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INVITATION TO COMMENT

W14-06

Title	Action Requested
Domestic Violence: Firearms Relinquishment in Family and Juvenile Law Restraining Order Cases	Review and submit comments by January 24, 2014
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rule 5.488	July 1, 2014
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Tamara Abrams, 415-865-7712 tamara.abrams@jud.ca.gov
Hon. Kimberly J. Nystrom-Geist, Cochair	
Hon. Jerilyn L. Borack, Cochair	

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council of California, effective July 1, 2014, adopt rule 5.488 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).¹ The rule would provide needed guidance for family and juvenile law judicial officers; fill a procedural gap in the underlying statute, which has caused public confusion; establish a uniform statewide procedure; and help protect victims and promote public safety.

Background

Under Family Code section 6389(c), 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

¹ The proposed rule would apply to all protective orders as defined in Family Code section 6218. Protective orders issued in family court under the Domestic Violence Prevention Act and protective orders issued in juvenile court under Welfare and Institutions Code section 213.5 are defined in Family Code section 6218.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

the order, either by surrendering the firearm to the control of local law enforcement officials or by selling the firearm to a licensed gun dealer.² 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 a licensed gun dealer within 48 hours of receiving the order. (Fam. Code, § 6389(c).)

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. The rule would present a consistent statewide procedure to do so.

The committee and the Domestic Violence Practice and Procedure Task Force developed the rule jointly, after considering existing local court procedures and consulting with judicial officers, court professionals, and members of the public.³

The Proposal

Proposed rule 5.488 provides a procedure to implement Family Code section 6389, which requires an order to relinquish firearms in every case in which a specified protective order is issued, including those issued in family and juvenile law matters. The statute provides no guidance for the court to determine compliance with the relinquishment order. The proposed rule is intended to assist courts in their efforts to implement the law by providing a statewide framework while allowing for the development of local procedures.

Information relevant to firearm relinquishment may be presented to the court at various points during a family or juvenile law matter. The proposal addresses situations where information may be presented regarding firearms and provides the court with options for addressing the issue at any noticed hearing.

The proposed rule:

- 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 or sales receipt required by Family Code section 6389(c) or if an exemption from the firearm prohibition was granted under Family Code section 6389(h).

² 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.)

³ The task force concluded its duties on September 1, 2013. The Judicial Council directed the Family and Juvenile Law Advisory Committee to move forward with the proposed firearms rule after September 1, 2013.

- Provides that the court may make its determination at the time a domestic violence protective order is issued, at a subsequent review hearing, or at a subsequent family or juvenile law hearing while the order remains in effect.
- Specifies that documentation of the court's determination be provided to the parties upon request; and
- Specifies remedies to be applied if the court determines that a restrained person has failed to relinquish a firearm.

If the court defers consideration of the matter to a review hearing, the proposal would specify timing of the hearing, that the protected person provide notice of the review hearing, who must be present at the review hearing, and an acknowledgment that a party may appear by telephone at the review hearing under California Rules of Court, rule 5.9.

Alternatives Considered

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

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

The proposal would support 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.

Last year, the Judicial Council demonstrated its intent to enhance the information available to courts about whether a restrained person has a prohibited firearm by its revisions to the *Emergency Protective Order* (form EPO-001).⁴ The form 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 checkboxes 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. The proposed rule provides such a procedure.

⁴ The report is available at www.courts.ca.gov/documents/jc-20121026-itemA26.pdf.

Address fiscal and operational issues

The proposal 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 proposed rule would allow the court to consider whether the restrained person complied with the relinquishment order at an existing court hearing, rather than requiring additional court time and resources on a later-filed action.

The proposed rule would require 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 cases that pose 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.

Further, rule 4.700, which applies to criminal domestic violence restraining order cases and addresses the same procedural gap as would be addressed by this proposal, has been in effect since July 2010. During 2011, information was sought about implementation of rule 4.700 from judicial officers, 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.⁵

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

Reduce public confusion

The committee reviewed existing procedures and noted that many courts have no procedure to review whether the restrained person 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 regarding compliance with the court's order.

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.

⁵ The report is available at <http://www.courts.ca.gov/documents/jc-20120228-info1.pdf>.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- 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?

The advisory committee also seek comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements and costs be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rule 5.488, at pages 6–8
2. California Family Code section 6389:
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FAM§ionNum=6389.

Rule 5.488 of the California Rules of Court would be amended, effective July 1, 2014, to read:

1 **Rule 5.488. Firearm relinquishment procedures**

2
3 **(a) Application of rule**

4
5 This rule applies when a domestic violence protective order as defined in Family Code
6 section 6218 is issued or in effect.

7
8 **(b) Purpose**

9
10 Information relevant to firearm relinquishment can be presented to the court at various
11 points during a family or juvenile law matter. This rule addresses situations in which
12 information may be presented regarding firearms and provides the court with options for
13 appropriately addressing the issue. This rule is intended to:

14
15 (1) Assist courts issuing domestic violence protective orders to determine whether a
16 restrained person has a firearm in or subject to his or her immediate possession or
17 control.

18
19 (2) Assist courts that have issued domestic violence protective orders to determine
20 whether a restrained person has complied with the court's order to relinquish or sell
21 the firearm under Family Code section 6389(c).

22
23 **(c) Firearm determination**

24
25 When relevant information is presented to the court at any noticed hearing that a restrained
26 person has a firearm, the court must consider that information to determine, by a
27 preponderance of the evidence, whether the person subject to a protective order as defined
28 in Family Code section 6218 has a firearm in or subject to his or her immediate possession
29 or control in violation of Family Code section 6389.

30
31 **(d) Determination procedures**

32
33 (1) In making a determination under this rule, the court may consider whether the
34 restrained person filed a firearm relinquishment, storage, or sales receipt or if an
35 exemption from the firearm prohibition was granted under Family Code section
36 6389(h).

37
38 (2) The court may make the determination at the time a domestic violence protective
39 order is issued, at a subsequent review hearing, or at a subsequent family or juvenile
40 law hearing while the order remains in effect.

- 1 (3) If the court makes a determination that the restrained person has a firearm in
2 violation of Family Code section 6389, the court must make a written record of the
3 determination and provide a copy of it to a party upon request.
4

5 **(e) Subsequent review hearing**
6

- 7 (1) When presented with information under (c), the court may set a review hearing to
8 determine whether a violation of Family Code section 6389 has taken place.
9
10 (2) The review hearing must be held within five court days after the noticed hearing at
11 which the information was presented. If the restrained person is not present when the
12 court sets the review hearing, the protected person must provide notice of the review
13 hearing to the restrained person at least two court days before the review hearing.
14
15 (3) The court may for good cause extend the date of the review hearing for a reasonable
16 period or remove it from the calendar.
17
18 (4) The court must order the restrained person to appear at the review hearing.
19
20 (5) The court may conduct the review hearing in the absence of the protected person.
21
22 (6) Nothing in this rule prohibits the court from permitting a party to appear by
23 telephone under California Rules of Court, rule 5.9.
24

25 **(f) Child custody and visitation and other orders**
26

- 27 (1) If the court determines that the restrained person has a firearm in violation of Family
28 Code section 6389, the court must consider that determination when deciding
29 whether the restrained person has overcome the presumption in Family Code section
30 3044.
31
32 (2) An order for custody or visitation issued at any time during a family law matter must
33 be made in a manner that ensures the health, safety, and welfare of the child and the
34 safety of all family members, as specified in Family Code section 3020. The court
35 must consider whether the best interest of the child, based on the circumstances of
36 the case, requires that any visitation or custody arrangement be limited to situations
37 in which a third person, specified by the court, is present, or that visitation or
38 custody be suspended or denied, as specified in Family Code section 6323(d).
39
40 (3) An order for visitation issued at any time during a juvenile court matter must not
41 jeopardize the safety of the child, as specified in Welfare and Institutions Code
42 section 362.1.
43

- 1 (4) The court may consider a determination that the restrained person has a firearm in
2 violation of Family Code section 6389 in issuing:
3
4 (A) An order to show cause for contempt under section 1209(a)(5) of the Code of
5 Civil Procedure for failure to comply with the court’s order to surrender or sell
6 a firearm; or
7
8 (B) An order for money sanctions under section 177.5 of the Code of Civil
9 Procedure.
10
11 (5) This rule should not be construed to limit the court’s power to issue orders it is
12 otherwise authorized or required to issue.
13

14 **Advisory Committee Comment**
15

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

30 Courts are encouraged to develop local procedures to calendar firearm relinquishment review hearings for
31 restrained persons.
32

33 Section (f) of this rule restates existing law regarding the safety and welfare of children and family
34 members and recognizes the safety issues associated with the presence of prohibited firearms.
35

36 Although this rule does not require the court to compel a restrained person to testify, the court may wish
37 to advise a party of his or her privilege against self-incrimination under the Fifth Amendment to the
38 United States Constitution. The court may also consider whether to grant use immunity under Family
39 Code section 6389(d).
40