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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2019 - 2020 Regular

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**Bill No:** AB 339                      **Hearing Date:** June 18, 2019  
**Author:** Irwin  
**Version:** March 6, 2019  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SC

**Subject:** *Gun Violence Restraining Orders: Law Enforcement Procedures*

### HISTORY

**Source:** Ventura County Sheriff's Office  
Ventura County District Attorney's Office

**Prior Legislation:** SB 1200 (Skinner), Ch. 898, Stats. 2018  
AB 2888 (Ting), vetoed, 2018  
AB 2526 (Rubio), Ch. 873, Stats. 2018  
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:** Bay Area Student Activists; California Statewide Law Enforcement Association; California Chapters of the Brady Campaign to Prevent Gun Violence; City of Los Angeles; Giffords Law Center to Prevent Gun Violence; Los Angeles County Board of Supervisors; National Association of Social Workers, California Chapter; Peace Officers' Research Association of California; Santa Cruz County Board of Supervisors; Ventura County Board of Supervisors

**Opposition:** California Sportsman's Lobby, Inc.; National Shooting Sports Foundation, Inc.; Outdoor Sportsmen's Coalition of California; Safari Club International; Safari Club International Foundation

**Assembly Floor Vote:** 68 - 1

### PURPOSE

*The purpose of this bill is to require specified law enforcement agencies to develop and adopt written policies and standards regarding the use of gun violence restraining orders (GVROs).*

*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 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 GVRO shall expire 21 days from the date the order is issued. (Pen. Code, § 18125, subd. (b).)

*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.)

*Existing law* allows an immediate family member, as defined, 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* 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 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* requires each municipal police department and county sheriff's department, the Department of the California Highway Patrol, and the University of California and California State University Police Departments, on or before January 1, 2021, to develop, adopt, and implement written policies and standards relating to GVROs.

*This bill* specifies that the policies and standards:

- a) Shall instruct officers to consider the use of a gun violence restraining order during a domestic disturbance response to any residence which is associated with a firearm registration or record, during a response in which a firearm is present, or during a response in which one of the involved parties owns or possesses a firearm.
- b) Should encourage the use of GVROs in appropriate situations to prevent future violence involving a firearm;
- c) Shall encourage officers encountering situations in which there is reasonable cause to believe that the person poses an immediate and present danger of causing personal injury to themselves or another person by having custody or control of a firearm, to consider obtaining a mental health evaluation of the person by a medically trained professional or to detain the person for mental health evaluation pursuant to agency policy relating to Section 5150 of the Welfare and Institutions Code; and,
- d) Should reflect the policy of the agency to prevent access to firearms by persons who, due to mental health issues, pose a danger to themselves or to others by owning or possessing a firearm.

*This bill* states that the written policies and standards developed pursuant to the provisions of this section shall be consistent with any GVRO training administered by the Commission on Peace Officer Standards and Training, and shall include all of the following:

- a) Standards and procedures for requesting and serving a temporary emergency GVRO;
- b) Standards and procedures for requesting and serving an ex parte GVRO;
- c) Standards and procedures for requesting and serving a GVRO issued after notice and hearing;

- d) Standards and procedures for the seizure of firearms and ammunition at the time of issuance of a temporary emergency GVRO;
- e) Standards and procedures for verifying the removal of firearms and ammunition from the subject of a GVRO;
- f) Standards and procedures for obtaining and serving a search warrant for firearms and ammunition;
- g) Responsibility of officers to attend GVRO hearings;
- h) Standards and procedures for requesting renewals of expiring GVROs; and,
- i) Training of officers on standards and procedures implemented pursuant to this bill.

*This bill* encourages law enforcement agencies to consult with gun violence prevention experts and mental health professionals in developing these policies and standards.

## COMMENTS

### 1. Need for This Bill

According to the author of this bill:

Currently GVROs are relatively unknown to law enforcement and the general public. The efficacy of GVROs depends on people with direct contact with dangerous individuals knowing about the availability of GVROs and being able to successfully request one. While education campaigns for both the public and law enforcement have had some success, and the Legislature has invested in further outreach, current efforts are not comprehensive and will leave many communities in the dark about GVROs.

### 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. According DOJ:

There are two initial types of GVROs that can, if appropriate, be extended for up to one year. 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 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 second type of GVRO is an Ex Parte GVRO, which may be sought by a law enforcement officer or an immediate family member. 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 in his or her custody or control, owning, purchasing, possessing, or receiving a firearm as determined by considering the factors listed in Penal Code section 18155; 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.) Unlike the Temporary Emergency GVRO, this application 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.*)

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Within 21 days, and before the temporary GVRO expires, an immediate family member of a person or a law enforcement officer 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 up to one year.<sup>1</sup> (Pen. Code, § 18170 et seq.) 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 Ex Parte GVRO, as applicable, 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 or ammunition; (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).) 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.*)

(California DOJ Division of Law Enforcement, *Gun Violence Restraining Order Process* (Jan. 2019) <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/infobuls/2019-bof-02.pdf>.)

### **3. Law Enforcement Duties under GVRO Law**

Law enforcement play a critical role under the existing GVRO law. 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:

- 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;
- d) 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 hold a hearing to determine whether a one-year GVRO should be issued. 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.)

Firearms surrendered pursuant to a GVRO may be held by law enforcement, sold by the owner to a federally licensed firearm dealer, or stored by a federally licensed firearm dealer. If at the expiration of the GVRO the subject of the petition is not otherwise prohibited from purchasing a firearm and a new GVRO has not been issued, all firearms may be returned pursuant to the issuance of a law enforcement gun release (LEGR). (Pen. Code, § 18120, subd. (b)(2); Pen. Code, § 33850 et seq, California DOJ Division of Law Enforcement, *Gun Violence Restraining Order Process* (Jan. 2019) <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/infobuls/2019-bof-02.pdf>.)

This bill requires specified law enforcement agencies to develop and adopt written policies and standards regarding the use of GVROs and specifies what shall be included within those policies and standards.

#### 4. Data on Issuance of GVROs

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. (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>news/article206994229.html>.)

Last year, 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. (Koseff, *California gun confiscations increase sharply under restraining-order law*, San Francisco Chronicle (Feb. 10, 2019) < <https://www.sfchronicle.com/politics/article/California-gun-confiscations-increase-sharply-13602566.php>>.)

## 5. Arguments in Support

According to the Ventura County Board of Supervisors:

Ventura County was the site of the November 2018 shooting at the Borderline bar, which tragically resulted in 12 deaths. This mass shooting has left our community shattered and in search of way to prevent similar tragedies. We appreciate the Legislature's mult-pronged effort to advance legislation in 2019 that reduces the likelihood that persons who pose a threat to themselves or others are restricted from possessing firearms. As a general policy, the County of Ventura support legislation that reduces the likelihood of accidental or intentional homicides and, in particular, mass homicides.

AB 339 would direct law enforcement agencies to develop and implement written policies and standards to guide their departmental use of GVROs. It specifies the required elements of such policies that would address such topics as standards for requesting renewals of expiring GVROs, responsibility of officers to attend GVRO hearings, verifying the removal of firearms and ammunition from the subject of the GVRO, and procedures for obtaining a search warrant. The measure encourages agencies to work with gun violence prevention and mental health professions. It would give law enforcement agencies an opportunity to engage with community members to design policies and standards that reflect community priorities and enhance public safety.

## 6. Arguments in Opposition

According to the California Sportsman's Lobby (CSL):

CSL does not oppose a requirement that law enforcement agencies have written policies and standards regarding the use of gun violence restraining orders as they would promote consistency in enforcement.

However, when dealing with firearms, which are often transported across several different jurisdictions while traveling to and from a shooting range or hunting trip, it is extremely important that there be statewide uniformity in any policies and standards.

Allowing differing jurisdiction policies and standards could result in confusion on the part of lawful persons whole traveling through or visiting in a jurisdiction different from the one in which they reside.

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