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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2019 - 2020 Regular

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**Bill No:** AB 61                      **Hearing Date:** June 18, 2019  
**Author:** Ting  
**Version:** April 4, 2019  
**Urgency:** No                              **Fiscal:** No  
**Consultant:** SC

**Subject:** *Gun Violence Restraining Orders*

## HISTORY

**Source:** Author

**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:** American Academy of Pediatrics, California; Bay Area Student Activists; Brady California United Against Gun Violence; California Chapter of the American College of Emergency Physicians; California District Attorneys Association; Giffords Law Center to Prevent Gun Violence; Los Angeles City Attorney's Office; Riverside Sheriffs' Association; Ventura County Board of Supervisors

**Opposition:** American Civil Liberties Union of California; California Civil Liberties Advocacy; California Rifle & Pistol Association; Gun Owners of California; National Rifle Association

**Assembly Floor Vote:** 54 - 17

**This Analysis Reflects the Bill as Proposed to be Amended**

## PURPOSE

*The purpose of this bill is to allow an employer, coworker, an employee or teacher of a secondary school or postsecondary school to file a petition requesting a gun violence restraining order, 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 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* expands the category of persons who may file a petition requesting an ex parte, one-year or renewal GVRO to include:

- 1) An employer;
- 2) A coworker who has had substantial and regular interactions with the subject of the petition for at least one year and has obtained the approval of the employer, and,
- 3) 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 the school administration staff.

*This bill* makes the operative date of its provisions September 1, 2020.

## 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 themself[ves] 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. In the three years that the GVRO program has been implemented 614 GVROs have been issued across California. Although the program has seen success, parties other than law enforcement and immediate family lack access to this new public safety tool. 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. 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.*)

....

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>.)

When AB 1014 (Skinner), Chapter 872, Statutes of 2014, which created the GVRO statutory scheme was considered in this Committee, the bill would have allowed anyone to request a gun violence restraining order. The committee analysis noted that "Only those with a close relationship to the person to be restrained can request a domestic violence protective order." This Committee questioned whether anyone should be allowed to petition for a GVRO. AB 1014 was subsequently amended in the Senate Appropriations Committee to only permit law enforcement and immediate family members to petition for a GVRO.

This bill would expand the category of people who are able to petition for an ex parte, one-year or renewal GVRO to include an employer, a coworker who has had substantial and regular interactions with the subject of the petition for at least one year and has obtained the approval of the employer, and an employee or teacher of a secondary school, or postsecondary school the subject has attended in the last six months and has the approval of the school administration staff.

### 3. 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>>.)

DOJ's data also shows that the vast majority of GVRO petitions are filed by law enforcement officers, rather than family members. Additionally, unlike petitions filed by law enforcement officers which have substantially increased since the early years that the GVRO law went into effect, GVRO petitions filed by family members have remained about the same from 2016 to 2018 (less than 10 issued per year statewide).

#### 4. Governor's Veto of Similar Prior Legislation

AB 2607 (Ting), of the 2015-2016 Legislative Session, was similar to this bill and was vetoed by the Governor on the basis that the GVRO law had not been implemented thus the change in law was viewed as premature.

AB 2888 (Ting), of the 2017-2018 Legislative Session, was also similar to this bill and was also vetoed by the Governor. The Governor's veto message stated:

This bill would authorize an employer, a coworker, an employee of a secondary school or postsecondary school that a person has attended in the last six months, to file a petition for a gun violence restraining order against an individual. All of the persons named in this bill can seek a gun violence restraining order today by simply working through law enforcement or the immediate family of the concerning individual. I think law enforcement professionals and those closest to a family member are best situated to make these especially consequential decisions.

#### 5. Arguments 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.

In such cases, 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 other with unique personal insight about a potential gunman's dangerousness to petition a court to hear relevant information and issue a GVRO. AB 61 would simply empower more community members to "see something and say something" by filing a sworn petition to a judge when they observe serious and imminent threats to public safety.

To be clear, AB 61 would not alter the strict legal standard under which courts must evaluate whether to issue a GVRO; all of the due process protections afforded by existing GVRO statutes would still apply. Ex parte GVROs may only be issued in emergency cases if the judge finds that there is a substantial likelihood that the respondent poses a significant danger to self or others in the near future by having access to a firearm and that a GVRO issued after notice and a hearing have to meet an even higher burden of proof to demonstrate "clear and convincing evidence" of the respondent's dangerousness and the GVRO's necessity. Existing law also guards against potential abuse of the GVRO process by imposing significant criminal penalties on individuals who file a knowingly false or harassing petition, including felony perjury charges. And AB 61 makes clear it would not legally obligate any person to file a petition.

## 6. Argument in Opposition:

According to the American Civil Liberties Union (ACLU) of California:

The ACLU of California does not oppose gun control measures that regulate the acquisition or use of guns – so long as those regulations contribute to public safety and do not raise civil liberties issues. Additionally, we do not oppose laws that authorize protective orders to remove guns from people who pose a risk to themselves or others, provided there are nondiscriminatory criteria for defining people as dangerous, and a fair process for those affected to object and be heard by a court.

AB 61, however, poses a significant threat to civil liberties by expanding the authorization to seek ex parte orders, with all the ensuing consequences, without an opportunity for the person to be heard or contest the matter.

The statutory scheme creating the Gun Violence Restraining Order (Penal Code Sections 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 to one year.

An ex parte order means the person subject to the restraining order is not informed of the court proceeding and therefore has no opportunity to contest the allegations. We support the 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 61 upsets that balance and creates significant potential for civil rights violations.

-- END --