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REPORT TO THE JUDICIAL COUNCIL

For business meeting on April 25, 2014

Title

Criminal Procedure: Criminal Protective
Order Forms

Agenda Item Type

Action Required

Effective Date

July 1, 2014

Rules, Forms, Standards, or Statutes Affected

Revise forms CR-160, CR-161, CR-162, and
CR-165

Date of Report

February 25, 2014

Recommended by

Criminal Law Advisory Committee
Hon. Tricia Ann Bigelow, Chair

Contact

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Executive Summary

The Criminal Law Advisory Committee recommends revising the Judicial Council criminal protective order forms, *Criminal Protective Order—Domestic Violence* (form CR-160), *Criminal Protective Order—Other Than Domestic Violence* (form CR-161), *Order to Surrender Firearms in Domestic Violence Case* (form CR-162), and *Notice of Termination of Protective Order in Criminal Proceeding* (form CR-165). The recommended revisions are in response to a rule of court that addresses firearm relinquishment hearings and to recent legislation that expands court authority to issue criminal protective orders, authorizes courts to order electronic monitoring in specified circumstances, prescribes a new firearm relinquishment option, and clarifies enforcement priorities for no-contact orders in criminal and civil protective orders. The committee also recommends several revisions to the forms' content, format, instructions, and advisements.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective July 1, 2014, revise the *Criminal Protective Order—Domestic Violence* (form CR-160), *Criminal Protective Order—Other Than Domestic Violence* (form CR-161), *Order to Surrender Firearms in Domestic Violence Case* (form CR-162), and *Notice of Termination of Protective Order in Criminal Proceeding* (form CR-165) to:

1. Add a check box to the captions of forms CR-160 and CR-161 for courts to indicate that the order was issued under Penal Code section 136.2(i)(1);
2. Revise item 3 on form CR-165 to conform with statutory requirements for transmitting termination orders to the California Department of Justice;
3. Add data fields to item 4 on forms CR-160 and CR-161 to include the gender and age of each protected person;
4. Add a check box to item 6 on form CR-160 and item 5 on form CR-161 to notify law enforcement that the court has received information that the defendant may have access to a firearm or ammunition;
5. Add a new statutory storage option to the firearm relinquishment orders in item 8 on form CR-160, item 7 on form CR-161, and item 4 on CR-162;
6. Add a check box to item 8 on form CR-160, item 7 on form CR-161, and item 4 on form CR-162 for courts to note the following statutory firearm relinquishment exemption: “The court has made the necessary findings and applies the firearm relinquishment exemption under Code Civ. Proc., §527.9(f).”
7. Add a data field to item 8 on form CR-160 and item 4 on form CR-162 for courts to set certain firearm relinquishment review hearings;
8. Add a check box to item 11 on form CR-160 and item 10 on form CR-161 for courts to make statutorily authorized electronic monitoring orders;
9. Revise the “peaceful contact” exceptions in item 16 on form CR-160 and in item 14 on form CR-161 to include court-ordered visitation;
10. Update and clarify the enforcement priorities for conflicting protective orders in provision 4 on page 2 of forms CR-160 and CR-161.
11. Delete as unnecessary (a) the “CLETS Entry By” text box in the caption of forms CR-160, CR-161, and CR-162; (b) the “peace officer” data fields in the box under the caption used to

describe the restrained person on forms CR-160, CR-161, and CR-162; (c) the form distribution key at the bottom of all forms; (d) the check boxes in the caption of form CR-165 used to identify the type of order being terminated; and (e) the “Arresting Agency” text box in the caption of form CR-165; and

12. Revise the format, content, instructions, and advisements to reduce confusion and enhance the information on all four forms, including bolding the expiration date provision in item 2 on forms CR-160, CR-161, and CR-162.

The text of the recommended revisions to forms CR-160, CR-161, CR-162, and CR-165 is attached at pages 8 through 13.

Previous Council Action

The Judicial Council most recently revised criminal protective order forms CR-160, CR-161, and CR-165, effective January 1, 2009; the council has not revised form CR-162 since it was adopted, effective January 1, 2007.

Rationale for Recommendation

The criminal protective order forms (CR-160, CR-161, CR-162, and CR-165) are mandatory forms used by courts to issue and terminate protective and firearm relinquishment orders in criminal cases as authorized by statute.¹ The recommended revisions are designed to implement statutory requirements, incorporate and clarify rule requirements, and update the forms’ content, format, instructions, and advisements to reduce confusion and enhance the information provided.

Proposed revisions in response to recent legislation and new rule

The committee recommends the following revisions in response to recent legislation and a new rule of court:

- ***Orders for up to 10 years.*** Legislation in 2012 and 2013 amended Penal Code section 136.2 to authorize courts, at the time of sentencing in certain sex offense and domestic violence cases, to issue orders that may be valid for up to 10 years regardless of whether the defendant is placed on probation or given a prison or jail sentence.² In response, the committee recommends revising the captions of forms CR-160 and CR-161 for courts to indicate that the order was issued under Penal Code section 136.2(i)(1), and adding a reference to section 136.2(i)(1) in the “Effective Date and Expiration Date of Orders” section of the “Warnings and Notices” on both forms.

¹ Pen. Code, §§ 136.2, 166, 273.5(j), 646.9(k), 1203.097(a)(2).

² [Sen. Bill 723](#) (Pavley; Stats. 2011, ch. 155); [Assem. Bill 307](#) (Campos; Stats. 2013, ch. 291).

- **Electronic monitoring.** Penal Code section 136.2³ was also amended in 2012 to authorize courts in counties that have adopted policies under the new provisions to order defendants who are subject to a criminal protective order, including an order issued at time of sentencing, to be placed on electronic monitoring for up to one year.⁴ In response, the committee recommends adding a check box to forms CR-160 and CR-161 for courts to issue electronic monitoring orders.
- **Firearm storage.** Legislation in 2013 amended Penal Code section 136.2 and added Penal Code section 29830 to authorize defendants, effective January 1, 2014, to store firearms with licensed firearm dealers for the duration of the protective order as an alternative to selling or surrendering the firearms.⁵ In response, the committee recommends adding the storage option to the firearm relinquishment orders on forms CR-160, CR-161, and CR-162, and to the “Notice Regarding Firearms” section of the “Warnings and Notices” on form CR-162, and on page 2 of forms CR-160 and CR-161.
- **Enforcement priorities.** Penal Code section 136.2 and several other code sections were also amended to modify the enforcement priorities between conflicting criminal and civil protective orders, effective July 1, 2014.⁶ In response, the committee recommends replacing the language in the “Warnings and Notices” on page 2 of forms CR-160 and CR-161 with a revised “Conflicting Orders—Priorities for Enforcement” section.
- **Firearm relinquishment hearing procedure.** Rule 4.700 of the California Rules of Court, which became effective July 1, 2010, requires courts in domestic violence cases to set firearm relinquishment hearings upon making certain findings. To assist courts in implementing the hearing requirements of rule 4.700, the committee recommends adding a data field to forms CR-160 and CR-162 for courts to set review hearings.

Additional recommendations

The committee also recommends the following revisions:

- **Access to firearms.** To enhance public safety, the committee recommends adding a check box to item 6 on form CR-160 and item 5 on form CR-161 to notify law enforcement that the court has received information that the defendant may have access to a firearm or ammunition.

³ [Pen. Code, § 136.2\(a\)\(7\)\(D\) and \(i\)\(2\).](#)

⁴ [Assem. Bill 2467](#) (Hueso; Stats. 2012, ch. 513).

⁵ [Assem. Bill 539](#) (Pan; Stats. 2013, ch. 739).

⁶ [Assem. Bill 176](#) (Campos; Stats. 2013, ch. 263).

- ***Protected party information.*** To improve the ability of law enforcement to identify protected persons, the committee recommends adding data fields to forms CR-160 and CR-161 to include the gender and age of each protected person.
- ***Peaceful contact exceptions.*** To clarify the peaceful contact exceptions to the criminal protective orders, the committee recommends revising forms CR-160 and CR-161 to specify that restricted persons may have peaceful contact with protected persons for the purpose of court-ordered visitation, not just for the *safe exchange* of children for court-ordered visitation as provided in the current forms.
- ***Termination of protective orders.*** To conform with statutory requirements regarding how termination orders must be transmitted to the Department of Justice, the committee recommends revising form CR-165 to track the language of Family Code section 6380(a).
- ***Unnecessary information.*** To reduce confusion and remove unnecessary information, the committee recommends deleting (a) the “CLETS Entry By” text box in the caption of forms CR-160, CR-161, and CR-162; (b) the “peace officer” data fields in the box under the captions used to describe the restrained person on forms CR-160, CR-161, and CR-162; (c) the form distribution key at the bottom of all forms; (d) the check boxes in the caption of form CR-165 used to identify the type of order being terminated; and (e) the “Arresting Agency” text box in the caption of form CR-165.

The committee also recommends several other minor, nonsubstantive revisions designed to improve the format and clarity of the forms’ content, including bolding the expiration date information in item 2 of forms CR-160, CR-161, and CR-162.

The committee believes that the recommended effective date of July 1, 2014, provides courts with sufficient time to undertake any necessary changes related to revisions of these forms.

Comments, Alternatives Considered, and Policy Implications

Two comment periods

Several of the recommended revisions were first circulated for public comment from April 21, 2011, to June 20, 2011. Sixteen commentators submitted comments; of those, 4 agreed with the proposal, 8 agreed if modified, 1 opposed the proposal, and 3 did not indicate a position. The committee tabled the proposed revisions after the comment period to concentrate on criminal justice realignment legislation enacted later that year.

Over the next two years, the committee developed several additional revisions. For ease of review, the committee circulated *all* proposed revisions together for the public comment period from December 13, 2013, to January 24, 2014. A total of 10 comments were received; of those, 4 agreed with the proposal, 4 agreed if modified, and two did not indicate a position. No commentators opposed the proposal. In preparing these recommendations, the committee considered the comments submitted in 2011 and those received during the 2013–2014 circulation

period. A chart with all comments received and the committee’s responses is attached at pages 14–41.

Notable comments

Notable comments and committee responses include:

- ***Expiration of Protective Order.*** Item 2 on forms CR-160, CR-161 and CR-162 provides space for the court to specify the expiration date of the order, followed by a default expiration date statement: “*If no date is listed, this order expires three years from the date of issuance.*” The committee originally proposed deleting the default expiration date statement. In response to various concerns about orders issued with a total absence of an expiration date, the committee recommends retaining the default expiration date statement on the forms. Although it is incumbent on courts to specify an expiration date, courts occasionally neglect to do so. Because protective orders are authorized for limited periods of time, the committee favors retaining the longstanding default expiration date statement—as opposed to having no indication of expiration whatsoever—for orders in which the court has not specified an end date.
- ***Firearm Relinquishment Exemption.*** To enhance public safety and provide law enforcement with sufficient information regarding firearm relinquishments and exemptions, the committee recommends revising forms CR-160, CR-161, and CR-162 to provide courts with the option of noting that, “The court has information that the defendant owns or has a firearm or ammunition, or both;” and “The court has made the necessary findings and applies the firearm relinquishment exemption under Code Civ. Proc., § 527.9(f).”

In response to comments that the proposed firearm relinquishment language does not enable courts to adequately identify the specific firearm for which the court has granted the defendant an exemption—which is particularly important where the defendant possesses other firearms that the court *will* require the defendant to relinquish—the committee added the following proposed language to forms CR-160, CR-161, and CR-162: “The defendant is not required to relinquish this firearm (*specify make, model, and serial number of firearm*):_____.”

Alternatives considered

The committee considered postponing or declining to recommend any form revisions in light of the severe economic circumstances faced by courts. The committee decided to recommend the revisions because many are required by recent statutory amendments, and the committee believes that the revisions would impose no significant change in court practices; rather, the recommended revisions are designed to improve criminal protective order and firearm relinquishment issuance and termination procedures by reducing confusion and enhancing the information on the forms.

Implementation Requirements, Costs, and Operational Impacts

Expected costs are limited to training, case management system updates, and the production of new forms. No other implementation requirements or operational impacts are expected.

Relevant Strategic Plan Goals and Operational Plan Objectives

The proposed revisions to forms CR-160, CR-161, CR-162, and CR-165 support the policies underlying Goal I, Access, Fairness, and Diversity, and Goal IV, Quality of Justice and Service to the Public. Specifically, these form revisions support Goal I, objective 4, “Work to achieve procedural fairness in all types of cases”; and Goal IV, objective 3, “Provide services that meet the needs of all court users and that promote cultural sensitivity and a better understanding of court orders, procedures, and processes.”

Attachments

1. Forms CR-160, CR-161, CR-162, and CR-165, at pages 8–13
2. Comments chart, at pages 14–41

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<i>FOR COURT USE ONLY</i>
PEOPLE OF THE STATE OF CALIFORNIA VS. DEFENDANT:	DRAFT Not Approved by the Judicial Council
CRIMINAL PROTECTIVE ORDER—DOMESTIC VIOLENCE (CLETS - CPO) (Pen. Code, §§ 136.2, 1203.097(a)(2), 136.2(i)(1), 273.5(j), and 646.9(k)) <input type="checkbox"/> ORDER UNDER PENAL CODE, § 136.2 <input type="checkbox"/> MODIFICATION <input type="checkbox"/> PROBATION CONDITION ORDER (Pen. Code, § 1203.097) ORDER UNDER: <input type="checkbox"/> PENAL CODE, § 136.2(i)(1) <input type="checkbox"/> PENAL CODE, § 273.5(j) <input type="checkbox"/> PENAL CODE, § 646.9(k)	CASE NUMBER:

This Order May Take Precedence Over Other Conflicting Orders; See Item 4 on Page 2.

PERSON TO BE RESTRAINED *(complete name)*:
 Sex: M F Ht.: Wt.: Hair color: Eye color: Race: Age: Date of birth:

1. This proceeding was heard on *(date)*: _____ at *(time)*: _____ in Dept.: _____ Room: _____
 by judicial officer *(name)*: _____
 2. **This order expires on *(date)*: _____ . If no date is listed, this order expires three years from date of issuance.**
 3. Defendant was personally served with a copy of this order at the court hearing, and no additional proof of service of this order is required.
 4. **FULL NAME, AGE, AND GENDER** OF EACH PROTECTED PERSON:
 5. For good cause shown, the court grants the protected persons named above the exclusive care, possession, and control of the following animals:
 6. The court has information that the defendant owns or has a firearm or ammunition, or both.
- GOOD CAUSE APPEARING, THE COURT ORDERS THAT THE ABOVE-NAMED DEFENDANT**
7. must not harass, strike, threaten, assault (sexually or otherwise), follow, stalk, molest, destroy or damage personal or real property, disturb the peace, keep under surveillance, or block movements of the protected persons named above.
 8. **must not own, possess, buy or try to buy, receive or try to receive, or otherwise obtain a firearm or ammunition. The defendant must surrender to local law enforcement, or sell to or store with a licensed gun dealer any firearm owned by the defendant or subject to his or her immediate possession or control within 24 hours after service of this order and must file a receipt with the court showing compliance with this order within 48 hours of receiving this order.**
 The court finds good cause to believe that the defendant has a firearm within his or her immediate possession or control and sets a review hearing for *(date)*: _____ to ascertain whether the defendant has complied with the firearm relinquishment requirements of Code Civ. Proc., § 527.9. (Cal. Rules of Court, rule 4.700.)
 The court has made the necessary findings and applies the firearm relinquishment exemption under Code Civ. Proc., § 527.9(f). The defendant is not required to relinquish this firearm *(specify make, model, and serial number of firearm)*: _____
 9. must not attempt to or actually prevent or dissuade any victim or witness from attending a hearing or testifying or making a report to any law enforcement agency or person.
 10. must take no action to obtain the addresses or locations of protected persons or their family members, caretakers, or guardian unless good cause exists otherwise. The court finds good cause not to make the order in item 10.
 11. must be placed on electronic monitoring for *(specify length of time)*: _____ . (Not to exceed 1 year from the date of this order. Pen. Code, § 136.2(a)(7)(D) and Pen. Code, § 136.2(i)(2).)
 12. must have no personal, electronic, telephonic, or written contact with the protected persons named above.
 13. must have no contact with the protected persons named above through a third party, except an attorney of record.
 14. must not come within _____ yards of the protected persons and animals named above.
 15. must not take, transfer, **sell**, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of the animals described in item 5.
 16. may have peaceful contact with the protected persons named above, as an exception to the "no-contact" or "stay-away" provision in item 12, 13, or 14 of this order, only for the safe exchange of children and court-ordered visitation as stated in:
 a. the Family, Juvenile, or Probate court order in case number: _____ issued on *(date)*: _____
 b. any Family, Juvenile, or Probate court order issued *after* the date this order is signed.
 17. The protected persons may record any prohibited communications made by the restrained person.
 18. Other orders including stay-away orders from specific locations:

Executed on: _____ (DATE) _____ (SIGNATURE OF JUDICIAL OFFICER) Department/Division: _____

WARNINGS AND NOTICES

1. **VIOLATION OF THE ORDER IS SUBJECT TO CRIMINAL PROSECUTION.** Violation of this protective order may be punished as a misdemeanor, a felony, or a contempt of court. Taking or concealing a child in violation of this order may be a felony and punishable by confinement in state prison, a fine, or both. Traveling across state or tribal boundaries with the intent to violate the order may be punishable as a federal offense under the Violence Against Women Act, 18 U.S.C. § 2261(a)(1) (1994).
2. **NOTICE REGARDING FIREARMS.** Any person subject to a protective order is prohibited from owning, possessing, purchasing or attempting to purchase, receiving or attempting to receive, or otherwise obtaining a firearm. Such conduct is subject to a \$1,000 fine and imprisonment. The person subject to these orders must relinquish any firearms (by surrendering the firearm to local law enforcement, or by selling or storing it with a licensed gun dealer) and not own or possess any firearms during the period of the protective order. (Pen. Code, § 136.2(d).) Under federal law, the issuance of a protective order after hearing will generally prohibit the restrained person from owning, accepting, transporting, or possessing firearms or ammunition. A violation of this prohibition is a separate federal crime.

Specified defendants may request an exemption from the firearm relinquishment requirements stated in item 8 on page 1 of this order. The court must check the box under item 8 to order an exemption from the firearm relinquishment requirements. If the defendant can show that the firearm is necessary as a condition of continued employment, the court may grant an exemption for a particular firearm to be in the defendant's possession only during work hours and while traveling to and from work. If a peace officer's employment and personal safety depend on the ability to carry a firearm, a court may grant an exemption that allows the officer to carry a firearm on or off duty, but only if the court finds, after a mandatory psychological examination of the peace officer, that the officer does not pose a threat of harm. (Code Civ. Proc., § 527.9(f).)

3. ENFORCING THIS ORDER IN CALIFORNIA

- This order must be enforced in California by any law enforcement agency that has received the order or is shown a copy of the order or has verified its existence on the California Law Enforcement Telecommunications System (CLETS).
- Law enforcement must determine whether the restrained person had notice of the order. If notice cannot be verified, law enforcement must advise the restrained person of the terms of the order and, if the restrained person fails to comply, must enforce it. (Fam. Code, § 6383.)

4. CONFLICTING ORDERS-PRIORITIES FOR ENFORCEMENT

If more than one restraining order has been issued, the orders must be enforced according to the following priorities:

- a. *Emergency Protective Order:* If one of the orders is an Emergency Protective Order (form EPO-001) and is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders. (Pen. Code, § 136.2(c)(1)(A).)
- b. *No-Contact Order:* If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence in enforcement over any other restraining or protective order.
- c. *Criminal Order:* If none of the orders include a no-contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. (Pen. Code, § 136.2(e)(2).) Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
- d. *Family, Juvenile, or Civil Order:* If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

5. CERTIFICATE OF COMPLIANCE WITH VIOLENCE AGAINST WOMEN ACT (VAWA).

This protective order meets all Full Faith and Credit requirements of the Violence Against Women Act, 18 U.S.C. § 2265 (1994). This court has jurisdiction over the parties and the subject matter, and the restrained person has been afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. This order is valid and entitled to enforcement in each jurisdiction throughout the 50 United States, the District of Columbia, all tribal lands, and all U.S. territories, and shall be enforced as if it were an order of that jurisdiction.

6. EFFECTIVE DATE AND EXPIRATION DATE OF ORDERS

- These orders are effective as of the date they were issued by a judicial officer.
- These orders expire as ordered in item 2 on page 1 of this order, or as explained below.
- Orders under Penal Code section 136.2(a) are valid as long as the court has jurisdiction over the case. They are not valid after imposition of a county jail or state prison commitment. (See *People v. Stone* (2004) 123 Cal.App.4th 153.)
- Orders issued under Penal Code sections 136.2(i)(1), 273.5(j), and 646.9(k) are valid for up to 10 years and may be issued by the court whether the defendant is sentenced to state prison or county jail or if imposition of sentence is suspended and the defendant is placed on probation.
- Orders under Penal Code section 1203.097(a)(2) are probationary orders, and the court has jurisdiction as long as the defendant is on probation.
- To terminate this protective order, courts should use form CR-165, *Notice of Termination of Protective Order in Criminal Proceeding (CLETS)*.

7. CHILD CUSTODY AND VISITATION

- Child custody and visitation orders may be established or modified in Family, Juvenile, or Probate court.
- Unless box a or b in item 16 on page 1 is checked, contact between the restrained and protected persons permitted by a Family, Juvenile, or Probate court order for child custody or visitation must not conflict with the provisions of this order.
- If box a or b in item 16 on page 1 is checked, the restrained and protected persons should always carry a certified copy of the most recent child custody or visitation order issued by the Family, Juvenile, or Probate court.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<i>FOR COURT USE ONLY</i>
PEOPLE OF THE STATE OF CALIFORNIA VS. DEFENDANT:	DRAFT Not Approved by the Judicial Council
CRIMINAL PROTECTIVE ORDER—OTHER THAN DOMESTIC VIOLENCE (CLETS - CPO) (Pen. Code, §§ 136.2, 136.2(i)(1), and 646.9(k)) <input type="checkbox"/> ORDER UNDER PENAL CODE, § 136.2 <input type="checkbox"/> MODIFICATION ORDER UNDER: <input type="checkbox"/> PENAL CODE, § 136.2(i)(1) <input type="checkbox"/> PENAL CODE, § 646.9(k)	CASE NUMBER:

PERSON TO BE RESTRAINED *(complete name)*:

Sex: M F Ht.: Wt.: Hair color: Eye color: Race: Age: Date of birth:

1. This proceeding was heard on *(date)*: _____ at *(time)*: _____ in Dept.: _____ Room: _____ by judicial officer *(name)*: _____
2. **This order expires on *(date)*: _____ . If no date is listed, this order expires three years from date of issuance.**
3. Defendant was personally served with a copy of this order at the court hearing, and no additional proof of service of this order is required.
4. **FULL NAME, AGE, AND GENDER OF EACH PROTECTED PERSON:**

5. **The court has information that the defendant owns or has a firearm or ammunition, or both.**

GOOD CAUSE APPEARING, THE COURT ORDERS THAT THE ABOVE-NAMED DEFENDANT

6. must not harass, strike, threaten, assault (sexually or otherwise), follow, stalk, molest, destroy or damage personal or real property, disturb the peace, keep under surveillance, or block movements of the protected persons named above.
7. **must not own, possess, buy or try to buy, receive or try to receive, or otherwise obtain a firearm or ammunition. The defendant must surrender to local law enforcement, or sell to or store with a licensed gun dealer any firearm owned by the defendant or subject to his or her immediate possession or control within 24 hours after service of this order and must file a receipt with the court showing compliance with this order within 48 hours of receiving this order.**
 The court has made the necessary findings and applies the firearm relinquishment exemption under Code Civ. Proc., § 527.9(f). The defendant is not required to relinquish this firearm *(specify make, model, and serial number of firearm)*: _____
8. must not attempt to or actually prevent or dissuade any victim or witness from attending a hearing or testifying or making a report to any law enforcement agency or person.
9. must take no action to obtain the addresses or locations of protected persons or their family members, caretakers, or guardian unless good cause exists otherwise. The court finds good cause not to make the order in item 9.
10. **must be placed on electronic monitoring for *(specify length of time)*: _____ . (Not to exceed one year from the date of this order. Pen. Code, § 136.2(a)(7)(D) and Pen. Code § 136.2(i)(2).)**
11. must have no personal, electronic, telephonic, or written contact with the protected persons named above.
12. must have no contact with the protected persons named above through a third party, except an attorney of record.
13. must not come within _____ yards of the protected persons named above.
14. may have peaceful contact with the protected persons named above, as an exception to the "no-contact" or "stay-away" provision in item 11, 12, or 13 of this order, only for the safe exchange of children and court-ordered visitation as stated in:
 - a. the Family, Juvenile, or Probate court order in case number: _____ issued on *(date)*: _____
 - b. any Family, Juvenile, or Probate court order issued *after* the date this order is signed.
15. The protected persons may record any prohibited communications made by the restrained person.
16. Other orders including stay-away orders from specific locations:

Executed on: _____ (DATE) _____ (SIGNATURE OF JUDICIAL OFFICER) Department/Division: _____

WARNINGS AND NOTICES

1. **VIOLATION OF THE ORDER IS SUBJECT TO CRIMINAL PROSECUTION.** Violation of this protective order may be punished as a felony, a misdemeanor, or contempt of court.
2. **NOTICE REGARDING FIREARMS.** Any person subject to a protective order is prohibited from owning, possessing, purchasing or attempting to purchase, receiving or attempting to receive, or otherwise obtaining a firearm. Such conduct is subject to a \$1,000 fine and imprisonment. The person subject to these orders must relinquish any firearms (by surrendering the firearm to local law enforcement, or by selling or storing it with a licensed gun dealer) and not own or possess any firearms during the period of the protective order. (Pen. Code, § 136.2(d).) Under federal law, the issuance of a protective order after hearing will generally prohibit the restrained person from owning, accepting, transporting, or possessing firearms or ammunition. A violation of this prohibition is a separate federal crime.

Specified defendants may request an exemption from the firearm relinquishment requirements stated in item 7 on page 1 of this order. The court must check the box under item 7 to order an exemption from the firearm relinquishment requirements. If the defendant can show that the firearm is necessary as a condition of continued employment, the court may grant an exemption for a particular firearm to be in the defendant's possession only during work hours and while traveling to and from work. If a peace officer's employment and personal safety depend on the ability to carry a firearm, a court may grant an exemption that allows the officer to carry a firearm on or off duty, but only if the court finds, after a mandatory psychological examination of the peace officer, that the officer does not pose a threat of harm. (Code Civ. Proc., § 527.9(f).)

3. ENFORCING THIS ORDER IN CALIFORNIA

- This order must be enforced in California by any law enforcement agency that has received the order or is shown a copy of the order or has verified its existence on the California Law Enforcement Telecommunications System (CLETS).
- Law enforcement must determine whether the restrained person had notice of the order. If notice cannot be verified, law enforcement must advise the restrained person of the terms of the order and, if the restrained person fails to comply, must enforce it. (Code Civil Proc., § 527.6.)

4. CONFLICTING ORDERS-PRIORITIES FOR ENFORCEMENT

If more than one restraining order has been issued, the orders must be enforced according to the following priorities:

- a. *Emergency Protective Order:* If one of the orders is an Emergency Protective Order (form EPO-001) and is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders. (Pen. Code, § 136.2(c)(1)(A).)
- b. *No-Contact Order:* If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence in enforcement over any other restraining or protective order.
- c. *Criminal Order:* If none of the orders include a no-contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. (Pen. Code, § 136.2(e)(2).) Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
- d. *Family, Juvenile, or Civil Order:* If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

5. EFFECTIVE DATE AND EXPIRATION DATE OF ORDERS

- These orders are effective as of the date they were issued by a judicial officer.
- These orders expire as ordered in item 2 on page 1 of this order, or as explained below.
- Orders under Penal Code section 136.2(a) are valid as long as the court has jurisdiction over the case. They are not valid after imposition of a county jail or state prison commitment. (See *People v. Stone* (2004) 123 Cal.App.4th 153.)
- Orders issued under Penal Code sections 136.2(i)(1) and 646.9(k) are valid for up to 10 years and may be issued by the court whether the defendant is sentenced to state prison or county jail or if imposition of sentence is suspended and the defendant is placed on probation.
- To terminate this protective order, courts should use form CR-165, *Notice of Termination of Protective Order in Criminal Proceeding (CLETS)*.

6. CHILD CUSTODY AND VISITATION

- Child custody and visitation orders may be established or modified in Family, Juvenile, or Probate court.
- Unless box a or b in item 14 on page 1 is checked, contact between the restrained and protected persons permitted by a Family, Juvenile, or Probate court order for child custody or visitation must not conflict with the provisions of this order.
- If box a or b in item 14 on page 1 is checked, the restrained and protected persons should always carry a certified copy of the most recent child custody or visitation order issued by the Family, Juvenile, or Probate court.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	FOR COURT USE ONLY DRAFT Not Approved by the Judicial Council CASE NUMBER:
PEOPLE OF THE STATE OF CALIFORNIA VS. DEFENDANT:	
ORDER TO SURRENDER FIREARMS IN DOMESTIC VIOLENCE CASE (CLETS - CPO) (Penal Code, §§ 136.2(a)(7)(B))	

PERSON TO SURRENDER FIREARMS *(complete name)*:
 Sex: M F Ht.: Wt.: Hair color: Eye color: Race: Age: Date of birth:

- This proceeding was heard on *(date)*: _____ at *(time)*: _____ in Dept.: _____ Room: _____ by judicial officer *(name)*: _____
- This order expires on *(date)*: _____ . If no date is listed, this order expires three years from date of issuance.**
- Defendant was personally served with a copy of this order at the court hearing, and no additional proof of service of this order is required.

GOOD CAUSE APPEARING, THE COURT ORDERS THAT THE ABOVE-NAMED DEFENDANT

- must not own, possess, buy or try to buy, receive or try to receive, or otherwise obtain a firearm or ammunition. The defendant must surrender to local law enforcement, or sell to or store with a licensed gun dealer, any firearm owned by the defendant or subject to his or her immediate possession or control within 24 hours after service of this order and must file a receipt with the court showing compliance with this order within 48 hours of receiving this order.**
 The court finds good cause to believe that the defendant has a firearm within his or her immediate possession or control and sets a review hearing for *(date)*: _____ to ascertain whether the defendant has complied with the firearm relinquishment requirements of Code Civ. Proc., § 527.9. (Cal. Rules of Court, rule 4.700.)
 The court has made the necessary findings and applies the firearm relinquishment exemption under Code Civ. Proc., § 527.9(f). The defendant is not required to relinquish this firearm *(specify make, model, and serial number of firearm)*: _____

Executed on: _____ (DATE) _____ (SIGNATURE OF JUDICIAL OFFICER) Department/Division: _____

WARNINGS AND NOTICES

This order is effective as of the date it was issued by the judicial officer and expires as ordered in item 2.
 This order is to be used ONLY when the court orders firearms relinquishment but does not make any other protective or restraining orders. Do NOT use in conjunction with other Criminal Protective Orders (form CR-160 or CR-161).
NOTICE REGARDING FIREARMS. Any person subject to a protective order is prohibited from owning, possessing, purchasing or attempting to purchase, receiving or attempting to receive, or otherwise obtaining a firearm. Such conduct is subject to a \$1,000 fine and imprisonment. The person subject to these orders must relinquish any firearms (by surrendering the firearm to local law enforcement, or by selling or storing it with a licensed gun dealer) and not own or possess any firearms during the period of the protective order. (Pen. Code, § 136.2(d).) Under federal law, the issuance of a protective order after hearing will generally prohibit the restrained person from owning, accepting, transporting, or possessing firearms or ammunition. A violation of this prohibition is a separate federal crime.
 Specified defendants may request an exemption from the firearm relinquishment requirements stated in item 4 of this order. *The court must check the box under item 4 to order an exemption from the firearm relinquishment requirements.* If the defendant can show that the firearm is necessary as a condition of continued employment, the court may grant an exemption for a particular firearm to be in the defendant's possession only during work hours and while traveling to and from work. If a peace officer's employment and personal safety depend on the ability to carry a firearm, a court may grant an exemption that allows the officer to carry a firearm on or off duty, but only if the court finds, after a mandatory psychological examination of the peace officer, that the officer does not pose a threat of harm. (Code Civ. Proc., § 527.9(f).)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	FOR COURT USE ONLY DRAFT Not Approved by the Judicial Council CASE NUMBER:
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT:	
NOTICE OF TERMINATION OF PROTECTIVE ORDER IN CRIMINAL PROCEEDING (CLETS) (Penal Code, §§ 136.2, 136.2(i)(1), 273.5(j), 646.9(k), and 1203.097(a)(2))	

NOTICE: THIS TERMINATION ORDER DOES NOT TERMINATE ANY EXISTING FAMILY, JUVENILE, OR PROBATE COURT ORDERS.

ORDER

1. THE COURT ORDERS:

Effective *(today's date)*: _____, the Protective Order *in the above-entitled case and* issued on *(date)*: _____,
 restraining *(name of restrained person)*: _____,
 listing as protected person(s): _____.

is terminated.

2. This **termination order** supersedes all prior protective orders in the above-entitled case.
3. The court or its designee must ensure that this order is electronically transmitted to the Department of Justice within one business day by either:
 - a. transmitting a physical copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into the California Law Enforcement Telecommunications System (CLETS); or
 - b. entering the order into CLETS directly, but only with the approval of the Department of Justice.
4. The prosecuting agency is to notify the protected person(s) of this order.

Executed on: _____ (DATE) _____ (SIGNATURE OF JUDICIAL OFFICER) Department/Division: _____

W14-05 (including comments to SPR11-31)

Criminal Procedure: Criminal Protective Orders (Revise forms CR-160, CR-161, CR-162, and CR-165)

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

	Commentator	Position	Comment	Advisory Committee Response
SPRING 2011				
1.	California Department of Justice Ms. Lydia Pantoja Manager California Restraining & Protective Order System	AM	<ul style="list-style-type: none"> • [The California Department of Justice (DOJ)] is concerned with “end date:” if removing the statement “<i>If no date is listed, this order expires three years from the date of issuance.</i>” Bottom line: What is the protocol if no date is entered? <p>Modification: The forms must state “DATE REQUIRED, if no date, return to court for appropriate end date.”</p> <ul style="list-style-type: none"> • DOJ is concerned with removing the peace officer data fields. This definitely should not be considered unnecessary content. This information readily alerts the officer handling the call to look for a finding on the order as to whether the restrained person is a peace officer and if he or she is allowed to keep the firearm and under what conditions. <p>Family Code Section 6389(h) allows the court to grant an exemption from the relinquishment order for a firearm if the respondent can show that the firearm is necessary as a condition of continued employment and the respondent’s personal safety depends on the ability to carry a</p>	<ul style="list-style-type: none"> • In response to various concerns about orders issued with a total absence of an expiration date, the committee has retained the statement, “<i>If no date is listed, this order expires three years from the date of issuance</i>” in item 2 on forms CR-160, CR-161 and CR-162. Although it is incumbent on courts to specify an expiration date, courts occasionally neglect to do so. Because protective orders are authorized for limited periods of time, the committee favors retaining the longstanding default expiration date statement—as opposed to having no indication of expiration whatsoever—for orders where the court has not specified an end date. • To ensure that the criminal protective order forms provide law enforcement with sufficient information regarding firearm relinquishments and exemptions, the committee has revised items 6 and 8 on form CR-160 and items 5 and 7 on form CR-161 to include check boxes for courts to note the following: <ul style="list-style-type: none"> ▪ “The court has information that the defendant owns or has a firearm or ammunition, or both.” ▪ “The court has made the necessary findings and applies the firearm relinquishment exemption under Code Civ. Proc., §527.9(f).”

W14-05 (including comments to SPR11-31)

Criminal Procedure: Criminal Protective Orders (Revise forms CR-160, CR-161, CR-162, and CR-165)

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

	Commentator	Position	Comment	Advisory Committee Response
			<p>firearm. The court may allow the peace officer to continue to carry a firearm on duty or off duty if the court finds by a preponderance of the evidence that the officer does not pose a threat of harm. Prior to making this finding, the court shall require a mandatory psychological evaluation of the peace officer and may require the peace officer to enter into counseling or other remedial treatment program to deal with any propensity for domestic violence.</p> <p>If the restrained person is a peace officer, the order must contain the court’s finding that the officer can continue to carry his firearm and under what conditions. The forms, however, do not have any place for the court to include its finding. Currently, the peace officer data field is the only information available on the form for DOJ to determine that the peace officer exemption is applicable. This is particularly important information for DOJ because DOJ is consistently addressing the issue of courts crossing out the mandated firearm restrictions, and DOJ must know if the exemption is applicable.</p> <p>Modification: Leave the Peace Officer data or change to “Peace officer or other (required to carry firearm as condition of employment)-See Other Orders”</p>	

W14-05 (including comments to SPR11-31)

Criminal Procedure: Criminal Protective Orders (Revise forms CR-160, CR-161, CR-162, and CR-165)

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

	Commentator	Position	Comment	Advisory Committee Response
			<ul style="list-style-type: none"> DOJ is concerned with the permanently marked check boxes for firearms. Check boxes or no check boxes, these will continue to be misinterpreted. <p>Modification: Leave the permanent checks without the check boxes.</p>	<ul style="list-style-type: none"> To avoid potential confusion caused by permanently marked check boxes for the mandatory orders on forms CR-160 and CR-161, the committee has decided to retain the current format which simply lists each mandatory order without either a check box or a permanent check mark.
2.	Ms. Cassandra Dehoff Deputy Clerk III Superior Court of Amador County	A	No additional comments provided.	No response required.
3.	Family Violence Law Center Ms. Kristie Whitehorse Managing Attorney	A	No additional comments provided.	No response required.
4.	Ms. Roberta Fitzpatrick San Jose, California	AM	<ul style="list-style-type: none"> [Regarding form CR-160, item numbers 13a. and 13b.]: The exceptions weaken the order. Domestic violence does not just stop because of a court order or a piece of paper. A third party should be designated to effect safe exchange and visitation. Also, this order needs to be communicated to family court, so they cannot ignore domestic violence in making a custody order ... [Regarding form CR-165]: [Termination of a protective order] also needs to be communicated to Family Court. 	<ul style="list-style-type: none"> The committee declines the suggestion because the exceptions contained in items 13a and 13b (proposed items 16a and b on form CR-160 and proposed items 14a and b on form 161) are required by Penal Code section 136.2(f). The committee declines the suggestion as unnecessary. Protocols for communication between courts and the timely coordination of protective orders are separately required by Penal Code section 136.2(f) and rule 5.445 of the California Rules of Court.
5.	Ms. Laura Hertlein Court Clerk II Superior Court of Amador County	A	I agree with the proposed changes to the forms. Especially helpful changes that I can easily see is the gender and age of each protected person	No response required.

W14-05 (including comments to SPR11-31)**Criminal Procedure: Criminal Protective Orders** (Revise forms CR-160, CR-161, CR-162, and CR-165)

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

	Commentator	Position	Comment	Advisory Committee Response
			for assisting law enforcement and also the advisement at the top of the form to clarify that the order does not also terminate other court protective orders. I see this frequently when a defendant believes that the protective order blankets all cases that have the protective order in place, including family law cases.	
6.	Mr. Ronald L. Brown Law Office of the Los Angeles County Public Defender	N	<p>The Judicial Council has proposed changes to forms CR-160, CR-161, CR-162, and CR-165. These forms relate to the issuance of criminal protective orders under Penal Code sections 136.2 (pre-trial protective orders), 646.9, subdivision (k) (stalking crimes), 1203.097 (protective orders issued as a condition of probation), and 273.5, subdivision (i) (protective orders issued after conviction of Penal Code section 273.5). We object to the proposed changes because the changes are in conflict with established law regarding pre-trial protective orders in two areas: 1) divesting defendants who are charged with crimes not related to domestic violence of their firearms violates their rights under the Second Amendment to the United States Constitution, and 2) orders issued pursuant to Penal Code section 136.2 are pre-trial orders only and terminate upon conviction.</p> <ul style="list-style-type: none"> Form CR-161 addresses criminal protective orders issued pursuant to Penal Code sections 136.2 and 646.9 (k) (commonly known as stalking). This form includes a 	<ul style="list-style-type: none"> The committee declines the suggestion because firearm relinquishment by a person subject to a criminal protective order is expressly required under Penal Code section 136.2(d)(2).

W14-05 (including comments to SPR11-31)**Criminal Procedure: Criminal Protective Orders** (Revise forms CR-160, CR-161, CR-162, and CR-165)

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

	Commentator	Position	Comment	Advisory Committee Response
			<p>provision for divesting defendants of firearms, a provision that is in conflict with the law regarding the federal constitutional right to bear arms under the Second Amendment. This form is intended to be completed by the courts when issuing a protective order in cases other than domestic violence cases. However, divesting a defendant of Second Amendment rights before the defendant has been convicted of any crime, especially a crime not involving violence, violates the defendant's constitutionally protected right to possess firearms. CR-161, in the section entitled "Warnings and Notices," states that federal law prohibits persons restrained by a protective order under Penal Code section 136.2 from owning firearms and that such persons may be charged with a federal crime. There is no support for this claim. Federal law does prohibit a very small class of persons who are subject to restraining orders from possessing firearms (18 U.S.C. section 922, subd. (g)(8)). However, that code section only prohibits possession of a firearm by any person who is subject to a court order that meets the following conditions:</p> <p>(A) the order was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;</p> <p>(B) the order restrains such person from harassing, stalking, or threatening an</p>	

W14-05 (including comments to SPR11-31)

Criminal Procedure: Criminal Protective Orders (Revise forms CR-160, CR-161, CR-162, and CR-165)

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

	Commentator	Position	Comment	Advisory Committee Response
			<p>intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (C) the order includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or the order, by its terms, explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.</p> <p>(18 U.S.C. 922 subd. (g)(8)).</p> <p>Federal courts have analyzed section 922 and found that it withstood strict scrutiny and did not violate the Second Amendment because it was so narrowly tailored: the law has very strict procedural requirements which include actual notice and an opportunity for a full hearing and that before issuing such an order, the court must make a factual finding that the restrained person is a threat to the physical safety of an intimate partner or child. (<i>United States v. Lippman</i> (8th Circuit, 2004) 369 F.3d 1039). In the context of a non-domestic violence related offense, such as those commonly issued pursuant to Penal Code section 136.2 and contemplated by form CR-161, these orders</p>	

W14-05 (including comments to SPR11-31)

Criminal Procedure: Criminal Protective Orders (Revise forms CR-160, CR-161, CR-162, and CR-165)

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

	Commentator	Position	Comment	Advisory Committee Response
			<p>divesting defendants of their right to bear arms would not survive constitutional muster. The United States Supreme Court has held that even minor deprivations of rights, even for short duration, cannot be imposed absent at least <u>rudimentary</u> procedures assuring due process, including prior notice, an explanation of the evidence, an opportunity to respond, and a prompt full adversarial proceeding thereafter. (See, e.g., <i>Goss v. Lopez</i> (1975) 419 U.S. 565; <i>Cleveland Board of Education v. Lauderhill</i> (1985) 470 U.S. 532, 545-546; <i>Arnett v. Kennedy</i> (1974) 416 U.S. 134, 170.) Penal Code section 136.2 does not even come close to providing the defendant with such procedural safeguards, and the divestment of firearms is not restricted to domestic violence cases. Thus, the orders divesting defendants of firearms are unconstitutional.</p> <ul style="list-style-type: none"> • Additionally, Penal Code section 136.2 orders are pre-trial orders only and are limited to the pendency of the criminal action; they do not remain in force after conviction. (<i>People v. Selga</i> (2008) 162 Cal.App.4th 113 at 118; accord, <i>People v. Stone</i> (2004) 123 Cal.App.4th 153 at 159.) Therefore, form CR-160 [CR-161] erroneously permits a court to check a box entitled "Probation Condition Order (Pen. Code § 136.2)." There is no authority for such an order. 	<ul style="list-style-type: none"> • The committee agrees that criminal protective orders issued in non-domestic violence cases under Penal Code section 136.2(a) are pre-trial orders that remain in effect during the period that the court retains jurisdiction. To eliminate confusion, the committee has removed from the caption of form CR-161 the check box and title, "PROBATION CONDITION ORDER (Pen. Code, § 136.2)". The committee notes, however, that recent legislation (Senate Bill 723 (Pavley; Stats. 2012, ch. 155); Assembly Bill 307 (Campos; Stats. 2013, ch. 291)) added Penal Code section 136.2(i) to authorize courts to issue restraining orders at

W14-05 (including comments to SPR11-31)

Criminal Procedure: Criminal Protective Orders (Revise forms CR-160, CR-161, CR-162, and CR-165)

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

	Commentator	Position	Comment	Advisory Committee Response
				<p>sentencing in all domestic violence cases and certain sex crime cases for up to 10 years. In response, the committee has also added a check box to the caption of forms CR-160 and CR-161 for courts to indicate that the order is issued under Penal Code section 136.2(i).</p>
7.	<p>Los Angeles Center for Law and Justice Ms. Suma Mathai Supervising Family Law Attorney</p>	NI	<p><u>Form CR-160</u></p> <ul style="list-style-type: none"> Item 2 [Item 3 on revised forms]: In the event that this box is not checked because the Defendant was not personally served with the order at the time of the hearing, it should be clear to the victim who has responsibility for service of process of the Criminal Protective Order (CPO) on the Defendant. Thus we propose an additional check box be added to read: <i>“Local law enforcement is directed to personally serve Defendant with a copy of this order and file proof of service with the court at the earliest available opportunity.”</i> Warnings Item 1: The implication of the second prong of this sentence is that if there is a Family, Juvenile or Probate court custody or visitation order, that order would take precedence over the CPO. Even if Boxes A and/or B are checked under Item 13, these items are complementary to the protective order, which would still take precedence. We propose that the second sentence under this item be revised to completely strike the second prong, 	<ul style="list-style-type: none"> The committee declines the suggestion in favor of retaining court discretion to determine proof of service issues on a case-by-case basis, noting that proof of service practices vary widely among courts. A court may also add proof of service requirements under the “Other Orders” provision of form CR-160, item 18. In response to recent legislation (Assembly Bill 176 (Campos; Stats. 2013, ch. 263)) that specifically addresses protective order enforcement prioritization, the committee has revised the “Conflict of Orders – Priorities for Enforcement” provision of the “Warnings and Notices” on page 2 of forms CR-160 and CR-161 to be consistent with statutory requirements.

W14-05 (including comments to SPR11-31)

Criminal Procedure: Criminal Protective Orders (Revise forms CR-160, CR-161, CR-162, and CR-165)

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

	Commentator	Position	Comment	Advisory Committee Response
			<p>as follows:</p> <p>“However, this order does not take precedence if (1) there is...in this order., or (2) if box a. or b. in item 13 has been checked on page 1 of this order.”</p> <p><u>Form CR-165</u></p> <ul style="list-style-type: none"> Item 4: If this box is <i>not</i> checked, it is unclear who, if anyone, is responsible to notify the protected person(s) of the order. As notice of a termination of a protective order in a criminal proceeding is of vital importance to the protected person(s), we propose that the check box be removed entirely and the prosecuting agency be ordered to notify the protected person(s) of termination in every case. 	<ul style="list-style-type: none"> The committee declines the suggestion in favor of retaining court discretion to determine on a case-by-case basis whether the prosecuting authority should be required to notify the protected person that the protective order has been terminated.
8.	Hon. Brett Morgan Superior Court of San Joaquin County	NI	<p>Regarding CR-160:</p> <ul style="list-style-type: none"> Commas should be added after “Penal Code” in the heading; Item 4 should be amended to read: “The protected persons named above are granted the exclusive care, possession, and control of the following animals.” The phrase “For good cause shown, the court grants...” should be deleted. 	<ul style="list-style-type: none"> The committee agrees with the suggestion and has added commas. The committee declines the suggestion because Family Code section 6320(b) requires a finding of “good cause” to issue an order in a criminal protective order granting the exclusive care, possession, and control of specified animals to the protected person.

W14-05 (including comments to SPR11-31)

Criminal Procedure: Criminal Protective Orders (Revise forms CR-160, CR-161, CR-162, and CR-165)

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

	Commentator	Position	Comment	Advisory Committee Response
			<ul style="list-style-type: none"> • The data field to note the “Department/Division” next to the signature of the judicial officer is “duplicative.” • The form should include an “other” order with a blank line. • Regarding CR-162: The word “explained” in the first line of the notices section should be replaced by the word “ordered.” 	<ul style="list-style-type: none"> • The committee declines the suggestion as unnecessary. • The committee declines the suggestion because form CR-160 already includes an “Other Orders” provision in item 18. • The committee agrees and has replaced the word “explained” with the word “ordered” in the first line of the “Warnings and Notices” section of form CR-162.
9.	Orange County Bar Association Mr. John Hueston President	AM	<p>In general, the proposed changes are consistent with the law. However, there is no legal requirement, guidance or support for the proposed addition to the Criminal Protective Order numbered ‘5’ which provides a box for the court to check if it ‘has information’ that the defendant owns or has a firearm or ammunition or both. There is no threshold standard of proof or evidence by which this box would be checked, and this lack could lead to inappropriate use. Furthermore, the information may well become stale nearly immediately after the issuance of the order since the defendant must turn over (or sell) any firearm within 24 hours of the issuance of the order. The order is a document that is relied by officers in the field, who will make decisions on how to respond to a situation which may be tragically inappropriate for both the officer and the defendant when based on such insubstantial, unsubstantiated and untimely information as this box on the form</p>	<p>The committee declines the suggestion in favor of providing courts with the discretion to warn law enforcement that the defendant may have a firearm or ammunition (item 6 on form CR-160 and item 5 on CR-161) under appropriate circumstances.</p>

W14-05 (including comments to SPR11-31)

Criminal Procedure: Criminal Protective Orders (Revise forms CR-160, CR-161, CR-162, and CR-165)

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

	Commentator	Position	Comment	Advisory Committee Response
			would contain. The warning at box 7 and the instructions that are attached under ‘Warnings and Notices’ provide the appropriate and ample protection under the law. Box 5 and its information should be deleted.	
10.	San Diego County District Attorney’s Office Ms. Jill Lindberg Deputy District Attorney	A	No additional comments provided.	No response required.
11.	Superior Court of Monterey County Ms. Chenoa Summers Research Attorney	AM	[Regarding forms] CR-160, CR-161, [and] CR-162, [t]he Court agrees with the proposed changes, but recommends that the forms should contain the statement next to the expiration date box that "if no date is listed, this order expires three years from the date of issuance" in the event that an expiration date is inadvertently left out.	In response to various concerns about orders issued with a total absence of an expiration date, the committee has retained the statement, “ <i>If no date is listed, this order expires three years from the date of issuance</i> ” in item 2 on forms CR-160, CR-161 and CR-162. Although it is incumbent on courts to specify an expiration date, courts occasionally neglect to do so. Because protective orders are authorized for limited periods of time, the committee favors retaining the longstanding default expiration date statement—as opposed to having no indication of expiration whatsoever – for orders where the court has not specified an end date.
12.	Superior Court of Orange County Ms. Erin Rigby Criminal Division Managers	AM	Revise form CR-160 to: <ul style="list-style-type: none"> Remove “person to be restrained” field above the demographics. The field is frequently missed. Instead, under “People of the State of California” add “Defendant” to reflect “Defendant/Restrained Person”. 	<ul style="list-style-type: none"> The committee declines the suggestion because the current location of the “person to be restrained” field is familiar to judicial officers, court staff, and law enforcement, which is critical for effective enforcement of the orders.

W14-05 (including comments to SPR11-31)

Criminal Procedure: Criminal Protective Orders (Revise forms CR-160, CR-161, CR-162, and CR-165)

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

	Commentator	Position	Comment	Advisory Committee Response
			<ul style="list-style-type: none"> • Line #3- complete name, gender and age; and add “date of birth”. This is not a DOJ requirement for protected parties, however, if the information is available, it should be entered as it may support enforcement of the order. • Line #4 & #14- should be combined, or at least displayed next to one another since they both related to the protection of animals. • Line #7- modify “must turn over” to “must surrender”. • Line #17- modify “This order ends” to “This order expires”. Also, move this reference to line #2 as it is in close proximity to the judicial officer date and there is too much room for error. 	<ul style="list-style-type: none"> • The committee has added data fields for gender and age of each protected person. The committee has not included a data field for the protected person’s “date of birth” because the information is not always readily available and there may be a need to protect victim confidentiality, particularly in cases where the restrained person does not already know the date of birth of the protected person. • The committee declines the suggestion because the grant of custody of identified animals is directed to the protected person, while the “stay away from protected animals” order is appropriately located with other restraining orders directed at the restrained person. • The committee agrees and has replaced “must turn over” with “must surrender.” • The committee agrees to use the phrase “this order expires” and to maintain the reference to the order’s expiration date in its current location on the form because it is familiar to judicial officers, court staff, and law enforcement, which is critical for effective enforcement of the orders.
13.	Superior Court of Riverside County	AM	<p>[Regarding CR-160 and CR-161]:</p> <p>The proposed forms are generally an improvement over what is now in place, but there is one item that may cause confusion: the specified end date on line 17 of CR-160 and line</p>	<p>To address concerns about possible confusion over the expiration date of a criminal protective order, the committee has revised the “Effective Date and Expiration Date of Orders” provision of the “Warnings and Notices” on page 2 of forms</p>

W14-05 (including comments to SPR11-31)

Criminal Procedure: Criminal Protective Orders (Revise forms CR-160, CR-161, CR-162, and CR-165)

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

	Commentator	Position	Comment	Advisory Committee Response
			<p>15 of CR-161. The forms make it unclear whether the CPO is unconditionally valid up to the specified end date, or whether (as is correct) it is valid until either the stated end date or the court loses jurisdiction. This possibility is mentioned in item 6 of the warnings and notices section on the reverse of the form, but the language is unclear. The lines should be amended to read: "This order ends on (specify date) _____ or as explained in item 6 on the reverse." Alternatively, warning and notice 6, bullet point 2 could be amended to read: "These orders end as explained in item 17 on the reverse, or as explained below."</p>	<p>CR-160 and CR-161 to read, "These orders expire as ordered in item 2 on page 1 of this order, or as explained below," followed by three bullet points providing detailed explanations of the relevant effective and expiration dates of orders.</p>
14.	<p>Superior Court of Sacramento County Mr. Robert Turner ASO II Finance Division</p>	NI	<p>The Superior Court of California, County of Sacramento has reviewed the proposed Criminal Procedure: Criminal Protective Orders (SP11-31) and has the following comments to submit:</p> <ul style="list-style-type: none"> • RE: Revising the expiration date on the forms: It is very common that judicial officers do not write the expiration date on the order, cognizant of the default expiration in three years. If the default date is omitted on the revised forms and in the event no expiration date is indicated by the judicial officer, how is an expiration date to be determined? Without a remedy, it might result in generating non-expiring orders (unintentionally). 	<ul style="list-style-type: none"> • In response to various concerns about orders issued with a total absence of an expiration date, the committee has retained the statement, "<i>If no date is listed, this order expires three years from the date of issuance</i>" in item 2 on forms CR-160, CR-161 and CR-162. Although it is incumbent on courts to specify an expiration date, courts occasionally neglect to do so. Because protective orders are authorized for limited periods of time, the committee favors retaining the longstanding default expiration date statement—as opposed to having no indication of expiration whatsoever—for orders where the court has not specified an end date.

W14-05 (including comments to SPR11-31)

Criminal Procedure: Criminal Protective Orders (Revise forms CR-160, CR-161, CR-162, and CR-165)

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	Commentator	Position	Comment	Advisory Committee Response
			<ul style="list-style-type: none"> • RE: Age and sex information for each protected person is usually unknown and is not likely to be provided. • RE: Termination of Protective Order the statement, ‘This termination order does not also terminate existing family, juvenile or probate court orders’ is poorly articulated and confusing. Suggestion: ‘This termination order shall not terminate any existing family, juvenile or probate court orders’. • RE: Identifying the names of additional protected persons on a Termination of Order may cause some confusion. Would the termination of said order apply only to the persons listed on the order and not necessarily to all protected persons listed on the CR-160? 	<ul style="list-style-type: none"> • Although the age and gender of the protected persons may not be known to the court in every case, the committee believes that the information is helpful to include when known. • To clarify the language of the termination order, the committee has revised the statement on form CR-165 to read, “This termination order does <i>not</i> terminate any existing family, juvenile, or probate court orders.” • The committee declines to revise the data field for listing protected persons on form CR-165 in favor of court discretion to determine on a case-by-case basis whether to terminate the order for a particular protected person or for all of the persons protected by the original order.
15.	Superior Court of San Diego County Mr. Michael M. Roddy Court Executive Officer	AM	<ul style="list-style-type: none"> • Form CR-160, item 3: Change "age" to "with birth year" or "date of birth." • Form CR-162, item 4: Change to read "The defendant must not own, have, buy, try to buy, receive or try to receive, or otherwise obtain a firearm or ammunition during the 	<ul style="list-style-type: none"> • The committee declines the suggestion to include a data field for date of birth information because the information is not always readily available and there may be a need to protect victim confidentiality, particularly in cases where the restrained person does not already know the date of birth of the protected persons. • The committee has added the suggested language to forms CR-160, CR-161 and CR-162.

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	Commentator	Position	Comment	Advisory Committee Response
			pendency of this case.	
16.	Unified Family Court Superior Court of San Francisco County Hon. Rebecca Wightman Commissioner	AM	<ul style="list-style-type: none"> • The revisions to item #13 [item 16] in the Criminal Protective Order forms CR-160 and CR-161 to clarify that the restricted person may have peaceful contact with the protected persons for purposes of court-ordered visitation, and not just for the safe exchange of children as provided in the current form are good. • However, there is no explanation as to why it is necessary to breakout a new “a.” and “b.” in item #13[item 16] . Is it really necessary to separate out [a] and [b]??? This may very well create a greater burden on court staff (at both ends) for several reasons: <ul style="list-style-type: none"> ○ Because of the time to try to inquire of the defendant and/or look up in a court case management system, whether an order was already issued or not (so as to figure out which box to check). ○ Because it may lead to the criminal court failing to check <i>either</i> a or b (due to not knowing) and only checking the main box in #13, which may in turn lead the Family, Juvenile or Probate court to have concern as to whether permission is granted in either situation (if a or b is not checked, but #13 box is checked), and which in turn may lead to taking time to check court case 	<ul style="list-style-type: none"> • No response required. • The committee declines the suggestion to combine item 16 “a” and “b” because the court’s reference to an existing family, juvenile, or probate order, as compared with providing for coordination with future orders, helps promote the effective enforcement of the orders. The committee notes that current forms CR-160 (items 13 and 14) and CR-161 (items 12 and 13) separate the “peaceful contact” provisions and there is no indication this format has been burdensome to court staff.

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			<p>management systems to figure out whether orders in Family Juvenile or Probate exist and/or to requesting the defendant to go back to the Criminal Court to get clarification/permission specified as to whether it is a or b or both – all causing greater workload.</p> <ul style="list-style-type: none"> ○ Many defendants may not be aware and/or have forgotten that an order in the Family, Juvenile or Probate Court already exists, and they may tell the Criminal Court that there is no family law order yet (when in fact there is)...so <i>if</i> the Criminal Court does not check box a, that means he must now actually file something in family court, whereas if box a had been checked, then it would not necessarily be required. <p>Suggested Fix: Keep Item #13 as a single box check (as in prior form), and add the language of clarification re: peaceful contact with the protected person only for safe exchange of children and court-ordered visitation in the text of that item.</p>	

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17.	California Partnership to End Domestic Violence Krista Niemczyk Public Policy Manager	AM	<ul style="list-style-type: none"> • Electronic Monitoring As is noted in the invitation to comment, while Assembly Bill 2467 (Hueso; Stats. 2012, ch. 513) authorizes courts to order defendants to electronic monitoring, this is applicable only in counties that have adopted appropriate electronic monitoring. For those counties, we agree that it is important for the forms to be updated to reflect this option and allow such orders to be made. However, we would also encourage the courts to add explanatory language or guidance with the form to clarify the circumstances under which electronic monitoring can be ordered. This information would be of use to prosecutors, victims, and judges at the time of request and issuance of a criminal restraining order. As this law is implemented it will be important for victim safety that electronic monitoring is only ordered when available, as to avoid and confusion with the enforcement of the order, and in particular to avoid providing victims with a false expectation of safety and belief that the offender will be monitored when that is not the case. • Enforcement Priorities We appreciate the Court’s attention to clarifying the new enforcement priorities with the passage of AB 176. The Partnership is concerned that this new priority structure will be confusing for all parties involved, and we encourage the Court to continue considering ways to provide clear 	<ul style="list-style-type: none"> • To eliminate confusion about restrictions on court authority to order electronic monitoring (item 11 on form CR-160 and item 10 on form CR-161), the committee included: (a) citations to Penal Code sections 136.2(a)(7)(D) and 136.2(i)(2), (b) an instruction to courts to specify the length of time for monitoring, and (c) an advisement that the period for monitoring may not exceed one year. • The committee has further revised the “Conflicting Order – Priorities for Enforcement” provision in the “Warnings and Notices” of forms CR-160 and CR-161 to parallel the list format of this provision in civil protective order forms. The language in

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			<p>and concise guidance. We believe the information can be better understood if provided in a list format, rather than in paragraph format. An example of this format can be found in proposed changes to the DV-110 format (Invitation to Comment W14-07). We also strongly suggest maintaining consistent language on all of the relevant forms to avoid and confusion on the priority of orders. We have provided the language and format we would recommend here:</p> <p style="text-align: center;">Conflicting Orders</p> <p>If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced in the following order (see Pen. Code, § 136.2, and Fam. Code, §§ 6383(h), 6405(b)):</p> <ol style="list-style-type: none"> 1. <i>EPO</i>: If one of the orders is an Emergency Protective Order (Form EPO-001), and it is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders. 2. <i>No-Contact Order</i>: If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence in enforcement over any other restraining or protective order. 3. <i>Criminal Order</i>: If none of the orders includes a no-contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable. 	<p>the provision is identical to the language that is being proposed for form DV-110.</p>

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			4. <i>Family or Civil Order</i> : If more than one family or other civil restraining or protective order has been issued, the one that was issued last must be enforced.	
18.	Department of Justice Law Enforcement Support Program Vivian E. Garcia Field Representative	AM	CR-160 item 4, CR-161 item 4: add DOB if available. The age on all forms should be replaced with actual DOB for all protected persons. Age can be helpful when DOB is unknown for the restrained. Only exact DOB can be entered for protected persons, there is no data field code for age.	The committee declines the suggestion to include a request for “date of birth” because the information is not always readily available and there may be a need to protect victim confidentiality, particularly in cases where the restrained person does not already know the date of birth of the protected persons.
19.	Harriett Buhai Center for Family Law Meredith L. Alexander Staff Attorney	AM	<ul style="list-style-type: none"> • General Comment: There is no statewide, uniform way for the restrained person or protected person to request a modification of a Criminal Protective Order (CPO). For example, a restrained person may wish to modify a CPO to ask the court to check proposed box 16 allowing for peaceful contact for visitation. Similarly, a protected party may wish to request that the proposed box 16 not be checked. Because there is no uniform way to request a modification, some counties do not have clear procedures on how to request such a modification which creates great confusion for individuals. <p>Orange County has a form called Petition for Modification of Protective Orders in Criminal Proceedings – Domestic Violence Case and Request for Hearing (<i>L-404</i>) which can be filed by any of the following:</p>	<ul style="list-style-type: none"> • The committee declines the suggestion as exceeding the scope of this proposal but will consider the comment in future reviews of criminal protective orders.

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			<p>the defendant, the protected person, or the parent or guardian of the protected person. The Judicial Council should consider creating a statewide form that counties can use to develop a uniform system for modifying CPOs when appropriate.</p> <ul style="list-style-type: none"> Proposed Changes to CR-160: On its face, there is no way to differentiate between earlier “temporary” protective orders and later protective orders, thus making it difficult for individuals to determine whether an order is still in effect. Often, early on in the case, a CPO is issued and the date at item 2 is left blank. The form indicates that if no date is listed, the order expires 3 years from date of issuance. However, the order could expire prior to 3 years depending on the outcome of the case. For example, if the case is dismissed. Additionally, another CPO can be issued later on in the case with different orders. However, aside from the date, there is no way to distinguish which, if any, CPO is in effect. <p>The way that the current form reads, it would be necessary for a litigant to also look at a court docket to determine whether the order actually is in effect. Therefore, we recommend adding some language or an option to indicate whether an order is “temporary,” or providing some mechanism to better identify on its face whether an</p>	<ul style="list-style-type: none"> In response to various concerns about orders issued with a total absence of an expiration date, the committee has retained the statement, <i>“If no date is listed, this order expires three years from the date of issuance”</i> in item 2 on forms CR-160, CR-161 and CR-162. Although it is incumbent on courts to specify an expiration date, courts occasionally neglect to do so. Because protective orders are authorized for limited periods of time, the committee favors retaining the longstanding default expiration date statement—as opposed to having no indication of expiration whatsoever—for orders where the court has not specified an end date.

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			order is actually in effect.	
20.	Marie Hazlett, HCRSC Los Angeles County Sheriff's Department, Court Services Division	N/I	<ul style="list-style-type: none"> I agree with all proposals, however the verbiage for conflicting orders may want to address when more than one domestic violence criminal order (CPO) has been issued. W14-05- I agree with all proposals, and suggest another change. Currently item #17(CR160) and item#15 (CR161) include stay away from specific locations. Because the distance is never indicated by the court, I suggest an optional blank field for locations be added to the stay away orders in item #14 (CR160) and item #13 (CR161) instead to clarify the distance the restrained person must stay away from the location indicated. 	<ul style="list-style-type: none"> The committee declines the suggestion because the proposed “Conflicting Orders – Priorities for Enforcement” provision of the “Warnings and Notices” section of forms CR-160 and CR-161 reflects the current statutory requirements for enforcement of orders. The committee declines the suggestion as unnecessary because the court can specify distance in the “Other Orders” data field in item 18 of form CR-160 or item 17 of form CR-161.
21.	Orange County Bar Association Thomas H. Bienert, Jr. President	A		No response required.
22.	Riverside County Probation Dept. Allison Patterson Executive Secretary	N/I	Aside from minor training on the order of enforcement under PC 136.2 and the possibility the court may place pre-trial offenders on electronic monitoring (PC 136.2(a)(7)(D)), this will have almost no impact on our department. However, after reviewing forms CR-160 and CR-161, we noticed there is no space to specify which agency is responsible for electronic monitoring. Perhaps a notation on the minute	The committee declines the suggestion as unnecessary because court discretion to order electronic monitoring is limited by the provisions of Penal Code sections 136.2(a)(7)(D) and 136.2(i)(2), which mandates that local government must have adopted a policy authorizing electronic monitoring of defendants and specified the agency with jurisdiction for this purpose.

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			<p>order will suffice? Otherwise, modifying Item 11 (on CR-160) and Item 10 (on CR-161), to add a space for the responsible agency might be prudent.</p> <p>[T]he proposed language describing the priority of orders [is generally] sufficiently clear and accurate. However, it might be nice to require the court to state on the record which agency is responsible for the monitoring.</p> <p>The form appears consistent with the law; we would recommend they add a space to indicate which agency is responsible for monitoring.</p>	
23.	<p>State Bar of California Standing Committee on the Delivery of Legal Services (SCDLS) Elizabeth Bluestein Chair</p>	AM	<ul style="list-style-type: none"> • Priority of Orders These orders must often be read and interpreted by officers in the field, who work under tremendous pressure. The approach taken in the proposed revisions to DV-110 is much easier to read and simpler to understand. (See W14-07.) While taking this approach might make extra pages, the extra length could be a good trade-off. • The language is clear and accurate. In dealing with self-represented persons and law enforcement officials, there is often confusion regarding the priority of orders and orders related to custody/visitation of minors. Therefore, it would be appropriate to reorder the items on the CR-160 	<ul style="list-style-type: none"> • The committee has further revised the “Conflicting Order – Priorities for Enforcement” provision in the “Warnings and Notices” of forms CR-160 and CR-161 to parallel the list format of this provision in civil protective order forms. The language in the provision is identical to the language that is being proposed for form DV-110. • The committee declines the suggestion as unnecessary because the “Warnings and Notices” provisions of forms CR-160 and CR-161 as currently organized provide relevant, detailed information in a logical order for law enforcement and self-represented persons.

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			<p>"WARNINGS AND NOTICES". The paragraphs should be organized as follows:</p> <ul style="list-style-type: none"> ○ Current paragraph 4 becomes paragraph 2; ○ Current paragraph 7 becomes paragraph 3; ○ Current paragraph 6 becomes paragraph 4; and ○ Current paragraph 3 becomes paragraph 5. <p>Items on CR-161 also should be reordered, the idea being simply that priority should be given to the language related to Priority of Orders and the Custody/Visitation language.</p> <ul style="list-style-type: none"> • On CR-165, the inclusion of the word “also” in the notice language that appears in the text box that reads "THIS TERMINATION ORDER DOES <i>NOT</i> ALSO TERMINATE...." weakens the phrase. Enlarging and bolding the words “DOES NOT” might be more effective. • Organization Ideally, all information about a specific topic should be placed together. On the proposed forms, information is scattered. For example, on proposed CR-160, references to firearms are found on page 1, sections 6 and 8, and on page 2, section 2, and references to duration are found on page 1, section 2 and on page 2, section 6. <p>Similarly, on proposed CR-161, references to firearms are found on page 1, sections 5 and 7, as well as page 2, section 2. References to duration are found on page 1,</p>	<ul style="list-style-type: none"> • To clarify the language of the termination order, the committee has revised the statement on form CR-165 to read, “This termination order does <i>not</i> terminate any existing family, juvenile, or probate court orders.” • The committee declines the suggestion because the current format provides each of the orders in an appropriate location, including grouping together orders that restrain the defendant, and provides relevant, detailed information in a logical order in the “Warnings and Notices” provisions on page 2 of forms CR-160 and CR-161.

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			<p>section 2 and page 2, section 5.</p> <p>It is recommended that information about such important topics be in one place. For ease of reference, a heading would be helpful. This is the approach taken on Civil Harassment and Domestic Violence restraining orders and it would be helpful here. Of course, this would make the form longer, but it would also make it more useful by opening up space for additional protected persons and for other information that might be useful.</p> <p><u>Are any other changes necessary to make the forms consistent with the law?</u></p> <ul style="list-style-type: none"> • Incorrect Statutory Reference Proposed CR-160, section 11 and CR-161, section 10 cite Pen. Code section 136.2(a)(7)(D)(i)(2), in reference to electronic monitoring. The Penal Code section number appears to be a typo because there is no such section. However in the July 1, 2014 version, there are two subdivisions relating to electronic monitoring: 136.2(a)(7)(D) and 136.2(i)(2). It is recommended that the form reference both sections with a check box to indicate which applies. • Omission – Electronic Monitoring Payments If the court finds the defendant can pay for 	<ul style="list-style-type: none"> • The committee has corrected the reference to read, “Pen. Code section 136.2(a)(7)(D) and Pen. Code section 136.2(i)(2).” However, the committee declines the suggestion to add check boxes for each of the authorizing code sections because the duration of electronic monitoring is limited to not more than one year under <i>both</i> Penal Code sections 136.2(a)(7)(D) and 136.2(i)(2). • The committee declines the suggestion as unnecessary because practices for determining “ability to pay” vary widely between courts.

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			<p>the electronic monitoring, it shall order the defendant to pay. If the defendant cannot pay, the court can order the agency to pay. (Pen. Code section 136.2(a)(7)(D) and Pen. Code section 136.2(i)(2).) The proposed forms contain no such provision. It is recommended that CR-160 and CR-161 be altered to reflect who shall pay for electronic monitoring.</p> <ul style="list-style-type: none"> • Incorrect Statement of the Law Proposed CR-160, page 2, section 6 and CR-161, page 2, section 5 state, “Orders under Penal Code section 136.2...are not valid after imposition of a state prison commitment.” The authority cited for this proposition is <i>People v. Stone</i> (2004) 123 Cal.App.4th 153. <p>While this statement was true at the time <i>Stone</i> was written in 2004, the legislature amended 136.2(i) in 2011 (SB 723) so that defendants convicted of certain crimes could be subject to long-term protective orders “regardless of whether the defendant is sentenced to the state prison.”</p> <p>Thus, some orders issued under 136.2, specifically those issued under 136.2(i), are valid after imposition of a state prison commitment. Therefore, the statement on the forms that “Orders under Penal Code section 136.2...are not valid after imposition of a state prison commitment” is</p>	<ul style="list-style-type: none"> • The committee has added to the “Effective Date and Expiration Date of Orders” provision of the “Warnings and Notices” on forms CR-160 and CR-161 a reference to Penal Code subsection (a) of Penal Code section 136.2 to read, “Orders under Penal Code section 136.2(a) are valid as long as the court has jurisdiction over the case. They are not valid after imposition of a county jail or state prison commitment.”

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			<p>an incorrect statement of the law.</p> <p>Although SB 723 partially abrogated <i>Stone</i>, the holding of <i>Stone</i> still appears to be valid as to orders issued during the pendency of the trial. Under the 2004 version of 136.2, this would refer to (a) domestic violence orders, (b) 136.1 orders pertaining to defendants (c) 136.1 orders pertaining to persons other than defendants, (d) victim/witness communications, (e) setting a hearing on any of the above, (f) orders issued to law enforcement agencies, and (g) victim protection.</p> <p>These provisions may now be found in (a)(1) domestic violence orders, (a)(2) 136.1 orders pertaining to defendants, (a)(3) 136.1 orders pertaining to persons other than defendants, (a)(4) victim/witness communications, (a)(5) setting a hearing on any of the above, (a)(6) orders issued to law enforcement agencies, and (a)(7) victim protection. It appears that all of the above are subject to the <i>Stone</i> holding.</p> <p>(The firearms provisions, once found in former section 136.2(h), are now found in 136.2(d), which states that anyone “subject to a protective order under this section shall not own...a firearm while the protective order is in effect.” Thus, a firearm prohibition could fall under 136.2(a) orders or under orders issued under 136.2(i).)</p>	

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			<p>It appears that a better statement of the law for CR-160, page 2, section 6 and CR-161, page 2, section 5 would be “Orders under Penal Code section 136.2(a) ...are not valid after imposition of a state prison commitment.”</p> <p>If the committee working on these forms agrees with this analysis, the following changes should be made:</p> <ul style="list-style-type: none"> ○ References to the <i>Stone</i> holding should be limited to orders issued during the pendency of the proceeding, under 136.2(a). ○ Any references to 136.2 on the forms should be modified to clearly reflect what subdivision of 136.2 they are issued under. ● Potentially Misleading Language Proposed CR-160, page 2, section 6 and CR-161, page 2, section 5 say, “To terminate this protective order, use form CR-165...” While a judicial officer can use CR-165 to terminate a protective order, neither the victim nor the defendant may do so. Presumably a judicial officer will be aware of this form. However, the language on the form could be misconstrued by a victim or defendant to mean that either could unilaterally terminate the order by submitting CR-165. It is recommended that the references to termination be deleted. 	<ul style="list-style-type: none"> ● The committee agrees with the suggestion and has added a reference to “courts” to the “Effective Date and Expiration Date of Orders” provision of the “Warnings and Notices” on forms CR-160 and CR-161 to read, “To terminate this protective order, <i>courts should</i> use form CR-165, Notice of Termination of Protective Order in Criminal Proceeding (CLETS).”

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24.	Superior Court of San Diego County Michael M. Roddy Court Executive Officer	A		No response required.
25.	Superior Court of San Francisco County Hon. Kathleen Kelly	A	<p>Our court has had numerous issues with regard to DV CPO's and their interpretation in Family and Juvenile Court.</p> <p>The proposed language in item 16 of CR 160 would be of great assistance. It is very important to allow, as this proposal does, "court ordered visitation" as specified in the Family, Juvenile or Probate court. You have accurately captured our concern. We strongly urge this amendment.</p>	No response required.
26.	Superior Court of Santa Clara County Hon. Christine Copeland Commissioner	A	<p>It is a VERY good idea to include case information re: other ROs from family court. I wouldn't limit that information to just the intersection with a parenting timeshare order. I have many DV cases in family court where parties have no kids together but there is a CPO and a DV in effect at the same time. The DV order forms from family court have a place to note if a CPO exists, but the converse is not true. I would like the CPO to have a separate section to note if a DV order (from family court, or from another court, i.e. a CH order from civil court) exists. I think this "cross" information would enhance the info. in CLETS and enhance enforcement.</p>	<p>The committee declines the suggestion as unnecessary. Protocols for communication between courts and the timely coordination of protective orders are separately required by Penal Code section 136.2(f) and rule 5.445 of the California Rules of Court.</p>