



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on December 13, 2013

Title	Agenda Item Type
Protective Orders: Update <i>Emergency Protective Order</i> Form	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise form EPO-001	January 1, 2014
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	December 2, 2013
Hon. Kimberly J. Nystrom-Geist and Hon. Jerilyn L. Borack, Cochairs	Contact
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Executive Summary

The Family and Juvenile Law Advisory Committee recommends revising *Emergency Protective Order* (form EPO-001), a mandatory form used by law enforcement officers throughout the state, to implement Assembly Bills 539 and 238.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2014, revise *Emergency Protective Order* (form EPO-001) to implement changes in the law regarding emergency protective orders under recently enacted legislation.¹

Revised form EPO-001 is attached at pages 5–6.

¹ In preparing the revisions to the form, the Protective Orders Working Group was consulted. The group consists of members not only from the Family and Juvenile Law Advisory Committee but also from the Civil and Small Claims, Criminal Law, and Probate and Mental Health Advisory Committees and the Violence Against Women Education Project Planning Committee. The group recommends the proposed changes to the EPO form.

Previous Council Action

The Judicial Council initially adopted the emergency protective order (EPO) form effective July 1, 1988. This form 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 a judicial officer by telephone or other means to request the order. If an order is issued, the law enforcement officer prepares the order using the standard Judicial Council EPO form adopted for this purpose.

The EPO form has been revised several times. The most recent revisions, effective January 1, 2013, clarified the firearms provisions that apply when an EPO is issued and reorganized the EPO form to be more effective and easier to understand.

Rationale for Recommendation

The EPO form needs to be further revised at this time to reflect recent legislation that becomes effective on January 1, 2014.

Assembly Bill 539

Under current law, all protective orders must contain a statement that persons subject to these orders must relinquish firearms to a law enforcement agency or sell them to a licensed gun dealer, and must file a proof of surrender or sale. (Pen. Code, § 29825(d).) Under Assembly Bill 539 (Stats. 2013, ch. 739),² the Penal Code is amended effective January 1, 2014 to provide that any person who is prohibited from owning or possessing a firearm may—instead of surrendering or selling their firearms—transfer them to a licensed firearms dealer for storage until the expiration date of the protective order. (Pen. Code, § 29830.)

To reflect this change in the law, certain revisions should be made to the EPO form. First, on page 1, the statement in the order on firearms (item 3d) currently refers only to the surrender or sale of firearms. It has been changed to state: “If you have any firearms, you must turn them in to law enforcement or sell them to, *or store them with*, a licensed gun dealer” (italics added).

Second, on the EPO form, the warnings and information at the top of the second page currently state: “YOU MUST TURN IN YOUR FIREARMS TO A LAW ENFORCEMENT AGENCY OR SELL THEM TO A LICENSED GUN DEALER WITHIN 24 HOURS OF RECEIPT OF THIS ORDER. PROOF OF SURRENDER OR SALE MUST BE FILED WITH THE COURT WITHIN 48 HOURS OF RECEIPT OF THIS ORDER.” To reflect the new storage provisions

² The text of AB 539, as chaptered, may be viewed at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB539

in AB 539, this text has been changed to read: “WITHIN 24 HOURS OF RECEIPT OF THIS ORDER, YOU MUST TURN IN YOUR FIREARMS TO A LAW ENFORCEMENT AGENCY, SELL THEM TO A LICENSED FIREARMS DEALER, OR STORE THEM WITH A LICENSED FIREARMS DEALER UNTIL THE EXPIRATION OF THIS ORDER. (PENAL CODE SECTION 29830.) PROOF OF SURRENDER, SALE, OR STORAGE MUST BE FILED WITH THE COURT WITHIN 48 HOURS OF RECEIPT OF THIS ORDER. “

Assembly Bill 238

The EPO form also needs to be revised to conform to Assembly Bill 238 (2013 Stats., ch.145),³ legislation sponsored by the Los Angeles County Sheriff’s Department. The bill, whose purpose is to provide for improved procedures for enforcing EPOs, changes the law on emergency protective orders in two respects.

First, under existing law, a law enforcement officer who requests an emergency protective order is required to serve the EPO on the restrained party, if that party can be reasonably located; provide a copy of the EPO to the protected party; file a copy with the court as soon as practicable after issuance; and carry a copy of the EPO while on duty. AB 238 eliminates the fourth requirement—that the officer must carry a copy of the order while on duty.

Second, instead of requiring officers who request an EPO to carry a copy of the order, the bill provides that the officer must have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice (DOJ). This is an important change. To better protect victims, restraining orders generally must be entered into a statewide database of protective orders, known as the California Restraining and Protective Order System (CARPOS). This enables the orders to be more easily tracked and enforced. However, in the past, EPOs have not been required to be entered into CARPOS. Under AB 238, starting January 1, 2014, EPOs must be entered into the database. This will provide an improved procedure for the enforcement of emergency protective orders that should better protect victims. (See Assem. Com. on Judiciary, Bill Analysis Synopsis of Assem. Bill 238 (2013–2014 Reg. Sess.), as amended March 20, 2013, at pages 2–3.)

To reflect these changes in the law under AB 238, the EPO form has been revised, effective January 1, 2014. First, in the section addressed “To law enforcement” on page 2 of the form, the sentence would be eliminated that states: “The officer who requested the emergency protective order, while on duty, shall carry copies of the order.” In the same section, a new sentence would be added stating that “the officer shall have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice.” With these

³ The text of AB 238, as chaptered, may be viewed at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB238&search_keywords=

changes, the form will be consistent with the law on emergency protective orders under AB 238.⁴

Comments, Alternatives Considered, and Policy Implications

Because the revisions of the EPO form are needed to accurately reflect the recent changes in the law and no issues of interpretation or application exist, the revisions were not circulated for public comment⁵ and no alternatives were considered except to change the form as proposed.

Implementation Requirements, Costs, and Operational Impacts

No significant implementation requirements, costs, or operational impacts for the courts are likely as a result of the form changes. The principal impacts of the recent legislation will be on law enforcement agencies, which will need to prepare copies of the revised EPO forms for use by peace officers. As a result of the underlying changes in the law, officers will no longer be required to carry copies of EPOs that have been issued. However, the staff of law enforcement agencies employing officers who request EPOs will have to enter the orders into the DOJ computer database system for protective and restraining orders. The estimated costs for law enforcement are not large and the public benefits are significant.⁶

Attachments

1. Revised *Emergency Protective Order* (form EPO-001), at pages 5–6

⁴ This proposal would also modify the last sentence in the instructions to law enforcement so that it is clearer and more closely tracks the Penal Code.

⁵ However, the revised EPO form was submitted to the Department of Justice for its consideration and the DOJ has approved the form.

⁶ According to the Senate Appropriations Committee, the annual state-reimbursable costs to law enforcement for entering approximately 16,500 emergency protective orders into the statewide database would be under \$50,000 (i.e., in the range of \$22,00 to \$37,000).

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.
d. YOU MUST NOT own, possess, purchase, receive, or attempt to purchase or receive any firearm or ammunition.
e. YOU MUST NOT take any action, directly or through others, to obtain the addresses or locations of any person named in item 1.
4. (Name): is given temporary care and control of the following minor children of the parties (names and ages):
5. THIS ORDER WILL EXPIRE AT THE CLOSE OF THE COURT BUSINESS DAY ON:
6. TO THE PROTECTED PERSON: If you need protection for a longer period of time, you must request restraining orders from the court in the county where you live:
7. 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.
8. Judicial officer (name): granted this Order on (date): at (time):

APPLICATION

9. 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):
10. 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 3c.
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 9. 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 law enforcement officer.
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

TO THE RESTRAINED PERSON: VIOLATION OF THIS ORDER IS A MISDEMEANOR PUNISHABLE BY A \$1,000 FINE, ONE YEAR IN JAIL, OR BOTH, OR IT MAY BE PUNISHABLE AS A FELONY. THIS PROTECTIVE 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. THE TERMS AND CONDITIONS OF THIS ORDER REMAIN ENFORCEABLE REGARDLESS OF THE ACTS OF THE PARTIES; IT MAY BE CHANGED ONLY BY ORDER OF THE COURT (PENAL CODE SECTION 13710(b)).

YOU ARE PROHIBITED FROM OWNING, POSSESSING, PURCHASING, RECEIVING, OR ATTEMPTING TO PURCHASE OR RECEIVE A FIREARM OR AMMUNITION. (PENAL CODE SECTIONS 29825(a), 30305(a).) A VIOLATION IS SUBJECT TO A \$1,000 FINE AND IMPRISONMENT OR BOTH. WITHIN 24 HOURS OF RECEIPT OF THIS ORDER, YOU MUST TURN IN YOUR FIREARMS TO A LAW ENFORCEMENT AGENCY, SELL THEM TO A LICENSED FIREARMS DEALER, OR STORE THEM WITH A LICENSED FIREARMS DEALER UNTIL THE EXPIRATION OF THIS ORDER. (PENAL CODE SECTION 29830.) PROOF OF SURRENDER, SALE, OR STORAGE MUST BE FILED WITH THE COURT WITHIN 48 HOURS OF RECEIPT OF THIS ORDER.

To the restrained person: This order will last until the date and time in item 5 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 on 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 5 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 5 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 6. 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 6, 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. 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 5 al dorso. Si usted desea que la protección continúe, tendrá que solicitar una orden de la corte en la dirección indicada en el punto 6. 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 6, 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*). 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: 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 shall be filed with the court as soon as practicable after issuance. Also, the officer shall have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice. 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. A law enforcement officer who acts in good faith to enforce an emergency protective order shall not be held civilly or criminally liable.

If a child is in danger of being abducted: This order will last only until the date and time noted in item 5 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 5 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 5 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.