
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 1493 **Hearing Date:** June 18, 2019
Author: Ting
Version: June 11, 2019
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Gun Violence Restraining Order: Petition*

HISTORY

Source: Author

Prior Legislation: SB 1200 (Skinner), Ch. 898, Stats. 2018
AB 2888 (Ting), vetoed, 2018
AB 2526 (Rubio), Ch. 873, Stats. 2018
AB 2607 (Ting), 2016, vetoed
AB 950 (Melendez), Ch. 205, Stats. 2015
AB 225 (Melendez), 2015, failed Assembly Public Safety
SB 505 (Jackson), Ch. 918, Stats. 2014
AB 1014 (Skinner), Ch. 872, Stats. 2014

Support: Bay Area Student Activists; Los Angeles County District Attorney's Office; San Diego City Attorney's Office

Opposition: None known

Assembly Floor Vote: 76 - 0

PURPOSE

The purpose of this bill is to authorize a person who is the subject of a gun violence restraining order (GVRO) petition to submit a form to the court voluntarily relinquishing the subject's firearm rights and stating that the subject is not contesting the petition.

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. (Pen. Code, § 18120, subd. (a).)

Existing law requires the court to order the restrained person to surrender all firearms and ammunition in his or her control. (Pen. Code, § 18120, subd. (b)(1).)

Existing law states that the law enforcement officer serving a GVRO shall request that all firearms and ammunition be immediately surrendered. Alternatively, if the request is not made by the law enforcement officer, the surrender shall 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).)

Existing law requires the law enforcement officer or licensed firearms dealer taking possession of any firearms or ammunition to issue a receipt to the person surrendering the firearm, or firearms, or ammunition, or both, at the time of surrender and the restrained person shall within 48 hours of being served, do both of the following:

- 1) File with the court that issued the gun violence restraining order the original receipt showing all firearms and ammunition have been surrendered to a local law enforcement agency or sold or transferred to a licensed firearms dealer. Failure to timely file a receipt shall constitute a violation of the restraining order; and,
- 2) File a copy of the receipt with the law enforcement agency that served the gun violence restraining order. Failure to timely file a copy of the receipt shall constitute a violation of the restraining order. (Pen. Code, § 18120, subd. (b)(2).)

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:

- 1) The subject of the petition poses an immediate and present danger of causing injury to himself, herself, or another by possessing a firearm; and,
- 2) The emergency GVRO is necessary to prevent personal injury to the subject of the order or another because less restrictive alternatives have been tried and been ineffective or have been determined to be inadequate under the circumstances. (Pen. Code, § 18125, subd. (a).)

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

Existing law states that a law enforcement officer who requests a temporary emergency gun violence restraining order shall do all of the following:

- 1) 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;
- 2) Serve the order on the restrained person, if the restrained person can reasonably be located;

- 3) File a copy of the order with the court as soon as practicable after issuance; and,
- 4) Have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice (DOJ). (Pen. Code, §18140.)

Existing law allows an immediate family member, as defined, or law enforcement officer to file a petition requesting that the court issue an ex parte GVRO enjoining a person from having in his or her custody or control, owning, purchasing, or receiving a firearm or ammunition. (Pen. Code, § 18150, subd. (a)(1).)

Existing law allows a court to issue an ex parte GVRO if an affidavit, made in writing and signed by the petitioner under oath, or an oral statement, and any additional information provided to the court on a showing of good cause that the subject of the petition poses a significant risk of personal injury to himself, herself, or another by having under his or her custody and control, owning, purchasing, possessing, or receiving a firearm as determined by balancing specified factors. (Pen. Code, §§ 18150, subd. (b) & 18155.)

Existing law requires 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 shall 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. When serving a gun violence restraining order, the law enforcement officer shall inform the restrained person that he or she is entitled to a hearing and provide the date of the scheduled hearing. (Pen. Code, § 18160.)

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

Existing law allows an immediate family member or law enforcement officer to file a petition requesting that the court issue a GVRO after notice and a hearing enjoining a person from having in his or her custody or control, owning, purchasing, or receiving a firearm or ammunition. (Pen. Code, § 18170.)

Existing law states that at the hearing, the petitioner has the burden of proof, which is to establish by clear and convincing evidence that the person poses a significant danger of causing personal injury to himself, herself, or another by having under his or her custody and control, owning, purchasing, possessing, or receiving a firearm. (Pen. Code, § 18175, subd. (b).)

Existing law provides that if a GVRO is issued after the hearing, the order has a duration of one year, subject to termination by further order of the court at a hearing and renewal by further order of the court. (Pen. Code, § 18175, subd. (d).)

Existing law allows a restrained person to file one written request for a hearing to terminate the order (Pen. Code, §18185) and allows a request for renewal of a GVRO for up to one year (Pen. Code, § 18190).

Existing law states that every person who files a petition for an ex parte GVRO or a GVRO issued after notice and a hearing, knowing the information in the petition to be false or with the intent to harass, is guilty of a misdemeanor. (Pen. Code, § 18200.)

Existing law states that every person who violates an ex parte GVRO or a GVRO issued after notice and a hearing, is guilty of a misdemeanor and shall be prohibited from having under his or her custody and control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition for a five-year period, to commence upon the expiration of the existing gun violence restraining order. (Pen. Code, § 18205.)

Existing law requires the Judicial Council to prescribe the form of the petitions and orders and any other documents related to GVROs and promulgate any rules of court necessary to implement the GVRO statutes.

This bill authorizes, starting September 1, 2020, the subject of a GVRO petition to file a form with the court relinquishing the subject's firearm rights for the duration specified on the GVRO petition or, if not stated in the petition, for one year from the date of the proposed hearing, and stating that the subject is not contesting the petition.

This bill states that if the subject of the petition files this form the court shall issue, without a hearing, the GVRO at least five court days before the scheduled hearing, except if the subject files the form within five court days of the scheduled hearing, the court shall issue the GVRO as soon as possible. The court shall issue notice of the order to all of the parties.

This bill provides that the subject of the GVRO shall surrender all firearms, ammunition and magazines within 48 hours of filing the form to relinquish their firearm rights.

COMMENTS

1. Need for This Bill

According to the author of this bill:

There lacks an option for the subject of a GVRO to communicate to the courts that they will not contest the order. When people are issued a traffic ticket, they have the option to not contest the order and then move forward with paying the fine. Similarly, allowing for the subject of a GVRO to not contest the order through a court form and move forward with compliance will help to streamline the process for all parties involved. This bill allow for the scheduled hearings to be cancelled and relieve strain on court resources that would have resulted in the same turnout.

2. California's GVRO Law

California's GVRO laws, modeled after domestic violence restraining order laws, went into effect on January 1, 2016. A GVRO will prohibit the restrained person from purchasing or possessing firearms or ammunition and authorizes law enforcement to remove any firearms or ammunition already in the individual's possession.

The statutory scheme establishes three types of GVRO's: a temporary emergency GVRO, an ex parte GVRO, and a GVRO issued after notice and hearing. According DOJ:

There are two initial types of GVROs that can, if appropriate, be extended for up to one year. 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 personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm; and (2) the 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 have been determined to be inadequate or inappropriate for the circumstances of the subject of the petition. (*Ibid.*)

The second type of GVRO is an Ex Parte GVRO, which may be sought by a law enforcement officer or an immediate family member. 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 in his or her custody or control, owning, purchasing, possessing, or receiving a firearm as determined by considering the factors listed in Penal Code section 18155; and (2) the 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.) Unlike the Temporary Emergency GVRO, this application 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 GVRO expires, an immediate family member of a person or a law enforcement officer 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 up to one year.¹ (Pen. Code, § 18170 et seq.) At the hearing, the petitioner shall have the burden of proving, by clear and convincing evidence, that both of the following are true: (1) the subject of the petition, or a person subject to an Ex Parte GVRO, as applicable, poses a significant danger of causing personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition; (2) a GVRO is necessary to prevent personal injury to the subject of the petition, or the person subject to an Ex Parte GVRO, as applicable, 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, or the person subject to an Ex Parte GVRO, as applicable. (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 or ammunition. (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.*)

(California DOJ Division of Law Enforcement, *Gun Violence Restraining Order Process* (Jan. 2019) <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/infobuls/2019-bof-02.pdf>.)

This bill would provide a mechanism for the subject of a GVRO to inform the court that they do not contest the GVRO and to voluntarily surrender their firearms and ammunition. Upon receipt of such notice, the court would notify the petitioner and cancel the scheduled hearing.

3. Data on Issuance of GVROs

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. (Koseff, *'Best tool' to prevent gun violence is rarely used in California*, Sacramento Bee (Mar. 29, 2018) < <http://www.sacbee.com/latest-news/article206994229.html>news/article206994229.html>.)

Last year, 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. (Koseff, *California gun confiscations increase sharply under restraining-order law*, San Francisco Chronicle (Feb. 10, 2019) < <https://www.sfchronicle.com/politics/article/California-gun-confiscations-increase-sharply-13602566.php>>.)

4. Argument in Support

According to the Office of the San Diego City Attorney:

As a new public safety tool, it is important to continue fine tuning the GVRO process. Currently, when an order is served, the subject of a GVRO has the option of selling their firearms or relinquishing them to law enforcement. The process is currently missing a step for the subject of a GVRO to communicate to the court that they are willing to cooperate and will not contest the order.

AB 1493 allows for the subject of a GVRO to submit a form to the court communicating that they will not be contesting the order. Adding this simple fix will help to streamline the GVRO process and make it a more effective tool to keep the public safe.

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