SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair
2015 - 2016 Regular

Bill No:	AB 2607	**Hearing Date:**	June 14, 2016
Author:	Ting		
Version:	March 17, 2016		
Urgency:	No	**Fiscal:**	No
Consultant:	JRD		

Subject: ***Firearm Restraining Orders***

HISTORY

Source: Author

Prior Legislation: AB 1014 (Skinner)--Chapter 872, Statutes of 2014

Support: California Chapters of the Brady Campaign to Prevent Gun Violence; Coalition Against Gun Violence; California Teachers Association; Coalition Against Gun Violence, a Santa Barbara Coalition; Law Center to Prevent Gun Violence; George Gascon, San Francisco District Attorney; California PTA; Women Against Gun Violence; City of Berkeley; Youth Alive

Opposition: American Civil Liberties Union of California; California Association of Marriage and Family Therapists; California Psychiatric Association; California Psychological Association; California Public Defenders Association; California Sportsman's Lobby; Firearms Policy Coalition; Gun Owners of California; Rick Farinelli, Madera County District 3 Supervisor; National Rifle Association; Outdoor Sportsmen's Coalition of California; Safari Club International

Assembly Floor Vote: 41 - 37

PURPOSE

The purpose of this bill is to expand the individuals who are eligible to petition for a gun violence restraining order (GVRO), as specified.

Existing law defines a "gun violence restraining order" 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." (Penal Code § 18100.)

Existing law requires the court to notify the Department of Justice (DOJ) when a GVRO is issued, renewed, dissolved, or terminated. (Penal Code § 18115.)

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. (Penal Code § 18120(a).)

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

Existing law allows law enforcement to seek 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 or another by possessing a firearm; and,

- 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. (Penal Code § 18125.)

Existing law allows an immediate family member 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. (Penal Code § 18150(a)(1).)

Existing law defines "immediate family member" as specified. (Penal Code § 18150(a)(2).)

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. (Penal Code §§ 18150(b) and 18155.)

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 restrained person with a form to request a hearing. (Penal Code § 18160.)

Existing law allows the restrained person who owns a firearm or ammunition that is in the custody of a law enforcement agency pursuant to this subdivision, if the firearm is an otherwise legal firearm, and the restrained person otherwise has right to title of the firearm, to sell or transfer title of the firearm to a licensed dealer. (Penal Code § 18120(c)(2).)

Existing law entitles the restrained person to a hearing to determine the validity of the order within 21 days after the date on the order. (Penal Code § 18165.)

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. (Penal 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. (Penal Code § 18175(b).)

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

Existing law allows a request for renewal of a GVRO. (Penal Code § 18190.)

Existing law states that every person who files a petition for an ex parte gun violence restraining order or a gun violence restraining order 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. (Penal Code § 18200.)

Existing law states that every person who violates an ex parte gun violence restraining order or a gun violence restraining order 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. (Penal Code § 18205.)

This bill allows an employer, a coworker, a mental health worker who has seen a person as a patient in the prior six months, an employee of a secondary or postsecondary school that a person has attended in the last six months, to file a petition requesting that the court issue an ex parte 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.

This bill allows an employer, a coworker, a mental health worker who has seen a person as a patient in the prior six months, an employee of a secondary or postsecondary school that a person has attended in the last six months, 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.

This bill allows an employer, a coworker, a mental health worker who has seen a person as a patient in the prior six months, an employee of a secondary or postsecondary school that a person has attended in the last six months, to request a renewal of a GVRO at any time within the three months before the expiration of such an order.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, Coleman v. Brown, Plata v. Brown (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Legislation

According to the author:

> California's laws have reduced the rate of firearm-related deaths by 56% in the past 20 years, however significantly more needs to be done to prevent gun violence from occurring. 57% of adults believe stricter gun laws are important and 62% say the government doesn't do enough to regulate gun access.
>
> Statistics of gun-related deaths demonstrate the need for government to take a more proactive approach to prevent shootings by taking guns away from dangerous people before tragedy strikes.
>
> - An estimated 13,286 people were killed in the US by firearms in 2015 and 26,819 people were injured.
> - Between January 2009 and July 2015 there have been at least 133 mass shootings.

- From 2000 to 2013 mass shootings are on the rise, with the majority of them occurring on school campuses and in the workplace.
- Since 2013, there have been at least 165 school shootings in America, an average of nearly one a week, and more young Americans are now dying from guns than car accidents.
- Guns are responsible for over 80% of fatalities that occur in the workplace, and in 2013 alone, there were 316 fatal workplace shootings.
- More than 60% of people in this country who die from guns die by suicide and suicide is the second-most common cause of death for Americans between the ages of 15 and 34.

2. Gun Seizure Laws: Connecticut and Indiana

Connecticut:

The law allows any two police officers (or a state's attorney) to get warrants and seize guns from anyone who poses an imminent risk of injuring himself or herself or someone else. (*OLR Research Report, Gun Seizure Law*, Veronica Rose, August 13, 2009, https://www.cga.ct.gov /2009/rpt/2009-R-0306.htm) A warrant may be sought only after (1) conducting an independent investigation to establish probable cause, and (2) determining that no reasonable alternative exists to avert the risk of harm. (*Id.*)

In determining whether probable cause exists for issuing a warrant, the judge must consider any recent threat or violent act the person directed at himself or herself, others, or animals. (*Id.*) In determining whether the threats or acts constitute probable cause to believe a risk of injury is imminent, the judge may consider, among other things, if the person (1) recklessly used, displayed, or brandished a gun; (2) has a history of using, attempting, or threatening to use physical force against people; (3) was ever involuntarily confined to a psychiatric hospital; (4) abused alcohol; or (5) illegally used controlled substances. If satisfied that probable cause exists and there is no reasonable alternative to prevent the person from causing imminent harm, the judge must issue the warrant. (*Id.*)

The court must hold a hearing within 14 days after a seizure to determine whether to return the guns or order them held for up to one year. (*Id.*)

From 1999, when the law took effect, to 2009, police had applied for at least 277 warrants and seized more than 2,000 guns.[1] (*Id.*) In 185 (67%) of the 277 cases, warrant applications were based on a suicide risk, murder allegation, or both. (*Id.*) Suicide threats or behavior accounted for 126 (46%) of the applications, murder threats for 34 (12%), and murder-suicide threats for 25 (9%). (*Id.*) Other factors that triggered applications included mental instability (11%), threatening (7%), reckless gun use or display (4%), and domestic violence (3%). (*Id.*)

Additionally, the data showed "a spouse as the most likely person to initiate a complaint triggering a warrant application (see Table 4). A spouse was the source of the complaint or allegation in 55 of the 236 cases in which we were able to identify the complainant. A relative

[1] This reflects number of warrants requested by law enforcement after an investigation, not the number of triggering complaints received. The committee was not able to locate information as to how often law enforcement receives a complaint and does not seek a warrant.

other than a spouse accounted for 36 applications, and law enforcement officials accounted for 29." (*Id.*)

Table 4: Source of Allegations in Gun Seizure Warrants (N=277)

Source of Allegation	*No. of Allegations*	*% of Total Allegations*
Spouse	55	21%
Relative other than spouse	36	13%
Police/law enforcement official	29	10%
Health professional	25	9%
Public official/employee	13	5%
Girl/boyfriend	13	5%
Ex-girl/boyfriend	9	3%
Self	12	4%
Workplace official/coworker	9	3%
Friend	6	2%
Ex-spouse	3	1%
Other (neighbors, etc.)	26	9%
Total known	236	85%
Unknown/unclear	41	15%
Total of all allegations	277	100%

Indiana:

In Indiana, law enforcement is allowed to seize, with or without obtaining a warrant, firearms from a person who they believe is dangerous. (Indiana Code §§ 35-47-14-2 and 35-4714-3) Indiana defines "dangerous" to mean:

> (1) the individual presents an imminent risk of personal injury to the individual or to another individual; or
>
> (2) the individual may present a risk of personal injury to the individual or to another individual in the future and the individual:
>
> (A) has a mental illness (as defined in IC 12-7-2-130) that may be controlled by medication, and has not demonstrated a pattern of voluntarily and consistently taking the individual's medication while not under supervision; or
> (B) is the subject of documented evidence that would give rise to a reasonable belief that the individual has a propensity for violent or emotionally unstable conduct. (*Id.* at 35-47-14-1.)

If law enforcement seizes the firearm without first obtaining a seizure warrant, the officer is required to submit to the court a written statement under oath or affirmation describing the basis

for the law enforcement officer's belief that the individual is dangerous. (*Id.* at 35-47-14-3.) The court is then required to review that statement and determine if probable cause exists to retain the firearm. (*Id.*) The court then conducts a hearing within 14 days to determine whether the firearm should be seized. (*Id.* at 35-47-14-5.) At the hearing, it is the state's burden to proof by clear and convincing evidence that the individual is dangerous. (*Id.* at 35-47-14-6.) At least one hundred eighty (180) days after the date on which a court orders a law enforcement agency to retain the firearm, the individual may petition the court for return of the firearm. (*Id.* at 35-47-14-8.)

3. California's Gun Violence Restraining Order

California's new 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. A law enforcement officer may seek a temporary emergency GVRO by submitting a written petition to or calling a judicial officer to request an order at any time of day or night. In contrast, an immediate family member or a law enforcement officer can petition for either an ex parte GVRO or a GVRO after notice and a hearing.

An ex parte GVRO is based on an affidavit filed by the petitioner which sets forth the facts establishing the grounds for the order. The court will determine whether good cause exists to issue the order. If, the court issues the order, it can remain in effect for 21 days. Within that time frame, the court must provide an opportunity for a hearing. At the hearing, the court can determine whether the firearms should be returned to the restrained person, or whether it should issue a more permanent order.

Finally, if the court issues a GVRO after notice and hearing has been provided to the person to be restrained, this more permanent order can last for up to one year.

When AB 1014 (Skinner, of 2014), which created the GVRO statutory scheme, was considered in the Senate Public Safety Committee, the bill would have allowed *anyone* to request a gun violence restraining order. The committee analysis noted,

> Only those with a close relationship to the person to be restrained can request a domestic violence protective order. Specifically, the person seeking the order must be: (1) married or registered domestic partners; (2) divorced or separated; (3) dating or used to date; (4) living together or used to live together (more than roommates); (5) parents together of a child; or, (6) closely related (parent, child, brother, sister, grandmother, grandfather, in-law).
>
> This legislation would allow *anyone* to request a gun violence restraining order. While the legislation requires the requesting party to sign an affidavit under perjury, and also creates a new misdemeanor to punish anyone who files a request "knowing the information in the petition to be false or with the intent to harass," members may wish to consider whether allowing anyone to file these requests is prudent.

SHOULD ANYONE BE ALLOWED TO PETITION THE COURT TO ISSUE A GUN VIOLENCE RESTRAINING ORDER?

The author offered amendments in the Senate Public Safety Committee that restricted the availability of an ex parte GVRO and a regular GVRO to law enforcement, immediate family members, and doctors/therapists of the person who is the subject of the petition. AB 1014 was subsequently amended in the Senate Appropriations Committee to only permit law enforcement and immediate family members to petition for a GVRO.

This bill would expand the class of people who are able to petition for a GVRO to enjoin an individual for possessing or purchasing a firearm. It would allow an employer, a coworker, a mental health worker who has seen the person as a patient in the prior six months, and an employee of a secondary or postsecondary school that the person has attended in the last six months to seek such an order. Given that the GVRO laws have been in effect for six months, it is unclear if there is a need for an expansion of who may seek a GVRO. It is, additionally, unclear why these groups of individuals are not able to seek a GVRO through law enforcement.

4. Argument in Support

According to the California Chapters of the Brady Campaign to End Gun Violence:

> Existing law allows law enforcement and immediate family members to petition the court to obtain a Gun Violence Restraining Order when a person is at risk of injury to self or others by having a firearm. The order would temporarily prohibit the purchase or possession of firearms while the order is in effect and would allow a warrant to be issued to seize firearms or ammunition from a person subject to the order. AB 2607 would also authorize an employer, a coworker, a mental health worker who has seen the person as a patient in the prior six months, or an employee of a secondary or postsecondary school that the person has attended in the last six months, to file a petition for a Gun Violence Restraining Order. Those who work or study with a person and have frequent interaction may see the early warning signs and be the first to know that the person is at severe risk of harming self or others with a firearm. These people need the ability to petition the court for a temporary firearm prohibition.
>
> The Gun Violence Restraining Order statute is modeled after California's domestic violence restraining order laws and ensures due process and a rigorous standard of proof. A noticed hearing before the court is required within 21 days. In fact, the law provides more protections than the state's domestic violence restraining order or mental health commitment laws. The person subject to the temporary order regains the ability to purchase or possess firearms when the order expires after one year (unless renewed) or is revoked by the court.
>
> As many California Brady members have personally experienced, heightened anger or hate, despondence, substance abuse, or a mental or emotional crises combined with access to firearms can be a deadly combination. The Gun Violence Restraining Order provides a way to prevent homicide, suicide, and mass shootings by removing firearms before a tragedy occurs.

5. Argument In Opposition

According to the American Civil Liberties Union of California:

> The ACLU regrets to inform you that we must respectfully oppose AB 2607, which would expand the parties who could seek an ex-parte gun violence restraining order to include an employer, a coworker, a mental health worker who has seen the person as a patient in the last 6 months, or an employee of a secondary or postsecondary school that the person has attended in the last 6 months. Because the current law which created the gun violence restraining order has only been in effect for less than four months, it is premature to decide that the policy recently approved by the legislature needs revision. Additionally, because the ex-parte procedure would allow a person to be subjected to this order, with all the ensuing consequences, without an opportunity to be heard or contest the matter, we believe expanding the authorization to seek such an order this broadly poses a significant threat to civil liberties.
>
> The statutory scheme creating the Gun Violence Restraining Order (Penal Code sections 18100-18205) was created in 2014, and only became operative in January of this year. (AB 1014 (Skinner) – Chap. 872, Stats. of 2014). Under this scheme a family member, or any law enforcement officer, who has reason to believe a person owns a gun and poses a significant danger to themselves or others, may petition the court for an ex-parte order to prohibit the subject from possessing a gun for up to 21 days, at which time a hearing would be held to determine whether to extend the order for up to one year.
>
> An ex-parte order means the person subjected to the restraining order is not informed of the court proceeding and therefore has no opportunity to appear to contest the allegations. We support efforts to prevent gun violence, but we must balance that important goal with protection of civil liberties so we don't sacrifice one in an attempt to accomplish the other. We believe the AB 1014 was crafted in order to properly strike that balance. By expanding the parties that could apply for such an ex-parte restraining order to include all the parties listed above, AB 2607 upsets that balance and creates significant potential for civil rights violations.
>
> For example, it is not hard to imagine a scenario in which someone might harbor an irrational fear of a coworker based on that coworker belonging to some minority group that the person dislikes and distrusts, and their being able to persuade a judge that their coworker is armed and poses a threat. AB 2607 would authorize that, on the basis of this person's uncorroborated allegation, the police could show up at the coworker's door, in the manner you could expect when they anticipate confronting someone who they believe to be armed and dangerous, and order them to surrender their firearms. And what if they say they don't have any firearms? Or not as many as the petitioner claimed? Would the officers then have probable cause to search the residence for the "missing" guns? Many judges would undoubtedly think so. The innocent coworker would, at a minimum, be subjected to a tense confrontation with police, possibly have their house searched, all without being accused of any wrongdoing and before ever being allowed to respond to their coworker's allegations.
>
> In addition to employers and coworkers, AB 2607 would allow a mental health worker who has seen the person as a patient in the last 6 months, or an employee of a secondary or postsecondary school that the person has attended in the last 6 months, to directly

petition the court for this ex-parte order. The rationale for allowing an ex-parte order is the urgency of the threat. It is hard to understand why someone should have the authority to obtain an ex-parte restraining order six months after they had contact with the person who they allege poses an urgent threat.

Under the current law, enacted just a few months ago under AB 1014, any of the people this bill would authorize to seek the restraining order could go to law enforcement with their concerns and law enforcement, if they felt the concerns were justified, could petition the court for such an order. This new law should be given a chance to work before revising it.

-- END –