
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: AB 1057 **Hearing Date:** July 13, 2021
Author: Petrie-Norris
Version: June 21, 2021
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Firearms*

HISTORY

Source: Brady United Against Gun Violence

Prior Legislation: AB 2617 (Gabriel), Ch. 286, Stats. 2020
AB 879 (Gipson), Ch. 730, Stats. 2019
AB 1494 (Ting), Ch. 733, Stats. 2019
AB 339 (Irwin), Ch. 727, Stats. 2019
AB 12 (Irwin), Ch. 724, Stats. 2019
AB 61 (Ting), Ch. 725, Stats. 2019
AB 2526 (Rubio), Ch. 873, Stats. 2018
SB 1200 (Skinner), Ch. 898., Stats. 2018
AB 950 (Melendez), Ch. 205, Stats. 2015
AB 1014 (Skinner), Ch. 872, Stats. 2014

Support: Calegislation; Center for Public Interest Law; Children’s Advocacy Institute; Everytown for Gun Safety Action Fund; Giffords; March for Our Lives San Diego; Moms Demand Action for Gun Sense in America; San Diegans for Gun Violence Prevention; San Diego City Attorney’s Office; Students Demand Action for Gun Sense in America; Women Against Gun Violence; Women for American Values and Ethics Action Fund

Opposition: None known

Assembly Floor Vote: 75 - 0

PURPOSE

The purpose of this bill is to include in the definition of “firearm” a frame or receiver of the weapon or firearm precursor part for purposes a Gun Violence Restraining Order (GVRO) and a Domestic Violence Restraining Order (DVRO).

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 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 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, to hold a hearing to determine if a GVRO should be issued after notice and hearing. (Pen. Code, § 18148.)

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; or a law enforcement officer. (Pen. Code, § 18150, subd. (a)(1).)

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 ex parte GVRO order, to hold a hearing to determine if a GVRO should be issued after notice and hearing. (Pen. Code, § 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; or a law enforcement officer. (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 if a GVRO is issued, the order has a duration of one to five years, subject to termination by further order of the court at a hearing and renewal by further order of the court. (Pen. Code, § 18175, subd. (e).)

Existing law allows a restrained person to file one written request per year during the effective period of the order for a hearing to terminate the order. (Pen. Code, § 18185.)

Existing law allows a request for renewal of a GVRO. Provides the renewal of a GVRO has a duration of between one to five years. (Pen. Code, § 18190.)

Existing law provides 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 provides that every person who owns or possesses a firearm or ammunition with knowledge that they are prohibited from doing so by a temporary emergency GVRO, ex parte GVRO or a GVRO issued after notice and a hearing, or by a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a GVRO described under California law, 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 GVRO. (Pen. Code, § 18205.)

Existing law defines a “firearm” to mean a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion. (Pen. Code, § 16520, subd. (a).)

Existing law defines a “firearm precursor part” to mean a component of a firearm that is necessary to build or assemble a firearm, and is either an unfinished receiver, as specified, or an unfinished handgun frame. (Pen. Code, § 16531, subd. (a).)

This bill defines “firearm” for purposes of a GVRO to include a frame or receiver of the weapon or a firearm precursor part.

Existing law establishes the Domestic Violence Protection Act (DVPA) which sets forth procedural and substantive requirements for the issuance of a protective order, whether issued ex parte, after notice and hearing, or in a judgment, that enjoins specified acts of abuse, excluding a person from a dwelling, or enjoining other specified behavior. (Fam. Code, §§ 6218, 6300 et seq.)

Existing law prohibits a person subject to a protective order issued pursuant to the DVPA, shall not own, possess, purchase, or receive a firearm or ammunition while that protective order is in effect. A person who owns, possesses, purchases, or receives, or attempts to purchase or receive a firearm or ammunition while the protective order is in effect is punishable as either a misdemeanor or state-prison felony. (Pen. Code, § 29825.)

This bill defines “firearm” for purposes of a DVRO issued pursuant to the DVPA to include a frame or receiver of the weapon or a firearm precursor part.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Under existing law, ghost guns cannot be seized when a judge issues an emergency GVRO. Law enforcement officers or close family members can request a GVRO when an individual is deemed to be an extreme risk to themselves or others. Law enforcement is currently only able to seize traditional firearms. The definition does not cover precursor parts of a weapon that can be readily converted to the functional condition of a finished frame or receiver.

The loophole in current California Code dangerously leaves out ghost guns and thereby, does not give courts the ability to seize weapons that may be of harm to the individual or others.

2. California's GVRO Law

California's GVRO laws, modeled after domestic violence restraining order laws, went into effect on 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.

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 temporary emergency GVRO may only be sought by a law enforcement officer. (Pen. Code, § 18125.) To obtain this order, a court must find (1) 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 (2) 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 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. In this case, the order is 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, after notice and a hearing, issue a GVRO 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.*)

As outlined above, the subject of a GVRO is prohibited from having in their custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm, ammunition, or magazine and is required to surrender their firearms, ammunition or magazine. A person who violates that prohibition by owning or possessing a firearm or ammunition is guilty of a misdemeanor. (Pen. Code, § 18205.) This bill defines firearm for purposes of the GVRO prohibitions to include a frame or receiver of the weapon or a firearm precursor part.

3. Domestic Violence Restraining Orders

The 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" (*Caldwell v. Coppola* (1990) 219 Cal.App.3d 859, 863) and courts are required to construe it broadly in order to accomplish the statute's purpose (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1498). 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." (Fam. Code, § § 6218, 6300.)

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. (Fam. Code, §§ 241, 6320 et seq.) Because the restrained party would not have had the opportunity to defend their interests, ex parte orders are short in duration. If a 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. (Fam. Code, §§ 242 & 245.) 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. (Fam. Code, § 243.) 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. (Fam. Code, §§ 6302, 6340, 6345.)

A person who is the subject of a domestic violence restraining order under the DVPA is prohibited from owning, possessing, purchasing, or receiving a firearm or ammunition while that protective order is in effect. (Pen. Code, § 29825.) A person who owns or possesses a firearm while a domestic violence restraining order is in effect may be punished by a misdemeanor with up to one year in county jail. (*Ibid.*) A person who purchases or receives, or attempts to purchase or receive a firearm or ammunition while the protective order is in effect is punishable as either a misdemeanor or state-prison felony. (*Ibid.*)

4. Effect of this Legislation

This bill expands the definition of firearms for purposes of firearm restrictions on a person subject to a GVRO or DVRO. According to the proponents of this bill, these parts can be readily converted into a functional gun and thus pose the same danger as a traditional firearm and thus should be prohibited as well.

Existing law, as enacted by AB 879 (Gipson), Chapter 730, Statutes of 2019 and later amended by SB 118 (Committee on Budget), Ch. 29, Stats. 2020, will require, commencing July 1, 2022, the sales of firearm precursor parts to be conducted by or processed through a licensed firearm precursor part vendor. The law requires a person or business to have a valid firearm precursor part vendor license to sell more than one firearm precursor part in any 30-day period. Starting July 1, 2022, the law requires Department of Justice (DOJ) to electronically approve the transfer or sales of a firearm precursor part through a vendor and requires the vendor to submit records of sales and transfers of firearm precursor parts to DOJ. Additionally, commencing July 1, 2022, the law makes it a misdemeanor for a person who is prohibited from possessing a firearm to possess a firearm precursor part, which would include anyone who is the subject of a restraining order, including a DVRO, from possessing a firearm precursor part. (Pen. Code, § 30405.)

This bill would prohibit a person who is subject to a GVRO or a DVRO from owning, possessing, receiving or purchasing a firearm precursor part starting January 1, 2022. All other prohibited persons would be subject to the prohibition starting July 1, 2022.

5. Argument in Support

According to the San Diego City Attorney's Office:

Law enforcement officers or close family members can request a GVRO when an individual is deemed to be an extreme risk to themselves or others with a firearm. Current GVRO law does not explicitly list a frame or receiver of a firearm, or the unfinished frame or receiver of a weapon that can be readily converted to the functional condition of a finished frame or receiver. While our Office has successfully petitioned for the removal of guns in whole or part, AB 1057 closes the loophole in current California Code that dangerously leaves out ghost guns or their parts and thereby does not give courts the ability to seize all weapons that may be of harm to the individual or others.

By updating the definition of seizable firearms to include parts of ghost guns for GVROs this bill ensures that these readily available weapons which look and act like any other firearm are subject to the same rules as any other firearm.

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