

RULE 5 LAW AND MOTION

[A. no changes]

B. SPECIAL PROCEDURES FOR DVPA RESTRAINING ORDERS

[(1)-(4) – no changes]

(5) MODIFICATION OF CRIMINAL PROTECTIVE ORDERS

- a. Any Court responsible for issuing custody or visitation orders involving minor child(ren) of a defendant/restrained person subject to a Criminal Protective Order – Domestic Violence (CLETS-CPO) (Judicial Council form CR-160), also known as Criminal Protective Order, may modify the Criminal Protective Order if all of the following circumstances are satisfied:

(Effective 1/1/2016)

- i. Both the defendant/restrained person and the victim/ protected person are subject to the jurisdiction of the Family, Juvenile, or Probate Court; both parties are present before the Court; and both agree to the modification.

(Effective 1/1/2013)

- ii. The defendant/restrained person has been convicted of or is currently charged with a domestic violence related offense in Santa Clara County and a Criminal Protective Order has issued and is still in effect.
- iii. The Family, Juvenile, or Probate Court identifies a Criminal Protective Order issued against the defendant, which is inconsistent with a proposed Family, Juvenile, or Probate Court Order, such that the Family, Juvenile, or Probate Order is/will be more restrictive than the Criminal Protective Order or there is proposed custody or visitation order which requires recognition in the Criminal Protective Order (~~item 16 on the Criminal Protective Order form~~).

(Effective 1/1/2016)

- iv. The defendant signs an appropriate waiver of rights forms or enters a waiver of rights on the record. (Local Form FM-1018 may be used for this purpose.)

(Effective 1/1/2016)

- v. Both the victim/protected person and the defendant/restrained person agree that the Criminal Protective Order may be modified to a more

restrictive order or to provide for exceptions. ~~check item 16 on the Criminal Protective Order~~

- b. The Family, Juvenile, or Probate Court may not modify existing Criminal Protective Orders to be less restrictive. Only if children are not listed as protected persons, a modification of the Criminal Protective Order to ~~check item 16~~ grant exceptions to the Criminal Protective Order will not be considered less restrictive.

(Effective 10/1/2020)

- c. The Family, Juvenile, or Probate Court may, on its own motion or at the request of a defendant, protected person or other interested party, calendar a hearing before the Criminal—Court on the issue of whether a Criminal Protective Order should be modified. The Family, Juvenile, or Probate Court will provide the Criminal Court with copies of existing or proposed Orders relating to the matter. Notice of the hearing will be provided to all counsel and parties.

(Effective 10/1/2020)