
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 2870 **Hearing Date:** June 28, 2022
Author: Santiago
Version: June 13, 2022
Urgency: No **Fiscal:** No
Consultant: SC

Subject: *Firearms: gun violence restraining orders*

HISTORY

Source: Author

Prior Legislation: AB 538 (Rubio), Ch. 686, Stats. 2021
AB 2617 (Gabriel), Ch. 286, Stats. 2020
AB 12 (Irwin), Ch. 724, Stats. 2019
AB 61 (Ting), Ch. 725, Stats. 2019
AB 339 (Irwin), Ch. 727, Stats. 2019
SB 1200 (Skinner), Ch. 898, Stats. 2018
AB 2888 (Ting), vetoed, 2018
SB 505 (Jackson), Ch. 918, Stats. 2014
AB 1014 (Skinner), Ch. 872, Stats. 2014

Support: Unknown

Opposition: American Civil Liberties Union California Action; Gun Owners of California;
National Rifle Association

Assembly Floor Vote: Not relevant

This Analysis Reflects the Bill as Proposed to be Amended

PURPOSE

The purpose of this bill is to expand the family members who can file a petition for a gun violence restraining order (GVRO) to include any person related by consanguinity or affinity within the 4th degree, as specified, and to additionally allow an individual who has a child in common with the subject, or a roommate, classmate, or dating partner of the subject to file a 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. Specifies that this means the person cannot own, purchase, possess, or receive any firearms or ammunition. (Pen. Code, § 18120, subd. (a).)

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

Existing law requires the law enforcement officer serving a GVRO to request that all firearms and ammunition be immediately surrendered. Requires, if the request is not made by a law enforcement officer, the surrender to occur within 24 hours of being served with the order, by surrendering all firearms and ammunition in a safe manner to the control of the local law enforcement agency, selling all firearms and ammunition to a licensed firearms dealer, or transferring all firearms and ammunition to a licensed firearms dealer. (Pen. Code, § 18120, subd. (b)(2) & (3).)

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

- File with the court that issued the GVRO the original receipt showing all firearms and ammunition have been surrendered to a local law enforcement agency or sold or transferred to a licensed firearms dealer. Failure to timely file a receipt shall constitute a violation of the restraining order; and,
- File a copy of the receipt with the law enforcement agency, if any, that served the GVRO. Failure to timely file a copy of the receipt shall constitute a violation of the restraining order. (Pen. Code, § 18120, subd. (b)(4) & (5).)

Existing law provides that there is no filing fee for an application, a responsive pleading, or an order to show cause that seeks to obtain, modify, or enforce a GVRO or other authorized order if the request for the other order is necessary to obtain or give effect to a GVRO or other authorized order. Provides that there is no fee for a subpoena filed in connection with that application, responsive pleading, or order to show cause. (Pen. Code, § 18121.)

Existing law allows law enforcement to obtain a temporary GVRO if the officer asserts, and the court finds, that there is reasonable cause to believe the following:

- The subject of the petition poses an immediate and present danger of causing injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition; and,
- A temporary emergency GVRO is necessary to prevent personal injury to the subject of the order or another because less restrictive alternatives have been tried and been ineffective or have been determined to be inadequate or inappropriate under the circumstances. (Pen. Code, § 18125, subd. (a).)

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

Existing law requires a law enforcement officer who requests a temporary GVRO do all of the following:

- If the request is made orally, sign a declaration under penalty of perjury reciting the oral statements provided to the judicial officer and memorialize the order of the court on the form approved by the Judicial Council;
- Serve the order on the restrained person, if the restrained person can reasonably be located;
- File a copy of the order with the court as soon as practicable, but not later than 3 court days, after issuance; and,
- Have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice. (Pen. Code, § 18140.)

Existing law requires the court that issued the order or another court in the same jurisdiction, within 21 days after the date on the temporary GVRO order, to hold a hearing to determine if a GVRO should be issued after notice and hearing. (Pen. Code, § 18148.)

Existing law allows any of the following individuals to file a petition requesting that the court issue an ex parte GVRO enjoining a person from having in his or her custody or control, owning, purchasing, or receiving a firearm or ammunition: an immediate family member of the subject of the petition; an employer of the subject of the petition; a coworker, if they have had substantial and regular interactions with the subject for at least one year and have obtained the approval of the employer; an employee or teacher of a school that the subject has attended in the past 6 months, if the employee or teacher has obtained the approval of a school administrator or a school administration staff member with a supervisory role; or a law enforcement officer. (Pen. Code, § 18150, subd. (a)(1).)

Existing law defines “immediate family member” to mean any spouse, whether by marriage or not, domestic partner, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household. (Pen. Code, § 422.4, subd. (b).)

Existing law allows a court to issue an ex parte GVRO if an affidavit, made in writing and signed by the petitioner under oath, or an oral statement, and any additional information provided to the court shows there is a substantial likelihood that both of the following are true:

- The subject of the petition poses a significant danger, in the near future, of causing personal injury to himself, herself, or another by having under his or her custody and control, owning, purchasing, possessing, or receiving a firearm as determined by balancing specified factors.
- An ex parte GVRO is necessary to prevent personal injury to the subject of the petition or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances of the subject of the petition. (Pen. Code, §§ 18150, subd. (b) & 18155.)

Existing law requires an ex parte GVRO to be issued or denied on the same day that the petition is submitted to the court unless the petition is filed too late in the day to permit effective review, in which case the order is required to be issued or denied on the next judicial business day. (Pen. Code, § 18150, subd. (d).)

Existing law requires a law enforcement officer to serve the ex parte GVRO on the restrained person, if the restrained person can reasonably be located. Requires the law enforcement officer to inform the restrained person that he or she is entitled to a hearing and provide the date of the scheduled hearing when serving a gun violence restraining order. (Pen. Code, § 18160.)

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

Existing law requires the court that issued the order or another court in the same jurisdiction, within 21 days after the date on the ex parte GVRO order, to hold a hearing to determine if a GVRO should be issued after notice and hearing. (Pen. Code, § 18165.)

Existing law allows the following individuals to file a petition requesting that the court issue a GVRO after notice and a hearing enjoining a person from having in his or her custody or control, owning, purchasing, or receiving a firearm or ammunition: an immediate family member of the subject of the petition; an employer of the subject of the petition; a coworker, if they have had substantial and regular interactions with the subject for at least one year and have obtained the approval of the employer; an employee or teacher of a school that the subject has attended in the past 6 months, if the employee or teacher has obtained the approval of a school administrator or a school administration staff member with a supervisory role; or a law enforcement officer. (Pen. Code, § 18170.)

Existing law states that at the hearing, the petitioner has the burden of proof, which is to establish by clear and convincing evidence that both of the following are true:

- The person poses a significant danger of causing personal injury to themselves or another by having in the subject's custody or control, owning, purchasing, possessing, or receiving a firearm.
- A GVRO is necessary to prevent personal injury to the subject of the petition or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances of the subject of the petition. (Pen. Code, § 18175, subd. (b).)

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

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

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

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

Existing law provides that every person who owns or possesses a firearm or ammunition with knowledge that they are prohibited from doing so by a temporary emergency GVRO, ex parte GVRO or a GVRO issued after notice and a hearing, or by a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a GVRO described under California law, is guilty of a misdemeanor and shall be prohibited from having under his or her custody and control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition for a five-year period, to commence upon the expiration of the existing GVRO. (Pen. Code, § 18205.)

This bill expands the family members who can file a petition to include any person related by consanguinity or affinity within the 4th degree who has had substantial and regular interactions with the subject for at least one year.

This bill clarifies that a roommate of the subject of the petition may file a petition for a GVRO.

This bill additionally authorizes the following persons to file a petition for a GVRO:

- A classmate of the subject of the petition.
- A dating partner of the subject of the petition.
- An individual who has a child in common with the subject of the petition.

COMMENTS

1. Need for This Bill

According to the author of this bill:

This year, there have been at least 243 mass shootings in the U.S., eight of them taking place in a span of a week, according to the Gun Violence Archive. Strong gun laws have proven to save lives. In 2020, the year with the latest data available, California's firearm death rate was 8.5 per 100,000 — the seventh lowest in the nation, according to the Centers for Disease Control and Prevention, while Texas had a gun mortality rate of 14.2 per 100,000.

Studies have shown that California's [GVRO] laws have prevented over 58 mass shootings. Unfortunately, California experienced an average of 44 mass shootings per year between 2013 and 2021. That translates to one mass shooting every 8.3 days. Strengthening the state's [GVRO] laws can prevent more mass shootings.

In order to get guns out of our communities and keep people safe, AB 2870 will expand California's red flag laws to include more family member such as aunts, uncles, and cousins, classmates, roommates, mandated reporters, dating partners, and faith leaders.

Enough is enough. Expanding common sense gun safety measures with this bill will help reduce the gun violence epidemic.

2. California's GVRO Law

California's GVRO laws, modeled after domestic violence restraining order laws, went into effect on January 1, 2016. (AB 1014 (Skinner), Ch. 872, Stats. 2014.) A GVRO prohibits the restrained person from purchasing or possessing firearms or ammunition and authorizes law enforcement to remove any firearms or ammunition already in the individual's possession.

The statutory scheme establishes three types of GVRO's: a temporary emergency GVRO, an ex parte GVRO, and a GVRO issued after notice and hearing. A temporary emergency GVRO may only be sought by a law enforcement officer. (Pen. Code, § 18125.) To obtain this order, a court must find (1) that the subject of the petition poses an immediate and present danger of causing injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition; and (2) the order is necessary to prevent personal injury to the subject of the order or another because less restrictive alternatives have been tried and been ineffective or have been determined to be inadequate or inappropriate under the circumstances. (*Ibid.*)

The second type of GVRO is an ex parte GVRO, which may be sought by an immediate family member of the subject of the petition; an employer of the subject of the petition; a coworker, if they have had substantial and regular interactions with the subject for at least one year and have obtained the approval of the employer; an employee or teacher of a school that the subject has attended in the past 6 months, if the employee or teacher has obtained the approval of a school administrator or a school administration staff member with a supervisory role; or a law enforcement officer. In this case, the order is issued if the court finds that (1) the subject of the petition poses a significant danger, in the near future, of causing personal injury to himself, herself, or another by having under his or her custody and control, owning, purchasing, possessing, or receiving a firearm as determined as determined by considering the factors listed in Penal Code section 18155; and (2) an order is necessary to prevent personal injury to the subject of the petition or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances of the subject of the petition. (Pen. Code, § 18150.) The petition for an ex parte GVRO must be supported by an affidavit that sets forth the facts tending to establish the grounds of the petition, or the reason for believing that they exist. (*Ibid.*)

Within 21 days, and before the temporary or ex parte GVRO expires, one of the above listed categories of individuals may request that a court, after notice and a hearing, issue a GVRO enjoining the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition for a period of one to five years. (Pen. Code, § 18170 et seq.) At the hearing, the petitioner has the burden of proving, by clear and convincing evidence, that both of the following are true: (1) the person poses a significant danger of causing personal injury to themselves or another by having in the subject's custody or control, owning, purchasing, possessing, or receiving a firearm; and (2) a GVRO is necessary to prevent personal injury to the subject of the petition or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances of the subject of the petition. (Pen. Code, § 18175, subd. (b).) If the court finds that there is clear and convincing evidence to issue a GVRO, the court shall issue a GVRO that prohibits the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm, ammunition, or magazine. (Pen. Code, § 18175, subd. (c).) If the court finds that there is not

clear and convincing evidence to support the issuance of a GVRO, the court shall dissolve any temporary emergency or ex parte GVRO then in effect. (*Ibid.*)

As discussed above, existing law allows law enforcement to file for a temporary GVRO. Immediate family members, which are defined to include any spouse, whether by marriage or not, domestic partner, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household, as well as an employer, a coworker if they have had substantial and regular interactions with the subject for one year and have obtained approval of the employer, or an n employee or teacher of a secondary or postsecondary school that the subject has attended in the last six months, if the employee or teacher has obtained the approval of a school administrator, are currently authorized to file a petition for an ex parte GVRO and a GVRO issued after notice and a hearing.

This bill does not change who may file a temporary GVRO. This bill adds to the persons who may file an ex parte GVRO and a GVRO issued after notice and a hearing to include a classmate, a dating partner, or an individual who has a child in common with the subject of the petition.

This bill also clarifies that a roommate of the subject may also file an ex parte GVRO or a GVRO issued after hearing and notice. Currently, roommates are included within the statutory definition of “immediate family member” thus on Judicial Council’s GVRO forms there is not a separate box that a roommate may check to confirm their authority to file a GVRO petition. According to the author’s office, this may cause confusion so this bill clarifies that roommates may file one of these types of GVROs.

3. Data on the Issuance of GVROs

The Department of Justice (DOJ) has statutory authority to collect GVRO data. (Pen. Code, § 18115.) 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.

In 2018, 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. In 2019, 700 GVROs were issued and in 2020, 1,284 GVROs were issued. The data shows that a Law enforcement petitioner accounted between 95 and 97 percent of the GVRO orders issued overall.

The most updated DOJ data on GVROs will be released later this year.

4. Effect of this Legislation

This bill expands who may file a petition for a GVRO. Specifically, this bill would expand family members who may petition for a GVRO to include any person related by consanguinity or affinity within the 4th degree who has had substantial and regular interactions with the subject for at least one year. Additionally, the bill would allow a classmate, an individual who has a child in common with the subject, or dating partner to file one of these types of GVROs.

When California's GVRO law was first considered by the Legislature through AB 1014 (Skinner), Chapter 872, Statutes of 2014, the bill was broader but after rigorous debate and amendments that followed, the bill that was signed into law authorized law enforcement and immediate family members, as defined in existing Penal Code section 422.4, to file an ex parte GVRO and a GVRO issued after notice and a hearing.

After the law went into effect in 2016, the GVRO law has been amended several times. The initial one year limit on GVROs issued after notice and a hearing was extended to a period of up to 5 years. (See AB 12 (Irwin), Ch. 724, Stats. 2019.) The persons who may file a petition for an ex parte GVRO and GVRO issued after notice and a hearing has been expanded to include a coworker of the subject of the petition, if they have had substantial and regular interactions with the subject for at least one year and have obtained the approval of the employer and an employee or teacher of a secondary or postsecondary school that the subject has attended in the last six months, if the employee or teacher has obtained the approval of a school administrator or a school administration staff member with a supervisory role. (See AB 61 (Ting), Ch. 725, Stats. 2019.) Law enforcement agencies are also required to develop and adopt written policies and standards regarding the use of GVROs. (AB 339 (Irwin) Ch. 727, Stats. 2019.) Persons who are prohibited from owning or possessing a firearm or ammunition due to a valid order issued out-of-state that is similar or equivalent to California's GVRO law is also prohibited from owning or possessing a firearm or ammunition within the state. (AB 2617 (Gabriel), Ch. 286, Stats. 2020.)

19 other states and the District of Columbia have an extreme risk protection order law which operates similarly to California's GVRO law. All of these jurisdictions authorize law enforcement to petition for an ERPO, and most authorize family members and intimate partners to also petition. A few authorize clinicians and school administrators to petition. (See https://americanhealth.jhu.edu/sites/default/files/website-media/high-impact/ERPO/resources/ERPO_GENERAL_ERPOvsDVOP_FactSheet.pdf> [as of June 22, 2022].) Federal legislation is currently being considered to provide grants encourage states to create so-called "red flag laws" that would allow law enforcement or other entities to petition a court to remove guns from a person deemed to be a threat to themselves or others. The funding could be applied to red flag laws but also to states that add mental health courts and drug courts.

California's law is already one of the most expansive because it includes school administrators and coworkers, as specified. This bill would expand the list of individuals who may file an ex parte GVRO and a GVRO issued after notice and a hearing to include classmates, an individual who has a child in common with the subject, and a dating partner of the subject of the petition. It would also expand family members who may file one of these types of GVROs to include any person related by consanguinity or affinity within the fourth degree who has had substantial and regular interactions with the subject for at least one year. These individuals would include individuals such as cousins and great-great grandparents and great-great grandchildren, great aunts and great uncles.

Notably, classmates were not included in the bill that expanded GVRO petitioners to include an employer, coworker or employee or teacher of a school. Aside from employers, these categories of individuals must also show additional requirements: coworkers must have substantial and regular interactions with the subject of the petition for one year and approval of the employer, and an employee or teacher of a secondary or postsecondary school must be one that the subject of the petition attended in the last six months and must have obtained approval of a school administrator or a school administrative staff member with a supervisory role. (See Pen. Code, §§ 18150, subd. (a)(1)(B)-(D); 18170, subd. (a)(1)(B)-(D); 18190, subd. (a)(1)(B)-(D).) Without

this expansion, concerned classmates could still reach out to law enforcement to petition for a GVRO, or they can use existing laws such as a civil harassment restraining order which would require the subject of the order to stay away from the petitioner and would also prohibit the subject of the order from owning, possessing or purchasing firearms and ammunition while the order is in effect.

Additionally, the bill's expansion to include a dating partner and an individual who has a child in common with the subject raises questions about when a GVRO would be sought by a petitioner versus a domestic violence restraining order. The purpose of a GVRO is to disarm an individual who is poses an imminent threat to themselves or others, whereas the purpose of a domestic violence restraining order is to protect the individual of the order by requiring the subject to stay away from the victim, not contact the victim, and to additionally prohibit the subject of the order from owning, possessing or purchasing firearms and ammunition while the order is in effect. Expanding the category of persons who may petition for these types of GVROs may also cause confusion for law enforcement or other entities serving victims of domestic violence who would be better protected if they requested a domestic violence restraining order.

The changes provided by this bill would also require Judicial Council to update any relevant forms and information about GVROs on court websites and may require law enforcement agencies to update their procedures, policies and training on GVROs.

5. Amendments to be Adopted in Committee

The bill as currently written also expands authority to file a petition for an ex parte GVRO and a GVRO issued after notice and a hearing to a faith leader at a religious institution that the subject of the petition regularly attends and a mandated reporter who has regular interactions with the subject of the petition.

These parts are being removed from the bill.

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