
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 301 **Hearing Date:** June 27, 2023
Author: Bauer-Kahan
Version: March 2, 2023
Urgency: No **Fiscal:** No
Consultant: SC

Subject: *Gun violence restraining orders: body armor*

HISTORY

Source: Everytown for Gun and Safety

Prior Legislation: AB 2870 (Santiago), Ch. 974, Stats. 2022
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: Los Angeles County District Attorney's Office; March for Our Lives Action Fund

Opposition: None known

Assembly Floor Vote: 54 - 17

PURPOSE

The purpose of this bill is to provide that, in determining whether grounds for issuing a gun violence restraining order (GVRO) exist, the court may consider evidence of the acquisition of body armor.

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;
- a law enforcement officer;
- A roommate of the subject of the petition;
- An individual who has a dating relationship with the subject of the petition; or,
- An individual who has a child in common with the subject of the petition, if they have had substantial and regular interactions with the subject for at least one year. (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 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.” (Pen. Code, § 18150, subd. (a)(3).)

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 in determining whether grounds for a GVRO exist, the court *shall* consider all evidence of the following:

- A recent threat of violence or act of violence by the subject of the petition directed toward another;
- A recent threat of violence or act of violence by the subject of the petition directed toward himself or herself;
- A violation of an emergency protective order issued that is in effect at the time the court is considering the petition;
- A recent violation of an unexpired protective order;
- A conviction for a misdemeanor offense that results in firearm prohibitions; or,
- A pattern of violent acts or violent threats within the past 12 months, including, but not limited to, threats of violence or acts of violence by the subject of the petition directed toward himself, herself, or another. (Pen. Code, § 18155, subd. (b)(1), italics added.)

Existing law states that in determining whether grounds for a GVRO exist, the court *may* consider any other evidence of an increased risk for violence, including, but not limited to, evidence of any of the following:

- The unlawful and reckless use, display, or brandishing of a firearm by the subject of the petition;
- The history of use, attempted use, or threatened use of physical force by the subject of the petition against another person;
- A prior arrest of the subject of the petition for a felony offense;
- A history of a violation by the subject of the petition of an emergency protective order;
- A history of a violation by the subject of the petition of a protective order;
- Documentary evidence, including, but not limited to, police reports and records of convictions, of either recent criminal offenses by the subject of the petition that involve controlled substances or alcohol or ongoing abuse of controlled substances or alcohol by the subject of the petition; or,
- Evidence of recent acquisition of firearms, ammunition, or other deadly weapons. (Pen. Code, § 18155, subd. (b)(2), italics added.)

Existing law defines “body armor” to mean “any bullet-resistant material intended to provide ballistic and trauma protection for the person wearing the body armor.” (Pen. Code, § 16288.)

This bill authorizes a court to consider evidence of acquisition of body armor when determining whether grounds for a GVRO exist.

COMMENTS

1. Need for This Bill

According to the author of this bill:

AB 301 safeguards the security of our communities by allowing judges to consider the acquisition of body armor as an important piece of evidence when deciding whether or not to grant a gun violence restraining order. According to The Violence Project, 21 mass shooters have worn tactical gear during their attacks. Most recent incidents include the Buffalo, New York mass shooting and in 2015 the San Bernardino shooting where both the perpetrators wore body armor to prolong their attacks, making it harder for law enforcement to apprehend them. As such, it is vital for judges to recognize the significance of body armor and its use in violent crimes.

2. California's GVRO Law

California's GVRO law, modeled after domestic violence restraining order laws, was signed into law on September 30, 2014, with a delayed implementation date of January 1, 2016. (AB 1014 (Skinner), Ch. 872, Stats. 2014.) Since the original law went into effect, 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.) The law was again amended last year to expand who can petition the court for an ex parte GVRO and GVRO issued after notice and a hearing to include a person who has a dating relationship with the subject of the petition and a person who has a child in common with the subject of the petition if they have had substantial and regular interactions with the subject for at least one year. (AB 2870 (Santiago), Ch. 974, Stats. 2022.)

Law enforcement agencies are 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.)

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: (1) a temporary emergency GVRO, (2) an ex parte GVRO, and (3) 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 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 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 individual who has a dating relationship with the subject or who has a child in common with the subject; 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. The ex parte order may be 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.*)

The law specifies factors for a court to consider when determining whether grounds exist for issuing a GVRO, including evidence of recent acquisition of firearms, ammunition, or other deadly weapons. (Pen. Code, § 18155.) This bill additionally authorizes a court to consider evidence of acquisition of body armor.

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. In 2021, there were 1384 GVROs issued with an increased amount of petitions coming from family members and co-workers. In 2022, there were 1,909 GVROs issued. The highest number of GVROs were issued in San Diego County and the second highest from Santa Clara County.

4. Argument in Support

According to Everytown for Gun Safety, the sponsor of this bill:

The number of mass shooters wearing body armor has been trending upwards in the past number of years, with at least 21 mass shooters over the last 40 years wearing body armor, according to The Violence Project. The majority of these have been in the past 10 years. This includes the May 2022 mass shooting at the Tops supermarket in Buffalo, NY where an act of white supremacist, hate-motivated violence killed 10 people and left a community forever traumatized. Other high-casualty mass shootings where the perpetrator utilized body armor include the 2015 San Bernardino mass shooting here in California, the 2012 Aurora, CO movie theater mass shooting, and the 2021 Boulder, CO supermarket mass shooting.

Over the past decade, body armor has become an increasingly common accessory worn by extremists and those committing mass terror acts against communities. Body armor leads to greater damage by making it more difficult to disarm an active shooter. In the recent mass shooting at Tops supermarket in Buffalo, NY, an armed security guard on site tried to stop the shooter - at least one of his shots hit the gunman but did not disable him because of his body armor. The shooter had reportedly researched the type of firearm the security guard would be carrying to ensure he had the appropriate body armor to protect him from the gun's bullets. Shortly after the Buffalo shooting, the New York state legislature passed a bill significantly limiting the sale of body armor.

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Courts should be encouraged to consider acquisition of body armor when evaluating the full constellation of risk factors to determine whether to issue a gun violence restraining order.