
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 2888 **Hearing Date:** June 19, 2018
Author: Ting
Version: April 18, 2018
Urgency: No **Fiscal:** No
Consultant: SC

Subject: *Gun Violence Restraining Orders*

HISTORY

Source: Author

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

Support: American Academy of Pediatrics California; Bay Area Student Activists;
California Chapters of the Brady Campaign to Prevent Gun Violence; Coalition
Against Gun Violence; Giffords Law Center to Prevent Gun Violence; National
Association of Social Workers – California Chapter; Women Against Gun
Violence; John Hartman, Third District Santa Barbara County Supervisor

Opposition: American Civil Liberties Union of California; Firearms Policy Coalition; National
Rifle Association of America

Assembly Floor Vote: 48 - 25

PURPOSE

The purpose of this bill is to authorize an employer, a coworker, an employee of a secondary school, or postsecondary school the person has attended in the last six months, to file a petition requesting a court to issue a gun violence restraining order (GVRO), as specified.

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 the court to notify the Department of Justice (DOJ) when a GVRO is issued, renewed, dissolved, or terminated. (Pen. 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. (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 officer serving the GVRO shall request the surrender of all firearms or ammunition immediately, or in the alternative, the surrender shall occur within 24 hours of being served with the GVRO 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 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:

- 1) The subject of the petition poses an immediate and present danger of causing injury to himself 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 requires the presiding judge of the superior court of each county to designate at least one judge, commissioner, or referee who shall be reasonably available to issue temporary emergency GVROs when the court is not in session. (Pen. Code, § 18145, subd. (b).)

Existing law requires a law enforcement officer seeking a temporary GVRO to do all of the following:

- 1) Memorialize the order of the court on the form approved by the Judicial Council, if the order is obtained orally;
- 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 DOJ. (Pen. Code, § 18140.)

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. (Pen. Code, § 18150, subd. (a)(1).)

Existing law defines "immediate family member" as specified. (Pen. Code, 18150, subd. (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. (Pen. Code, §§ 18150, subd. (b) & 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. (Pen. 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. (Pen. Code, § 18120, subd. (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. (Pen. 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. (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 authorizes an employer, a coworker, an employee of a secondary school, or postsecondary school the person has attended in the last six months, to file a petition requesting a court to issue an ex parte GVRO, a GVRO issued after notice and a hearing, or a renewal of a GVRO.

This bill clarifies that persons are not required to seek a GVRO.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Gun violence and mass shootings can no longer be tolerated or accepted. We need to provide the people in all our communities with more tools to take firearms out of the hands of individuals that pose deadly threat to themselves and others. Family members, co-workers, employers, and teachers are the most likely to see early warning signs if someone is becoming a danger to them self or others.

In these circumstances, existing law enables family members and law enforcement to prevent gun-related tragedies before they happen by pursuing a gun violence restraining order (GVRO) in court. If granted by a court, a GVRO results in a temporary seizure of firearms possessed by the dangerous individual and a prohibition of their ability to purchase new firearms. This bill logically expands who can petition a court for a GVRO by adding co-workers, employers, and teachers

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. A document prepared by Judicial Council describes the different types of GVRO in further detail:

There are three major differences between the "temporary" and "ex parte" orders. First, the temporary order may only be requested by a law enforcement officer, while the ex parte order may be requested by a law enforcement officer or an immediate family member (as defined). Second, the temporary order expires in 21 days with no procedure for extending it or making it "permanent;" the ex parte order also expires in 21 days, but provides for a hearing to be held within 21 days to issue a GV order with a duration of one year. With the temporary order, before the 21 days are up, the law enforcement officer can petition for an order after hearing. The third difference is in the showing required to get the order. The temporary order requires a showing of immediate and present danger, while the ex parte order requires a showing of a significant danger in the near future. The temporary order may also be obtained by using the procedures to obtain an oral search warrant if time and circumstances do not permit the filing of a petition. Hence, the temporary order is a tool to be used by law enforcement in an emergency situation, when there is a perceived need to remove guns from someone acting erratically and aggressively and to prohibit him or her from possessing a firearm. If the restraining order is issued and the restrained party has not relinquished the firearm, then under the amendments to Penal Code section 1524(a)(14), a search warrant for the firearm can be issued. In summary, law enforcement can seek a temporary order in an emergency or an ex parte order for danger in the near future. A family member can only seek an ex parte order. Either may seek an order after hearing.

(<http://www.courts.ca.gov/documents/SPR15-13.pdf> [as of May 30, 2018], pg. 3.)

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, the restrained person must surrender to a local law enforcement agency all firearms and ammunition in his or her custody or control, or which he or she possesses or owns, or sell or transfer all firearms and ammunition to a licensed gun dealer within 24 hours of the order, and is prohibited from acquiring more guns or ammunition. The order 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, the order can last for up to one year. The restrained person may request another hearing during the period of the prohibition to terminate the order. The duration of the GVRO may be renewed for another year or terminated early as determined by the court.

According to data from DOJ, 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> > [as of Apr. 5, 2018].)

This bill adds to the list of persons who may seek a GVRO, not including a temporary emergency GVRO which may only be requested by law enforcement. The added persons include an employer, a coworker, and an employee of a secondary or postsecondary school that the person has attended in the last six months.

3. Prior Legislation

AB 2607 (Ting), of the 2015-2016 Legislative Session, was substantially similar to this bill, although AB 2607 had included a mental health worker who has seen the person as a patient in the prior six months as a person who may also seek a GVRO, which is not included in this bill.

AB 2607 was vetoed by the Governor. The Governor's veto message stated:

This bill expands the list of individuals who are authorized to petition for a gun violence restraining order.

In 2014, I signed Assembly Bill 1014 which allowed immediate family members and members of law enforcement to petition for a gun violence restraining order. That law took effect on January 1, 2016, so at this point it would be premature to enact a further expansion.

4. Argument in Support

According to the Giffords Law Center to Prevent Gun Violence:

Prior to the June 12, 2016 shooting at a gay night club in Orlando, Florida, the gunman's co-workers had also repeatedly reported that he was "dangerous," "unstable," and "unhinged," and that he had made credible threats of violence and of committing a mass shooting. One former co-worker told reporters, "When news broke of the shooting . . . I absolutely knew he was the shooter." By contrast, the gunman's father said his family was "not aware of any action he [was] taking" and "in shock like the whole country;" though the gunman's wife believed her husband was planning to attack a gay nightclub, she made no attempt to notify law enforcement. (Fn. omitted.)

In cases like this, where family members are unable or unwilling to help disarm a dangerous person, other well-situated individuals should be able to proactively and directly intervene. But existing California law provides no legal standing for co-workers and others with unique personal about a potential gunman's dangerousness to petition a court to hear relevant information and issue a GVRO. AB 2888 would simply empower more community members to "see something and say something" by filing a sworn petition to a judge when they observe serious threats and imminent to public safety.

5. Argument in Opposition

American Civil Liberties Union of California writes in opposes the bill's expansion of persons authorized to seek *ex parte* orders:

The statutory scheme creating the Gun Violence Restraining Order (Penal Code §§ 18100-18205) was established in 2014 (AB 1014, Skinner). 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 is 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 proceedings and therefore has no opportunity 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 do not sacrifice one in an attempt to accomplish the other. We believe 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, many of whom lack the relationship or skills required to make an appropriate assessment, AB 2888 upsets that balance and creates significant potential for civil rights violations.