
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 2759 **Hearing Date:** June 4, 2024
Author: Petrie-Norris
Version: April 10, 2024
Urgency: No **Fiscal:** No
Consultant: AB

Subject: *Domestic violence protective orders: possession of a firearm*

HISTORY

Source: The Women’s Foundation of California Solis Policy Institute

Prior Legislation: AB 1143 (Berman, Ch. 156, Stats. of 2021)
SB 538 (Rubio, Ch. 686, Stats. of 2021)
SB 218 (Solis, Ch. 662, Stats. of 1999)

Support: Brady California; Brady Campaign; California District Attorney Association;
California Partnership to End Domestic Violence; Family Assistance Program;
Family Violence Appellate Project; Fresno Building Healthy Communities;
Futures Without Violence; Giffords; Legislative Coalition to Prevent Child
Abuse; Lumina Alliance; Partners Against Violence

Opposition: None known

Assembly Floor Vote: 72 - 0

PURPOSE

The purpose of this bill is to clarify the applicability of an existing exemption to domestic violence protective order firearm relinquishment requirements that generally pertains to individuals who must use firearms in the course of their employment, including peace officers.

Existing law provides that a person who has suffered civil harassment may apply to the court for a temporary restraining order and an order after hearing prohibiting harassment. (Code of Civil Procedure, §527.6)

Existing law provides that an individual subject to the a restraining order per the above provision (and other specified provisions regarding the issuance of restraining orders) must relinquish any firearm in that person’s possession upon an order from the court issuing the order within 24 hours of being served with the order, and prescribes a process for that relinquishment. (Code of Civil Procedure, §527.9)

Existing law provides that a court may, as part of the relinquishment order, grant an exemption from the relinquishment requirements above for a particular firearm if the respondent can show that a particular firearm is necessary as a condition of continued employment and that the current employer is unable to reassign the respondent to another position where a firearm is unnecessary.

If such an exemption is granted, the order shall provide that the firearm shall be in the physical possession of the respondent only during scheduled work hours and during travel to and from his or her place of employment. (Code Civil Procedure, § 527.9, subd. (f).)

Existing law provides that in any case involving a peace officer who as a condition of employment and whose personal safety depends on the ability to carry a firearm, a court may allow the peace officer to continue to carry a firearm, either on duty or off duty, if the court finds by a preponderance of the evidence that the officer does not pose a threat of harm. Prior to making this finding, the court shall require a mandatory psychological evaluation of the peace officer and may require the peace officer to enter into counseling or other remedial treatment program to deal with any propensity for domestic violence. (*Ibid.*)

Existing law Punishes any intentional and knowing violation of a protective order, as a misdemeanor punishable by a fine of not more than \$1,000, or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. (Pen. Code, § 273.6, subd. (a).)

Existing law authorizes a court, under the Domestic Violence Protection Act (DVPA), to issue and enforce domestic violence restraining orders, including emergency protective orders (EPOs), temporary (or ex parte) restraining orders (TROs), and longer-term or permanent restraining orders (also known as orders after hearing, or for purposes of this analysis, a DVRO). (Family Code, §§ 6200 *et seq.*)

Existing law requires, before a hearing on a protective order, that the court ensures a search of specified records and databases is conducted to determine if the subject of the proposed order has a registered firearm. (Family Code, § 6306 (a).)

Existing law prohibits a person subject to a protective order from owning, possessing, purchasing, or receiving a firearm or ammunition while the order is in effect, a violation of which is a crime. (Family Code, § 6389 (a).)

Existing law makes a violation of the prohibition in 4) punishable as either a misdemeanor (owning or possessing a firearm when prohibited from doing so by a restraining order), or a wobbler (purchasing or receiving or attempting to purchase or receive a firearm when prohibited from doing so by a restraining order), punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. (*Ibid.*; See also Pen. Code, § 29825, subd. (a).)

Existing law provides that upon issuance of a restraining order, the court shall order the respondent to relinquish any firearm in the respondent's immediate possession or control or subject to the respondent's immediate possession or control. (Family Code, § 6389, subd. (c)(1).)

Existing law provides that the restraining order requiring a person to relinquish a firearm or ammunition pursuant to Family Code § 6389 shall state on its face that the respondent is prohibited from owning, possessing, purchasing or receiving a firearm or ammunition while the protective order is in effect, as specified. (Family Code, § 6389, subd. (f).)

Existing law provides that the restraining order requiring a person to relinquish a firearm or ammunition pursuant to Family Code § 6389 shall prohibit the person from possessing or controlling a firearm or ammunition for the duration of the order, and prescribes the process for

the return of the firearm by law enforcement to the respondent at the expiration of the order. (Family Code, § 6389, subd. (f).)

Existing law authorizes the court, as part of the relinquishment order, grant an exemption from the relinquishment requirements of Family Code § 6389 for a particular firearm or ammunition if the respondent can show that a particular firearm or ammunition is necessary as a condition of continued employment and that the current employer is unable to reassign the respondent to another position where a firearm or ammunition is unnecessary, and if such an exemption is granted, the order shall provide that the firearm or ammunition shall be in the physical possession of the respondent only during scheduled work hours and during travel to and from the place of employment. (Family Code, § 6389, subd. (h).)

Existing law provides that when a peace officer is required, as a condition of employment, to carry a firearm or ammunition and whose personal safety depends on the ability to carry a firearm or ammunition a court may allow the peace officer to continue to carry a firearm or ammunition, either on duty or off duty, if the court finds by a preponderance of the evidence that the officer does not pose a threat of harm. Prior to making this finding, the court shall require a mandatory psychological evaluation of the peace officer and may require the peace officer to enter into counseling or other remedial treatment program to deal with any propensity for domestic violence.

This bill provides that the court may, as part of the relinquishment order, grant an exemption from the relinquishment requirements of Family Code § 6389 for a particular firearm or ammunition if the respondent is not otherwise prohibited from owning, possessing, controlling or purchasing a firearm and ammunition under state or federal law and one of the following applies:

- 1) The respondent is currently employed as a sworn peace officer who is required, as a condition of continued employment, to carry a firearm, ammunition or firearm and ammunition and the current employer is unable to reassign the peace officer to another position where the use of a specified firearm or ammunition is unnecessary. In such a case, a court may allow the peace officer to continue to carry a specified firearm, ammunition, or firearm and ammunition, either on duty or off duty, if the court finds by a preponderance of the evidence, in writing or on the record, both of the following:
 - a) The peace officer's personal safety depends on the ability to carry that specific firearm, ammunition, or firearm and ammunition outside of scheduled work hours.
 - b) The peace officer does not pose an additional threat of harm to a protected party or the public by having access to the specific firearm, ammunition, or firearm and ammunition, including whether the peace officer might use the firearm for a purpose other than as permitted under this paragraph.
- 2) The respondent is not a peace officer but is required to carry a specific firearm, ammunition, or firearm and ammunition during scheduled work hours as a condition of continued employment, the current employer is unable to reassign the respondent to another position where the firearm, ammunition, or firearm and ammunition is unnecessary.

This bill provides that prior to making the finding in 1) above, the court shall require a mandatory psychological evaluation of the peace officer by a licensed mental health professional with domestic violence expertise; the court shall consider the results of an evaluation and may require the peace officer to enter into counseling or another remedial treatment program to deal with a propensity for domestic violence.

This bill provides that in a case that falls under 2) above, a court may grant an exemption to allow the respondent to possess a specific firearm, ammunition, or firearm and ammunition only during scheduled work hours if the court finds by a preponderance of the evidence, in writing or on the record, that the respondent does not pose an additional threat of harm to a protected party or the public by having access to the specific firearm, ammunition, or firearm and ammunition only during scheduled work hours, including whether the respondent might utilize the firearm, ammunition, or firearm and ammunition for a purpose other than as permitted under this paragraph.

This bill provides that, for the purposes of 2) above, the court may order a psychological evaluation of the respondent by a licensed mental health professional with domestic violence expertise to assist the court in making the decision.

This bill provides that if the court grants the exemption pursuant to 2) above, the order shall provide that the specific firearm, ammunition, or firearm and ammunition shall be in the physical possession of the respondent only during scheduled work hours and that the exemption does not authorize the respondent to possess any other firearm or ammunition, or to possess the specific firearm, ammunition, or firearm and ammunition outside of scheduled work hours.

This bill provides that if an exemption is granted under 1) or 2) above during the pendency of a temporary restraining order and the court subsequently issues a restraining order after hearing on the same application, the court shall review and make a finding, in writing or on the record, as to whether the exemption remains appropriate, based upon the criteria set forth in 1) and 2), as applicable, in light of the issuance of the order after hearing. This review and finding shall occur at the time the restraining order after hearing is issued.

This bill provides that if an exemption is granted following an initial restraining order, after hearing and the court subsequently renews the initial restraining order at the request of the protected party, the court shall review and make a finding, in writing or on the record, as to whether the exemption remains appropriate, based upon the criteria set forth in 1) and 2), as applicable, in light of the renewal. This review and finding shall occur at the time the restraining order after hearing is issued.

This bill authorizes a court to terminate or modify an exemption granted pursuant to this paragraph at any time if the respondent demonstrates a need to modify the specific firearm, ammunition, or firearm and ammunition authorized by the court pursuant to 1) or 2), or if the respondent no longer meets the requirements in this section, or otherwise violates the restraining order.

COMMENTS

1. Need for This Bill

According to the Author:

Under existing California law, the vast majority of persons subject to a domestic violence restraining order must surrender all firearms and ammunition they possess. There is, however, an exemption to this law. Family Code section 6389(h) permits peace officers or others whose professional duties require them to carry a particular firearm to continue to do so under certain circumstances. The exemption is limited in scope so that those subject to a domestic violence civil restraining order who can safely perform their job duties may continue to do so where appropriate, which can support ongoing financial stability for domestic violence victims and their families. Unfortunately, the exemption for those whose continued employment requires they have a firearm is generally unclear, limited, and contradictory. This increases the possibility that someone receives an exemption who should not have one, putting victims and the public at risk.

AB 2759 proposes several changes to make the law fairer and offer better protection to survivors of domestic violence and the public at-large. For instance, AB 2759 clarifies that the exemption is only valid while the respondent's employment status doesn't change, and should the order need to be renewed, the court must determine if the exemption remains appropriate. Furthermore, this bill clarifies that these exemptions may only be granted if the person is not otherwise prohibited from having a firearm under any state or federal law, and also ensures that those with the exemption cannot purchase any additional firearms and must surrender any additional firearms or ammunition in their possession.

2. Domestic Violence Restraining Orders (DVRO) Generally

California's Domestic Violence Protection Act (DVPA) seeks to prevent acts of domestic violence, abuse, and sexual abuse, and to provide for a separation of persons involved in domestic violence for a period sufficient to enable them to seek a resolution. The DVPA's "protective purpose is broad both in its stated intent and its breadth of persons protected" and courts are required to construe it broadly in order to accomplish the statute's purpose.¹ The act enables a party to seek a "protective order," also known as a restraining order, which may be issued to protect a petitioner who presents "reasonable proof of a past act or acts of abuse," and are among the most common restraining orders issued throughout the state.²

Victims of domestic violence who need immediate protection may seek a temporary restraining order, which may be decided ex parte (without notice to the respondent) and generally must be issued or denied the same court day the petition is filed.³ Because the restrained party would not have had the opportunity to defend their interests, ex parte orders are short in duration. If a

¹ *Caldwell v. Coppola* (1990) 219 Cal.App.3d 859, 863; *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1498

² Fam. Code, §§ 6218, 6300 ; *Judges Guide to Restraining Orders: Domestic Violence Restraining Orders*. Judicial Council of California

³ Fam. Code, §§ 241, 6320 et seq.

noticed hearing is not held within 21 days (or 25 if the court finds good cause), a temporary restraining order is no longer enforceable, unless a court grants a continuance. The respondent must be personally served with a copy of the petition, the temporary restraining order, if any, and the notice of the hearing on the petition, at least five days before the hearing.⁴ After a duly noticed hearing, the court is authorized to extend the original temporary restraining order for up to five years, which may then be renewed.⁵

There is often some confusion about the terminology surrounding protective orders and restraining orders. Generally, protective orders are shorter in duration (also called “temporary restraining orders, or TROs), and restraining orders are longer and issued only after notice to a respondent and a subsequent hearing (also called “restraining orders after hearing,” or ROAHs).⁶ This bill refers to a provision of law – Family Code § 6389 – that applies to both protective orders/TROs and ROAHs. A person may be the subject of a protective order or a restraining order even if they are not facing a criminal charges and are never convicted of any criminal act.

3. DVRO Firearm Relinquishment Requirement and Employment Exemption

Under existing law, individuals convicted of domestic violence felonies and specified domestic violence misdemeanors are subject to a lifetime or 10-year ban (respectively) on the purchase, possession and ownership of firearms.⁷ However, even if an individual has not yet been convicted of a domestic violence offense, if they become subject to any DVRO, existing law prohibits them from acquiring or possessing firearms, firearm parts and ammunition for the entire duration that the order is in effect, and requires them to relinquish any firearms currently in their possession.⁸

When the court issues a DVRO, it must also issue a corresponding relinquishment order under which the respondent must relinquish all firearms, firearm parts and ammunition in their custody or control within 24 hours, either by selling or storing with a licensed gun dealer or turning over to local law enforcement. If a person is ordered to relinquish their firearm and law enforcement has not secured it, the person must provide proof the firearm was relinquished within 48 hours of being served with the protective order.⁹ Law enforcement must return the relinquished firearm within five days of the expiration of order, unless the firearm has been stolen or the person is a prohibited person and is included on the Armed and Prohibited Persons (APPS) list.¹⁰

Existing law allows a court to grant an exemption from the relinquishment order if the respondent is able to demonstrate a particular firearm is necessary as a condition of continued employment and the current employer is unable to reassign the recipient of the protective order to another position where a firearm is unnecessary.¹¹ This provision is not specific to just peace officers, but applies to any person who may be subject to protective or restraining order, and

⁴ Fam. Code, §§ 242, 243 & 245.

⁵ Fam. Code, §§ 6302, 6340, 6345.

⁶ For a more expansive explanation regarding the difference between protective orders and restraining orders, see the analysis prepared by the Assembly Public Safety Committee, pp. 5-6.

⁷ Penal Code §§ 29800, 29805.

⁸ Family Code §6389 (a), (c).

⁹ To prove to the court that the firearms have been turned over, the respondent must fill out a DV-800 form. [DV-800/JV-270 Receipt for Firearms, Firearm Parts, and Ammunition \(Domestic Violence Prevention\) \(ca.gov\)](https://www.cdps.ca.gov/Programs/OPA/Pages/NR2017-0001.aspx)

¹⁰ Family Code § 6389 (c), (g)

¹¹ Family Code § 6389 (h)

further states that if an exemption is granted, the order must provide that the firearm can only be in the physical possession of the respondent during scheduled work hours and travel to and from employment. However, the same provision goes on to specify that, in cases involving a peace officer whose employment *and* personal safety depend on the ability to carry a firearm, a court may allow the peace officer to continue to carry a firearm, either on duty *or* off duty, if the court finds that the officer does not pose a threat of harm after the officer undergoes a psychological evaluation.¹² According to the Author, and as mentioned above, the “exemption for those whose continued employment requires they have a firearm is generally unclear, limited, and contradictory,” and this is especially true in the case of peace officers, and what must be demonstrated to the court in order for an officer subject to a DVRO to possess their firearm while off duty. Does the peace officer need to meet a different standard to maintain possession of their firearm while on duty vs. off duty? Does the ‘personal safety’ requirement relate only to the officer’s off-duty safety? Does ‘threat of harm’ relate only to the protected party? Does the exemption relate to all firearms in the officer’s possession? This bill seeks to answer these and other related questions about this confusing provision of existing law.

Effect of This Bill

This bill seeks to provide clarity about the process a court must follow to permit a person who is subject to a domestic violence protective order, but must use a firearm while working, to possess a specified firearm, ammunition, or firearm and ammunition in the course of their employment. It sets forth the considerations and findings that a court must make when evaluating a request from a respondent who seeks to possess a firearm, ammunition, or firearm and ammunition during their employment, and does so by making considerable revisions to the existing exemption and establishing separate standards for civilians and peace officers.

Specifically, the bill provides that when a DVRO respondent is currently employed as a peace officer where carrying a firearm is required, and reassignment of that officer is not possible, a court may allow the officer to continue to carry a *specified* firearm, ammo, or firearm and ammo, *either on or off duty*, if the court finds both of the following: 1) the officer’s safety depends on ability to carry that firearm while off duty and 2) the officer does not pose an additional threat of harm to the protected party or the public because they can access the firearm.¹³ In cases where the DVRO respondent is required to carry a specified firearm for their job but is not a peace officer and cannot be reassigned, the bill provides that the court may grant an exemption to allow the individual to possess a firearm and ammunition only during work hours if it finds that the individual does not pose a risk of harm to the protected party or the public during those hours.¹⁴ Another provision of the bill clarifies the process a court must follow if the employment exemption is granted during a TRO and an ROAH is granted, or during an initial restraining order and an extension of that order is grant, requiring the court to determine whether the exemption is still appropriate based upon the criteria outlined in the previous paragraph.

¹² *Ibid*. The provision also authorizes the court to require the officer to enter counseling.

¹³ The bill retains the requirement that the court require a mandatory psych evaluation of the peace officer and the authority of the court to require the officer to enter into counseling. The findings listed must be made by a preponderance of the evidence.

¹⁴ The findings must be made by a preponderance of the evidence, and if an exemption is granted, the order must provide that the individual must be in physical possession of the firearm only during work hours.

Existing law contains provisions nearly identical to the DVRO relinquishment requirement and employment exemptions that apply to non-DV civil harassment protection/restraining orders.¹⁵ This bill does not amend those provisions, despite the presence of similarly confusing language regarding civilian and peace officer employment exemptions. Accordingly, the author may wish to consider amending this bill to include its revised exemption language in those provisions.

4. Constitutional Considerations

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.¹⁶ The court examined several different historical statutes to see if there were any analogues which prohibited firearm possession based on civil proceedings alone.¹⁷ 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.”¹⁸ 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 at issue in the case.¹⁹

5. Related Legislation

SB 899 (Skinner) extends firearm and ammunition relinquishment procedures that exist for the purposes of DVROs to gun violence restraining orders, civil harassment, workplace violence or postsecondary violence temporary restraining orders and injunctions, elder abuse restraining orders, and protective orders issued during the pendency of criminal proceedings and following specified criminal convictions. That bill passed out of this committee on a vote of 5-0. The Author may wish to include the provisions of this bill therein, as both bills amend Family Code § 6389. In any event, at some point, amendments will be needed to avoid chaptering issues between these measures.

¹⁵ See Code of Civil Procedure § 527.9

¹⁶ *U.S. v. Rahimi* (2023) 61 F.4th 443.

¹⁷ *Id.* at 455-460.

¹⁸ *Id.* at 461.

¹⁹ 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>)

6. Argument in Support

According to the Giffords Law Center to Prevent Gun Violence:

AB 2759 will help ensure exemptions for firearm prohibitions are provided only in those domestic violence cases where an exemption is warranted and supports public safety. As you know, gun violence is a public health crisis in this country, and in particular, the nexus of guns and domestic violence puts victims at tremendous risk. Women in the United States are 21 times more likely to be killed with a firearm than women in other high-income countries and the risk of homicide increases by at least 500% when a firearm is present in the home during an incident of domestic violence.

Under existing California law, the vast majority of persons subject to a domestic violence restraining order (respondents) must surrender all firearms and ammunition they own or possess. There is, however, an exemption allowed for peace officers or others whose professional duties require them to carry a particular firearm to continue to do so under certain circumstances. In the Family Code, this exemption is limited in scope so that those subject to a domestic violence civil restraining order who can safely perform their job duties may continue to do so where appropriate, which can support ongoing financial stability for domestic violence victims and their families. Unfortunately, the current exemption is generally unclear, limited, and contradictory. This increases the possibility that someone receives an exemption who should not have one, putting victims and the public at risk. AB 2759 proposes several changes that will make the law fairer, more consistent, and better protect survivors of domestic violence and the public at large.

-- END --