



*Kern County Sheriff's Office*  
**Policies and Procedures**

<b>TITLE:</b> Gun Violence Restraining Order		<b>NO:</b> H 2100	
<b>APPROVED:</b> Donny Youngblood, Sheriff-Coroner			
<b>EFFECTIVE:</b> 09/8/2022	<b>REVIEWED:</b> 09/02/2022	<b>REVISED:</b> 09/02/2022	<b>UPDATED:</b> 09/02/2022

## **POLICY PURPOSE AND SCOPE**

The purpose of this policy is to provide guidelines for the Kern County Sheriff's Office ("KCSO") to petition and serve gun violence restraining orders and account for the firearms obtained pursuant to those orders (Penal Code § 18108).

It is the policy of KCSO to petition and serve gun violence restraining orders in compliance with state law and to properly account for firearms and ammunition obtained pursuant to such orders.

A Gun Violence Restraining Order (GVRO) is a civil restraining order prohibiting a named person from controlling, owning, purchasing, possessing, receiving, or otherwise having custody of any firearms or ammunition, including an ammunition magazine (Penal Code § 18100).

## **PROCEDURE**

A deputy petitioning the court for a GVRO shall comply with notice, hearing, and renewal requirements, as set forth in Penal Code §18100, et. seq. Forms established by the Judicial Council should be used (Penal Code §18105). The petition should describe the number, types, and locations of any firearm and ammunition the deputy believes to be possessed or controlled by the person ((Penal Code §18107). Petitions should describe why the order is necessary to prevent personal injury to the subject of the petition or another person because less restrictive alternatives are ineffective or inadequate under the circumstances (Penal Code §18125; Penal Code §18150; Penal Code §18175).

If it is not practical under the circumstances to submit a written petition, a deputy may orally request an order, and then prepare and sign a declaration under penalty of perjury that recites the oral statements provided to the judicial officer and memorialize the order of the court on the appropriate Judicial Council form (Penal Code § 18140).

## **ADDITIONAL CONSIDERATIONS**

Deputies should also consider requesting permission to petition the court for a gun violence restraining order (Penal Code § 18108):

- When responding to a domestic disturbance where the residence is associated with a firearm registration or record.
- When responding to any call or incident when a firearm is present or when one of the

involved parties owns or possesses a firearm.

- During a contact with a person exhibiting mental health issues, including suicidal thoughts, statements, or actions if that person owns or possesses a firearm.

Deputies should consider obtaining a mental health evaluation if the encounter involves a situation where there is a reasonable cause to believe the person poses an immediate and present danger of causing personal injury to themselves or another person by having custody or control of a firearm (Penal Code § 18108).

## **GUN VIOLENCE RESTRAINING ORDERS**

There are three types of GVROs in California: emergency protective orders, temporary ex-parte GVROs, and the one-to-five year ban. All three types of GVROs require a finding that a GVRO is necessary to prevent personal injury to self or others, because less restrictive alternatives have been tried and either found to be ineffective, or have been determined inadequate, or inappropriate under the circumstances.

There are three types of GVROs available in California:

### **Gun Violence Emergency Protective Order (Valid for 21 Days) (Law Enforcement only)**

- A Gun Violence Emergency Protective Order is valid for 21 days beginning the day after the date of issuance.
- Only law enforcement officers may request a Gun Violence Emergency.
- A deputy who reasonably believes a person is a present danger to their self or another person by controlling, owning, purchasing, possessing, receiving, or otherwise having custody of a firearm may petition the court for a temporary firearms restraining order or a firearms emergency protective order.
- When issuing an Emergency Protective Order, deputies must use Judicial Council of California form, Gun Violence Emergency Protective Order (CLETS-EGV) **EPO-002**. After completing form EPO-002, a copy must be provided to the restrained person and issuing court, as stated on the bottom of the form.
- Explain to a judicial officer why reasonable grounds for the issuance of an emergency GVRO exist and ask for oral or written approval of the temporary emergency GVRO.
- If a Gun Violence Emergency Protective Order is granted, the deputy must be forwarded to the KCSO Gun Violence Restraining Order Coordinator/Subpoena Coordinator to forward to County Counsel's Office via e-mail for determination of further action including whether a Petition for a Firearms Restraining Order should be sought.
- Serve the order on the person to be restrained (if the person can reasonably be located).

- Upon serving a copy of the copy of EPO-002 on the restrained person, enter the EPO-002 into the California Restraining and Protective Order computer database system (Penal Code § 18115).
- Provide the original proof of service to the issuing court as soon as practicable, but within one business day (Penal Code § 18115).
- Verbally ask the subject of the order if they have any firearm, ammunition, or magazine in their possession or under their custody or control (Penal Code § 18160).
- Request that any firearms, ammunition, and magazines be immediately surrendered and issue a receipt for the surrendered items (Penal Code § 18120). When ordered, the respondent must surrender all firearms and ammunition immediately.
- Take into temporary custody any firearms, ammunition, magazines, or other deadly weapons discovered in plain view or pursuant to consent or other lawful search (Penal Code § 18250).
- Inform the restrained person of any scheduled hearing regarding the order (Penal Code § 18160).
- File a copy of the order with the court as soon as practicable after issuance, but within one business day.
- As soon as practicable but no later than the end of the deputy's shift. Submit proof of the emergency firearms protective order to Teletype for prompt entry into the computer database system for protective and restraining orders (CLETS) maintained by the Department of Justice.
- Teletypes will be responsible for entering the order into CLETS and filing a copy with the court.

### **Temporary Ex-Parte Gun Violence Restraining Order**

- In coordination with the Kern County Counsel's Office, KCSO may seek to obtain a temporary ex parte GVRO when one or more deputies believe there is a substantial likelihood the individual who is the subject of the GVRO poses a significant danger, in the near future, or causing personal injury to self or others by having custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition as determined by considering the factors listed in California Penal Code §18155; and the GVRO is necessary to prevent injury to self or others because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the circumstances.
- If a temporary ex parte GVRO is issued by the court, the respondent must be "served" in-person with a copy of the order and notice of the hearing. State law allows for a county sheriff or marshal to serve the restrained person with the order and remove all the respondent's firearms, ammunition, and magazines. Due to the dangers, a deputy from the

KCSO substation that requested the GVRO should serve these orders, instead of using a family member, or a private process server.

- **Deputies must attend the hearing.**
- When attending the hearing, deputies should take documents that help prove the reasons why a firearm restraining order is necessary. Take two copies of all documents.

### **Permanent Gun Violence Restraining Orders (One to Five Year Ban)**

- In coordination with the Kern County Counsel's Office, KCSO may seek to obtain a court order for one-to-five years, when there is a finding by clear and convincing evidence that: the subject of the GVRO poses a significant danger of causing personal injury to self or others by having custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition; and a GVRO is necessary to prevent personal injury to self or others because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the circumstances.
- Permanent Gun Violence Restraining Orders are available to law enforcement, immediate family members including spouses, parents, grandparents, children, stepparents, stepchildren, domestic partners, siblings, or roommates and persons who have regularly resided on the same property as the person to be restrained within the last six months; employers; coworkers of the subject of the petition if they had substantial and regular interactions with the subject for at least one year prior to the petition and have obtained the approval of the employer; or an employee or teacher of a secondary or postsecondary school that the subject has attended in the last six months and upon approval of the school administrator (Penal Code §18170).
- A final GVRO may be issued after a hearing is held to determine if the respondent poses a significant danger to self or others and the removal of firearms, magazines, and ammunition is needed to prevent injury. Final GVROs are renewable.
- **Deputies must attend the hearing.**
- When attending the hearing, deputies should take documents that help prove the reasons why a firearm restraining order is necessary. Deputies should also take two copies of all documents.

Additionally, witnesses may attend the hearing and provide statements.

During a hearing the court will assess the dangerousness of the individual based on the following criteria:

- Recent threat or act of violence directed toward self or others.

- A violation of a domestic violence emergency protective order that is in effect at the time the court is considering the petition.
- A recent violation of an unexpired domestic violence protective order.
- Any conviction for any crime that prohibits purchase and possession of firearms under California law.
- Patterns of violence or threatened violence within the prior 12 months directed toward self or others.
  - The court may consider any other evidence that is indicative of an increased risk of violence, such as the reckless use of a firearm.
  - The court may also consider whether other means less restrictive than a restraining order have been tried and have not worked or are not appropriate.

## **SEARCH WARRANTS**

If a person who has been served with a GVRO refuses to surrender any firearm or ammunition, the deputy should consider whether to seek a search warrant. If a search warrant is to be obtained, the preparation and service of the search warrant shall be done in accordance with Penal Code §1542.5.

- The deputy serving the warrant shall take custody of any firearm or ammunition that is controlled, possessed or owned by the person who is the subject of the GVRO, including any discovered pursuant to the warrant, a consensual search or other lawful search.
- If the location being searched is jointly occupied and the firearm or ammunition is owned by a person other than the restrained person, the firearm or ammunition should not be seized if the following conditions are met:
  - The firearm or ammunition can be stored in a manner that does not allow the restrained person to have control or access.
  - There is no evidence that the owner unlawfully possesses the firearm or ammunition.
- If a locked gun safe belonging to someone other than the subject of a GVRO is discovered, the deputy shall not search the contents of the safe unless the owner consents or there is a valid search warrant for the safe. Any search of the safe must be done in the owner's presence.
- A receipt for the firearm will be provided by a deputy who takes custody of a firearm or other deadly weapon at the scene of a domestic violence incident, when servicing a protective order, or when serving a GVRO. The receipt shall include the name and residential mailing address of the owner of the firearm or other deadly weapon.

## **RELEASE OF FIREARMS**

- Firearms and ammunition that were taken into temporary custody or surrendered pursuant to a GVRO shall be returned to the restrained person upon the expiration of the order and in accordance with Penal Code §18120.
- Firearms and ammunition that were taken pursuant to a search warrant must be retained by the Kern County Sheriff's Department and may only be released in accordance with Penal Code §1536.

### **RENEWAL OF GUN VIOLENCE RESTRAINING ORDERS**

- The KCSO GVRO Coordinator in coordination with the Kern County Counsel's Office is responsible for the review of a GVRO obtained by the Kern County Sheriff's Department to determine if a renewal should be requested within the time prescribed by law (Penal Code §18190).
- In coordination with the Kern County Counsel's Office, KCSO shall re-examine every GVRO court order 90 days prior to its expiration of the GVRO to determine whether re-petitioning the court to extend the ban is warranted.

### **POLICY AVAILABILITY**

The Sheriff or authorized designee shall be responsible for making this policy available to the public upon request (Penal Code §18108).

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