


GIFFORDS LAW CENTER

TO PREVENT GUN VIOLENCE

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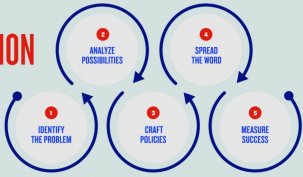


Implementation

Passing gun safety laws isn't enough—these laws must be effectively and equitably implemented in order to save lives.

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COMPONENTS OF EFFECTIVE IMPLEMENTATION



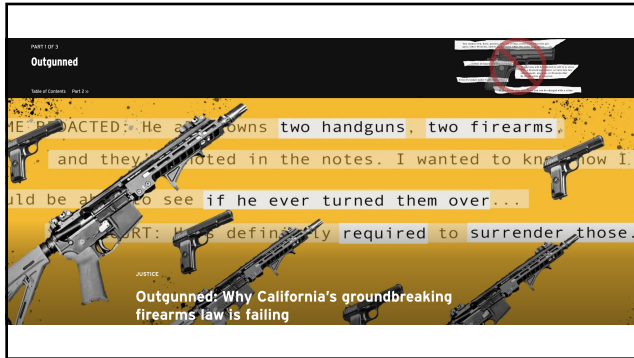
Implementation Toolkit for Gun Safety Laws

JULIA WEBER JULY 10, 2021

<https://giffords.org/issues/implementation/>

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SB 320 (Eggman) effective Jan. 1, 2022

- Codified in statute California Rule of Court [5.495](#) (eff. 7/2014)
- Added Family Code section [6322.5](#)
- Amended Family Code sections [3044](#), [6304](#), [6306](#), [6323](#), [6389](#), WIC section [213.5](#), and several Penal Code sections

Ammunition

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Relinquishment in Civil DV Matters

- Family Code 6389 (c) (1) "Upon issuance of a protective order...the court shall order the respondent to relinquish any firearm or ammunition in the respondent's immediate possession or control or subject to the respondent's immediate possession or control."
- At the scene and at service (EPO, TRO, OAH), law enforcement **MUST** remove firearms in plain sight or found through a consensual search (PC 18250). Relinquishment **MUST** occur immediately upon request by a law enforcement officer serving an order under FC 6389(c)(2).
- If not relinquished then, restrained party has 24 hours to relinquish and 48 hours to turn in proof to law enforcement and the court under FC 6389 and per court forms. DV-800/JV 252 may be used to provide proof of relinquishment to the court. Therefore, cases involving firearms should have DV-800 or similar information showing compliance in the court file within 48 hours of service.

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Local Protocols Must Be in Place

DV-800-INFO has statewide, general information on how to comply. However, courts **MUST** provide **local** info on how to relinquish under FC 6304.

Every law enforcement agency in the state **shall develop, adopt, and implement written policies** and standards for law enforcement officers who request immediate relinquishment of firearms or ammunition. FC 6389(c)(B)(5)

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Mandates & Permits Court Actions

- Before a noticed hearing, the court runs a check under FC 6306, including whether respondent/restrained party has firearms.
- If the check, or other info provide by a party shows firearm possession, the court MUST consider whether there's been a violation (FC 6306 and 6322.5; information might, for example, be available on the request for order in #9 on [QV-100](#)).
- Under FC 6322.5(a), when info about firearms is provided to the court, the court MUST consider whether there is a violation, MUST make a written record of the determination, and MUST provide it to the parties (see also FC 6322.5(c)).
- To make the determination, courts MAY set review hearings as provided under 6322.5(c).

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Addressing Violations

- Under FC 6306(f), the court MUST make a written record of whether a prohibited party has provided proof of relinquishment.
- If evidence of compliance is not provided under FC 6389(d), the court MUST notify law enforcement IMMEDIATELY. Law enforcement must then **"take all actions necessary"** to obtain firearms and ammunition owned, possessed, or controlled by the restrained party.
- The court MUST review the file and **report violations to the prosecuting agency within 2 days** (FC6389(c)(2)(B)(4)).

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Consequences for Violations

- For custody and visitation, the court MUST consider a determination under FC 6322.5 when deciding whether visitation should be suspended, denied, or supervised (FC 6323(e)). A determination that there's been a violation of the firearm prohibition is a factor in considering whether the rebuttable presumption in FC 3044 has been overcome.
- Failure to comply is a criminal violation of the protective order.
- Civil contempt and monetary sanctions may result.

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Key Data Points

1. Is the court providing LOCAL information on how to comply?
2. Is law enforcement asking about and obtaining firearms and ammunition at the scene?
3. Is law enforcement serving orders and obtaining firearms and ammunition at that time?
4. Do court files show DV-800 forms being filed?
5. Do law enforcement agencies show receipts being filed?
6. How many people in the community are in the Armed Prohibited Persons System?
7. What are prosecuting attorneys doing to address civil violations?
8. Are family courts treating violations of restraining orders as significant in child custody and visitation matters?
9. Do protected parties know where to go to get assistance when there is non-compliance?
10. Are service providers screening for and providing safety planning around firearms and ammunition, including pre-cursor parts (aka "ghost guns")?

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For nearly 25 years, the legal experts at Giffords Law Center to Prevent Gun Violence have been fighting for a safer America by researching, drafting, and defending the laws, policies, and programs proven to save lives from gun violence.

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