



## Judicial Council of California · Administrative Office of the Courts

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: April 25, 2014

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Title	Agenda Item Type
Domestic Violence: Firearms Relinquishment in Family and Juvenile Law Restraining Order Cases	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Adopt Cal. Rules of Court, rule 5.495	July 1, 2014
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	April 2, 2014
Hon. Kimberly J. Nystrom-Geist, Cochair Hon. Jerilyn L. Borack, Cochair	Contact Tamara Abrams, 415-865-7712 <a href="mailto:tamara.abrams@jud.ca.gov">tamara.abrams@jud.ca.gov</a>

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### Executive Summary

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council adopt rule 5.495 of the California Rules of Court to provide a procedure for courts issuing family and juvenile law domestic violence restraining orders to determine whether a restrained person has complied with the court's order to relinquish any prohibited firearms the restrained person owns, possesses, or controls, as specified in Family Code section 6389(c). The statute provides no guidance for courts to determine compliance with relinquishment orders, and the proposed rule provides a statewide framework for implementing section 6389 while allowing for the development of local procedures.

### Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective July 1, 2014, adopt rule 5.495 of the California Rules of Court to provide a procedure for courts issuing family and juvenile law domestic violence restraining orders to determine whether a restrained person has complied with the court's order to relinquish any prohibited firearms the restrained person owns, possesses, or controls, as specified in Family Code section

6389(c). The rule would apply to all protective orders as defined in Family Code section 6218 and Welfare and Institutions Code section 213.5.

The text of rule 5.495 is attached at pages 9–12.

### **Previous Council Action**

In July 2010, the council adopted California Rules of Court, rule 4.700, which applies to criminal domestic violence restraining order cases and addresses the same procedural gap as is addressed by rule 5.495. During 2011, information was sought about implementation of rule 4.700 from judicial offices, prosecutors, defense attorneys, probation officers, and other justice system personnel. Judicial officers reported that implementation of the rule resulted in no significant increase in court time or resources. The Domestic Violence Practice and Procedure Task Force presented this information to the council in February 2012.<sup>1</sup>

Rule 5.495 was developed jointly by the Family and Juvenile Law Advisory Committee and the Domestic Violence Practice and Procedure Task Force. Although the task force concluded its duties on September 1, 2013, the Judicial Council, at its August 2013 meeting, directed the Family and Juvenile Law Advisory Committee to move forward with this proposed firearms rule after September 1, 2013.<sup>2</sup>

### **Rationale for Recommendation**

Under Family Code section 6389(a), anyone subject to a specified family or juvenile law domestic violence restraining order is prohibited from owning, possessing, purchasing, or receiving a firearm except under rare circumstances. Additionally, the court is required to order the restrained person to relinquish any firearm in that person's immediate possession or control, or subject to that person's immediate possession or control, within 24 hours of being served with the order, either by surrendering the firearm to the control of local law enforcement officials or by selling the firearm to, or storing the firearm with, a licensed gun dealer.<sup>3</sup> The restrained person must file with the court a receipt showing that the firearm was surrendered to the local law enforcement agency or sold to or stored with a licensed gun dealer within 48 hours of receiving the order (Fam. Code, § 6389(c)).

### **Addressing a procedural gap in statute**

There is no provision in Family Code section 6389 for a procedure to ensure that the court's order to relinquish a prohibited firearm has been followed. Rule 5.495 sets forth a consistent statewide procedure to do so. The rule:

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<sup>1</sup> The report is available at [www.courts.ca.gov/documents/jc-20120228-info1.pdf](http://www.courts.ca.gov/documents/jc-20120228-info1.pdf).

<sup>2</sup> See item J of the council meeting minutes posted at [www.courts.ca.gov/documents/jc-20130823-minutes.pdf](http://www.courts.ca.gov/documents/jc-20130823-minutes.pdf).

<sup>3</sup> The court may grant an exemption from the relinquishment requirement for a particular firearm if the respondent can show that the firearm is necessary as a condition of continued employment (Fam. Code, § 6389(h)). Effective July 1, 2014, the restrained person may choose to store his or her firearm with a licensed gun dealer as one of the relinquishment options (Assem. Bill 539; Stats. 2013, ch. 739).

- Specifies that the court must consider relevant information, when presented at a noticed hearing, to determine whether the person subject to a family or juvenile law protective order has a prohibited firearm;
- Provides procedures regarding the court’s determination, including considering whether the restrained person filed a relinquishment, storage or sale receipt required by Family Code section 6389(c) or if an exemption from the firearm prohibition was granted under Family Code section 6389(h);
- Provides that the court may make its determination at the time a domestic violence protective order is issued or at a subsequent noticed hearing while the order remains in effect;
- Specifies that documentation of the court’s determination be provided to the parties;
- Specifies remedies to be applied if the court determines that a restrained person has failed to relinquish a prohibited firearm; and
- For cases in which the court defers consideration of the matter to a review hearing, specifies the timing of that hearing, requires the protected person to provide notice of the hearing either in person or by mail to the restrained person if that person was not present when the court set the review hearing, specifies who must be present at the review hearing, and provides that a party may appear by telephone at the review hearing under rule 5.9.

**Enhancing information available to the court in complex family and juvenile law matters**

Rule 5.495 supports the goal of enhancing information available to the court in complex family and juvenile law matters relating to child custody and safety of children, including whether a parent has failed to comply with the court’s order to relinquish a firearm.

The Judicial Council recently demonstrated its intent to enhance the information available to courts about whether a restrained person has a prohibited firearm when it revised the *Emergency Protective Order* (form EPO-001),<sup>4</sup> which is used by law enforcement to request a restraining order that is valid for up to seven calendar days. The revisions include the addition of check boxes for law enforcement to indicate whether firearms were observed, reported, searched for, or seized. A copy of the form may later be provided to the family or juvenile court in connection with a request for a restraining order. In such a case, the court could have information that a firearm was reported to, observed, or searched for by law enforcement but no specified procedure to ensure that the firearm was relinquished as required. Rule 5.495 provides such a procedure.

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<sup>4</sup> The report is available at [www.courts.ca.gov/documents/jc-20121026-itemA26.pdf](http://www.courts.ca.gov/documents/jc-20121026-itemA26.pdf).

### **Addressing fiscal and operational issues**

The rule may reduce the likelihood of additional court hearings on restraining order violations, thus reducing the fiscal burden on the courts. When a restrained person fails to relinquish a firearm as ordered, he or she may be subject to criminal prosecution or a contempt proceeding brought by the protected party. The rule would allow the court to consider whether the restrained person complied with the relinquishment order at an existing noticed court hearing, rather than requiring additional court time and resources for a later-filed action.

The rule requires court action only in a case where relevant information is presented that the restrained person has a prohibited firearm in his or her immediate possession or control—precisely the case that poses a serious risk of lethality. Several courts that have implemented local firearm relinquishment procedures report that implementation of their procedures has required minimal additional court resources.

However, development of local rules requires resources and time that many courts do not have in the current budget climate. A statewide approach obviates the need for individual courts to expend their time and resources developing local rules and does not discourage development of local procedures when deemed necessary by the courts. The Advisory Committee Comment at the end of rule 5.495 specifically encourages courts to develop local procedures for firearm relinquishment review hearings.

### **Reducing public confusion**

The committee reviewed existing procedures and noted that many courts have no procedure to review whether a restrained person has relinquished his or her firearm as ordered. The public's confusion over the court's responsibility and lack of court follow-up on the firearm relinquishment order could pose a serious threat to the safety of the public at large and the protected persons. A statewide rule would also provide consistent information to the restrained person about compliance with the court's order.

### **Comments, Alternatives Considered, and Policy Implications**

The proposal was circulated to the standard mailing lists for family and juvenile law proposals during the regular winter comment cycle from December 13, 2013 to January 24, 2014. Included on the lists were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, social workers, probation officers, and other family law professionals, such as family law facilitators. The committee also sought comment from legal aid attorneys and attorneys working for domestic violence victim support agencies in the greater San Francisco Bay Area, the California Department of Justice (DOJ), and law enforcement agencies identified by the California DOJ.

The committee received comments from 13 commentators. Of those, 3 agreed with the proposal, 7 agreed if modified, and 3 did not state a position. A chart presenting the comments and the committee's responses is attached at pages 13–35. In general, the comments supported the rule.

### **Alternatives considered**

The committee carefully considered whether limiting firearm relinquishment procedures to local practice would sufficiently address the safety, operational, and fiscal issues addressed by the rule. The committee rejected relying solely on a local approach because statewide consistency provides needed information about firearm relinquishment to the parties and the court, reduces the likelihood of additional court hearings for restraining order violations, and eliminates the need for courts to develop local rules. A more detailed explanation of the committee's analysis follows.

### **Comments on issues specified by the committee**

The committee specifically requested public comment on two issues:

- Whether the proposal appropriately addresses the stated purpose, and
- In those cases where the court sets a review hearing, whether the rule should specify that the restrained person be notified by personal service or by mail.

Among the commentators who responded to whether the proposal addresses the stated purpose, all responded affirmatively.

Many commentators responded to the issue of the method of notice of a review hearing. The rule does not require a review hearing, but courts may schedule one at their discretion. The proposal as circulated would have required the protected person to provide personal service of a review hearing date when the restrained person was not present at the noticed hearing.

Commentators overwhelmingly favored service of process by mail for any subsequent review hearing, with many noting that personal service of a review hearing on the volatile and potentially lethal issue of firearms could be very dangerous. Furthermore, commentators noted that it would be difficult for the sheriff's office to effectuate service in three days as was required by the rule that was circulated for comment. Finally, commentators noted that the restrained person would have already been personally served by the time a noticed hearing took place so service by mail of a subsequent review hearing on an issue highlighted in the temporary restraining order would be sufficient. The committee notes that the documents personally served on a respondent in an action for a Domestic Violence Prevention Act restraining order include a notice that the court will ask for proof that a prohibited firearm was relinquished as ordered.<sup>5</sup>

In response to these comments, the committee incorporated the suggestion to allow service of process of any subsequent review hearing either personally or by mail, to allow flexibility. In order to account for mail delivery, the length of time between the noticed hearing and the review hearing was lengthened to 10 days.

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<sup>5</sup> See form DV-110, *Temporary Restraining Order*, "Warnings and Notices to the Restrained Person in (2)."

### **Comments on other issues**

In response to the procedures outlined in subdivision (d) concerning the court's determination of whether a restrained person subject to a firearm relinquishment order still has a firearm, one commentator suggested that the term "determination" in (d)(3) be replaced with "finding" to more appropriately reflect the court's action. Though the terms have similar meaning, "determination" more closely aligns with the conclusion that the court reaches, based on a variety of facts that the court may consider. In addition, changing one instance of "determination" to "finding" in the rule may cause confusion. For these reasons, the committee did not modify the circulated rule as suggested.

One commentator expressed concern that the rule may preempt their court's firearm relinquishment procedures. The commentator suggested that wording be added to the rule to (1) clarify that courts are encouraged to develop local procedures to ensure the restrained person has no firearms or has complied with the relinquishment order and (2) state that the rule is not intended to preempt local procedures. The committee notes that rule 5.495 would preempt local procedures only in situations where the local procedures conflict with the rule. The committee also notes that the suggested text is advisory in nature and therefore is more appropriate for the Advisory Committee Comment.

Two commentators suggested that subdivision (f), on child custody and visitation orders, be distinguished from other orders the court may make. In response, the committee has moved the remedies such as contempt or money sanctions to a new subdivision (g).

Two commentators questioned the utility of the court providing its determination in writing to the parties. One commentator questioned how a protected person might use the determination and expressed concern that the only remedy for a protected person was a difficult contempt action. The committee notes that failure to file a relinquishment, sale, or storage receipt demonstrating compliance with the relinquishment order constitutes a violation of the restraining order. (Fam. Code, § 6389(b)(2)(B).) If the court makes a written determination that the restrained person failed to file the receipt, the protected person may utilize the determination to attempt to initiate a criminal justice response in addition to or instead of a civil proceeding.

Three commentators commented on court resources necessary to implement the rule. One judicial officer stated that the rule would not constitute a cost savings and would add costs but that the costs are necessary. Another court commentator noted that clarifying the court's role in enforcing firearm relinquishment "is much needed" and should be replicated in other restraining order matters such as civil harassment, workplace violence, and elder and dependent adult abuse. This commentator also noted that most courts are overwhelmed with court hearings and that additional resources to respond to the requirements of the rule are needed.

The Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group (rules working group) agreed with the proposal, if modified. The committee revised the rule to respond to several of the rules working group's suggestions

including to (1) clarify that the rule is applicable only at a noticed hearing and (2) allow notice of a subsequent review hearing to be served by mail. The rules working group suggested that service of process by a probation officer or child welfare department be authorized if the case involves a juvenile restraining order. The committee notes that this suggestion would create additional duties for governmental agencies and would therefore need to be circulated for public comment. The rules working group also suggested a requirement for the probation department to file a firearm receipt upon seizure of any prohibited firearms. The committee notes that the suggestion would create additional duties for governmental agencies and would need to be circulated for public comment.

In response to the committee's public comment request for information on how the proposal would impact the courts, the rules working group commented that courts would be required to create new event codes, docket codes, and wording for minute orders. In addition, court staff would be required to (1) expedite processing of receipts for input and imaging; (2) prepare calendars for firearm relinquishment review hearings, including file reviews for proofs of service and relinquishment receipts; and (3) provide judicial officers with printouts of specified reports.

Commentators suggested that if the court makes a determination that the restrained person has a firearm in violation of the law, the court should provide a copy of its determination to the parties, rather than wait for a request from a party as was indicated in the proposal that was circulated for comment. The commentators noted that self-represented litigants would not know to ask the court for a copy. In response, the committee revised the rule to require the court to provide a copy of its determination to the parties who are present at a noticed hearing and, upon request, to any party not present. The committee notes that current budget constraints do not allow courts to provide service of the determination by mail to parties. Typically the protected person will be present at the noticed hearing when the court makes its determination so he or she will receive a copy of the determination.

One commentator suggested modifying the circulated rule to clarify its applicability to cases in which a juvenile protective order has issued. In response, the committee added language to subdivision (a) specifying the rule's applicability to cases in which a protective order has been issued under Welfare and Institutions Code section 213.5.

One commentator suggested that since rule 5.630 governs restraining orders in juvenile court proceedings, a reference to rule 5.495 should be included in that rule. The committee recommends amending rule 5.630 to include a reference to rule 5.495. If rule 5.495 is not adopted by the Judicial Council, the reference to it would be removed from rule 5.630. Rule 5.630 is also on the agenda for the April 2014 Judicial Council meeting in a report entitled *Domestic Violence: Changes to Rule and Forms for Family and Juvenile Law Restraining Orders*.

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

Implementation of the rule may involve limited additional discretionary review hearings and, in those counties that have not already implemented similar procedures, may require education and training of court personnel.

### **Attachments**

1. Cal. Rules of Court, rule 5.495, at pages 9–12
2. Comment chart, at pages 13–35



Rule 5.495 of the California Rules of Court is adopted, effective July 1, 2014, to read:

**Division 2**

**Chapter 4: Protective Orders**

**Rule 5.495. Firearm relinquishment procedures**

**(a) Application of rule**

This rule applies when a family or juvenile law domestic violence protective order as defined in Family Code section 6218 or Welfare and Institutions Code section 213.5 is issued or in effect.

**(b) Purpose**

This rule addresses situations in which information is presented to the court about firearms and provides the court with options for appropriately addressing the issue. This rule is intended to:

(1) Assist courts issuing domestic violence protective orders in determining whether a restrained person has a firearm in or subject to his or her immediate possession or control.

(2) Assist courts that have issued domestic violence protective orders in determining whether a restrained person has complied with the court's order to relinquish, store, or sell the firearm under Family Code section 6389(c).

**(c) Firearm determination**

When relevant information is presented to the court at any noticed hearing that a restrained person has a firearm, the court must consider that information to determine, by a preponderance of the evidence, whether the person subject to a protective order as defined in Family Code section 6218 or Welfare and Institutions Code section 213.5 has a firearm in or subject to his or her immediate possession or control in violation of Family Code section 6389.

**(d) Determination procedures**

(1) In making a determination under this rule, the court may consider whether the restrained person filed a firearm relinquishment, storage, or sales receipt or if an exemption from the firearm prohibition was granted under Family Code section 6389(h).

1           (2)   The court may make the determination at any noticed hearing when a domestic  
2           violence protective order is issued, at a subsequent review hearing, or at any  
3           subsequent family or juvenile law hearing while the order remains in effect.  
4

5           (3)   If the court makes a determination that the restrained person has a firearm in  
6           violation of Family Code section 6389, the court must make a written record of the  
7           determination and provide a copy to any party who is present at the hearing and,  
8           upon request, to any party not present at the hearing.  
9

10   **(e)   Subsequent review hearing**

11  
12           (1)   When presented with information under (c), the court may set a review hearing to  
13           determine whether a violation of Family Code section 6389 has taken place.  
14

15           (2)   The review hearing must be held within 10 court days after the noticed hearing at  
16           which the information was presented. If the restrained person is not present when the  
17           court sets the review hearing, the protected person must provide notice of the review  
18           hearing to the restrained person at least 2 court days before the review hearing, in  
19           accordance with Code of Civil Procedure 414.10, by personal service or by mail to  
20           the restrained person’s last known address.  
21

22           (3)   The court may for good cause extend the date of the review hearing for a reasonable  
23           period or remove it from the calendar.  
24

25           (4)   The court must order the restrained person to appear at the review hearing.  
26

27           (5)   The court may conduct the review hearing in the absence of the protected person.  
28

29           (6)   Nothing in this rule prohibits the court from permitting a party to appear by  
30           telephone under California Rules of Court, rule 5.9.  
31

32   **(f)   Child custody and visitation**

33  
34           (1)   If the court determines that the restrained person has a firearm in violation of Family  
35           Code section 6389, the court must consider that determination when deciding  
36           whether the restrained person has overcome the presumption in Family Code section  
37           3044.  
38

39           (2)   An order for custody or visitation issued at any time during a family law matter must  
40           be made in a manner that ensures the health, safety, and welfare of the child and the  
41           safety of all family members, as specified in Family Code section 3020. The court  
42           must consider whether the best interest of the child, based on the circumstances of  
43           the case, requires that any visitation or custody arrangement be limited to situations

1 in which a third person, specified by the court, is present, or that visitation or  
2 custody be suspended or denied, as specified in Family Code section 6323(d).

3  
4 (3) An order for visitation issued at any time during a juvenile court matter must not  
5 jeopardize the safety of the child, as specified in Welfare and Institutions Code  
6 section 362.1.

7  
8 **(g) Other orders**

9  
10 (1) The court may consider a determination that the restrained person has a firearm in  
11 violation of Family Code section 6389 in issuing:

12  
13 (A) An order to show cause for contempt under section 1209(a)(5) of the Code of  
14 Civil Procedure for failure to comply with the court’s order to surrender or sell  
15 a firearm; or

16  
17 (B) An order for money sanctions under section 177.5 of the Code of Civil  
18 Procedure.

19  
20 (2) This rule should not be construed to limit the court’s power to issue orders it is  
21 otherwise authorized or required to issue.

22  
23 **Advisory Committee Comment**

24  
25 When issuing a family or juvenile law domestic violence protective order as defined in Family Code  
26 section 6218 or Welfare and Institutions Code section 213.5, ex parte or after a noticed hearing, the court  
27 is required to order a restrained person “to relinquish any firearm in [that person’s] immediate possession  
28 or control or subject to [that person’s] immediate possession or control.” (Fam. Code, § 6389(c)(1).)  
29 Several mandatory Judicial Council forms—*Temporary Restraining Order* (form DV-110), *Restraining*  
30 *Order After Hearing* (form DV-130), and *Notice of Hearing and Temporary Restraining Order—Juvenile*  
31 (form JV-250)—include mandatory orders in bold type that the restrained person must sell to or store  
32 with a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms within his or  
33 her immediate possession or control within 24 hours after service of the order and must file a receipt with  
34 the court showing compliance with the order within 48 hours of receiving the order. California law  
35 requires personal service of the request for and any temporary protective order at least five days before  
36 the hearing, unless the court issues an order shortening time for service. Therefore, by the date of the  
37 hearing, the restrained person should have relinquished, stored, or sold his or her firearms and submitted a  
38 receipt to the court.

39  
40 Courts are encouraged to develop local procedures to calendar firearm relinquishment review hearings for  
41 restrained persons.

1 Section (f) of this rule restates existing law on the safety and welfare of children and family members and  
2 recognizes the safety issues associated with the presence of prohibited firearms.

3  
4 Although this rule does not require the court to compel a restrained person to testify, the court may wish  
5 to advise a party of his or her privilege against self-incrimination under the Fifth Amendment to the  
6 United States Constitution. The court may also consider whether to grant use immunity under Family  
7 Code section 6389(d).

8

**W14-06**

**Domestic Violence: Firearms Relinquishment in Family and Juvenile Law Restraining Order Cases** (adopt Cal. Rules of Court, rule 5.495)

All comments are verbatim unless indicated by an asterisk (\*)

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	<p>San Diego Family Court Virginia S. Johnson, Staff Attorney</p> <p>NOTE: All comments and recommendations in this document are submitted by Virginia S. Johnson, Staff Attorney for the San Diego Family Court, strictly as an individual in consultation with Judge Maureen F. Hallahan. No comments or recommendations in this document are to be considered as being submitted, approved or endorsed by the San Diego Superior Court.</p>	N/I	<p>(b)(2) <u>...Assist courts that have issued domestic violence protective orders to determine whether a restrained person has complied with the court’s order to relinquish, <del>or</del> sell or [store](This may have been an oversight.) the firearm under Family Code section 6389(c).</u></p> <p>(c) Local Procedures and Pre-[emption](See comment below in Advisory Committee Comment.)</p> <p>(1). <u>Courts are encouraged to develop local procedures to insure the restrained person has no firearms or has complied with the order under Family Code section 6389(c).</u></p> <p>(2) <u>This rule of court is not intended to pre-empt any local procedure or local rule created pursuant to the subsection above.</u></p> <p>(d)(3) <u>If the court makes a finding determination (“Finding” would seem to be the more appropriate word.) that the restrained person has a firearm in violation of Family Code section 6389, the court must make a written record of the finding determination and provide a copy of it to a party upon [request] (The procedure seems too vague which could result in a myriad of “written records” among the courts. What is the purpose of the “written record”?)</u></p>	<p>The committee agrees with this suggestion to add the word “store.”</p> <p>The commentator suggests moving the Advisory Committee Comment on local procedures to the rule. The committee has considered this comment and prefers to keep the text in the Advisory Committee Comment. The suggested text is advisory in nature. Further, the suggested text exceeds the scope of the rule and would need to be circulated to the public for comment.</p> <p>The committee notes that, although the terms are closely related, the committee prefers the term “determination” because changing the term in this one location could be confusing.</p> <p>The committee notes that the written record could be utilized by a party in a subsequent contempt proceeding or other action.</p>

**W14-06**

**Domestic Violence: Firearms Relinquishment in Family and Juvenile Law Restraining Order Cases** (adopt Cal. Rules of Court, rule 5.495)

All comments are verbatim unless indicated by an asterisk (\*)

	Commentator	Position	Comment	Committee Response
			<p>(e)(2) <u>The review hearing must be held within five court days after the noticed hearing at which the information was presented. If the restrained person is not present when the court sets the review hearing, the protected person must provide [notice] (The type of notice should be specific.) of the review hearing to the restrained person at least two court days before the review hearing.</u></p> <p>(e)(4) <u>The court must order the restrained person to appear at the review [hearing.] (The type of notice given above should take into consideration the order for the appearance.)</u></p> <p style="text-align: center;"><b>Advisory Committee Comment</b></p> <p><u>Courts are encouraged to develop local procedures to calendar firearm relinquishment review hearings for restrained [persons.] (This is excellent. Our court has an effective local procedure which should not be pre-empted by the new CRC. To make this certain, suggest that the language actually be included in the rule rather than in the Advisory Committee Comment)</u></p>	<p>The committee has incorporated service by mail into the rule.</p> <p>The rule authorizes both types of service for flexibility.</p> <p>See response above.</p>
2.	Superior Court of Santa Clara County	AM	Overall I agree with the proposed rule.	

**W14-06****Domestic Violence: Firearms Relinquishment in Family and Juvenile Law Restraining Order Cases** (adopt Cal. Rules of Court, rule 5.495)

All comments are verbatim unless indicated by an asterisk (\*)

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
	Hon. L. Michael Clark Superior Court Judge Not on behalf of group		<p>However, I recommend that that 5.488<sup>1</sup>, subdivision (a), be modified to read: "This rule applies when a domestic violence protective order as defined in Family Code section 6218 or Welfare and Institutions Code section 213.5 is issued or in effect."</p> <p>Rationale: The firearm relinquishment rule should apply both to family and juvenile proceedings.</p>	The committee agrees to incorporate the suggestion to add Welfare and Institutions Code section 213.5.
3.	Superior Court of Santa Clara County Christine Copeland Commissioner On behalf of group	A	<p>Re: changes to CRC 5.488 and AOC's request for specific comments:</p> <p>If notice for the underlying hearing was proper (personal service) then I am not sure why any notice of a secondary, etc hearing is needed for restrained party re: relinquishment compliance. Had they appeared at the underlying hearing, then they would have/could have known about hearing #2 (relinquishment follow-up hearing). Alternatively, mail notice should be sufficient. Let's say that the review hearing is NOT set by the court (as the suggested rule proposes) but instead a protected party files a post RO hearing using an RFO to present evidence that restrained party hasn't relinquished (just assume it's not an OSC for contempt in family/DV court and/or</p>	The committee agrees to incorporate the suggestion for service by mail.

<sup>1</sup> The rule was circulated for comment as rule 5.488. The committee recommends adding Chapter 4 to Division 2 of Title 5 of the California Rules of Court and to number the rule 5.495.

**W14-06****Domestic Violence: Firearms Relinquishment in Family and Juvenile Law Restraining Order Cases** (adopt Cal. Rules of Court, rule 5.495)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>assume it's not in criminal court for RO violation): in that instance, I would require RFO be filed at least 16 court days in advance, and via personal service.</p> <p>I don't think there would be cost-savings with the proposed CRC and additional court hearings on issue of relinquishment would no doubt add costs, but such are necessary to properly address the relinquishment requirement.</p> <p>Re: firearms relinquishment, I wonder if ammunition relinquishment is also a requirement and if so, that should be included.</p>	<p>No response required.</p> <p>California law does not require relinquishment of ammunition.</p>
4.	Riverside County Probation Department Allison Paterson Executive Secretary On behalf of group	N/I	<p>Family Court and Juvenile Court restraining orders are issued under FC 6218 and WIC 213.5 (213.5(b) specifies delinquency court), respectively. Currently, there is no procedure for courts issuing those orders to determine whether a restrained person has complied with the court's order to relinquish any firearms, as specified in FC 6389(c).</p> <p>The proposed modification is to create CRC 5.488, which would provide guidance for the family/juvenile court to determine compliance with the relinquishment order.</p> <p>Department Response: After reviewing the rule, it essentially recommends a review hearing,</p>	No response required.



**W14-06****Domestic Violence: Firearms Relinquishment in Family and Juvenile Law Restraining Order Cases** (adopt Cal. Rules of Court, rule 5.495)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>where the restrained person can present evidence he/she relinquished the firearm. If he/she does not, the court can consider that in its order for custody or visitation.</p> <p>As the minors we supervise are generally under the age of 18, and therefore unable to legally own/possess firearms; our interaction with restraining orders would probably come in the framework of a restrained parent. The above would primarily be conducted from the bench and have little impact on our department, aside from maybe the juvenile court officer, who would have to disseminate court proceedings to line staff.</p> <p>The request for comment had two specific questions relating to the proposed changes.</p> <p>They are:</p> <p>Question: Does the proposal appropriately address the stated purpose?</p> <p>Answer: From a juvenile court perspective, the wording appears sufficient.</p> <p>Question: In those cases where the court sets a review hearing, should the rule specify that the restrained person be notified by personal service or by mail?</p>	<p>No response required.</p>

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			Answer: Mail should be sufficient. Our experience is that all parties are present at these hearings, so the court could directly give the person notice. If the person was not present, his/her address is typically in the social worker's or probation officer's report, so first class mail would seem adequate.	The committee agrees to incorporate the suggestion for service by mail.
5.	California Partnership to End Domestic Violence Krista Niemczyk Public Policy Manager On behalf of group	N/I	<p>In response to the recent invitation to comment, the California Partnership to End Domestic Violence (the Partnership) respectfully submits the following feedback. As the federally recognized State Domestic Violence Coalition for California, representing over 200 organizations and individuals statewide, united in their commitment to safety and justice for victims, we recognize the importance of updated and easily understood forms, and we thank you for your attention to these forms and for the opportunity to comment on the proposed changes. The proposed changes include several helpful updates, and we thank the Family and Juvenile Law Advisory Committee for these proposals.</p> <p>We greatly appreciate the Court's attention to setting standards for firearm relinquishment and support the decision to set a statewide standard rather than relying solely on a local approach. Strengthening firearm relinquishment in domestic violence cases is essential to improving victim safety. Abusers who possess</p>	No response required.

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			<p>guns tend to inflict the most severe abuse on their partners, and domestic violence victims residing in a house with firearms are five times more likely to be killed than victims living in gun-free homes. Guns are used in over half of all domestic violence homicides – more than all other weapons combined.</p> <p>While we broadly support the proposed rule, we would draw the Court’s attention to the proposed language in (e)(2), which as drafted states:</p> <p>The review hearing must be held within five court days after the noticed hearing at which the information was presented. If the restrained person is not present when the court sets the review hearing, the protected person must provide notice of the review hearing to the restrained person at least two court days before the review hearing.</p> <p>Given the lethal intersection of firearms and domestic violence, we are concerned with the victim’s safety if required to provide notice to the restrained person. The courts already allow victims to request that the sheriff or marshal notify the restrained person about an order at no cost, and we would encourage the courts to permit the same notice options for the subsequent review hearing and make that option clearly and explicitly available to victims.</p>	<p>The committee agrees to incorporate the suggestion for service by mail.</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			Thank you for the opportunity to provide these comments. For additional information or questions, please contact Krista Niemczyk, Public Policy Manager, at Krista@cpedv.org or 916-444-7163.	
6.	Los Angeles County Sheriff's Department Court Services Division Civil Management Bureau Protective Order Section/Information Systems Section Marie Hazlett, HCRSC Not on behalf of group	A	I agree with the proposal and suggest in those cases where the court sets a review hearing, the rule should specify the restrained person be notified by mail.	The committee agrees to incorporate the suggestion for service by mail.
7.	Harriett Buhai Center for Family Law Meredith L. Alexander, Staff Attorney On behalf of group	AM	<p>Proposed Changes to Rule 5.488</p> <p>Item (b), the phrase "various points during a family or juvenile law matter" is vague and unclear. The specific points at which information relevant to firearm relinquishment can be presented should be clarified.</p> <p>Item (d)(2), the word "any" should be added, so that the rule reads, "or at any subsequent family or juvenile law hearing while the order remains in effect."</p> <p>Item (d)(3), we believe that both parties should be provided with a copy of the determination</p>	<p>The committee agrees to delete "at various points" and to incorporate the suggestion into the rule.</p> <p>The committee agrees to incorporate the suggestion.</p> <p>The committee agrees to incorporate the suggestion, with minor variation, into the</p>

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			<p>that the restrained person has a firearm. A self-represented litigant would not know to ask for this on his or her own.</p> <p>Item (e)(2), for safety reasons, we believe that the notice from the protected person to the restrained person should be by mail. Personal service would be inappropriate because it is sometimes difficult to find people, the situation could potentially become dangerous, or more conflict could arise from the personal service.</p> <p>Item (e)(3), we believe that this item should either be deleted or further clarified. It could be very dangerous or even fatal for the court to extend the date of the hearing when a firearm is involved. Thus, it would be safer to specify what particular types of situations would constitute “good cause” for an extension of the review date.</p> <p>Item (e)(5), in the event that the review hearing is conducted in the absence of the protected person, it should be included that notice must still be given to the protected person.</p> <p>Item (f)(4) &amp; (5), these items do not belong under the heading “Child custody and visitation and other orders.” Instead, they should be under their own heading after “Subsequent review hearing” called “Ramifications for violations of</p>	<p>recommendation.</p> <p>The committee agrees to incorporate the suggestion for service by mail into the recommendation.</p> <p>The committee notes that a good cause finding is fact based. It is difficult to enumerate all potential circumstances in a rule.</p> <p>The committee notes that the protected person will have been at the initial hearing when review hearing date was set. This provision specifies that the protected person need not be present at the review hearing.</p> <p>The committee agrees to incorporate the suggestion to separate the non-custody remedies into a separate subsection.</p>

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			firearm relinquishment.”	
8.	Superior Court of Shasta County Stacy Larson, Family Law Facilitator Not on behalf of group	AM	Clarification of the Court’s role enforcing the firearm relinquishment is much needed—I hope there are correlating statutes pertaining to elder abuse/dependent adult, workplace violence, civil harassment, and other types of restraining orders, which have similar needs. Most courts, like ours, are hopelessly overwhelmed with hearings and lack courtrooms as well as bench officers to handle the hearings. Absent resources to comply with this statute’s requirements of holding a hearing in a timely manner, it will serve little purpose. Litigants who know enough to ask for a hearing on this issue will not be granted a hearing unless there are courtrooms and bench officers available for the hearings to occur. If denied their hearings, the litigants’ options include writs, appeals, etc. The majority are self-represented and are unable to pursue these avenues without legal assistance, which is not available to them. The courts need adequate resources to ensure that these self-represented litigants’ rights are protected and honored.	This suggestion would require circulation for public comment and will be considered by the applicable advisory committees.
9.	The State Bar of California Family Law Section The Executive Committee of the Family Law Section of the State Bar of California On behalf of group	AM	The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) supports Proposal W14-06 with the amendments set forth below.  Date position taken: January 13, 2014	

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	<p>Contacts:</p> <p>Andrew Cain Legal Advocates for Children and Youth</p> <p>Saul Bercovitch Legislative Counsel The State Bar of California</p> <p><u>DISCLAIMER:</u></p> <p>This position is only that of the FAMILY LAW SECTION of the State Bar of California. This position has not been adopted by either the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California.</p> <p>Membership in the FAMILY LAW SECTION is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.</p>		<p>Executive Committee vote: 11-0-0</p> <p>Basis for Position:</p> <p>FLEXCOM supports the proposal to create a process to review whether restrained parties have surrendered any firearms. The proposed rule creates a consistent mechanism that institutionalizes the enforcement of firearm relinquishment by requiring a court to determine whether a person is in violation of Family Code section 6389 once a court has information that a person may be in violation, and to set a hearing within 5 days if the court does not determine this at the initial noticed hearing on the restraining order.</p> <p>As to whether the restrained party should be notified in person or by mail of any subsequent review hearing on the firearm relinquishment if they are not present in court when the hearing is set, FLEXCOM believes the ordinary rules of service should apply. If the notice is contained in a restraining order after hearing that must be served personally, then the notice should be served personally. If the notice is contained in a restraining order or other order that may be served by mail, then the notice may be served by mail. However, if the order is served by mail, the court would need to set the hearing out by more than 5 days. Otherwise, there would</p>	<p>The committee has considered the suggestion and recommends incorporating service of the notice of a review hearing by mail. The restrained person has already been personally served with notice of the initial hearing. Accordingly, the committee recommends extending the time for the review hearing to 10 days after the noticed hearing.</p>

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			<p>not be sufficient time to perfect service by mail, since Code of Civil Procedure section 1013(a) requires adding an additional 5 days for service when mailed in California.</p> <p>We recommend the following language be added to proposed Rule of Court 5.488(e)(2):</p> <p>The review hearing must be held within five court days after the noticed hearing at which the information was presented, if the notice of the review hearing is to be served personally, or within ten court days if the notice is to be served by mail. The notice of the review hearing may be served by mail if it is part of a restraining order which may be served by mail pursuant to Family Code section 6384(a) or it is part of any other Order After Hearing which may be served by mail.</p>	
10.	Superior Court of Los Angeles On behalf of group	AM	<p>Rule 5.488 (c) Firearm determination states that “When relevant information is presented to the court at any noticed hearing that a restraining person has a firearm...”</p> <p>(d) Determination procedures states “(2)The court may make the determination at the time a domestic violence protective order is issued...”</p> <p>Although it appears that the section (d) Determination procedures is intended to clarify section (c) Firearm Determination, it is unclear whether this section refers to only noticed</p>	The committee agrees to clarify that section (d) is applicable only at a noticed hearing.



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			<p>hearings, as domestic violence protective orders are frequently issued without notice at an ex parte hearing.</p> <p>Rule 5.488(e) Subsequent review hearing states “(2) The review hearing must be held within five court days after the noticed hearing at which the information was presented. If the restrained person is not present when the court sets the review hearing, the protected person must provide notice of the review hearing to the restrained person at least two court days before the review hearing.”</p> <p>This section appears to put an undue burden and risk on the protected party. Presumably the review hearing would be set when it is alleged that the restrained party has a firearm, and has not filed proof with the court of having turned in, sold or stored that firearm. The review hearing being set within 5 days would mandate that notice of the hearing would be by personal service, and the short notice period would generally preclude service by sheriff. This would mean that a friend or family member of the protected party would need to go to the home of the restrained party who is alleged to have a firearm, yet has refused to surrender it – to personally serve notice to that person. Given the circumstances, it seems like it may be an unwise risk to undertake.</p>	<p>The committee agrees to incorporate the suggestion to allow service by mail.</p>

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			<p>If in fact it is contemplated that armed law enforcement would be required to serve notice of the review hearing, what procedures would be put in place to carry this out? Currently, service of process by the sheriff is carried out by civilian sheriff staff with a delay of up to 2 weeks to process the service request.</p> <p>Rule 5.488 (e) states “(5) The court may conduct the review hearing in the absence of the protected person.”</p> <p>If the protected party is not present, this would require the judicial officer to question the respondent, thereby placing the judicial officer in the role of investigator rather than neutral arbiter.</p> <p>Rule 5.488 (f) Child custody and visitation and other orders states “(1) If the court determines that the restrained person has a firearm in violation of Family Code section 6389, the court must consider that determination when deciding whether the restrained person has overcome the presumption in Family Code section 3044”.</p> <p>The phrasing “when deciding whether ...” seems to mean that the requirement for the court to consider this determination is meant to be triggered only when custody/visitation has been put at issue by one of the parties. However, we</p>	<p>The committee has considered this comment and notes that the judicial officer is not required to question the respondent. The judicial officer is required to consider the information presented. This could include information previously presented by the protected person.</p> <p>The committee agrees to incorporate the suggestion by moving former sub-sections (f)(4)-(5) into new subsection (g).</p>

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			<p>think it should be stated more clearly to avoid any misinterpretation that this rule might require the court to consider such a determination even when initial or modified custody/visitation orders have not been requested or placed at issue by either party.</p> <p>Rule 5.488 (f) (4) Order to Show Cause for Contempt or Money Sanctions.</p> <p>Either request for relief appears to place an undue burden on the protected party to bring a rather legally technical hearing, such as for contempt, without appearing to provide any immediate relief of removing the firearm from the restrained party who has not relinquished it. Is there any assistance or remedy contemplated through the police or criminal court?</p>	<p>The committee notes that the protected person may alert law enforcement of the court's determination. The protected person may submit the court's determination under (d)(3) to initiate a criminal justice response, in addition to or instead of a civil contempt proceeding.</p>
11.	Orange County Bar Association Thomas H. Bienert, Jr., President On behalf of group	A	No narrative comments submitted.	No response required.
12.	Superior Court of California, County of San Diego Mike Roddy, Executive Officer On behalf of group	AM	Restraining orders in juvenile court cases are governed primarily by Welfare and Institutions Code section § 213.5 and rule 5.630 of the California Rules of Court. It would be helpful to add something in Rule 5.630 about firearm relinquishment, even if it is just a reference to Rule 5.488.	The committee has revised rule 5.630 to reference rule 5.495 (renumbered from 5.488 after comment period).

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			<ul style="list-style-type: none"> <li>• <i>Does the proposal appropriately address the stated purpose? For the most part.</i></li> <li>• <i>In those cases where the court sets a review hearing, should the rule specify that the restrained person be notified by personal service or by mail?</i></li> </ul> <p>The proposed rule reads: “The review hearing must be held within five court days after the noticed hearing at which the information was presented. If the restrained person is not present when the court sets the review hearing, the protected person must provide notice of the review hearing to the restrained person at least two court days before the review hearing.” (CRC, rule 5.488(e)(2).)</p> <p>First, why is the responsibility for providing notice to the restrained person placed on the protected person? (See CCP § 414.10 [TRO and order after hearing must be served by adult non-party].) Second, assuming the protected person is required to serve notice, wouldn’t personal service place the protected person at risk? For this reason, service should be by mail.</p> <p><b>Rule 5.488(e) Subsequent review hearing</b></p> <p>(1) ...</p> <p>(2) The review hearing must be held within five</p>	<p>No response required.</p> <p>The committee agrees to incorporate the suggestion to allow service by mail and, as a result, to lengthen the period of time between the noticed hearing and the review hearing to 10 days. Standard service rules apply. The committee agrees to add a reference to Code of Civ. Proc. 414.10.</p> <p>See response above.</p>

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			<p>court days after the noticed hearing at which the information was presented. If the restrained person is not present when the court sets the review hearing, <b>the protected person must provide notice</b> of the review hearing to the restrained person at least two court days before the review hearing.</p> <p><i>Why is the responsibility for providing notice of the review hearing to the restrained person placed on the protected person? (See CCP § 414.10 [TRO and order after hearing must be served by adult non-party].) Couldn't this place the protected person at risk?</i></p> <p><b><u>Advisory Committee Comment</u></b></p> <p><u>... California law requires personal service of the request [it is not clear what type of "request" this is referring to; suggest adding "for protective order"] and any temporary protective order at least five days before the hearing, unless the court issues an order shortening time for service. Therefore, by the date of the hearing, the restrained person should have relinquished, stored, or sold his or her firearms and submitted a receipt to the court.</u></p>	<p>The committee agrees to clarify that the request is for a temporary order.</p>
13.	Joint Rules Working Group Judicial Council and Court Leadership	AM	<p><b>TCPJAC/CEAC Joint Rules Working Group Comment</b></p>	

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	<p>Services Division                      Judicial Council of California -                      Administrative Office of the Courts                      Claudia Ortega, Senior Court Services                      Analyst                      On behalf of group.</p>		<p><u>Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.)</u>                      The courts will need to create new event codes, docket codes, and wording for minute orders.</p> <p><u>Increases court staff workload</u>                      The proposal will increase court staff workload in the following ways:</p> <ul style="list-style-type: none"> <li>• Expedite processing of receipts for input and imaging;</li> <li>• Prepare calendars for firearm relinquishment review hearings, including file reviews for Proofs of Service and Relinquishment Receipts.</li> <li>• Provide judicial officers with printouts of the CLETS, AFS and CARPOS reports.</li> </ul> <p><u>Impact on local or statewide justice partners</u>                      Juvenile Impact - County welfare and Probation departments will need to research and inform the courts when restrained parties own/possess firearms in violation of Family Code section 6389. If OCS re: contempt is pursued, there</p>	

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			<p>may also need to be prepared affidavits to pursue the contempt.</p> <p><u>Other</u></p> <ol style="list-style-type: none"> <li>Proposed rule 5.488(c) <b><u>Firearm determination</u></b> states “When relevant information is presented to the court at any <i>noticed</i> hearing that a restraining person has a firearm...” (d)(2) <b><u>Determination procedures</u></b> states “The court may make the determination at the time a domestic violence protective order is issued...”</li> </ol> <p>Although it appears that the section (d) Determination procedures is intended to clarify section (c) Firearm Determination, it is unclear whether this section refers to only noticed hearings, as domestic violence protective orders are frequently issued without notice at an ex parte hearing.</p> <ol style="list-style-type: none"> <li>Proposed rule 5.488(e)(2) <b><u>Subsequent review hearing</u></b> states “The review hearing must be held within five court days after the noticed hearing at which</li> </ol>	<ol style="list-style-type: none"> <li>The committee agrees to clarify that section (d) is applicable only at a noticed hearing.</li> <li>The committee agrees to incorporate the suggestion to require service by mail.</li> </ol>

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			<p>the information was presented. If the restrained person is not present when the court sets the review hearing, the protected person must provide notice of the review hearing to the restrained person at least two court days before the review hearing.”</p> <p>This section appears to put an undue burden and risk on the protected party. Presumably the review hearing would be set when it is alleged that the restrained party has a firearm, and has not filed proof with the court of having turned in, sold or stored that firearm. The review hearing being set within 5 days would mandate that notice of the hearing would be by personal service, and the short notice period would generally preclude service by sheriff. This would mean that a friend or family member of the protected party would need to go to the home of the restrained party who is alleged to have a firearm, yet has refused to surrender it – to personally serve notice to that person. Given the circumstances, it seems like it may be an unwise risk to undertake.</p>	



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			<p>If in fact it is contemplated that armed law enforcement would be required to serve notice of the review hearing, what procedures would be put in place to carry this out? Currently, service of process by the sheriff is carried out by civilian sheriff staff with a delay of up to 2 weeks to process the service request.</p> <p>3. Proposed rule 5.488(e)(5) <b><u>Subsequent review hearing</u></b> states “The court may conduct the review hearing in the absence of the protected person.”</p> <p>If the protected party is not present, this would require the judicial officer to question the respondent, thereby placing the judicial officer in the role of investigator rather than neutral arbiter.</p> <p>4. Proposed rule 5.488(f)(1) <b><u>Child custody and visitation and other orders</u></b> states “If the court determines that the restrained person has a firearm in violation of Family Code section</p>	<p>3. The committee has considered this comment and notes that the rule does not require the court to question the respondent. The judicial officer is only required to consider the information presented.</p> <p>4. The committee agrees to incorporate the suggestion by moving former sub-sections (f)(4)-(5) into section (g).</p>

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			<p>6389, the court must consider that determination when deciding whether the restrained person has overcome the presumption in Family Code section 3044.”</p> <p>The phrasing “when deciding whether ...” seems to mean that the requirement for the court to consider this determination is meant to be triggered only when custody/visitation has been put at issue by one of the parties. However, we think it should be stated more clearly to avoid any misinterpretation that this rule might require the court to consider such a determination even when initial or modified custody/visitation orders have not been requested or placed at issue by either party.</p> <p>5. Regarding proposed rule 5.488 (f)(4) <b><u>Order to Show Cause for Contempt or Money Sanctions</u></b>, either request for relief appears to place an undue burden on the protected party to bring a rather</p>	<p>5. The committee notes that the protected person may alert law enforcement of the court’s determination. The protected person may submit the court’s determination under (d)(3) to initiate a criminal justice response, in addition to or</p>

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			<p>legally technical hearing, such as for contempt, without appearing to provide any immediate relief of removing the firearm from the restrained party who has not relinquished it. Is there any assistance or remedy contemplated through the police or criminal court?</p> <p>6. <u>Suggested modifications</u>            In addition to addressing the issues raised above, the Joint Rules Working Group requests the following suggested modifications:</p> <p>(a) Add a requirement for Probation to file receipt for relinquishment if they seize firearms.</p> <p>(b) Modify to require that Notice of Hearing to Restrained Person under Rule 5.488(e)(2) be provided by protected person, child welfare or probation department in Juvenile instead of exclusively by protected person.</p>	<p>instead of a civil contempt proceeding.</p> <p>(a) The committee notes that the suggestion exceeds the scope of the rule which only addresses court procedures. The suggestion would require circulation for public comment.</p> <p>(b) The suggestion creates additional duties by other agencies and would therefore need to be circulated for public comment. The committee will consider this suggestion if the rule is later modified.</p>