Office of the San Diego City Attorney and San Diego Police Department

Gun Violence Restraining Orders
Penal Code sections 18100-18197

IMLA Annual Conference - Addendum

The City of SAN DIEGO

How the three GVROs intersect

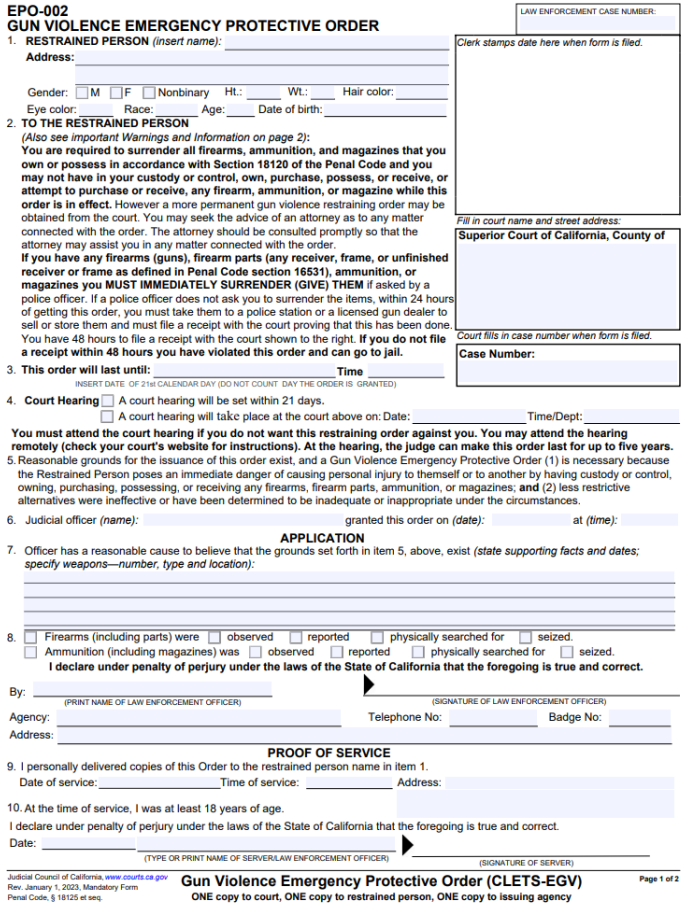
	Temporary (Emergency) EPO-002	Ex Parte	After Hearing (Permanent)
Statutory Authority	PC 18145	PC 18150	PC 18175
Duration	21 Days plus Continuances	21 Days of Continuances	1-5 Years, Renewable
Petitioner	Law Enforcement Only	LE, Family, Employer, Teacher	LE, Family, Employer, Teacher
Evidentiary Standard	Reasonable Cause	Substantial Likelihood	Clear & Convincing
Threshold Showing	Immediate & Present Danger of Causing Personal Injury	Significant Danger in the Near Future of Causing Personal Injury	Any Significant Danger of Causing Personal Injury

Temporary Emergency GVRO (**EPO-002**)

Procedure

1. Call judge, fill out **EPO-002**.
   - *Articulate that subject poses an immediate and present danger to themselves or others.*
   - Request a hearing date (depending on jurisdiction).
2. Serve **EPO-002** on the subject while on scene (per PC 18140(b)).
3. Request immediate surrender (PC 18120) of firearms/Request firearms (per PC 18135(b)). SW if necessary (per PC 1524(a)(14)).
4. File a copy of the order with the court as soon as practical (per PC 18140(c)).
5. Enter the order into the computer database maintained by the DOJ (per PC 18140(d)).

Temporary Emergency GVRO (EPO-002)



EPO-002
GUN VIOLENCE EMERGENCY PROTECTIVE ORDER

LAW ENFORCEMENT CASE NUMBER:

1. **RESTRAINED PERSON** *(insert name)*:
Address:
Gender: ☐ M ☐ F ☐ Nonbinary Ht.: Wt.: Hair color:
Eye color: Race: Age: Date of birth:

Clerk stamps date here when form is filed.

2. **TO THE RESTRAINED PERSON**
(Also see important Warnings and Information on page 2):
You are required to surrender all firearms, ammunition, and magazines that you own or possess in accordance with Section 18120 of the Penal Code and you may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, any firearm, ammunition, or magazine while this order is in effect. However a more permanent gun violence restraining order may be obtained from the court. You may seek the advice of an attorney as to any matter connected with the order. The attorney should be consulted promptly so that the attorney may assist you in any matter connected with the order.
If you have any firearms (guns), firearm parts (any receiver, frame, or unfinished receiver or frame as defined in Penal Code section 16531), ammunition, or magazines you MUST IMMEDIATELY SURRENDER (GIVE) THEM if asked by a police officer. If a police officer does not ask you to surrender the items, within 24 hours of getting this order, you must take them to a police station or a licensed gun dealer to sell or store them and must file a receipt with the court proving that this has been done. You have 48 hours to file a receipt with the court shown to the right. **If you do not file a receipt within 48 hours you have violated this order and can go to jail.**

Fill in court name and street address:
Superior Court of California, County of

Court fills in case number when form is filed.
Case Number:

3. **This order will last until:** **Time**
INSERT DATE OF 21st CALENDAR DAY (DO NOT COUNT DAY THE ORDER IS GRANTED)

4. **Court Hearing** ☐ A court hearing will be set within 21 days.
☐ A court hearing will take place at the court above on: Date: Time/Dept:
You must attend the court hearing if you do not want this restraining order against you. You may attend the hearing remotely (check your court's website for instructions). At the hearing, the judge can make this order last for up to five years.

5. Reasonable grounds for the issuance of this order exist, and a Gun Violence Emergency Protective Order (1) is necessary because the Restrained Person poses an immediate danger of causing personal injury to themself or to another by having custody or control, owning, purchasing, possessing, or receiving any firearms, firearm parts, ammunition, or magazines; **and** (2) less restrictive alternatives were ineffective or have been determined to be inadequate or inappropriate under the circumstances.

6. Judicial officer *(name)*: granted this order on *(date)*: at *(time)*:

APPLICATION

7. Officer has a reasonable cause to believe that the grounds set forth in item 5, above, exist *(state supporting facts and dates; specify weapons—number, type and location)*:

8. ☐ Firearms (including parts) were ☐ observed ☐ reported ☐ physically searched for ☐ seized.
☐ Ammunition (including magazines) was ☐ observed ☐ reported ☐ physically searched for ☐ seized.
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

By: (PRINT NAME OF LAW ENFORCEMENT OFFICER) (SIGNATURE OF LAW ENFORCEMENT OFFICER)
Agency: Telephone No: Badge No:
Address:

PROOF OF SERVICE

9. I personally delivered copies of this Order to the restrained person name in item 1.
Date of service: Time of service: Address:

10. At the time of service, I was at least 18 years of age.
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/LAW ENFORCEMENT OFFICER) (SIGNATURE OF SERVER)

Judicial Council of California, www.courts.ca.gov
Rev. January 1, 2023, Mandatory Form
Penal Code, § 18125 et seq.

Gun Violence Emergency Protective Order (CLETS-EGV)
ONE copy to court, ONE copy to restrained person, ONE copy to issuing agency

Page 1 of 2

How to prepare a GVRO Hearing after an **EPO-002** is Filed and Served

Show up to court

If hearing proceeds

- **GV-030**: Gun Violence Restraining Order After Hearing
- **EPO-002**
- **GV-125**: Consent to GVRO & Surrender of Firearm

If hearing is continued

- **GV-115**: Request to continue court hearing for Gun Violence Restraining Order
- **GV-116**: Order of Continuance and Notice of a new hearing date

Ex Parte GVRO

What is it?

PC 18150

- Temporary civil restraining order pending permanent hearing.
- Requested by law enforcement, immediate family, co-workers, employers, and/or teachers.
- Maximum of 21 days, unless extended by court order.
- Subject poses a **significant danger in the near future** of causing harm to self or others, based on a consideration of factors.

Statutory Factors for Consideration by the Court for GVRO

PC 18155(b)(1) MANDATORY FACTORS: "the court shall consider all evidence of the following…"	PC 18155(b)(2) DISCRETIONARY FACTORS: "the court may consider any other evidence of an increased risk for violence including, but not limited to…"
Recent* threat or act of violence by Respondent toward another	Unlawful and reckless use, display, or brandishing of a firearm by Respondent
Recent* threat or act of violence by Respondent toward self	History of use, attempted use, or threatened use of physical force by Respondent
Violation of Emergency Protective Order	Prior arrest of the subject of the petition for a felony offense
Recent* violation of an unexpired Protective Order	History of a violation by Respondent of an Emergency Protective Order
Conviction for any offense listed in section 29805	History of a violation by Respondent of a Protective Order
Pattern of violent acts or threats in the past 12 months	Documentary evidence, including, but not limited to, police reports and records of convictions, of either recent criminal offenses, ongoing alcohol or controlled substance abuse by Respondent
*"Recent" means within the 6 months prior to the petition	Evidence of recent acquisition of firearms, ammunition, or other deadly weapons

Intangible Mass Shooter Factors to Prove Increased Risk of Violence

Respondents with certain traits (non-specific indicators) who feel a psychological need:

- Failure | Anger | Rage
- Undervalued
- Depression | Despair
- Insignificant
- No respect
- Social awkwardness | Disconnected



Violence is the remedy to fulfill the above

Ex Parte GVRO

Additional considerations

PC 18108(b): 'SHALL' consider a GVRO for domestic disturbance with a registered firearm, firearm present, or one party possesses a firearm

PC 18108(c): 'SHOULD' consider a GVRO for mental health and suicide

How do I file an Ex Parte GVRO?

Where?

- **Ask your local court for specific business office process and method to file Ex Parte GVROs**
  - Civil or Criminal **(ASK LOCAL LE OR ATTORNEY)**

- **Ask your local court in which department GVRO hearings are conducted**

What about e-Filing GVROs?

AB 2960 amended PC 18122

- **Court <u>SHALL PERMIT</u> GVRO petitions to be submitted electronically**
- **Effective July 1, 2023**

****Use CAUTION when e-Filing confidential or sealed documents****

How do I file an Ex Parte GVRO?

When?

- **Ask your local court for specific filing deadlines to submit Ex Parte GVROs**

  Don't forget **PC 18150(d)**: GVRO "shall be issued or denied on the same day the petition is submitted to the court" – unless it's too late to permit effective review, then issued or denied on the next day of judicial business

- **Ask your local court how long it will take for the judge to review the filing and put together the certified order and packets**

How do I file an Ex Parte GVRO?

How?

- Be able to articulate a **significant danger in the near future**
  - **PC 18150(b)(1)**

- Be able to articulate that GVRO is necessary to prevent personal injury and there are no lesser restrictive means to prevent the injury
  - **PC 18150(b)(2)**

How do I file an Ex Parte GVRO?

Step 1

Receive reports from
Law Enforcement Agency
(City Attorney/Legal Representative)

Step 2

Review for GVRO filing

How do I file an Ex Parte GVRO?

Step 3

Complete the following court forms in this order:

- **GV-100:** Petition for Firearms Restraining Order (LE officer signature required) and check box 10 on page 4 of the form
- **MC-030:** Declaration (LE officer signature required with the necessary language)
- **GV-109:** Notice of Court Hearing
- **GV-110:** Temporary Firearms Restraining Order (not to be confused with **EPO-002**)
- **CLETS-001:** Confidential CLETS Information
- **CM-010:** Civil Case Cover Sheet (check 5 boxes – a: Unlimited (top left box); b: Other Petition (Section 1, box 43); c: Non-complex (Section 2, second box); d: Non-monetary (Section 3, box b); and e: Non-class action (Section 5, second box))

***Court forms (in English, Spanish, Chinese, and Vietnamese) provided with the training materials or online at** http://www.courts.ca.gov/forms.htm?filter=GVP

How do I file an Ex Parte GVRO?

Step 4

Write the declaration into the **MC-030** and use attachments if needed.
Include the following in the declaration:

> *"Based on the information contained herein, I hold the opinion that a GVRO is necessary to protect the public and prevent harm to Respondent or others. There are no lesser restrictive means to ensure public safety. The San Diego Police Department hold the opinion that Respondent poses a significant danger in the near future."*

How do I file an Ex Parte GVRO?

Step 5

File completed Ex Parte GVRO Packet, with items from Step 4, with the court business office.

Step 6

Retrieve the following packets from court:

1. Certified copy of the Temporary GVRO Packet;

2. Order After Hearing Packet; and

3. Respondent's Packet.

How do I file an Ex Parte GVRO?

Certified copy of the Temporary GVRO Packet includes:

1. **GV-109** – Notice of Court Hearing
2. **GV-110** – Temporary Gun Violence Restraining Order
3. **GV-100** – Petition of Gun Violence Restraining Order
4. **MC-030** – Declaration (with copy of redacted reports)

How do I file an Ex Parte GVRO?

Order After Hearing Packet includes:

1. **GV-200-INFO** – What is a Proof of Service?
2. **GV-200** – Proof of Personal Service
3. **GV-130** – Firearms Restraining Order After Hearing
4. **GV-115** – Request to Continue Court Hearing for Firearms Restraining Order

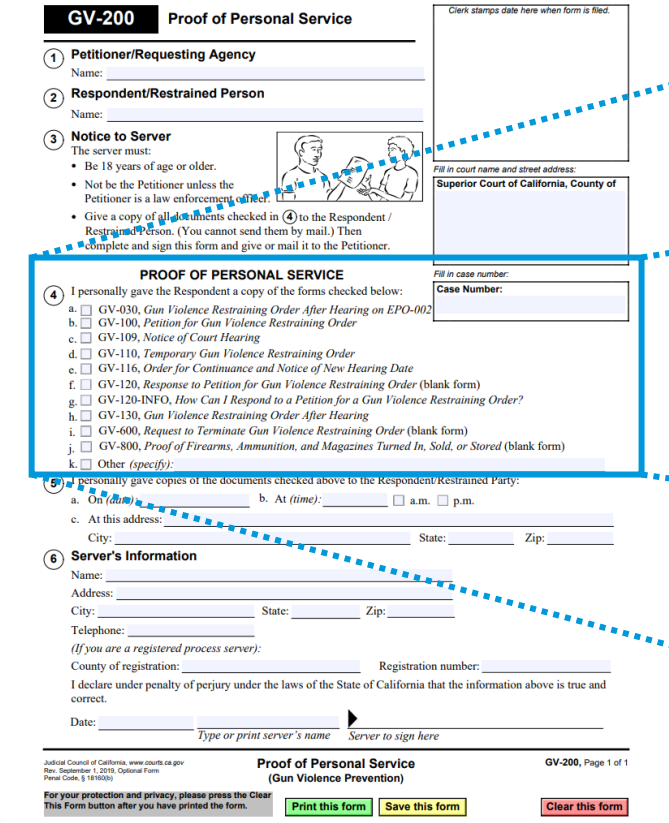
How do I file an Ex Parte GVRO?

Respondent's Packet for Service includes:

1. **GV-109** – Notice of Court Hearing
2. **GV-110** – Temporary Gun Violence Restraining Order
3. **GV-100** – Petition for Gun Violence Restraining Order
4. **MC-30** – Declaration
5. **GV-120-INFO** – How can I respond to Petition for a GVRO?
6. **GV-120** – Response to a Petition for a GVRO
7. **GV-125** – Consent to GVRO and Surrender of Firearms
8. **MC-020** – Additional Page Attachment to Judicial Council Form
9. **GV-250** – Proof of Service of Response by Mail
10. **GV-800-INFO** – How do I turn in or sell my Firearms?
11. **GV-800** – Proof of Firearms turn in or sold
12. **GV-600** – Request to Terminate GVRO

How do I file an Ex Parte GVRO?

GV-200



GV-200 Proof of Personal Service

(1) Petitioner/Requesting Agency
Name:

(2) Respondent/Restrained Person
Name:

(3) Notice to Server
The server must:
- Be 18 years of age or older.
- Not be the Petitioner unless the Petitioner is a law enforcement officer.
- Give a copy of all documents checked in (4) to the Respondent / Restrained Person. (You cannot send them by mail.) Then complete and sign this form and give or mail it to the Petitioner.

Clerk stamps date here when form is filed.

Fill in court name and street address:
Superior Court of California, County of

Fill in case number:
Case Number:

PROOF OF PERSONAL SERVICE

(4) I personally gave the Respondent a copy of the forms checked below:
a. ☐ GV-030, *Gun Violence Restraining Order After Hearing on EPO-002*
b. ☐ GV-100, *Petition for Gun Violence Restraining Order*
c. ☐ GV-109, *Notice of Court Hearing*
d. ☐ GV-110, *Temporary Gun Violence Restraining Order*
e. ☐ GV-116, *Order for Continuance and Notice of New Hearing Date*
f. ☐ GV-120, *Response to Petition for Gun Violence Restraining Order* (blank form)
g. ☐ GV-120-INFO, *How Can I Respond to a Petition for a Gun Violence Restraining Order?*
h. ☐ GV-130, *Gun Violence Restraining Order After Hearing*
i. ☐ GV-600, *Request to Terminate Gun Violence Restraining Order* (blank form)
j. ☐ GV-800, *Proof of Firearms, Ammunition, and Magazines Turned In, Sold, or Stored* (blank form)
k. ☐ Other *(specify):*

(5) I personally gave copies of the documents checked above to the Respondent/Restrained Party:
a. On *(date)*: b. At *(time)*: ☐ a.m. ☐ p.m.
c. At this address:
City: State: Zip:

(6) Server's Information
Name:
Address:
City: State: Zip:
Telephone:
(If you are a registered process server):
County of registration: Registration number:
I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.
Date: *Type or print server's name* *Server to sign here*

Judicial Council of California, www.courts.ca.gov
Rev. September 1, 2019, Optional Form
Penal Code, § 18160(b)

Proof of Personal Service
(Gun Violence Prevention)

GV-200, Page 1 of 1

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

PROOF OF PERSONAL SERVICE

Fill in case number:

Case Number:
37-2021-000XXXXX-CU-PT-CTL

(4) I personally gave the Respondent a copy of the forms checked below:
a. ☐ GV-030, *Gun Violence Restraining Order After Hearing on EPO-002*
b. ☒ GV-100, *Petition for Gun Violence Restraining Order*
c. ☒ GV-109, *Notice of Court Hearing*
d. ☒ GV-110, *Temporary Gun Violence Restraining Order*
e. ☐ GV-116, *Order for Continuance and Notice of New Hearing Date*
f. ☒ GV-120, *Response to Petition for Gun Violence Restraining Order* (blank form)
g. ☒ GV-120-INFO, *How Can I Respond to a Petition for a Gun Violence Restraining Order?*
h. ☐ GV-130, *Gun Violence Restraining Order After Hearing*
i. ☐ GV-600, *Request to Terminate Gun Violence Restraining Order* (blank form)
j. ☒ GV-800, *Proof of Firearms, Ammunition, and Magazines Turned In, Sold, or Stored* (blank form)
k. ☒ Other *(specify):* MC-030 w/redacted reports; GV-250; GV-800 INFO; Order to Seal

(5) I personally gave copies of the documents checked above to the Respondent/Restrained Party:

How to succeed at a GVRO Hearing after an Ex Parte GVRO is Filed and Served

Show up to court

If hearing proceeds

- **GV-130**: Gun Violence Restraining Order After Hearing
- **GV-125**: Consent to GVRO & Surrender of Firearm

If hearing is continued

- **GV-115**: Request to continue court hearing for Gun Violence Restraining Order
- **GV-116**: Order of Continuance and Notice of a new hearing date

How to succeed at a GVRO Hearing after an Ex Parte GVRO is Filed and Served

If hearing conducted and Permanent GVRO is granted

- Provide the **GV-130** to judge for signature and court file stamp. Customarily, Respondent will be served in open court.

If Respondent is not present at the hearing

- Establish Service and proceed to the hearing without Respondent.
- Repeat previous step.
- Give Certified **GV-130** to LE for personal service to Respondent (File **GV-200** with court when complete).

Juveniles

How to File

May File Under Seal

There is no Statutory Authority – consistent with legislative intent to protect minors.

1. Application to Seal Record (Cal. Rules of Court, Rule 2.551)
2. Declaration of Counsel in Support of Application for Order sealing Record (List all GV documents in the initial filing packet)
3. Order to Seal Record
   - Respondent juvenile must only include first name and initial of last name (Jeffrey B.)
   - Two copies:
     - One copy with full name and no redactions in a sealed envelope.
     - One copy with full redactions and partial juvenile name.

Permanent GVRO

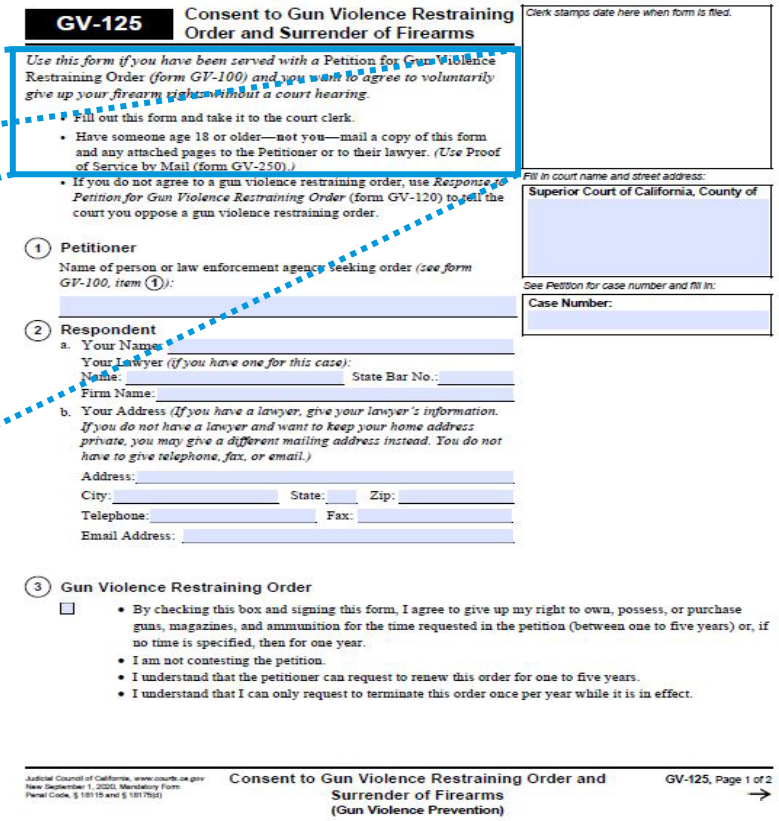
Consent to GVRO & Surrender of Firearms

GV-125 **Consent to Gun Violence Restraining Order and Surrender of Firearms**

Clerk stamps date here when

Use this form if you have been served with a Petition for Gun Violence Restraining Order *(form GV-100) and you want to agree to voluntarily give up your firearm rights without a court hearing.*

- Fill out this form and take it to the court clerk.
- Have someone age 18 or older—**not you**—mail a copy of this form and any attached pages to the Petitioner or to their lawyer. *(Use* Proof of Service by Mail (form GV-250).*)*



GV-125 **Consent to Gun Violence Restraining Order and Surrender of Firearms**

Clerk stamps date here when form is filed.

Use this form if you have been served with a Petition for Gun Violence Restraining Order *(form GV-100) and you want to agree to voluntarily give up your firearm rights without a court hearing.*

- Fill out this form and take it to the court clerk.
- Have someone age 18 or older—not you—mail a copy of this form and any attached pages to the Petitioner or to their lawyer. *(Use* Proof of Service by Mail (form GV-250).*)*
- If you do not agree to a gun violence restraining order, use *Response to Petition for Gun Violence Restraining Order* (form GV-120) to tell the court you oppose a gun violence restraining order.

Fill in court name and street address:
Superior Court of California, County of

See Petition for case number and fill in:
Case Number:

(1) **Petitioner**
Name of person or law enforcement agency seeking order *(see form GV-100, item (1)):*

(2) **Respondent**
a. Your Name:
Your Lawyer *(if you have one for this case)*:
Name: State Bar No.:
Firm Name:
b. Your Address *(If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or email.)*
Address:
City: State: Zip:
Telephone: Fax:
Email Address:

(3) **Gun Violence Restraining Order**
☐
- By checking this box and signing this form, I agree to give up my right to own, possess, or purchase guns, magazines, and ammunition for the time requested in the petition (between one to five years) or, if no time is specified, then for one year.
- I am not contesting the petition.
- I understand that the petitioner can request to renew this order for one to five years.
- I understand that I can only request to terminate this order once per year while it is in effect.

Judicial Council of California, www.courts.ca.gov
New September 1, 2020, Mandatory Form
Penal Code, § 18115 and § 18175(d)

Consent to Gun Violence Restraining Order and Surrender of Firearms
(Gun Violence Prevention)

GV-125, Page 1 of 2

Service & Seizure

Authority to Seize

PC 18120

3 RULES WHEN SERVED BY POLICE:

1. Upon service, law enforcement officers **shall verbally ask** Respondent if they have firearms.
2. Law enforcement officers **shall request** that all firearms and ammunition be immediately surrendered.
3. Subject **shall surrender** firearms **immediately** in a **safe manner** upon service.

*** Can be combination of **ANY** or **ALL** of the above***

Service & Seizure

Authority to Seize and Search for Firearms

PC 18250:

When law enforcement serves a GVRO, officer shall take temporary custody of any firearms in ***plain sight*** or discovered pursuant to a ***lawful search***.

1. Attempt to obtain **consent** to search after GVRO service.
2. If subject refuses, obtain a **search warrant**.

Service & Seizure

What if they refuse to submit their weapons?

PC 18205:

It is a misdemeanor if the subject:

1. Possesses or owns firearms or ammunition; and
2. Knows they are prohibited by a GVRO.

Upon conviction, Respondent cannot access firearms for **5 years** from the time the original GVRO expires.

Also consider PC 166

Service & Seizure

Search Warrant Authority

Officers have authority to obtain a search warrant pursuant to PC 1524(a)(14) if:

1. Property or things to be seized include a firearm;
2. Owned by, in possession of, or in the custody or control of a person;
3. Who is the subject of a GVRO; and
4. If the person has been served and refuses to relinquish the firearm as required by law.

Service & Seizure

Search Warrant Authority

Do not use GVRO PC 1524(a)(14) to piggy-back seizure of items (such as narcotics) other than firearms or ammunition when there is no independent PC to seize the other items (narcotics), however:

1. Plain view and all other Fourth Amendment still applies.
2. Consider the gravity of the items seized and possibly stop and get new SW to cover new possible felony.
3. No case law or statute to test yet.

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