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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** AB 818                      **Hearing Date:** July 11, 2023  
**Author:** Petrie-Norris  
**Version:** March 29, 2023  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** AB

**Subject:** *Protective orders*

## HISTORY

**Source:** Author

**Prior Legislation:** AB 178 (Ting, Ch. 45, Stats. of 2022)  
AB 2791 (Bloom, Ch. 417, Stats. of 2022)  
SB 320 (Eggman, Ch. 685, Stats. of 2021)  
SB 465 (Eggman, Ch. 137, Stats. of 2020)

**Support:** Giffords Law Center to Prevent Gun Violence; Los Angeles County District Attorney's Office; Weave Inc.

**Opposition:** None known

**Assembly Floor Vote:** 80 - 0

## PURPOSE

*The purpose of this bill is to require peace officers to take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a lawful search in specified circumstances, and to clarify that a law enforcement officer must serve a protective order upon request by a petitioner, even if that request is not made at the scene of a domestic violence incident.*

*Existing law* requires the Department of Justice (DOJ) to keep and properly file various records related to firearms. (Pen. Code, §11106.)

*Existing law* requires law enforcement agencies that have been reported stolen, lost, found, recovered, held for safekeeping, relinquished, or surrendered into the DOJ's Automated Firearms System (AFS). (Pen. Code, § 11108.2.)

*Existing law* requires peace officers at the scene of a domestic violence incident, as specified, or is serving a protective order or GVRO, as specified, to take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer. (Pen. Code, § 18250.)

*Existing law* establishes various processes regarding the disposition of weapons seized pursuant to the above provision. (Pen. Code, §§18255 – 18275.)

*Existing law* authorizes courts to issue protective orders in criminal cases, and specifies that when the defendant is charged with a crime involving domestic violence, the court shall consider issuing a protective order requiring the defendant to relinquish ownership or possession of any firearms. (Pen. Code, § 136.2.)

*Existing law* provides that no fee shall be charged for serving an emergency protective order, protective order, or restraining order issued pursuant on a respondent who is in custody in specified domestic violence cases. (Gov. Code, § 26721.)

*Existing law* authorizes a court to issue an emergency protective order in domestic violence cases, requires the law enforcement officer who requested the order to serve the order, and requires law enforcement officers to use every reasonable means to enforce the order. (Fam. Code, §§ 6240-6275.)

*Existing law* provides that when making a protective order, where both parties are in court, the court is required to inform both the petitioner and the respondent of the terms of the order, including that the respondent is prohibited from owning, possessing, purchasing, or receiving or attempting to own, possess, purchase, or receive a firearm or ammunition, and notice of the penalty for violation. Information provided shall include how any firearms or ammunition still in the restrained party's possession are to be relinquished, according to local procedures, and the process for submitting a receipt to the court showing proof of relinquishment. (Fam. Code, § 6304.)

*Existing law* authorizes a court to issue an ex parte temporary restraining order or emergency protective order without a noticed hearing. (Fam. Code, §§ 6320-6327.)

*Existing law* provides that a person subject to a protective order shall not own, possess, purchase, or receive a firearm or ammunition while the protective order is in effect; a violation of this prohibition is a misdemeanor or a wobbler. (Fam. Code, § 6389(a), (g); Pen. Code, § 29825.)

*Existing law* provides that, upon issuance of a protective order, the court shall order the respondent to relinquish any firearms and ammunition, which shall occur by surrendering any firearms or ammunition in a safe manner as specified; if a law enforcement officer is serving a protective order that indicates the respondent possesses weapons or ammunition, the law enforcement officer must request that the firearm or ammunition be immediately surrendered. (Fam. Code, § 6389(c).)

*Existing law* provides that a temporary restraining order or emergency protective order shall, on the request of the petitioner, be served on the respondent, whether or not the respondent has been taken into custody, by a law enforcement officer who is present at the scene of reported domestic violence involving the parties to the proceeding. (Fam. Code, §6383.)

*This bill* provides that a temporary restraining order, emergency protective order, or an order issued after a domestic violence hearing shall be served on the respondent by a law enforcement officer who receives a request from the petitioner to serve the order, regardless of whether the request is made at the scene of a reported domestic violence incident.

*This bill* provides that, when service of a protective order is made pursuant to the above, the law enforcement officer must make service pursuant to Family Code §6389's requirement that the officer request that respondent surrender any firearms or ammunition.

*This bill* prohibits a fee from being charged for service of a protective order pursuant to the above.

*This bill* provides that if a firearm is obtained at the scene of a domestic violence incident or during service, law enforcement shall enter the firearm into the DOJ's AFS pursuant to existing law.

*This bill* requires a peace officer to take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or otherwise lawful search as necessary for the protection of the peace officer or other persons present in any of the following circumstances:

- The peace officer is at the scene of a domestic violence incident involving a threat to human life or a physical assault;
- The peace officer is serving a protective order; or,
- The peace officer is serving a gun violence restraining order (GVRO).

## COMMENTS

### 1. Need for This Bill

According to the Author:

Current law requires that someone subject to a domestic violence or gun violence restraining order be prohibited from having firearms. When the person becomes prohibited, that information is entered into the statewide database (CLETS); if they currently own a registered firearm, they will show up in the state's Armed Prohibited Persons System (APPS). When serving the order, an officer is required to remove firearms from the prohibited person.

However, advocates for victims of domestic violence often report that when a protected party (victim) requests that law enforcement serve the order, some agencies refer victims to another law enforcement agency elsewhere. Victims are then forced to locate and drive to a subsequent local law enforcement agency and attempt to get them to serve the protective order and remove the firearms from the perpetrator.

This is concerning because many victims are already living in fear for their lives. In addition, this undermines the goal of the firearms prohibitions: to rapidly get guns out of the hands of those who courts have determined should not have them. AB 818 strengthens the goal of these policies by requiring law enforcement agencies remove firearms from a prohibited person when requested by a victim. This bill will help protect victims of domestic violence – and make our communities safer.

## 2. Domestic Violence Restraining Orders (DVROs)

California's Domestic Violence Protection Act (DVPA) seeks to prevent acts of domestic violence, abuse, and sexual abuse, and to provide for a separation of persons involved in domestic violence for a period sufficient to enable them to seek a resolution. The DVPA's "protective purpose is broad both in its stated intent and its breadth of persons protected" and courts are required to construe it broadly in order to accomplish the statute's purpose.<sup>1</sup> The act enables a party to seek a "protective order," also known as a restraining order, which may be issued to protect a petitioner who presents "reasonable proof of a past act or acts of abuse."<sup>2</sup>

Victims of domestic violence who need immediate protection may seek a temporary restraining order, which may be decided *ex parte* (without notice to the respondent) and generally must be issued or denied the same court day the petition is filed.<sup>3</sup> Because the restrained party would not have had the opportunity to defend their interests, *ex parte* orders are short in duration. If a noticed hearing is not held within 21 days (or 25 if the court finds good cause), a temporary restraining order is no longer enforceable, unless a court grants a continuance. The respondent must be personally served with a copy of the petition, the temporary restraining order, if any, and the notice of the hearing on the petition, at least five days before the hearing.<sup>4</sup> After a duly noticed hearing, the court is authorized to extend the original temporary restraining order for up to five years, which may then be renewed.<sup>5</sup>

A person who is the subject of a domestic violence restraining order under the DVPA is prohibited from owning, possessing, purchasing, or receiving a firearm or ammunition while that protective order is in effect. A person who owns or possesses a firearm while a domestic violence restraining order is in effect may be punished by a misdemeanor with up to one year in county jail. A person who purchases or receives, or attempts to purchase or receive a firearm or ammunition while the protective order is in effect is punishable as either a misdemeanor or state-prison felony.<sup>6</sup>

## 3. Effect of This Bill

Under the DVPA, law enforcement is required to serve DVROs on a respondent via the specific law enforcement officer who is present at the scene of the domestic violence incident. According to the Author, in some instances when a protected party requests that law enforcement serve a protective order on a respondent, the agency will refer the victim to a different agency, which results in dangerous delays and significant inconvenience to the victim. This bill requires a protective order to be served on a respondent not only by a law enforcement officer present at the scene of a reported domestic violence incident, but, at the request of the petitioner, by any law enforcement officer who receives such a request. Related provisions of the bill preclude the charging of a fee for service of the order and require service of the order to be completed in accordance with existing firearm relinquishment provisions (see Family Code §6389.) The fee

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<sup>1</sup> *Caldwell v. Coppola* (1990) 219 Cal.App.3d 859, 863; *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1498

<sup>2</sup> Fam. Code, §§ 6218, 6300.

<sup>3</sup> Fam. Code, §§ 241, 6320 et seq.

<sup>4</sup> Fam. Code, §§ 242, 243 & 245.

<sup>5</sup> Fam. Code, §§ 6302, 6340, 6345.

<sup>6</sup> Pen. Code, § 29825.

restriction is consistent with existing law (Gov. Code § 26721), which waives fees for service of domestic violence orders when a respondent is in custody. Accordingly, this bill would extend that fee waiver to all DVROs, whether or not the respondent is in custody.

This bill also specifies that law enforcement must enter a firearm obtained during service of the order or obtained at the scene of a domestic violence incident into the Automated Firearms System, or AFS. The AFS is a repository of firearm records maintained by the DOJ, in order to assist in the investigation of crime, the prosecution of civil actions by city attorneys, the arrest and prosecution of criminals, and the recovery of lost, stolen, or found firearms.<sup>7</sup> Under existing law, law enforcement agencies are required to enter firearms that have been reported stolen, lost, found, recovered, held for safekeeping, relinquished, or surrendered into the AFS.

Finally, this bill enacts language in the DVPA that is identical to related language in the Penal Code which sets forth the procedure peace officers must follow in domestic violence incidents involving firearms. Specifically, Penal Code Section 18250 requires a peace officer at the scene of a domestic violence incident to take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or otherwise lawful search as necessary for the protection of the peace officer or other persons present. This bill also imposes this requirement in the following specified circumstances: where the peace officer is at the scene of a domestic violence incident involving a threat to human life or a physical assault; the peace officer is serving a protective order related to domestic violence under the DVPA; or where the peace officer is serving a gun violence restraining order.

#### 4. Argument in Support

According to the Giffords Law Center to Prevent Gun Violence:

As you know, gun violence is a public health crisis in this country, and in particular, the nexus of guns and domestic violence puts victims at tremendous risk. Women in the United States are 21 times more likely to be killed with a gun than women in other high-income countries and the risk of homicide increases by at least 500% when a firearm is present in domestic violence situations.

California currently prohibits a person who is subject to a domestic violence, civil harassment, workplace violence prevention or gun violence restraining order from having firearms and ammunition. When the person becomes prohibited, that information is entered into the statewide database (CLETS); if they currently own a registered firearm, the person who is now prohibited and known to have a firearm or firearms will show up in the state's Armed Prohibited Persons System (APPS). [...] Currently, there are over 24,000 people in APPS – people who are known to have registered firearms but are prohibited. We can and must do better.

Unfortunately, advocates for victims of domestic violence often report that when a victim of domestic violence requests that law enforcement serve the firearm prohibiting order, some agencies refer victims to another law enforcement agency elsewhere or refuse to serve the order. Victims are then forced to locate and drive to a subsequent local law enforcement agency and attempt to get them to serve the

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<sup>7</sup> For more information, see DOJ, *Regulations: Automated Firearms System (AFS) Information Updates* <https://www.oag.ca.gov/firearms/regs/afs>

protective order and remove the firearms from the prohibited party. Alternatively, they must rely on non-law enforcement process servers or lay people who cannot remove those firearms from the prohibited person. Without service, the order is not enforceable and the person who the court sought to prohibit is not in fact prohibited from having firearms. [...]

Giffords is dedicated to reducing gun violence and increasing safety for individuals and the broader community. We know that when good policies are in place, we can save lives. Research shows that having these types of policies in place reduces domestic violence-related homicides by 16 percent; we appreciate this bill's focus on these lifesaving remedies. AB 818 strengthens the goal of these policies and APPS by requiring that law enforcement agencies serve court-mandated restraining orders upon request. This bill will help protect victims of domestic violence and help make our communities safer.

**-- END --**