
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 165 **Hearing Date:** June 25, 2019
Author: Gabriel
Version: May 16, 2019
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Peace Officer Training: Gun Violence Restraining Orders*

HISTORY

Source: Brady California United Against Gun Violence
Giffords Law Center to Prevent Gun Violence

Prior Legislation: AB 2526 (Rubio), Ch. 873, Stats. 2018
SB 1331 (Skinner), Ch. 137, Stats. 2018
SB 1200 (Skinner), Ch. 898, Stats. 2018
AB 1014 (Skinner), Ch. 872, Stats. 2014

Support: Bay Area Student Activists California District Attorneys Association; California District Attorneys Association; California Psychiatric Association; California Statewide Law Enforcement Association; City of Los Angeles Mayor Eric Garcetti; Cleveland School Remembers; Coalition Against Gun Violence; Everytown for Gun Safety; Laguna Woods Democratic Club; Los Angeles City Attorney's Office; Los Angeles County Board of Supervisors; Los Angeles Police Protective League; Moms Demand Action for Gun Sense in America, California Chapter; National Association of Social Workers, California Chapter; Physicians for Social Responsibility, San Francisco Bay Area Chapter; Women For: Orange County; Youth Alive

Opposition: None known

Assembly Floor Vote: 72 - 0

PURPOSE

The purpose of this bill is to require the Commission on Peace Officer Standards and Training (POST) to develop and implement a course of training regarding Gun Violence Restraining Orders (GVRO) for peace officers and incorporate it into the course of basic training.

Existing law requires all peace officers to complete and introductory course of training prescribed by POST, demonstrated by passage of an appropriate examination developed by POST. (Pen. Code, § 832, subd. (a).)

Existing law requires POST to adopt rules and training that establish minimum standards for peace officers. (Pen. Code § 13510.)

Existing law requires that the course of basic training for law enforcement officers include adequate instruction in specified procedures and techniques relating to domestic violence complaints, including:

- 1) The legal duties imposed on peace officers to make arrests and offer protection and assistance including guidelines for making felony and misdemeanor arrests;
- 2) Techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of the victim;
- 3) The nature and extent of domestic violence;
- 4) The signs of domestic violence;
- 5) The legal rights of, and remedies available to, victims of domestic violence;
- 6) The services and facilities available to victims and batterers; and,
- 7) Emergency assistance to victims and how to assist victims in pursuing criminal justice options. (Pen. Code § 13519.)

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 allows a restrained person to file one written request for a hearing to terminate the order. (Pen. Code, § 18185.)

Existing law allows a request for renewal of a GVRO. (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.)

This bill requires POST, on or before January 1, 2021, to develop and implement, a course of training regarding GVROs.

This bill provides that in developing the training, POST shall consult with members of law enforcement and the community who have expertise in the area of gun violence and GVROs.

This bill requires the GVRO training be incorporated into the course or courses of basic training for law enforcement officers, on or before January 1, 2021, and shall include, but not be limited to, the following:

- 1) The process of filing a petition for gun violence restraining orders;
- 2) Situational training to assist officers in identifying when a gun violence restraining order is appropriate;
- 3) How law enforcement can respond effectively to situations that might necessitate the filing for a GVRO.

This bill allows law enforcement officers, administrators, and executives to participate in supplementary training that includes all of the topics described above related to GVROs.

This bill states that this supplementary training shall fulfill POST's requirements for continuing professional training and additional training courses to update this instruction shall be established as deemed necessary by POST.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Gun Violence Restraining Orders (GVROs) are a critical tool that allow law enforcement to temporarily confiscate guns from, and prevent the purchase of new guns by, individuals who pose a significant risk of harm to themselves or others.

However, currently there is no statewide requirement for law enforcement to be trained on the usage of GVROs. This gap in training must be filled in order to combat gun violence in California.

Even with the toughest gun laws in the country, California still had the most deaths from mass shootings since 1982, with 128. According to the U.S. Centers for Disease Control and Prevention, the majority of gun deaths in California are suicides. There are especially troubling trends of increased rates of firearm suicide in rural counties.

Additionally, the law is relatively new and, per experts, is underutilized, as less than 200 GVROs were issued in the first two years of their availability. Advocates have expressed that part of the reason is local law enforcement's understandable unfamiliarity with executing the relatively new policy. With increased local training from City Attorneys, usage increased last year, but that surge was due to increases in certain counties. It is critical that this training is actively prioritized across the state, particularly in rural counties.

In light of tragedies like the Borderline shooting and increased rates of suicide by firearm, it is imperative that all of our law enforcement officials have the training needed to file GVROs when they feel public safety is at risk.

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>.)

3. Peace Officer Basic Training

The Commission on Peace Officers Standards and Training (POST) was established by the Legislature in 1959 to set minimum selection and training standards for California law enforcement. According to POST's website, "POST funding comes from the State Penalty Fund, which receives money from penalty assessments on criminal and traffic fines. Therefore, the POST Program is funded primarily by persons who violate the laws that peace officers are trained to enforce. No tax dollars are used to fund the POST Program." (See <https://post.ca.gov/About-Us>.)

POST develops and implements various courses to train peace officers, including both basic and continuing professional training. Peace officer basic training includes a minimum of 664 hours of POST-developed training and testing in 42 separate areas of instruction. According to POST's website, most POST-certified basic training academies exceed the 664 minimum hours by 200 or more hours with some academies presenting over 1000 hours of training and testing. Academy students are subject to various written, skill, exercise, and scenario-based tests. Students must also participate in a rigorous physical conditioning program which culminates in a Work Sample Test Battery (physical ability test) at the end of the academy. Students must pass all tests in order to graduate from the basic academy.

The current basic training course for peace officers does not include training on GVROs. According to POST, eight hours are dedicated to training regarding domestic violence restraining orders but none of that time is spent on GVROs specifically. This bill would require POST to develop and implement a course of training on GVROs and incorporate that training, on or before January 1, 2021, into the basic training course for law enforcement officers.

4. Law Enforcement Duties under GVRO Law

Law enforcement play a critical role under the existing GVRO law. Law enforcement officers are the only persons who may request a temporary emergency GVRO. A law enforcement officer seeking a temporary emergency GVRO is required to 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;
- 4) Have the order entered into the computer database system for protective and restraining orders maintained by DOJ. (Pen. Code, § 18140.)

When serving the temporary emergency GVRO, the officer is required to verbally ask the restrained person if he or she has any firearm, ammunition, or magazine in his or her possession or under his or her custody or control. (Pen. Code, § 18135.) Within 21 days of the issuance of the temporary emergency GVRO, the court is required to hold a hearing to determine whether a one-year GVRO should be issued. At the hearing, the burden is on the officer to prove the necessity of the GVRO by clear and convincing evidence. If this burden is not met, the court shall dissolve any temporary emergency or ex parte gun violence restraining order then in effect. (Pen. Code, § 18175.)

Firearms surrendered pursuant to a GVRO may be held by law enforcement, sold by the owner to a federally licensed firearm dealer, or stored by a federally licensed firearm dealer. If at the expiration of the GVRO the subject of the petition is not otherwise prohibited from purchasing a firearm and a new GVRO has not been issued, all firearms may be returned pursuant to the issuance of a law enforcement gun release (LEGR). (Pen. Code, § 18120, subd. (b)(2); Pen. Code, § 33850 et seq, 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 requires POST to develop and implement a course of training regarding GVROs for peace officers and incorporate it into the course of basic training. This bill specifies that the course of training must at minimum include the following: 1) the process of filing a petition for gun violence restraining orders; 2) situational training to assist officers in identifying when a gun violence restraining order is appropriate; and 3) how law enforcement can respond effectively to situations that might necessitate the filing for a GVRO. POST is also required to consult with members of law enforcement and the community who have expertise in the area of gun violence and GVROs in developing the training.

5. 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>>.)

DOJ's data also shows that the vast majority of GVRO petitions are filed by law enforcement officers, rather than family members. Additionally, unlike petitions filed by law enforcement officers which have substantially increased since the early years that the GVRO law went into effect, GVRO petitions filed by family members have remained about the same from 2016 to 2018 (less than 10 issued per year statewide).

6. Argument in Support

According to Brady California United Against Gun Violence, a sponsor of this bill:

Although the GVRO law has not been in effect for over three years, it is evident that many law enforcement agencies either do not know about the law, do not understand how it can fill gaps in existing law, or do not have a process for implementing the law in their jurisdiction. Additionally, there is confusion regarding the use of the GVRO instead of a 5150 mental health hold. GVRO data provided by the California Department of Justice shows that:

- 1) Most orders are obtained by law enforcement (97%)
- 2) Many counties have never issued an order (20)
- 3) Use of the law has been uneven (one county – San Diego – has issued approximately one-third of the total number of orders)
- 4) The GVRO law has been underused (86 orders in 2016, 104 orders in 2017, and 424 orders in 2018)

. . . . AB 165 will require the California Commission on Peace Officer Standards and Training (POST) to develop and implement a course of training regarding the GVRO for all incoming officers by January 1, 2021. Additionally, serving law enforcement officers, administrators and executives may participate in supplementary GVRO training that fulfills the POST requirement for continuing professional training.

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