

Domestic Violence and Firearms in California Family and Juvenile Dependency Court Matters

Effective 1/1/22, **SB 320** codified in statute California Rule of Court **5.495** (eff. 7/2014).

The bill added Family Code section **6322.5** and amended Family Code sections **3044, 6304, 6306, 6323, 6389**, WIC section **213.5**, and several Penal Code sections.



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.



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



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 DV-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).



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 (FC 6389(c)(2)(B)(4)).



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.

NOTE: A respondent at a hearing 1) may have been prohibited under an EPO or a TRO related to the current case; 2) may have been prohibited for another reason; or 3) may become prohibited as a result of the order issued at the hearing. A respondent could be determined to be in violation at the first noticed hearing or subsequently. Firearms prohibitions are in place under state law in all restraining orders and under federal law if the order after hearing is issued. State law allows for certain exemptions only if specific findings are made and procedures followed under FC 6389(h).