
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 2526 **Hearing Date:** June 12, 2018
Author: Rubio
Version: February 14, 2018
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Temporary Emergency Gun Violence Restraining Orders*

HISTORY

Source: Judicial Council of California

Prior Legislation: AB 1443 (Levine), Ch. 172, Stats. 2017
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: Bay Area Student Activists; California Academy of Family Physicians; California Police Chiefs Association; California State Sheriffs' Association; Crime Victims United of California

Opposition: Firearms Policy Coalition

Assembly Floor Vote: 71 - 0

PURPOSE

The purpose of this bill is to make oral requests for a temporary emergency gun violence restraining order (GVRO) the statutory default and authorize written requests if time and circumstances permit.

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 the court to notify the Department of Justice (DOJ) when a GVRO is issued, renewed, dissolved, or terminated. (Pen. Code, § 18115.)

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 officer serving the GVRO shall request the surrender of all firearms or ammunition immediately, or in the alternative, the surrender shall occur within 24 hours of being served with the GVRO 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 allows law enforcement to seek a temporary GVRO if the officer asserts, and the court finds, that there is reasonable cause to believe the following:

- The subject of the petition poses an immediate and present danger of causing injury to himself or another by possessing a firearm; and,
- 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 requires the presiding judge of the superior court of each county to designate at least one judge, commissioner, or referee who shall be reasonably available to issue temporary emergency GVROs when the court is not in session. (Pen. Code, § 18145, subd. (b).)

Existing law requires a law enforcement officer seeking a temporary GVRO to do all of the following:

- Memorialize the order of the court on the form approved by the Judicial Council, if the order is obtained orally;
- Serve the order on the restrained person, if the restrained person can reasonably be located;
- File a copy of the order with the court as soon as practicable after issuance; and,
- Have the order entered into the computer database system for protective and restraining orders maintained by the DOJ. (Pen. Code, § 18140.)

This bill requires the officer to additionally sign a declaration under penalty of perjury reciting the oral statements provided to the judicial officer.

Existing law states that a petition for a temporary emergency GVRO shall be obtained by submitting a written petition to the court, except that if time and circumstances do not permit the submission of a written petition, a temporary emergency gun violence restraining order may be issued in accordance with the procedures for obtaining an oral search warrant. (Pen. Code, § 18145 subd. (a).)

This bill instead allows a judicial officer to issue a temporary emergency GVRO orally based on the statements of the law enforcement officer and would allow a temporary GVRO to be obtained in writing and based on a declaration signed under penalty of perjury if time and circumstances permit.

COMMENTS

1. Need for this Bill

According to the author of this bill:

Temporary emergency gun violence restraining orders (EPOs, or temporary emergency GVROs) are generally obtained over the phone by a law enforcement officer in the field who is dealing with the immediate and present danger that is the subject of the order.

However, the default procedure in statute (Pen. Code §18145) dictates that temporary emergency GVRO's shall be obtained via written petition, unless time and circumstances do not permit writing and filing the petition. Where oral issuance is permitted, the statute directs law enforcement to follow the procedures used for obtaining an oral search warrant (Pen. Code §1526).

The organization of the statute has led to confusion about whether a written petition is required for issuance. The Judicial Council form filed with the court does not serve as a written petition. Moreover, oral search warrant procedure, which differs greatly from the domestic violence restraining order procedure that California's GVRO laws were modeled after, can be too burdensome for temporary GVROs. These factors create inefficiencies in the processing of already time-sensitive requests.

This bill would make oral requests the default procedure in statute, allowing for a written process if time and circumstances permit. The bill would also specify that when the request is made orally, the officer shall follow procedures more consistent with obtaining a domestic violence EPO, including: signing a declaration under penalty of perjury, reciting statements to the judicial officer under oath, memorializing the order on the approved Judicial Council form, and filing a copy with the court as soon as practicable. These changes retain the essential elements of the original statute as well as oral search warrant procedures, and align statutory language with the reality of how firearms EPOs are issued.

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. A document prepared by Judicial Council describes the different types of GVRO in further detail:

There are three major differences between the "temporary" and "ex parte" orders. First, the temporary order may only be requested by a law enforcement officer, while the ex parte order may be requested by a law enforcement officer or an immediate family member (as defined). Second, the temporary order expires in 21

days with no procedure for extending it or making it “permanent;” the ex parte order also expires in 21 days, but provides for a hearing to be held within 21 days to issue a GV order with a duration of one year. With the temporary order, before the 21 days are up, the law enforcement officer can petition for an order after hearing.

The third difference is in the showing required to get the order. The temporary order requires a showing of immediate and present danger, while the ex parte order requires a showing of a significant danger in the near future.

The temporary order may also be obtained by using the procedures to obtain an oral search warrant if time and circumstances do not permit the filing of a petition. Hence, the temporary order is a tool to be used by law enforcement in an emergency situation, when there is a perceived need to remove guns from someone acting erratically and aggressively and to prohibit him or her from possessing a firearm. If the restraining order is issued and the restrained party has not relinquished the firearm, then under the amendments to Penal Code section 1524(a)(14), a search warrant for the firearm can be issued.

In summary, law enforcement can seek a temporary order in an emergency or an ex parte order for danger in the near future. A family member can only seek an ex parte order. Either may seek an order after hearing.

(<http://www.courts.ca.gov/documents/SPR15-13.pdf> [as of May 30, 2018], pg. 3.)

Although current law contemplates the oral issuance of a GVRO, the default procedure in statute is to submit a written petition. Oral issuance is only allowed if time and circumstances do not permit the filing of a written petition. This bill aims to eliminate the existing law’s preference for the written petition, given the fact that the situation in which a temporary emergency GVRO already requires an “immediate and present danger.”

Additionally, this bill would streamline the oral procedure for obtaining a GVRO. Rather than having to comply with the somewhat more rigorous demands that are necessary to obtain a search warrant, an officer can simply recite the reasons needed for the GVRO to the judicial officer over the phone, so long as those reasons are later memorialized in a declaration signed under the penalty of perjury. This process appears to balance the immediacy of the potential threat with the requirements of due process.

3. Argument in Support

Judicial Council of California, the sponsor of this bill, writes in support:

Making the oral procedures the primary procedure in the statute reflects the reality of how these orders are issued: the request is generally made over the phone by a law enforcement officer who is in the field dealing with a situation in which someone poses an immediate and present danger of causing harm to himself or herself, or others. Thus, it is difficult to see how time and circumstances would allow the officer to present a written form to a judicial officer at the courthouse as required by the current default procedure.

In addition, AB 2526 aligns the temporary GVRO procedures with those for obtaining domestic violence emergency protective orders by adopting requirements similar to those specified by the Legislature for emergency protection orders that law enforcement obtain orally in domestic violence cases (Fam. Code § 6241.) Finally, the bill retains the essential requirements of the original statutes. Specifically, the oral statements that the law enforcement officer seeking the order makes to the judicial officer must be declared under penalty of perjury on the order form eventually filed with the court – a parallel to the requirement of statements under oath for oral issue of search warrants (Pen. Code § 1526(b) (law enforcement officer statement made by telephone and recorded or sent in to court in writing via fax or email).)

4. Argument in Opposition

According to the Firearms Policy Coalition:

AB 2526 would amend Section 18140 of the Penal Code to allow a law enforcement officer to request a [GVRO] verbally. This is a stunning infringement on liberty, wherein peace officers could have a law-abiding gun owners' firearms taken away merely at their say-so.

The bill's language is careful to note that petitioners would be required to sign a declaration under penalty of perjury. However, time and experience has shown us that people are willing to perjure themselves in front of a court of law in order to achieve their goals.

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