SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair
2015 - 2016 Regular

Bill No:	AB 950	**Hearing Date:**	June 9, 2015
Author:	Melendez		
Version:	February 26, 2015		
Urgency:	No	**Fiscal:**	Yes
Consultant:	JRD		

Subject: ***Firearms: Gun Violence Restraining Orders***

HISTORY

Source: Author

Prior Legislation: AB 1014 (Skinner) - Chapter 872, Statutes of 2014
AB 539 (Pan) - Chapter 739, Statutes of 2013

Support: California Chapters of the Brady Campaign to Prevent Gun Violence; California Rifle and Pistol Association; Firearms Policy Coalition; Law Center to Prevent Gun Violence; National Rifle Association of America

Opposition: None known

Assembly Floor Vote: 77-0

PURPOSE

The purpose of this legislation is to: (1) allow a person, who is subject to a gun violence restraining order (GVRO), to transfer his or her firearms or ammunition to a licensed firearms dealer for the duration of the prohibition; and, (2) provide for the transfer of ammunition to a licensed firearms dealer by any person who is prohibited from owning or possessing ammunition.

*Existing law p*ermits persons who are subject to domestic violence restraining orders to surrender their weapons to licensed firearms dealers for storage during the period they are not permitted to possess firearms. (Penal Code § 29830.)

*Existing law s*tates that the provisions of law establishing gun violence restraining orders shall take effect on January 1, 2016. (Penal Code § 18122.)

Existing law requires, upon issuance of a gun violence restraining order, the court to order the restrained person to surrender to the local law enforcement agency all firearms and ammunition in the restrained person's custody or control, or which the restrained person possesses or owns. (Penal Code § 18120(b)(1).)

Existing law allows an immediate family member of a person or a law enforcement officer to file a petition requesting that the court issue an ex parte gun violence restraining order, that expires no later than 21 days from the date of the order, enjoining the subject of the petition from having

in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition. (Penal Code §§ 18150 and 18155(c).)

Existing law states that the court, before issuing an ex parte gun violence restraining order, shall examine on oath, the petitioner and any witness the petitioner may produce, or in lieu of examining the petitioner and any witness the petitioner may produce, the court may require the petitioner and any witness to submit a written affidavit signed under oath. (Penal Code § 18155(a).)

Existing law requires a showing that the subject of the petition poses a significant danger, in the near future, of personal injury to himself or herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm as determined by considering specified factors and that less restrictive alternative have been ineffective, or are inappropriate for the situation, before an ex parte gun violence restraining order may be issued. (Penal Code § 18150(b).)

Existing law specifies in determining whether grounds for a gun violence restraining order exist, the court shall consider all evidence of the following:

- A recent threat of violence or act of violence by the subject of the petition directed toward another;
- A recent threat of violence or act of violence by the subject of the petition directed toward himself or herself;
- A violation of an emergency protective order that is in effect at the time the court is considering the petition;
- A recent violation of an unexpired protective order;
- A conviction for any specified offense resulting in firearm possession restrictions; or,
- A pattern of violent acts or violent threats within the past 12 months, including, but not limited to, threats of violence or acts of violence by the subject of the petition directed toward himself, herself, or another.

(Penal Code § 18155(b)(1).)

Existing law states that an ex parte gun violence restraining order shall be personally served on the restrained person by a law enforcement officer, or any person who is at least 18 years of age and not a party to the action, if the restrained person can reasonably be located. When serving a gun violence restraining order, a law enforcement officer shall inform the restrained person of the hearing that will be scheduled to determine whether to issue a gun violence restraining order. (Penal Code § 18160(b).)

Existing law requires, within 21 days from the date an ex parte gun violence restraining order was issued, before the court that issued the order or another court in the same jurisdiction, the court to hold a hearing to determine if a gun violence restraining order should be issued. (Penal

Code § 18160(c).)

Existing law allows an immediate family member of a person or a law enforcement officer to request a court, after notice and a hearing, to issue a gun violence restraining order enjoining the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition for a period of one year. (Penal Code § 18170.)

Existing law states at the hearing, the petitioner shall have the burden of proving, by clear and convincing evidence, that both of the following are true:

- The subject of the petition, or a person subject to an ex parte gun violence restraining order, as applicable, poses a significant danger of personal injury to himself or herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition; and,

- A gun violence restraining order is necessary to prevent personal injury to the subject of the petition, or the person subject to an ex parte gun violence restraining order, as applicable, or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances. (Penal Code § 18175(b).)

Existing law provides if the court finds that there is clear and convincing evidence to issue a gun violence restraining order, the court shall issue a gun violence restraining order that prohibits the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition. If the court finds that there is not clear and convincing evidence to support the issuance of a gun violence restraining order, the court shall dissolve any temporary emergency or ex parte gun violence restraining order then in effect. (Penal Code § 18175(c).)

Existing law requires the court to inform the restrained person that he or she is entitled to one hearing to request a termination of the gun violence restraining order and provide the restrained person with a form to request a hearing. (Penal Code § 18180(b).)

Existing law states that it is a misdemeanor offense for every person who files a petition for an ex parte gun violence restraining order or a gun violence restraining order issued after notice and a hearing knowing the information in the petition to be false or with the intent to harass. (Penal Code § 18200.)

Existing law provides that it is a misdemeanor offense for every person who owns or possesses a firearm or ammunition with knowledge that he or she is prohibited from doing so by a gun violence restraining order and he or she shall be prohibited from having in his or her custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition for a five-year period, to commence upon the expiration of the existing gun violence restraining order. (Penal Code § 18205.)

This bill would allow a person who is subject to a gun violence restraining order to transfer his or her firearms or ammunition to a licensed firearms dealer for the duration of the prohibition. If the firearms or ammunition have been surrendered to a law enforcement agency, the bill would entitle the owner to have them transferred to a licensed firearms dealer.

This bill would provide for the transfer of ammunition to a licensed firearms dealer by any person who is prohibited from owning or possessing ammunition.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as "of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity." (Defendants' February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for Legislation

According to the author:

> The recently enacted gun violence restraining order law, AB 1014 (Skinner) (Ch. 872, Stats. of 2014) requires a person subject to a gun violence restraining order to either *sell* their firearms or surrender them to law enforcement.
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> Prior to AB 1014, AB 539 (Pan) (Ch. 739, Stats. of 2013) created a process, in addition to surrendering or selling the firearms, whereby a person who is prohibited from owning or possessing firearms, may *transfer* their firearms to a federal firearm (FFL) dealer during the duration of the restraining order.
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> The 2014 gun violence restraining order law took precedent over the 2013 statutes. That means the option to transfer (not sell or surrender) firearms to a registered FFL dealer has been eliminated.
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> AB 950 would give a person subject to a gun violence restraining order the option of transferring their firearms and ammunition to a federally licenses firearms dealer to hold for the duration of the order.
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> The option to transfer the firearms only applies when the peace officer does not immediately request the surrender of all firearms and ammunition.
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> Since the gun violence restraining order provisions also apply to ammunition, this proposal would expand the 2013 statutes to also authorize the transfer of ammunition to an FFL dealer.

2. Effect of Legislation

AB 1014 (Skinner), Chapter 872, Statutes of 2014, enacted a gun violence restraining order law in California to address concerns related to mental health and firearms possession after the Isla Vista shooting in Santa Barbara. Under the provisions of AB 1014, persons subject to gun violence restraining orders are required to either sell their weapons or surrender those firearms to law enforcement. This bill seeks to provide an option that is available for persons who are subject to domestic violence restraining orders. That option was put into place by AB 539 (Pan), Chapter 739, Statutes of 2013, which created a process whereby persons subject to a domestic violence restraining order could transfer their firearms to a federally licensed firearms dealer for the duration of the restraining order. This bill would provide that same remedy for persons subject to a gun violence restraining order. By enacting this bill, the original intent of AB 1014 is preserved, while the property interests of persons subject to restraint through a GVRO are also maintained.

3. Argument in Support

According to the California Chapters of the Brady Campaign to Prevent Gun Violence:

> In 2014, the Brady Campaign was instrumental in the passage of AB 1014 (Skinner), which we believe, when implemented in 2016, will save numerous lives. The California Brady Campaign Chapters support AB 950 by Assembly Member Melissa Melendez, as the bill will facilitate the implementation of this important new law.
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> AB 1014 allows an immediate family member or a law enforcement officer to request a court to issue a Gun Violence Restraining Order (GVRO) to enjoin a person from owning or possessing a firearm or ammunition for a period of one year upon a showing that the person poses a significant danger of personal injury to himself, herself, or another. Existing law requires a person who is subject to such a restraining order to surrender his or her firearms and ammunition immediately upon request of any law enforcement officer. If no request is made, existing law requires the person to surrender his or her firearms or ammunition to a local law enforcement agency or to sell his or her firearms or ammunition to a licensed firearms dealer within 24 hours.
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> This bill would allow a person who is subject to a GVRO to transfer his or her firearms and/or ammunition to a licensed firearms dealer for the duration of the prohibition. If the firearms or ammunition have been surrendered to a law enforcement agency, the bill would entitle the owner to have them transferred to a licensed firearms dealer. The bill would additionally provide for the transfer of ammunition to a licensed firearms dealer by any person who is prohibited from owning or possessing ammunition.
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> AB 950 is essentially similar to AB 539 (2013) by Dr. Richard Pan and, in fact, Senator Pan is principle coauthor of this bill. Like AB 539, this bill presents a reasonable alternative for temporarily removing firearms, particularly in volatile situations. We believe that it would enhance public safety as people may be more likely to surrender their firearms and ammunition if they believe that there is a reasonable chance that they can get them back upon the termination of the prohibition.

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