
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 2617 **Hearing Date:** July 31, 2020
Author: Gabriel
Version: July 28, 2020
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Firearms: Gun Violence Restraining Orders*

HISTORY

Source: Author

Prior Legislation: AB 164 (Cervantes), Ch. 726, Stats. 2019
AB 1494 (Ting), Ch. 733, Stats. 2019
AB 339 (Irwin), Ch. 727, Stats. 2019
AB 165 (Gabriel), held in Senate Approps. Comm., 2019
AB 61 (Ting), Ch. 725, Stats. 2019
AB 12 (Irwin), Ch. 724, Stats. 2019
AB 2526 (Rubio), Chapter 873, Statutes of 2018
SB 1200 (Skinner), Ch. 898, Stats. 2018
AB 1014 (Skinner), Ch. 872, Stats. 2014

Support: Alameda County District Attorney's Office; Brady California United Against Gun Violence; California District Attorneys Association; California Federation of Teachers, AFT, AFL-CIO; California State Sheriffs' Association; Everytown for Gun Safety Action Fund; Friends Committee on Legislation of California; Giffords Law Center to Prevent Gun Violence; Hadassah, the Women's Zionist of America, Inc.; Jewish Center for Justice; Judicial Council of California; League of California Cities; Los Angeles City Attorney's Office; Los Angeles County District Attorney's Office; Los Angeles County Sheriff's Department; March for Our Lives California; Moms Demand Action for Gun Sense in America; Riverside Sheriff's Association; San Fernando Valley Young Democrats; Santa Barbara Women's Political Committee; County of Ventura; Youth Alive!

Opposition: American Civil Liberties Union of California; California Attorneys for Criminal Justice

Assembly Floor Vote: 76 - 0

PURPOSE

The purpose of this bill is to 1) require law enforcement officer who files a temporary emergency gun violence restraining order (GVRO) to file a copy of the order with the court no later than 3 court days after issuance; and 2) provide that any person who owns or possesses a firearm or ammunition with knowledge that they are prohibited from doing so by a valid order

issued by an out-of-state jurisdiction that is similar or equivalent to a GVRO is guilty of a misdemeanor.

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:

- a) 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,
- b) 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 emergency GVRO if the officer asserts, and the court finds, that there is reasonable cause to believe the following:

- a) The subject of the petition poses an immediate and present danger of causing injury to himself, herself, or another by possessing a firearm; and,
- b) 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 emergency GVRO shall expire 21 days from the date the order is issued. (Pen. Code, § 18125, subd. (b).)

Existing law requires the court to hold a hearing within 21 days of the issuance of a temporary emergency GVRO to determine if the restrained person should continue to be subject to a GVRO issued after notice and a hearing. (Pen. Code, § 18148.)

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

- a) 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;
- b) Serve the order on the restrained person, if the restrained person can reasonably be located;
- c) File a copy of the order with the court as soon as practicable after issuance; and,
- d) Have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice (DOJ). (Pen. Code, §18140.)

This bill requires a law enforcement officer who requests a temporary emergency GVRO to file a copy of the order with the court within 3 court days of issuance.

Existing law allows an immediate family member, as defined, or law enforcement officer, and commencing September 1, 2020 an employer, coworker, or an employee or teacher of a secondary or postsecondary school as provided, 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, and commencing September 1, 2020 an employer, coworker, or an employee or teacher of a secondary or postsecondary school as provided, 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 the court finds that there is clear and convincing evidence to issue a gun violence restraining order, the court shall issue a GVRO that prohibits the subject of the petition from having in the subject's custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm, ammunition, or magazine for a period of one year, and commencing September 1, 2020, for a period of between one year to five years. (Pen. Code, § 18175, subd. (c)(1) & (e)(1).)

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 which may last for a duration of one to five years. (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 provides that a person who owns or possesses a firearm or ammunition with the knowledge that they are prohibited from doing so by a GVRO is guilty of a misdemeanor and shall be prohibited from having custody or control of, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition for a period of 5 years, commencing upon the expiration of the existing GVRO. (Pen. Code, § 18205.)

This bill applies the above prohibition to persons who are subject to a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a GVRO issued under California's laws.

This bill provides that a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a GVRO means an out-of-state order issued upon a showing by clear and convincing evidence that the person poses a significant danger of causing personal injury to themselves or another because of owning or possessing a firearm or ammunition.

This bill contains a severability clause so that if any of the bill's provisions or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

COMMENTS

1. Need for This Bill

According to the author of this bill:

While California has recognized Domestic Violence Restraining Orders and other forms of protective and firearm restriction orders from other states, it has not specifically provided that authority to GVROs issued by other states. This means that individuals who have been found by an out-of-state court to pose a dangerous risk of gun violence are able to circumvent a restraining order by moving or travelling to California. This loophole was noted in the Assembly Public Safety analysis of AB 164.

From 2000 to 2015, there were 24,922 firearm homicides and 23,682 firearm suicides in California. GVROs are a key tool to prevent these tragedies by temporarily removing firearms from those most at risk. The ability to enforce these orders and similar orders from other states, however, stops at the state's borders.

Thirty-five percent of guns traced by law enforcement in California come from out-of-state. The interdependence of our gun laws and public safety across our state border was shown most recently by the shooting at the Gilroy Garlic Festival. When individuals who purchase weapons from out-of-state or have been identified in other states as posing a risk to public safety are able to avoid restriction by entering California, it is essential that our law enforcement professionals are empowered to enforce out-of-state orders.

While California has taken steps to enforce certain equivalent out-of-state firearm restraining orders, current law still requires more clarity to ensure that out of state gun violence restraining orders can be enforced. This gap in the law could lead to unfortunately dangerous situations in California. We should acknowledge and give full faith and credit to protective orders from outside jurisdictions when it comes to preventing, protecting, and intervening in matters that could be fatal.

AB 2617 will close this dangerous loophole by allowing California courts to enforce firearms prohibitions issued by other states. Subjects of out-of-state orders will thus be prohibited from purchasing a firearm in California and law enforcement will be able to disarm these individuals.

Additionally, this bill ensures law enforcement files GVROs in a timely manner with local courts so that the Judicial Council of California can file notice of the GVRO hearing with the restrained party.

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, Ch. 872, Stats. 2014.) A GVRO will prohibit the restrained person from purchasing or possessing firearms, ammunition or magazines and authorizes law enforcement to remove any of these prohibited items already in the individual's possession.

The statutory scheme establishes three types of GVROs: 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, the law enforcement officer requesting the order must show (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 court may issue this type of order orally, or if time and circumstances permit, the order may be obtained in writing. (Pen. Code, § 18145.) This order is valid for 21 days from the date of issuance. (Pen. Code, § 18125, subd. (b).)

An ex parte GVRO, which may be sought by a law enforcement officer, an immediate family member, or starting September 1, 2020, an employer, a coworker, or an employee of a secondary or postsecondary school with a specified relationship to the restrained person. (AB 61, Ch. 725, Stats. 2019; Pen. Code, § 18150.) 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 specified factors; 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.) This order is valid for up to 21 days from the issuance of the order. (Pen. Code, § 18155, subd. (c).)

Within 21 days of the issuance of the initial GVRO, the court is required to hold a hearing on whether a person subject to a temporary or ex parte GVRO should continue to be subject to a GVRO issued after notice and a hearing. (Pen. Code, §§ 18148 and 18165.) 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 temporary emergency or ex parte GVRO 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, ammunition or magazine; (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).) A GVRO issued after notice and a hearing is valid for one year, and starting September 1, 2020, the court may issue a GVRO for up to five years. (AB 12, Ch. 724, Stats. 2019; Pen. Code, § 18175, subd. (e).)

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. (Pen. Code, § 18175, subd.(c)(2).)

3. Temporary Emergency GVROs

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 set a hearing and provide notice to the restrained person. (Pen. Code, § 18148.) At the hearing, the court must determine whether a GVRO should remain in effect for one year, and starting on September 1, 2020, up to 5 years. (AB 12, Ch. 724, Stats. 2019; Pen. Code, §§ 18148 and 18175.) 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.)

While existing law specifies that the court shall hold a hearing within 21 days of the issuance of a temporary emergency GVRO, the law does not provide a deadline for law enforcement to file a copy of the order with the court. The filing of this order provides notice to the court that a hearing is required within the statutory 21-day period. This bill requires law enforcement to file a copy of the order not later than 3 court days of issuance of the temporary GVRO.

4. Data on Issuance of GVROs in 2019

According to DOJ's most recent data, 385 temporary emergency GVROs were issued in 2019. The counties with the highest number of orders was Orange (66), Santa Barbara (57), San Diego

(35) and Sacramento (34). There were 430 ex parte GVROs issued, with the majority requested by law enforcement. There were 295 GVROs issued after a notice and a hearing.

5. Out-of-State Protection Orders

Giffords Law Center to Prevent Gun Violence has compiled information on states that have enacted laws to temporarily restrict a person's access to guns based on a court order, which has been referred to as "Extreme Risk Protection Orders (ERPO)." California's version of an "Extreme Risk Protection Order" is the GVRO, which was enacted in 2014. Giffords Law Center to Prevent Gun Violence describes "Extreme Risk Protection Orders" as a process which allows families, household members, or law enforcement officers to petition a court directly for an extreme risk protection order which temporarily restricts a person's access to guns. (See <https://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/extreme-risk-protection-orders/> [as of July 7, 2020].)

Currently, 19 states and the District of Columbia have ERPO laws. These laws vary on who can petition the court for an ERPO, the standard of proof required to issue an order, and the duration of the orders. (*Id.*)

California has a higher standard of proof (clear and convincing evidence) than some states (preponderance of the evidence) that have similar ERPOs. According to Giffords Law Center, 12 other states also require clear and convincing evidence of the subject's dangerousness in order to issue a final order. (See *ERPO Procedures by State* <https://lawcenter.giffords.org/wp-content/uploads/2020/02/ERPO_Table_2-26-20.pdf> [as of July 7, 2020].) California's law requires a showing that the subject of the order poses a significant danger of causing personal injury to themselves or another by being in possession of a firearm and a GVRO is necessary to prevent personal injury or injury to another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances. (Pen. Code, § 18175, subd. (b).) An out-of-state ERPO may not require a showing of the same level of dangerousness as is required in California.

This bill would require that an out of state order be "similar or equivalent to a GVRO" to trigger criminal liability for possession in California in violation of the out of state order. The "similar or equivalent" language is the same language that was used in AB 164 (Cervantes), Chapter 726, Statutes of 2019 for firearm prohibitions based on out of state domestic violence orders. However, because AB 164 was newly enacted this year there is not enough data from the courts to know how the "similar or equivalent" language is being interpreted by the courts.

This bill would state that a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a gun violence restraining order described in this section" means an out-of-state order issued upon a showing by clear and convincing evidence that the person poses a significant danger of causing personal injury to themselves or another because of owning or possessing a firearm or ammunition.

6. Background Check for Purchasing a Firearm or Ammunition in California

California law requires any prospective purchaser of (or transferee or person being loaned) a firearm to submit an application to purchase the firearm (also known as a “Dealer Record of Sale” or “DROS” form) through a licensed dealer to DOJ. The dealer must submit firearm purchaser information to DOJ on the date of the application through electronic transfer, unless DOJ makes an exception allowing a different format. The purchaser must present “clear evidence” of his or her identity and age to the dealer (either a valid California driver’s license or a valid California identification card issued by the Department of Motor Vehicles). Dealers must obtain the purchaser’s name, date of birth, and driver’s license or identification number electronically from the magnetic strip on the license or ID card. This information cannot be supplied by any other means except as authorized by DOJ. Once this information is submitted, DOJ will check available and authorized records such as its own records and those it is authorized to request from the Department of State Hospitals, and National Instant Criminal Background Check System (NICS) – the federal background check system utilized when a person purchases a firearm – in order to determine whether the person is prohibited from possessing, receiving, owning, or purchasing a firearm by state or federal law. (<http://lawcenter.giffords.org/background-checks-in-california/>)

An out-of-state ERPO may not be found during DOJ’s background check process for purchasing a firearm or ammunition in California. Such an order would only be found if the state that issued the order submits the information into NICS.

7. Argument in Support

According to Brady United Against Gun Violence:

From 2000 to 2015, there were 24,922 firearm homicides and 23,682 suicides in California. GVROs are a key tool to prevent these tragedies by temporarily removing firearms from those at risk. The ability to enforce these orders and similar orders from other states, however, stops at the state’s border. While California has recognized other forms of protective orders, such as Domestic Violence Restraining Orders, from other states, it has not provided authority to enforce GVROs issued by other states. This means that individuals who have been found by a court to pose a dangerous risk of gun violence are able to circumvent a restraining order by moving or traveling to California.

AB 2617 would make it an offense to possess a firearm in violation of a protective order issued by another state. The effectiveness of GVROs and similar protective orders in states and the continued risk posed by guns purchased in other states shows that it is imperative to ensure that law enforcement is able to enforce these orders regardless of where a person travels.

This bill also seeks to strengthen the due process of California’s GVRO laws by requiring law enforcement to file a copy of the temporary emergency GVRO with the court as soon as practicable, “but not later than three court days.” Under current law, if law enforcement does not file the emergency GVRO in a timely manner, the court may not have adequate time to set and provide appropriate notice of the required hearing to the restrained party. This bill will create uniformity across all jurisdictions, provide clarity for law enforcement and ensure that courts are complying with the 21-day hearing requirement.

8. Argument in Opposition

The American Civil Liberties Union of California opposes this bill and writes:

. . . [T]he legal standards and procedures for issuance of a GVRO vary widely from state to state. A person may be subject to a GVRO type of order in another state on the basis of allegations that would not allow for issuance of a GVRO in California, or that was issued based on a lower standard or proof. Nor are the consequences of violating such an order the same in every state. In some states, there are no criminal penalties for violation of a GVRO. Thus someone who was subject to a GVRO in another state may not have adequate notice that the existence of that order means they are committing a criminal act by owning a firearm in California.

Subjecting someone to criminal penalties on the basis of violation of another state's order is simply unfair without a more careful definition of when such an order is truly the equivalent of a California order for which a person has reasonable notice. Because of the risk that individuals will be unfairly prosecuted on the basis of an order they did not believe would bar them from owning a gun in California, we must oppose AB 2617.

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