

## **Gun Violence Restraining Orders**

### **337.1 PURPOSE AND SCOPE**

The purpose of this policy is to provide guidelines for petitioning and serving gun violence restraining orders and accounting for the firearms obtained pursuant to those orders.

#### **337.1.1 DEFINITIONS**

Definitions related to this policy include:

**Gun violence restraining order** - Civil restraining order prohibiting a named person from controlling, owning, purchasing, possessing, receiving, or otherwise having custody of any firearms or ammunition, including an ammunition magazine (Pen. Code § 18100).

### **337.2 POLICY**

It is the policy of the California Department of State Hospitals (DSH) to petition and serve gun violence restraining orders in compliance with state law and to properly account for firearms and ammunition obtained by DSH pursuant to such orders.

### **337.3 GUN VIOLENCE RESTRAINING ORDERS**

An officer who reasonably believes a person is a present danger to him/herself or another person by controlling, owning, purchasing, possessing, receiving or otherwise having custody of a firearm may request permission from the Hospital Police Chief or designee to petition the court for a gun violence restraining order.

Officers petitioning the court, with the approval of the Hospital Police Chief or designee, should use the forms established by the Judicial Council (Pen. Code § 18105). The petition should describe the number, types and locations of any firearms and ammunition that the officer believes to be possessed or controlled by the person (Pen. Code § 18107). The petition should also describe why less-restrictive alternatives are

ineffective or inadequate for the circumstances (Pen. Code § 18125; Pen. Code § 18150; Pen. Code § 18175).

If it is not practical under the circumstances to submit a written petition, an officer, with the approval of the Hospital Police Chief of designee, may orally request an order using the procedures for obtaining an oral search warrant and preparing the order using the appropriate Judicial Council form, and then prepare and sign a declaration under penalty of perjury that recites the oral statements provided to the judicial officer and memorialize the order of the court on the appropriate Judicial Council form (Pen. Code § 18140; Pen. Code § 18145).

#### **337.4 SERVICE OF GUN VIOLENCE RESTRAINING ORDERS**

An officer serving any gun violence restraining order shall:

- (a) Verbally ask the subject of the order if he/she has any firearm, ammunition, or magazine in his/her possession or under his/her custody or control (Penal Code § 18160).
- (b) Request that any firearms or ammunition be immediately surrendered and issue a receipt for the surrendered items (Penal Code § 18120).
- (c) Take into temporary custody any firearm or other deadly weapon discovered in plain view or pursuant to consent or other lawful search (Penal Code § 18250).
- (d) Inform the restrained person of any scheduled hearing regarding the order (Penal Code § 18160).
- (e) Transmit the original proof of service form to the issuing court as soon as practicable but within one business day (Penal Code § 18115).
- (f) As soon as practicable, but by the end of his/her shift, submit proof of service to the Records Manager or designee for prompt entry into the California Restraining and Protective Order System (Penal Code § 18115).

The officer should also inform the restrained person that he/she is required, within 24 hours, to surrender to a law enforcement agency any other firearms and ammunition he/she owns or that are in his/her custody or control or sell them to a firearms dealer. This notification should be documented.

Note: Pursuant to the Court Ordered Firearms and Ammunition Surrenders section, DSH does not accept court-ordered firearms surrenders.

#### **337.4.1 SERVICE OF ORAL GUN VIOLENCE RESTRAINING ORDERS**

If a gun violence restraining order is obtained orally, the officer shall (Penal Code § 18140):

- (a) Serve the order on the restrained person in the manner outlined above, if the restrained person can reasonably be located.
- (b) File a copy of the order with the court as soon as practicable after issuance.
- (c) Ensure the order is provided to the Records Manager for entry into the computer database system for protective and restraining orders maintained by the Department of Justice.

#### **337.5 SEARCH WARRANTS**

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

- (a) The officer serving the warrant shall take custody of any firearm or ammunition that is controlled, possessed or owned by the person who is the subject of the gun violence restraining order, including any discovered pursuant to the warrant, a consensual search or other lawful search.
- (b) If the location being searched is jointly occupied and the firearm or ammunition is owned by a person other than the restrained person, the firearm or ammunition should not be seized if the following conditions are met:

1. The firearm or ammunition can be stored in a manner that does not allow the restrained person to have control or access.
  2. There is no evidence that the owner unlawfully possesses the firearm or ammunition.
- (c) If a locked gun safe belonging to someone other than the subject of a gun violence restraining order is discovered, the officer shall not search the contents of the safe unless the owner consents or there is a valid search warrant for the safe. Any search of the safe must be done in the owner's presence.

#### **337.6 RECORDS MANAGER RESPONSIBILITIES**

The Records Manager is responsible for ensuring:

- (a) Proof of service of any gun violence restraining order served by an officer or received from the clerk of the court is entered in the computer database system for protective and restraining orders maintained by the Department of Justice within one business day of service if served by an officer, or within one business day of receipt of proof of service if served by a person other than a law enforcement officer (Penal Code § 18115).
- (b) Oral orders are entered into the California Restraining and Protective Order System (Penal Code § 18140).
- (c) Copies of receipts of surrendered firearms or ammunition issued by other agencies for gun violence restraining orders issued by DSH are properly maintained (Penal Code § 18120).

#### **337.7 COURT-ORDERED FIREARMS AND AMMUNITION SURRENDERS**

DSH will not accept court-ordered firearms surrenders. It is a felony to possess firearms on hospital grounds. All requests by the public or DSH employees for OPS to accept surrendered firearms will be directed to the law enforcement agency in the person's

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residence jurisdiction.

**337.8 RELEASE OF FIREARMS AND AMMUNITION**

Firearms and ammunition that were taken into temporary custody or surrendered pursuant to a gun violence restraining order shall be returned to the restrained person upon the expiration of the order and in accordance with Penal Code § 18120 and the Property and Evidence Policy.