
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 1200 **Hearing Date:** April 17, 2018
Author: Skinner
Version: March 21, 2018
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Firearms: Gun Violence Restraining Orders*

HISTORY

Source: Brady Campaign to Prevent Gun Violence – California Chapters
Giffords Law Center to Prevent Gun Violence

Prior Legislation: 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: Drain the NRA; San Francisco Bay Area Physicians for Social Responsibility;
Violence Prevention Coalition of Greater Los Angeles; Violence Prevention
Coalition of Orange County; Women Against Gun Violence; 1 private individual

Opposition: Firearms Policy Coalition; National Shooting Sports Foundation, Inc.

PURPOSE

The purpose of this bill is to make various changes to existing laws related to gun violence restraining orders (GVROs).

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.)

This bill defines, for purposes of the GVRO law, "firearm" to include firearm parts or components and defines "firearm parts or components" to mean unassembled parts and components of a firearm that are clearly designed and intended to be used to assemble a functional weapon.

This bill defines, for purposes of the GVRO law, "ammunition" to include a "magazine."

This bill makes conforming changes to the notice required to be given to the subject of a GVRO.

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 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:

- 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,
- 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. (*Id.*)

This bill requires the court, within one day of receiving the receipt to transmit a copy of the receipt to DOJ in a manner and pursuant to a process prescribed by the department.

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).)

This bill states that within 21 days after the date the temporary GVRO was issued, the court that shall hold a hearing to determine if a one year GVRO should be issued and applies the process applicable to issue a GVRO after notice and hearing.

Existing law allows an immediate family member 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 defines "immediate family member" as specified. (Pen. Code, 18150, subd. (a)(2).)

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 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 restrained person with a form to request a hearing. (Pen. Code, § 18160.)

Existing law allows the restrained person who owns a firearm or ammunition that is in the custody of a law enforcement agency pursuant to this subdivision, if the firearm is an otherwise legal firearm, and the restrained person otherwise has right to title of the firearm, to sell or transfer title of the firearm to a licensed dealer. (Pen. Code, § 18120, subd. (c)(2).)

Existing law entitles the restrained person to a hearing to determine the validity of the order within 21 days after the date on the order. (Pen. Code, § 18165.)

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 allows a restrained person to file one written request for a hearing to terminate the order. (Pen. Code, 18185.)

Existing law allows a request for renewal of a GVRO. (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 states that when serving a GVRO the law enforcement officer shall verbally ask the restrained person if he or she has any firearm, firearm part or component, ammunition, or magazine in his or her possession or under his or her custody or control.

Existing law exempts from the prepayment requirement generally authorized in connection with service of process of notices the service of process of a protective order, restraining order, or injunction involving stalking, credible threats of violence resulting from a threat of sexual assault, domestic violence, marital dissolution, or a child custody matter is not subject to.

This bill exempts from the prepayment requirement any orders or injunctions related to GVROs.

This bill states that there is no filing fee for an application, a responsive pleading, or an order to show cause that seeks to obtain, modify, or enforce a GVRO or other order authorized by the GVRO law if the request for the other order is necessary to obtain or give effect to a gun violence restraining order or other order authorized by this division. There is also no fee for a subpoena filed in connection with that application, responsive pleading, or order to show cause.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Those closest to a person are often the first to notice an escalation in disturbing behavior along with threats to act violently. When someone is in such a crisis access to guns is a lethal combination. Yet until recently, California had few legal options for a family member or roommate to have guns temporarily removed from their loved ones.

In 2014, AB 1014 (Skinner) established California's GVRO as a tool family members could use to disarm loved ones who were threatening violence or self-harm. Washington and Oregon have now also passed laws based on AB 1014 which those states have named "Extreme Risk Prevention Orders".

Since AB 1014 went into effect in January 2016, California has issued approximately 200 GVRO's. During this initial phase, a number of issues have come to light that if addressed would greatly improve the effectiveness of this tool.

First, petitioners trying to obtain a GVRO often must pay filing and service fees. Facing such fees can prevent a family member from pursuing the GVRO. Secondly, magazines and other firearm components that also pose a threat were not included in the original bill. Thirdly, when a person is served an emergency GVRO, the original bill did not include an automatic hearing date within the initial 21 day period to determine if the GVRO was issued appropriately and if it should be extended for a full-year. Finally, the original bill language did not require law enforcement to verbally ask the person served with a GVRO if the person has relinquished all guns and firearm components in their possession.

California's Gun Violence Restraining Order (GVRO) is a lifesaving tool that enables parents, spouses and household members to temporarily get firearms out of the hands of those close to them who are making credible threats of violence against themselves or others. SB 1200 improves the process for obtaining a GVRO and ensures that all firearms and firearm components can be removed when a GVRO is issued. SB 1200 addresses these issues to strengthen the effectiveness, and efficiency of California's GVRO system.

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 Apr. 9, 2018].)

An ex parte GVRO is based on an affidavit filed by the petitioner which sets forth the facts establishing the grounds for the order. The court will determine whether good cause exists to issue the order. If the court issues the order, the restrained person must surrender to a local law enforcement agency all firearms and ammunition in his or her custody or control, or which he or she possesses or owns, or sell or transfer all firearms and ammunition to a licensed gun dealer within 24 hours of the order, and is prohibited from acquiring more guns or ammunition. The order can remain in effect for 21 days. Within that time frame, the court must provide an opportunity for a hearing. At the hearing, the court can determine whether the firearms should be returned to the restrained person, or whether it should issue a more permanent order.

Finally, if the court issues a GVRO after notice and hearing has been provided to the person to be restrained, this more permanent order can last for up to one year. The restrained person may request another hearing during the period of the prohibition to terminate the order. The duration of the GVRO may be renewed for another year or terminated early as determined by the court.

According to data from DOJ, 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> > [as of Apr. 5, 2018].)

3. Effect of this Legislation

This bill makes several clarifying changes to California's GVRO law. First, it provides a definition for "firearm," "firearm parts or components" and "ammunition" for purposes of the GVRO law and makes conforming changes to the notice required to be given to the restrained person. Second, the bill specifies that a law enforcement officer that serves a GVRO shall verbally ask at the time of service whether the restrained person has any firearm, firearm part or component, ammunition, or magazine in his or her possession or under his or her custody or control.

Third, the bill requires the court to send a copy of the receipt that shows that all firearms and ammunition have been surrendered by the restrained person to DOJ within one business day of receiving the receipt. Fourth, under existing law temporary GVROs expire after 21 days of issuance. There is no specified mechanism for turning a temporary GVRO to a permanent one that lasts up to one year in current statute. This bill specifies that the court shall hold a hearing within 21 days of the issuance of the temporary GVRO and follow the process specified for issuing a GVRO after notice and hearing. Lastly, the bill prohibits certain fees, including filing fees, for an application, responsive pleading, or an order to show cause related to a GVRO, and exempts from any prepayment requirement for service of process for service of process of a GVRO.

4. Argument in Support

Women Against Gun Violence writes in support:

AB 1014 ... established California's Gun Violence Restraining Order law after the Isla Vista shooting in 2014, took effect in January 2016. The law allows for a temporary firearm prohibition if there is credible evidence that the person presents a violent threat and was the first in the nation to allow family members or roommates, those closest to the person at risk, to petition for the order rather than relying solely on law enforcement. California has issued over 250 gun violence restraining orders since the law took effect.

SB 1200 eliminates any fees for requesting such a restraining order and adds ammunition, magazines and firearm components that can be used to assemble a final weapon to the list of items which must be surrendered. SB 1200 also requires law enforcement personnel that serve the order to verbally ask the recipient if they have firearms or accessories and also requires gun violence restraining orders that are issued for a 21-day period having a hearing held within that time period to allow for a judicial determination that the gun violence restraining order be extended for a year. SB 1200 will strengthen the effectiveness of California's existing gun violence restraining order law.

5. Argument in Opposition

The National Shooting Sports Foundation, Inc. opposes the bill's inclusion of firearm parts or components in the definition of firearm, and magazines in the definition of ammunition, for purposes of a GVRO:

These items are neither firearms nor ammunition.

SB 1200 would place someone in violation of the law for merely, and likely unknowingly, possessing a firearm part such as a spring or magazine, even if obsolete or in an unusable condition. Such parts are commonly kept by persons who lawfully possess firearms.

Under both state and federal law, a frame or receiver of a firearm is, itself, defined to actually be the firearm. Everything else is just parts that cannot be assembled into a functioning firearm without a frame or receiver.

Accordingly, if a person relinquishes their firearms, it would necessarily include frames and receivers, thus rendering the other parts and magazines non-functional and irrelevant.

No public safety purpose would be realized as a result of relinquishing other parts and magazines, too.

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