
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 2907 **Hearing Date:** June 25, 2024
Author: Zbur
Version: June 17, 2024
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Firearms: restrained persons*

HISTORY

Source: Los Angeles County District Attorney's Office

Prior Legislation: AB 732 (Mike Fong, Ch. 240, Stats. of 2023)
AB 818 (Petrie-Norris, Ch. 242, Stats. of 2023)
SB 320 (Eggman, Ch. 685, Stats. of 2021)
SB 538 (Rubio, Ch. 686, Stats. of 2021)

Support: California District Attorneys Association; California Chapter of the American College of Emergency Physicians; Los Angeles Unified School District; 1 individual

Opposition: None known

Assembly Floor Vote: 70 - 0

PURPOSE

The purpose of this bill is to require individuals subject to post-conviction protective orders to relinquish any firearms in their possession, as specified, and to require the court and law enforcement to take specified action with regard to these orders.

Existing law defines “domestic violence” as abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this definition, “cohabitant” means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as spouses, (5) the continuity of the relationship, and (6) the length of the relationship.

Existing law authorizes a court with jurisdiction over a criminal matter, upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, issue specified orders. (Pen. Code, § 136.2, subd. (a).)

Existing law provides that when a criminal defendant has been convicted of a crime involving domestic violence (or other specified crimes), the court shall consider issuing an order restraining the defendant from any contact with a victim of the crime, which may be valid up to 10 years. (Pen. Code, § 136.2, subs. (h) & (i).)

Existing law makes it a felony for any person to inflict corporal injury resulting in a traumatic condition upon a victim that is the person's former or current spouse, cohabitant, fiancé, romantic partner, or child's parent. (Pen. Code, §273.5, subd. (a).)

Existing law provides that upon conviction for the above felony, the sentencing court shall also consider issuing an order restraining the defendant from any contact with the victim, which may be valid for up to 10 years. (Pen. Code, § 273.5, subd. (j).)

Existing law makes it crime to commit abuse against an elder or dependent adult, as specified, and upon conviction for such crime, requires the sentencing court to consider issuing an order restraining the defendant from any contact with the victim. (Pen. Code, § 368, subs. (b), (c), (l).)

Existing law makes it a crime for any person to engage in stalking, as defined, of another person, and upon conviction for such crime, requires the sentencing court to consider issuing an order restraining the defendant from any contact with the victim. (Pen. Code 646.9, subs. (a), (k).)

Existing law specifies the terms of probation that must be imposed on a person convicted in a domestic violence case, which include a criminal court protective order protecting the victim from further acts of violence, threats, stalking, sexual abuse, and harassment, and, if appropriate, containing residence exclusion or stay-away conditions. (Pen. Code, § 1203.097.)

Existing law requires the prosecutor, on any charge involving acts of domestic violence as specified, to perform or cause to be performed, by accessing the electronic databases, a thorough investigation of the defendant's history, including, but not limited to, prior convictions for domestic violence, other forms of violence or weapons offenses and any current protective or restraining order issued by any civil or criminal court. (Pen. Code, § 273.75, subd. (a).)

Existing law requires the information from the investigation into the defendant's history to be presented for consideration by the court (1) when setting bond or when releasing a defendant on their own recognizance at the arraignment, if the defendant is in custody, (2) upon consideration of any plea agreement, and (3) when issuing a protective order, as specified. (Pen. Code, § 273.75, subd. (a).)

Existing law specifies that databases that the district attorney or prosecuting city attorney shall search when complying with the above, and provides that a record or database need not be searched if the information available in that record or database can be obtained as a result of a search conducted in another record or database. (Pen. Code, § 273.75, subd. (b).)

Existing law requires the prosecutor, if the investigation in the defendant's history reveals a current civil protective or restraining order or a protective or restraining order issued by another criminal court and involving the same or related parties, and if a protective or restraining order is issued in the current criminal proceeding, to send relevant information regarding the contents of the order issued in the current criminal proceeding, and any information regarding a conviction of the defendant, to the other court immediately after the order has been issued. (Pen. Code, § 273.75, subd. (c).)

Existing law provides that, when requested, the information revealed in the investigation into the defendant's history may be sent to the appropriate family, juvenile, or civil court; and, when requested and upon a showing of a compelling need, the information may be sent to a court in another state. (Pen. Code, § 273.75, subd. (c).)

Existing law prohibits a person subject to a domestic violence 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. (Fam. Code, § 6389 (a).)

Existing law provides that, upon issuance of a protective order, the court shall order the respondent to relinquish any firearms and ammunition, which shall occur by surrendering any firearms or ammunition in a safe manner, as specified; if a law enforcement officer is serving a protective order that indicates the respondent possesses weapons or ammunition, the law enforcement officer must request that the firearm or ammunition be immediately surrendered. (Fam. Code, § 6389(c).)

Existing law requires any person subject to a firearm prohibition based on a conviction of a felony or specified misdemeanor to relinquish any firearms they own, possess or have under their control or custody within 48 hours if the defendant is out of custody or within 14 days if the defendant is in custody. (Penal Code, § 29810 (a).)

Existing law makes it a wobbler for a person to purchase or receive, or attempt to purchase or receive, a firearm knowing that they are prohibited from doing so in any jurisdiction by a temporary restraining order or injunction, by a protective order, or by a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a temporary restraining order, injunction, or protective order, that includes a prohibition from owning or possessing a firearm. (Pen. Code, § 29825, subd. (a).)

Existing law makes it a misdemeanor for a person who owns or possesses a firearm knowing that the person is prohibited from doing so in any jurisdiction by a temporary restraining order or injunction, by a protective order, or by a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a temporary restraining order, injunction, or protective order, that includes a prohibition from owning or possessing a firearm. (Pen. Code, § 29825, subd. (b).)

Existing law requires Judicial Council to provide notice on all protective orders issued within the state that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that a firearm owned or possessed by the person shall be relinquished to the local law enforcement agency for that jurisdiction, sold to a licensed firearms dealer, or transferred to a licensed firearms dealer for the duration of the period that the protective order is in effect, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall also state on its face the expiration date for relinquishment. (Pen. Code, § 29825, subd. (d).)

This bill, for protective orders issued in connection with domestic violence, stalking, elder or dependent adult abuse convictions, or as terms of probation for domestic violence convictions, requires the court to consider information provided to the court pursuant to the required investigation conducted by the prosecuting attorney into the defendant's history (per Penal Code § 273.75.)

This bill requires the court, in a case against a defendant for domestic violence, if an inquiry into the defendant's history reveals or if the court otherwise receives evidence that the defendant owns or possesses a firearm or ammunition, to make a written record as to whether the defendant has relinquished the firearm or ammunition and has provided proof of the required storage, sale, or relinquishment of the firearm or ammunition.

This bill requires the court, if evidence of compliance with firearms prohibitions is not provided, to order the clerk of the court to immediately notify appropriate law enforcement officials of the protective order, information about the firearm or ammunition, and of any other information obtained through the inquiry into the defendant's history, as required, that the court determines is appropriate.

This bill requires law enforcement officials notified by the court of the defendant's noncompliance to take all actions necessary to obtain those and any other firearms or ammunition owned, possessed, or controlled by the defendant and to address any violation of the order with respect to firearms or ammunition as appropriate and as soon as practicable.

This bill requires an arresting officer for an offense involving an act of domestic violence, as specified, to do all of the following:

- Query the Automated Firearms System through the California Law Enforcement Telecommunications System for any firearms owned or possessed by the arrestee;
- Ask the arrestee, victim, and any other household members, if applicable, about any firearms owned or possessed by the arrestee; and,
- Document in detail, in the arrest report, the actions taken to fulfil these obligations.

This bill requires the investigating or filing officer to include a copy of the Automated Firearms System report when filing the case with the district attorney or prosecuting city attorney.

This bill requires the information collected by an arresting officer per the above to be presented to the court hearing a domestic violence case (1) when setting bond or when releasing a defendant on their own recognizance at the arraignment, if the defendant is in custody, (2) upon consideration of any plea agreement, and (3) when issuing a protective order.

This bill extends the applicability of the crimes of purchasing or receiving, or attempting to purchase or receive, and owning or possessing a firearm knowing that the person is prohibited from doing so due to a restraining order to individuals subject to protective orders issued in connection with convictions for elder or dependent adult abuse, specified felony domestic violence offenses, or as a term of probation for a domestic violence conviction.

This bill requires a person subject to a specified protective order to relinquish any firearm they possess or control, per the provisions below.

This bill requires the court, upon the issuance of a protective order, to order the restrained person to relinquish any firearm in that person's immediate possession or control, or subject to that person's immediate possession or control, within 24 hours of being served with the order, either by surrendering the firearm to the control of a local law enforcement agency, or by selling the

firearm to a licensed firearms dealer, as specified. The court shall provide the person with information on how any firearms or ammo still in the possession of the restrained party are to be relinquished according to local procedures, and the process for submitting proof of relinquishment to the court

This bill provides that if a person refuses to relinquish a firearm or ammunition based on an assertion of the right against self-incrimination as provided by the Fifth Amendment to the United States Constitution and Section 15 of Article I of the California Constitution, the court may grant use immunity for the act of relinquishing the firearm or ammunition as required pursuant to this section.

This bill authorizes a local law enforcement agency to charge a person subject to a protective order a fee for the storage of any firearm relinquished pursuant to these provisions, except that the fee shall not exceed the actual cost incurred by the agency for the storage of the firearm, as specified.

This bill requires the protective order to state on its face that the restrained person is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect and that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed with the court within a specified period of receipt of the order.

This bill requires the protective order to state on its face the expiration date for relinquishment.

This bill provides that protective order shall prohibit the person from possessing or controlling any firearm for the duration of the order, and that at the expiration of the order, the local law enforcement agency shall return possession of any surrendered firearm to the restrained person, within five days after the expiration of the relinquishment order, unless the local law enforcement agency determines that (1) the firearm has been stolen, (2) the person is prohibited from possessing a firearm, as specified, or 3) another successive order has been issued against the person.

This bill specifies that if the local law enforcement agency determines that the restrained person is the legal owner of any firearm deposited with the agency and is prohibited from possessing any firearm, the person shall be entitled to sell or transfer the firearm to a licensed dealer. If the firearm has been stolen, it shall be restored to the lawful owner upon identification and proof of ownership.

This bill authorizes the court, as part of the relinquishment order, to grant an exemption for the relinquishment requirements for a particular firearm or ammunition of the restrained person if they are not otherwise prohibited from owning, possessing or purchasing a firearm and they are either a sworn peace officer and satisfy specified criteria, or they are not a peace officer but required to carry a firearm and satisfy specified criteria.

This bill specifies that during the period of the relinquishment order, the restrained person is entitled to make one sale of all firearms that are in the possession of a local law enforcement agency, as specified.

This bill specifies that the relinquishment of a firearm to a law enforcement agency pursuant of its provisions does not need to be conducted through a licensed firearm dealer.

COMMENTS

1. Need for This Bill

According to the Author:

The data makes one thing clear: in cases of domestic violence, preventing access to guns is crucial to preventing gun related deaths and injury. AB 2907 will enhance gun safety protections for people who have survived domestic violence, stalking, and elder abuse by imposing enhanced enforcement. The bill conforms the firearm surrender deadlines for criminal protective orders to the shorter firearm surrender periods for civil protective orders, closing a dangerous loophole in California state law. We know what needs to be done to prevent domestic violence, injury, and death from firearms – enact policies that prevent abusers from having access to firearms, and then fully implement and enforce those policies. Timely and safe relinquishment of firearms is an essential component of effective domestic violence policy.

2. Pretrial Restraining Orders and Conviction-Related Protective Orders

California law allows for the issuance of restraining orders and protective orders in a wide range of contexts, including orders that may be issued before a criminal or civil trial occurs and orders that may only be issued upon conviction. As an initial matter, it is important to note that 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). Further, requests for protective orders are often submitted by law enforcement, or simply granted by the court sua sponte, whereas restraining order requests are usually lodged by the victim of the alleged abuse or misconduct.¹

Many pretrial protective orders are issued in the domestic violence context, and are governed by California’s Domestic Violence Protection Act (DVPA), under which a protective order 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 Orders issued under the DVPA include emergency protective orders (EPOs), TROs and ROAHs, all of which have different proof and due process requirements. Generally, these orders can restrict the conduct of the restrained party, direct specific action related to property (such as a move-out order or an order protecting animals), and establish rules regarding child custody and visitation.

Another subset of protective orders, and the type to which this bill relates, involves orders issued in conjunction with a criminal conviction, usually related to interpersonal abuse, such as victim or witness intimidation, elder or dependent adult abuse, stalking and domestic violence. Generally, these orders may be valid for up to 10 years at the judge’s discretion, and the

¹ “Guide to Protective Orders.” California Courts Self-Help Guide. [Guide to Protective Orders | California Courts | Self Help Guide](#); For a more expansive explanation regarding the difference between protective orders and restraining orders, see the analysis of Assembly Bill 2759 prepared by the Assembly Public Safety Committee, pp. 5-6.

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

Legislature has repeatedly expressed its intent that the length of these orders be based on the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and their immediate family. This bill, in several statutes relating to post-conviction protective orders, adds to that statement of intent that the length of the order should also be based on information provided to the court regarding the defendant's history.³

Under this bill, for any charge involving acts of domestic violence, information related to the defendant's history which must be presented to the court by law enforcement must also include information obtained via a new investigative process established by the bill. Specifically, this bill requires the arresting officer in a domestic violence case to do the following: 1) query the Automated Firearms System (AFS) and the California Law Enforcement Telecommunications System (CLETS) for any firearms owned or possessed by the arrestee, 2) ask the arrestee, victim or other household members, about firearms owned or possessed by the arrestee, 3) document these actions in detail in the arrest report, and 4) include a copy of the AFS report when submitting the case to the district attorney.

If the information provided to the court by law enforcement (pursuant to the process described above) or any other evidence indicates that the defendant possesses a firearm, the bill requires the court to make a written record as to whether the firearm(s) has been relinquished. If it appears that the defendant is not complying with firearm prohibitions pursuant to a protective order, the bill requires the court to immediately notify the district attorney and law enforcement so they may take appropriate action to disarm the defendant.

3. Firearm Relinquishment Requirements

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.⁴ However, even if an individual has not yet been convicted of a domestic violence offense, if they become subject to any domestic violence restraining order (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, as specified.⁵

This bill largely adapts these DVRO-related firearm relinquishment provisions for the purpose of post-conviction protective orders. That is, the bill requires any person subject to a protective order issued in connection with a conviction for victim or witness intimidation, elder or dependent adult abuse, stalking, certain domestic violence, or as a term of probation for a domestic violence-related crime, to relinquish any firearm they own or possess within 24 hours of being served with the order, and show proof of such relinquishment to the court. To comply with this requirement, the defendant may surrender firearm(s) to a local law enforcement agency or sell the firearms to a licensed dealer, and if the former option is chosen, law enforcement must return the firearm(s) within 5 days after the expiration of the order, unless they determine the firearm is stolen or the person is still prohibited from possessing firearms. Additionally, the bill creates a narrow exemption to this relinquishment requirement (mirroring a similar exemption related to DVRO relinquishment) for individuals who must use their firearm in the course of

³ Pen. Code §273.75 requires the district attorney to search several specified databases to obtain information regarding the defendant's history.

⁴ Penal Code §§ 29800, 29805.

⁵ Family Code §6389 (a), (c).

their employment. This exemption includes different requirements depending on whether the defendant is a peace officer or not.

4. Constitutional Consideration

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.⁶ The court examined several different historical statutes to see if there were any analogues which prohibited firearm possession based on civil proceedings alone.⁷ 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.”⁸ 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.⁹ Because this bill primarily involves protective orders based on criminal convictions, which the Supreme Court has indicated are less constitutionally suspect, the outcome of *Rahimi* is likely to be less relevant to this bill as it is to related pending legislation regarding restraining orders based on civil proceedings, such as those discussed below.

5. Recent Amendments Added Provisions Mirroring Related Legislation

Amendments to the bill adopted on June 17 add several provisions mirroring two related pieces of legislation: SB 899 (Skinner), which extends DVRO-related firearm relinquishment procedures to other specified civil and criminal *pretrial* protective orders, and AB 2759 (Petrie-Norris), which revises the applicability of the employment exemption to the DVRO firearm relinquishment requirement. Specifically, this bill includes language from SB 899 requiring the court to provide specified information to a defendant required to relinquish a firearm as well as a provision exempting the relinquishment or surrender of a firearm to law enforcement from the requirement that firearm transfers be conducted through licensed dealers. The bill also mirrors

⁶ *U.S. v. Rahimi* (2023) 61 F.4th 443.

⁷ *Id.* at 455-460.

⁸ *Id.* at 461.

⁹ 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>)

language from AB 2759 regarding the differing applicability of the employment exemption to peace officers and non-peace officers.

6. Argument in Support

According to the bill's sponsor, the Los Angeles District Attorney's Office:

Existing law authorizes a criminal court to issue a 10-year protective order for victims of Domestic Violence (Penal Code Section 273.5(j)); Elder Abuse (Penal Code Section 368(l)); Stalking (Penal Code Section 646.9 (K)(1)); and Domestic Violence (Penal Code Section 1203.097(a)(2)). While well intentioned, existing law has not proven to be effective in safely taking possession of prohibited firearms in domestic violence criminal cases. Major gaps exist in both Penal Code Section 29810 and Code of Civil Procedure 527.9.

California recently enacted SB 320 (Eggman) to better effectuate the requirement that a restrained party in a civil domestic violence restraining order (DVRO) relinquish their firearms. Under Family Code 6389, if a restrained party does not relinquish their firearms upon the request of law enforcement at the time of the service of a domestic violence restraining order, the restrained party has 24 hours to relinquish their firearms and 48 hours to provide proof of the relinquishment to the court. Neither of these provisions apply to a domestic violence protective order issued by a criminal court. SB 320 also requires a court to immediately notify the appropriate law enforcement agency whenever a subject of a DVRO fails to provide the required proof of firearm relinquishment and directs law enforcement to take all steps necessary to obtain any firearm owned or possessed by the restrained party.

Under existing law there is no requirement for a criminal court to notify law enforcement immediately when there is a failure to comply with a criminal protective order firearm prohibition, nor is there a requirement for law enforcement to take all necessary steps to enforce the firearm prohibition in a criminal protective order. As a result, victims of domestic violence crimes who have a protective order issued by a criminal court are not given the same protection, priority and urgency as victims given a civil restraining order and are unnecessarily at risk for a longer time-period. AB 2907 will help to better protect domestic violence, elder abuse and stalking victims ensuring that the courts, law enforcement and prosecutors receive information about the presence of firearms at the earliest possible stage to ensure the greatest protections to victims of domestic violence.

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