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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** AB 667                      **Hearing Date:** June 4, 2024  
**Author:** Maienschein  
**Version:** January 3, 2024  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SC

**Subject:** *Firearms: gun violence restraining orders*

## HISTORY

Source: Author

Prior Legislation: AB 301 (Bauer-Kahan), Ch. 234, Stats. 2023  
AB 2870 (Santiago), Ch. 974, Stats. 2022  
AB 538 (Rubio), Ch. 686, Stats. 2021  
AB 2617 (Gabriel), Ch. 286, Stats. 2020  
AB 12 (Irwin), Ch. 724, Stats. 2019  
AB 61 (Ting), Ch. 725, Stats. 2019  
AB 339 (Irwin), Ch. 727, Stats. 2019  
SB 1200 (Skinner), Ch. 898, Stats. 2018  
AB 2888 (Ting), vetoed, 2018  
SB 505 (Jackson), Ch. 918, Stats. 2014  
AB 1014 (Skinner), Ch. 872, Stats. 2014

Support: California District Attorneys Association; California Catholic Conference; CFT –  
A Union of Educators & Classified Professionals, AFT, AFL-CIO

Opposition: Brady United Against Gun Violence; GIFFORDS; National Rifle Association

Assembly Floor Vote: 61 - 1

## PURPOSE

*The purpose of this bill is to require a court to issue a gun violence restraining order (GVRO) for a duration of five years if the subject of the petition displayed an extreme risk of violence, as specified, within the prior 12 months.*

*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* 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. Specifies that this means the person cannot own, purchase, possess, or receive any firearms or ammunition. (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, or which the person possesses or owns. (Pen. Code, § 18120, subd. (b)(1).)

*Existing law* requires the law enforcement officer serving a GVRO to request that all firearms and ammunition be immediately surrendered. Requires, if the request is not made by a law enforcement officer, the surrender to 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) & (3).)

*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 requires the restrained person to, within 48 hours of being served, do both of the following:

- File with the court that issued the GVRO 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, if any, that served the GVRO. Failure to timely file a copy of the receipt shall constitute a violation of the restraining order. (Pen. Code, § 18120, subd. (b)(4) & (5).)

*Existing law* provides 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 authorized order if the request for the other order is necessary to obtain or give effect to a GVRO or other authorized order. Provides that there is no fee for a subpoena filed in connection with that application, responsive pleading, or order to show cause. (Pen. Code, § 18121.)

*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:

- The subject of the petition poses an immediate and present danger of causing injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition; and,
- A temporary 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 or inappropriate under the circumstances. (Pen. Code, § 18125, subd. (a).)

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

*Existing law* requires a law enforcement officer who requests a temporary GVRO do all of the following:

- 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;
- 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, but not later than 3 court days, after issuance; and,
- Have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice. (Pen. Code, § 18140.)

*Existing law* allows any of the following individuals 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:

- An immediate family member of the subject of the petition;
- An employer of the subject of the petition;
- A coworker, if they have had substantial and regular interactions with the subject for at least one year and have obtained the approval of the employer;
- An employee or teacher of a school that the subject has attended in the past 6 months, if the employee or teacher has obtained the approval of a school administrator or a school administration staff member with a supervisory role;
- A law enforcement officer;
- A roommate of the subject of the petition;
- An individual who has a dating relationship with the subject of the petition; or,
- An individual who has a child in common with the subject of the petition, if they have had substantial and regular interactions with the subject for at least one year. (Pen. Code, § 18150, subd. (a)(1).)

*Existing law* defines “immediate family member” to mean “any spouse, whether by marriage or not, domestic partner, parent, child, any person related by consanguinity or affinity within the second degree, or any person related by consanguinity or affinity within the fourth degree who has had substantial and regular interactions with the subject for at least one year.” (Pen. Code, § 18150, subd. (a)(3).)

*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 shows there is a substantial likelihood that both of the following are true:

- The subject of the petition poses a significant danger, in the near future, 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 as determined by balancing specified factors.
- An ex parte GVRO 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, 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 is required to 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. Requires the law enforcement officer to inform the restrained person that he or she is entitled to a hearing and provide the date of the scheduled hearing when serving a gun violence restraining order. (Pen. Code, § 18160.)

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

*Existing law* requires the court that issued the order or another court in the same jurisdiction, within 21 days after the date on the temporary GVRO order or the ex parte GVRO order, to hold a hearing to determine if a GVRO should be issued after notice and hearing. (Pen. Code, §§ 18148 and 18165.)

*Existing law* allows the following individuals 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: an immediate family member of the subject of the petition; an employer of the subject of the petition; a coworker, if they have had substantial and regular interactions with the subject for at least one year and have obtained the approval of the employer; an employee or teacher of a school that the subject has attended in the past 6 months, if the employee or teacher has obtained the approval of a school administrator or a school administration staff member with a supervisory role; a law enforcement officer; A roommate of the subject of the petition; an individual who has a dating relationship with the subject of the petition; or an individual who has a child in common with the subject of the petition, if they have had substantial and regular interactions with the subject for at least one year. (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 both of the following are true:

- The person poses a significant danger of causing personal injury to themselves or another by having in the subject's custody or control, owning, purchasing, possessing, or receiving a firearm.
- A GVRO 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, § 18175, subd. (b).)

*Existing law* provides that in determining whether grounds for a GVRO 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 issued that is in effect at the time the court is considering the petition;
- A recent violation of an unexpired protective order;
- A conviction for a misdemeanor offense that results in firearm prohibitions; 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. (Pen. Code, § 18155, subd. (b)(1), italics added.)

*Existing law* defines "recent" for purposes of the above provision to mean within the six months prior to the date the petition was filed. (Pen. Code, § 18155, subd. (c).)

*Existing law* states that in determining whether grounds for a GVRO exist, the court *may* consider any other evidence of an increased risk for violence, including, but not limited to, evidence of any of the following:

- The unlawful and reckless use, display, or brandishing of a firearm by the subject of the petition;
- The history of use, attempted use, or threatened use of physical force by the subject of the petition against another person;
- A prior arrest of the subject of the petition for a felony offense;
- A history of a violation by the subject of the petition of an emergency protective order;
- A history of a violation by the subject of the petition of a protective order;
- Documentary evidence, including, but not limited to, police reports and records of convictions, of either recent criminal offenses by the subject of the petition that involve

controlled substances or alcohol or ongoing abuse of controlled substances or alcohol by the subject of the petition; or,

- Evidence of recent acquisition of firearms, ammunition, or other deadly weapons. (Pen. Code, § 18155, subd. (b)(2), italics added.)

*This bill* provides that if the court finds evidence of an extreme risk of violence, including but not limited to, repeated and egregious instances of facts identified in subdivision (b) of Penal Code section 18155, and the court finds that the evidence existed in the 12 months prior to the petition being filed, the court shall issue a GVRO for a period of 5 years.

## COMMENTS

### 1. Need for This Bill

According to the author of this bill:

California has proved that it is possible to reduce gun violence through legislative action. In the last decade, we have passed nearly 100 laws aimed at reducing gun violence, and these efforts have kept us below the national average of gun deaths. Still, too many individuals find themselves in situations where legal protections are necessary. Gun violence restraining orders serve as a useful tool for law enforcement and families across the state to help keep firearms out of the hands of individuals who pose a risk to either themselves or others. AB 667 furthers current protections for victims by having a court-issued gun violence restraining order for a mandatory five years if the court finds evidence of extreme risk of violence and repeated offenses within a one-year period.

### 2. California's GVRO Law

California's GVRO law, modeled after domestic violence restraining order laws, was signed into law on September 30, 2014, with a delayed implementation date of January 1, 2016. (AB 1014 (Skinner), Ch. 872, Stats. 2014.) A GVRO prohibits 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. A court is required to notify DOJ when a GVRO is issued, renewed, dissolved, or terminated.

The statutory scheme establishes three types of GVRO's: (1) a temporary emergency GVRO, (2) an ex parte GVRO, and (3) a GVRO issued after notice and hearing.

A temporary emergency GVRO may only be sought by a law enforcement officer. (Pen. Code, § 18125.) To obtain this order, a court must find that the subject of the petition poses an immediate and present danger of causing injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition; and the order 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 or inappropriate under the circumstances. (*Ibid.*)

The second type of GVRO is an ex parte GVRO, which may be sought by an immediate family member of the subject of the petition; an individual who has a dating relationship with the subject or who has a child in common with the subject; an employer of the subject of the petition; a coworker, if they have had substantial and regular interactions with the subject for at least one year and have obtained the approval of the employer; an employee or teacher of a school that the subject has attended in the past 6 months, if the employee or teacher has obtained the approval of a school administrator or a school administration staff member with a supervisory role; or a law enforcement officer. The ex parte order may be 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 under his or her custody and control, owning, purchasing, possessing, or receiving a firearm as determined as determined by considering the factors listed in Penal Code section 18155; and (2) an 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.) The petition for an ex parte GVRO 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 or ex parte GVRO expires, one of the above listed categories of individuals may request that a court issue the third type of GVRO which is issued after notice and a hearing, 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 to five years. (Pen. Code, § 18170 et seq.) At the hearing, the petitioner has the burden of proving, by clear and convincing evidence, that both of the following are true: (1) the person poses a significant danger of causing personal injury to themselves or another by having in the subject's custody or control, owning, purchasing, possessing, or receiving a firearm; and (2) a GVRO 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, § 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, ammunition, or magazine. (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.*)

Persons who are prohibited from owning or possessing a firearm or ammunition due to a valid order issued out-of-state that is similar or equivalent to California's GVRO law is also prohibited from owning or possessing a firearm or ammunition within the state. (AB 2617 (Gabriel), Ch. 286, Stats. 2020.)

When the original law went into effect, a GVRO issued after notice and a hearing had a duration of one year which the court could renew if the petitioner proves by clear and convincing evidence that the grounds for the issuance of the order continue to be true. Since then, the law has been amended to authorize a GVRO to be valid for a period of up to 5 years. In determining the duration of the GVRO, the court is required to consider the length of time that the circumstances requiring the order are likely to continue. The subject of the petition is allowed to request a hearing for termination of the order on an annual basis. (See AB 12 (Irwin), Ch. 724, Stats. 2019.)

The bill requires a court to issue a GVRO for the maximum period of 5 years if the court finds evidence of extreme risk of violence, including but not limited to, repeated instances of the facts that the court should consider when determining whether grounds exist to issue an ex parte GVRO. Those facts include recent acts or threats of violence, violation of a protective order, a prior conviction for unlawful possession of a firearm, and recent acquisition or certain weapons, among other facts. The statute defines “recent” to be within the prior 6 months, but also states that the court shall consider evidence of a pattern of violent acts or threats within the past 12 months.

As stated above, the court currently has discretion to determine the appropriate length of time that the GVRO should be in place. In determining what length of time is appropriate, the court is required to consider the length of time that the circumstances requiring the order are likely to continue. This consideration focuses on current and future dangerousness in determining how long a person should be subject to firearm prohibitions. As shown by the data in note #3 below, courts have issued a significant number of GVROs lasting 4-5 years which shows that courts are not having trouble finding future dangerousness in many cases. This bill requires the court to issue a GVRO for the maximum period of 5 years based on prior conduct which may show current dangerousness but does not require a connection to future dangerousness (i.e. how long the circumstances are likely to last).

According to information on Everytown for Gun Safety’s website, California is an outlier for how long our GVROs may last compared to other states with similar extreme risk laws. The maximum length of time for orders in those states ranges from 6 months to one year. (See [Extreme Risk Laws Save Lives – Extreme Risk Laws By State | Everytown Research & Policy](#) [as of May 28, 2024].)

### **3. Data on Issuance of GVROs**

The Department of Justice (DOJ) has statutory authority to collect GVRO data. (Pen. Code, § 18115.) 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.

In 2018, 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. In 2019, 700 GVROs were issued and in 2020, 1,284 GVROs were issued. In 2021, there were 1384 GVROs issued with an increased amount of petitions coming from family members and co-workers. In 2022, there were 1,909 GVROs issued. The highest number of GVROs were issued in San Diego County and the second highest from Santa Clara County.

In 2023, a total of 2,703 GVROs were issued. The highest number of GVROs were issued in Santa Clara County and the second highest from San Diego County. The data shows that a law enforcement petitioner accounted for the vast majority of GVRO orders issued overall.

Information provided by DOJ on the duration of GVROs issued by courts for the period starting September 1, 2020 through December 31, 2022 is as follows:



Duration of GRVO	9/1/2020-12/31/2022
0-1 year	386
1-2 years	52
2-3 years	69
3-4 years	84
4-5 years	271
5+ years	14

The data shows that the one-year GVRO is the most commonly issued, however the 4-5 year orders appear to be issued more frequently than the shorter duration orders. Thus, it appears that courts have issued a significant number of the longer duration orders under existing law.

**4. Pending Litigation: *United States v. Rahimi***

In *N.Y. State Rifle & Pistol Ass’n v. Bruen* (2022) 142 S.Ct. 2111, the United States Supreme Court established a new test for determining whether a government restriction on carrying a firearm violates the Second Amendment:

“[W]hen the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation’s historical tradition may a court conclude that the individual’s conduct falls outside the Second Amendment’s ‘unqualified command.’” (*Id.* at 2126.)

Based on *Bruen*, the Fifth Circuit Court of Appeals invalidated a federal statute prohibiting a defendant from possessing a firearm pursuant to a domestic violence court order, even after the defendant was involved in five shootings over the course of approximately one month. (*U.S. v. Rahimi* (2023) 61 F.4th 443.) The court examined several different historical statutes to see if there were any analogues which prohibited firearm possession based on civil proceedings alone. (*Id.* at 455-460.) Ultimately, the court found that there were no such relevantly similar historical laws and found that the firearm prohibition was an, “an outlier that our ancestors would never have accepted.” (*Id.* at 461.)

The United States Supreme Court is now reviewing the case (certiorari granted *United States v. Rahimi* (2023) 143 S.Ct. 2688). On November 7, 2023, the Court heard oral arguments in the case. The justices’ questioning seemed to suggest that they would uphold the law. (See Amy Howe, Justices appear wary of striking down domestic-violence gun restriction, SCOTUSblog (Nov. 7, 2023, 5:47 PM), <https://www.scotusblog.com/2023/11/justices-appear-wary-of-striking-down-domestic-violence-gun-restriction> )

Although the *Rahimi* case deals with domestic violence restraining orders, the inquiry principally revolved around prohibiting firearm possession based on a civil proceeding, which could implicate California’s GVRO laws depending on the outcome of the case.

## 5. Argument in Support

According to CFT:

California's school shooting epidemic is among the most serious challenges faced by our education system. In 2023 alone, our schools suffered 25 shooting incidents, totaling 18 deaths<sup>1</sup> and likely far more injuries, particularly when mental health trauma is considered. Most students must now undergo repeated drills and training regarding what to do during mass shooter incidents, forcing children to live their lives in fear that such a catastrophic event could occur at their school. Clearly, we must do more to prevent these incidents from ever occurring in the first place.

AB 667 (Maienschein) requires a court to issue a gun violence restraining order (GVRO) lasting the maximum time of five years if the subject of the petition displayed an extreme risk of violence within the prior 12 months. This common-sense measure targets those individuals most likely to commit gun violence and takes a strong step towards disarming those very individuals. With this measure in place, our members and our students will be less likely to suffer violence at the hands of those whom courts agree should not be in possession of firearms.

## 6. Argument in Opposition

According to GIFFORDS and Brady United Against Gun Violence:

Under the existing statute, the duration of GVROs is informed, at the petitioner's request, by the length of time a person is likely to continue to be a threat to themselves or others and how likely those circumstances will continue. Right now, law enforcement accounts for the vast majority (96 percent) of petitioners. When seeking these orders, they and the other petitioners ask the court to issue GVROs for various reasons and varying lengths of time-based on the case's specific circumstances. Ultimately, the length of time the order will remain in place is determined based on the petitioner's request and the evidence they present. A showing of "significant violence" is adequate for a 5-year order if the basis is likely to continue. For instance, a judge may determine a five-year order is warranted because the condition of a person with dementia or another condition contributing to them being a danger to themselves or others is unlikely to improve.

AB 667 introduces a new, undefined "extreme risk of violence" factor to the GVRO determination, potentially raising the bar for longer orders. This addition alters and potentially narrows the GVRO process, interfering with the court's ability to use its discretion in issuing orders that align with the petitioners' requests and are appropriate to the circumstances. Additionally, while in some cases, the evidence may indeed indicate "extreme" violence, this is not always the case. Under AB 667, if there have not been "repeated and egregious instances" of an "extreme" threat of violence, petitioners may be unable to request a five-year order, and judges may be less inclined to issue one, even if it is warranted.

The GVRO is an important, life-saving tool. We understand and applaud the desire to constantly improve its effectiveness. Unfortunately, AB 667 does not improve upon what is currently in place and could undermine its vital role in preventing access to firearms and ammunition for those who may be a danger to themselves or others.

**-- END --**