
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 12 **Hearing Date:** June 18, 2019
Author: Irwin
Version: April 1, 2019
Urgency: No **Fiscal:** No
Consultant: SC

Subject: *Firearms: Gun Violence Restraining Orders*

HISTORY

Source: Ventura County Sheriff's Office
Ventura County District Attorney's Office

Prior Legislation: SB 1200 (Skinner), Ch. 898, Stats. 2018
AB 2888 (Ting), vetoed, 2018
AB 2526 (Rubio), Ch. 873, Stats. 2018
AB 2607 (Ting), 2016, vetoed
AB 950 (Melendez), Ch. 205, Stats. 2015
AB 225 (Melendez), 2015, failed Assembly Public Safety
SB 505 (Jackson), Ch. 918, Stats. 2014
AB 1014 (Skinner), Ch. 872, Stats. 2014

Support: Alameda County District Attorney's Office; Bay Area Student Activists;
California Chapters of the Brady Campaign to Prevent Gun Violence; California
District Attorneys Association; California Police Chiefs; City of Los Angeles
Mayor Eric Garcetti; County of Santa Cruz Board of Supervisors; Democratic
Women's Council of the Conejo Valley; Indivisible Ventura; Los Angeles County
District Attorney's Office; Ventura County Board of Supervisors

Opposition: California Attorneys for Criminal Justice; National Rifle Association of America

Assembly Floor Vote: 53 - 13

This Analysis Reflects the Bill as Proposed to be Amended

PURPOSE

The purpose of this bill is to extend the duration of a gun violence restraining order (GVRO) issued after notice and hearing and any renewals to a maximum of five years.

Existing law defines a "GVRO" as "an order, in writing, signed by the court, prohibiting and enjoining a named person from having in his or her custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition." (Pen. Code, § 18100.)

Existing law requires a petition for a GVRO to describe the number, types, and locations of any firearms and ammunition presently believed by the petitioner to be possessed or controlled by the subject of the petition. (Pen. Code, § 18107.)

Existing law prohibits a person that is subject to a GVRO from having in his or her custody any firearms or ammunition while the order is in effect. (Pen. Code, § 18120, subd. (a).)

Existing law requires the court to order the restrained person to surrender all firearms and ammunition in his or her control. (Pen. Code, § 18120, subd. (b)(1).)

Existing law states that the law enforcement officer serving a GVRO shall request that all firearms and ammunition be immediately surrendered. Alternatively, if the request is not made by the law enforcement officer, the surrender shall occur within 24 hours of being served with the order, by surrendering all firearms and ammunition in a safe manner to the control of the local law enforcement agency, selling all firearms and ammunition to a licensed firearms dealer, or transferring all firearms and ammunition to a licensed firearms dealer. (Pen. Code, § 18120, subd. (b)(2).)

Existing law requires the law enforcement officer or licensed firearms dealer taking possession of any firearms or ammunition to issue a receipt to the person surrendering the firearm, or firearms, or ammunition, or both, at the time of surrender and the restrained person shall within 48 hours of being served, do both of the following:

- a) File with the court that issued the gun violence restraining order the original receipt showing all firearms and ammunition have been surrendered to a local law enforcement agency or sold or transferred to a licensed firearms dealer. Failure to timely file a receipt shall constitute a violation of the restraining order; and,
- b) File a copy of the receipt with the law enforcement agency that served the gun violence restraining order. Failure to timely file a copy of the receipt shall constitute a violation of the restraining order. (Pen. Code, § 18120, subd. (b)(2).)

Existing law allows law enforcement to obtain a temporary GVRO if the officer asserts, and the court finds, that there is reasonable cause to believe the following:

- a) The subject of the petition poses an immediate and present danger of causing injury to himself, herself, or another by possessing a firearm; and,
- b) The emergency GVRO is necessary to prevent personal injury to the subject of the order or another because less restrictive alternatives have been tried and been ineffective or have been determined to be inadequate under the circumstances. (Pen. Code, § 18125, subd. (a).)

Existing law states that a temporary GVRO shall expire 21 days from the date the order is issued. (Pen. Code, § 18125, subd. (b).)

Existing law states that a law enforcement officer who requests a temporary emergency gun violence restraining order shall do all of the following:

- a) If the request is made orally, sign a declaration under penalty of perjury reciting the oral statements provided to the judicial officer and memorialize the order of the court on the form approved by the Judicial Council;
- b) Serve the order on the restrained person, if the restrained person can reasonably be located;
- c) File a copy of the order with the court as soon as practicable after issuance; and,
- d) Have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice (DOJ). (Pen. Code, §18140.)

Existing law allows an immediate family member, as defined, or law enforcement officer to file a petition requesting that the court issue an ex parte GVRO enjoining a person from having in his or her custody or control, owning, purchasing, or receiving a firearm or ammunition. (Pen. Code, § 18150, subd. (a)(1).)

Existing law allows a court to issue an ex parte GVRO if an affidavit, made in writing and signed by the petitioner under oath, or an oral statement, and any additional information provided to the court on a showing of good cause that the subject of the petition poses a significant risk of personal injury to himself, herself, or another by having under his or her custody and control, owning, purchasing, possessing, or receiving a firearm as determined by balancing specified factors. (Pen. Code, §§ 18150, subd. (b) & 18155.)

Existing law requires an ex parte GVRO to be issued or denied on the same day that the petition is submitted to the court unless the petition is filed too late in the day to permit effective review, in which case the order shall be issued or denied on the next judicial business day. (Pen. Code, § 18150, subd. (d).)

Existing law requires a law enforcement officer to serve the ex parte GVRO on the restrained person, if the restrained person can reasonably be located. When serving a gun violence restraining order, the law enforcement officer shall inform the restrained person that he or she is entitled to a hearing and provide the date of the scheduled hearing. (Pen. Code, § 18160.)

Existing law states that an ex parte GVRO shall expire no later than 21 days from the date the order is issued. (Pen. Code, § 18155, subd. (c).)

Existing law allows an immediate family member or law enforcement officer to file a petition requesting that the court issue a GVRO after notice and a hearing enjoining a person from having in his or her custody or control, owning, purchasing, or receiving a firearm or ammunition. (Pen. Code, § 18170.)

Existing law states that at the hearing, the petitioner has the burden of proof, which is to establish by clear and convincing evidence that the person poses a significant danger of causing personal injury to himself, herself, or another by having under his or her custody and control, owning, purchasing, possessing, or receiving a firearm. (Pen. Code, § 18175, subd. (b).)

Existing law provides that if a GVRO is issued after the hearing, the order has a duration of one year, subject to termination by further order of the court at a hearing and renewal by further order of the court. (Pen. Code, § 18175, subd. (d).)

Existing law allows a restrained person to file one written request for a hearing to terminate the order (Pen. Code, §18185) and allows a request for renewal of a GVRO for up to one year (Pen. Code, § 18190).

Existing law states that every person who files a petition for an ex parte GVRO or a GVRO issued after notice and a hearing, knowing the information in the petition to be false or with the intent to harass, is guilty of a misdemeanor. (Pen. Code, § 18200.)

Existing law states that every person who violates an ex parte GVRO or a GVRO issued after notice and a hearing, is guilty of a misdemeanor and shall be prohibited from having under his or her custody and 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. (Pen. Code, § 18205.)

This bill extends the duration of a GVRO issued after notice and a hearing and their renewals from one year to a period of time between one and five years.

This bill specifies that in determining the duration of the GVRO and renewal of a GVRO, the court shall consider the length of time that the circumstances set forth below are likely to continue, and shall issue the order based on that determination:

- 1) The subject of the petition, or a person subject to the ex parte GVRO poses a significant danger of causing personal injury to themselves or another by having in the person's custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition; and,
- 2) A GVRO is necessary to prevent personal injury to the subject of the petition, or the person subject to an ex parte GVRO or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances of the subject of the petition, or the person subject to an ex parte GVRO.

This bill provides that the restrained person is entitled to request a hearing for termination of the GVRO once yearly during the effective period of the order.

This bill clarifies that when a GVRO is issued as an ex parte order or order after notice and hearing and is served by a person other than a law enforcement officer, and if no request is made by a law enforcement officer, the surrender shall occur within 24 hours of being served with the order by surrendering all firearms and ammunition in a safe manner to the control of a local law enforcement agency, selling all firearms and ammunition to a licensed firearms dealer, or transferring all firearms and ammunition to a licensed firearms dealer.

This bill authorizes the employing law enforcement agency to be named in a GVRO petition filed by a law enforcement officer in place of the individual officer's name.

This bill's provisions shall go into effect on September 1, 2020.

This bill makes other technical and conforming changes.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Currently an order after notice and hearing may only extend for one year from the court finding by clear and convincing evidence the statutory requirements. The law allows the restrained person the ability to request a hearing once during that year to restore their rights, and also allows law enforcement or a family member to petition the court to extend the order before the expiration for another year. These mechanisms necessitate the courts possibly having three hearings in the first year of an order and then possibly having two hearings a year ongoing for individuals they have found by a high standard of proof to pose a significant risk of harm to themselves or others, and continue to do so at each hearing.

By modifying the duration of the order to up to 5 years, but still allowing a restrained person to petition annually for the restoration of their rights, the bill reduces the burden on the courts by having only up to 2 hearings in the first year, and one or none in subsequent years, while still allowing a restrained person the opportunity to restore their rights. This change would also have the potential to remove the burden on family members and law enforcement who may not continue to have contact with the restrained individual from having to annually petition the court for an extension, and would possibly only have to be present for one hearing a year if the restrained individual petitions the court.

2. California's GVRO Law

California's GVRO laws, modeled after domestic violence restraining order laws, went into effect on January 1, 2016. A GVRO will prohibit the restrained person from purchasing or possessing firearms or ammunition and authorizes law enforcement to remove any firearms or ammunition already in the individual's possession.

The statutory scheme establishes three types of GVRO's: a temporary emergency GVRO, an ex parte GVRO, and a GVRO issued after notice and hearing. According DOJ:

There are two initial types of GVROs that can, if appropriate, be extended for up to one year. A Temporary Emergency GVRO may only be sought by a law enforcement officer. (Pen. Code, § 18125.) To obtain this order, a court must find (1) that the subject of the petition poses an immediate and present danger of causing personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm; and (2) the order is necessary to prevent personal injury to the subject of the petition or another because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the circumstances of the subject of the petition. (*Ibid.*)

The second type of GVRO is an Ex Parte GVRO, which may be sought by a law enforcement officer or an immediate family member. In this case, the order is issued if the court finds that (1) the subject of the petition poses a significant danger, in the near future, of causing personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm as determined by considering the factors listed in Penal Code section 18155; and (2) the order is necessary to prevent personal injury to the subject of the petition or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances of the subject of the petition. (Pen. Code, § 18150.) Unlike the Temporary Emergency GVRO, this application must be supported by an affidavit that sets forth the facts tending to establish the grounds of the petition, or the reason for believing that they exist. (*Ibid.*)

.....

Within 21 days, and before the temporary GVRO expires, an immediate family member of a person or a law enforcement officer may request that a court, after notice and a hearing, issue a GVRO 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 up to one year.¹ (Pen. Code, § 18170 et seq.) At the hearing, the petitioner shall have the burden of proving, by clear and convincing evidence, that both of the following are true: (1) the subject of the petition, or a person subject to an Ex Parte GVRO, as applicable, poses a significant danger of causing personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition; (2) a GVRO is necessary to prevent personal injury to the subject of the petition, or the person subject to an Ex Parte GVRO, 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 of the subject of the petition, or the person subject to an Ex Parte GVRO, as applicable. (Pen. Code, § 18175, subd. (b).) If the court finds that there is clear and convincing evidence to issue a GVRO, the court shall issue a GVRO 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. (Pen. Code, § 18175, subd. (c).) If the court finds that there is not clear and convincing evidence to support the issuance of a GVRO, the court shall dissolve any temporary emergency or Ex Parte GVRO then in effect. (*Ibid.*)

(California DOJ Division of Law Enforcement, *Gun Violence Restraining Order Process* (Jan. 2019) <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/infobuls/2019-bof-02.pdf>.)

3. Effect of this Legislation

a. Extension of the duration of GVROs

This bill expands the duration of GVRO issued after notice and a hearing and any renewals from one year to a period between one and five years. When determining the appropriate duration of the GVRO, the court must consider how long the specified

circumstances that necessitate the issuance of the GVRO are likely to continue. Specifically, those circumstances are: (1) the subject of the petition, or a person subject to the ex parte GVRO poses a significant danger of causing personal injury to themselves or another by having in the person's custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition; and 2) a GVRO is necessary to prevent personal injury to the subject of the petition, or the person subject to an ex parte GVRO or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances of the subject of the petition, or the person subject to an ex parte GVRO.

This bill entitles the subject of a GVRO a hearing for termination of the GVRO once yearly during the effective period of the order. If the court finds after the hearing that there is no longer clear and convincing evidence to believe that the two circumstances described above are true, the court shall terminate the order.

b. Clarification of when a restrained person may transfer or sell their firearms and ammunition.

According to the background information provided by the author, "certain clauses in the code make it unclear whether a restrained person under a temporary emergency GVRO has a right to transfer or sell their firearms and ammunition within 24 hours of being served an order. The 24-hr allowance does delineate between the three types of orders in 18120(b)(2) but is prefaced with the absence of a law enforcement request. The preceding sentence requires an officer to make a request when serving an order, as does 18135(b) when serving a temporary emergency order which only law enforcement may do. Therefore there can be no 24hr period for a temporary emergency order, as there is no scenario in which a civil process server could serve the temporary emergency order, or a scenario in which a law enforcement officer could serve the order but not make the request to surrender firearms and ammunition. The language in AB 12 explicitly narrows the 24 hr period to ex parte and 'notice and hearing' orders, to avoid confusion on whether an officer has discretion to not order the surrender in a temporary emergency context, or the misconception by the restrained individual that they have a right to retain their firearm for sale and transfer."

c. The employing law enforcement agency may be named on the GVRO petition in place of the individual officer petitioner.

Currently, when a law enforcement officer is the petitioner of a GVRO, the officer is a named party in the court case. This bill would authorize the employing law enforcement agency to be named on the petition in lieu of the individual officer.

4. Data on Issuance of GVROs

According to DOJ's data, since the law went into effect in 2016, courts issued GVROs 86 times in 2016 and 104 times in 2017. Los Angeles County had the highest number of GVROs issued for a total of 32 from 2016 to 2017. The county with the second highest number was Santa Barbara with 21 GVROs. The county that had the highest number of GVROs per capita was Contra Costa. (Koseff, *'Best tool' to prevent gun violence is rarely used in California,*

Sacramento Bee (Mar. 29, 2018) < <http://www.sacbee.com/latest-news/article206994229.html>news/article206994229.html>.)

Last year, 424 GVROs were issued throughout the state. San Diego County accounted for the majority of the increase with 185 orders issued; the nine Bay Area counties accounted for 53 GVROs with only one issued in San Francisco. (Koseff, *California gun confiscations increase sharply under restraining-order law*, San Francisco Chronicle (Feb. 10, 2019) < <https://www.sfchronicle.com/politics/article/California-gun-confiscations-increase-sharply-13602566.php>>.) According to DOJ's data, of the 424 GVROs issued, 93 were the one year GVROs issued after notice and a hearing.

5. Argument in Support

According to the Ventura County District Attorney's Office, the sponsor of this bill:

AB 12 streamlines the process that allows law enforcement to disarm individuals who pose a danger to themselves or others. AB 12 allows issuance of a search warrant at the same time as the GVRO, with execution of the warrant conditioned on the person being lawfully served with the restraining order and failing to relinquish the firearms or ammunition as required by law. This change limits the opportunities for dangerous individuals to secrete their weapons, or worse, to arm themselves against victims or officers.

Second, AB 12 would extend the duration of a GVRO issued after notice and hearing from one year to a period of one to five years. The extended restraint period better permits individuals to meaningfully address the underlying criminal or mental health issues that led to issuance of the GVRO. The restrained person may request restoration of their rights after a year and each year thereafter. This new process better balances the interests of public safety against the rights of the restrained person.

6. Argument in Opposition

According to the *National Rifle Association*:

Denial of constitutional rights is a serious matter that requires proper due process and strong objective supporting data. Currently GVRO's can be issued for a period of one year and extended annually without limitation. The unfortunate reality is that an individual can be placed in a constant restrained state without ever being convicted of a crime or adjudicated mentally ill, but based on third party allegations.

By extending the duration of a GVRO, the restrained will now be burdened with making the request to appeal the order on an annual basis and saddled with the legal costs associated with such a request. Whereas, the current obligation is on the party requesting to restrain an individual from their constitutionally protected freedoms.

AB 12 is noticeably lacking any clear guidance on how a judge is to determine the

length of a GVRO. It should be noted that if an individual is truly dangerous, existing law already provides a variety of mechanisms to deal with the individual, all of which can lead to firearm prohibitions in appropriate cases. The issuance of a protective order does nothing to deal with the underlying cause of dangerousness, nor does it subject the person to any actual physical restraint, ongoing reporting or monitoring requirements, or treatment for any underlying mental health condition.

Despite the good intentions of this legislation, AB 12 will have the effect of acting as a false security blanket. Again, this legislation would leave truly dangerous individuals free to commit their crimes with illegal firearms, explosives and anything else that sick individuals might use to commit heinous crimes. Unfortunately AB 12 will only promote the denial of fundamental civil liberties.

-- END --