
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: SB 320 **Hearing Date:** March 9, 2021
Author: Eggman
Version: February 4, 2021
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Domestic violence protective orders: possession of a firearm*

HISTORY

Source: Giffords Law Center to Prevent Gun Violence
Prior Legislation: AB 465 (Eggman), 2019, held on Senate Floor then subsequently amended
Support: California Partnership to End Domestic Violence; Prosecutors Alliance of California
Opposition: None known

PURPOSE

The purpose of this bill is to codify existing Rules of Court related to the relinquishment of a firearm by a person subject to a civil domestic violence restraining order and to require the courts to notify law enforcement and the county prosecutor's office when there has been a violation of a firearm relinquishment order.

Existing law authorizes protective orders to be issued by the civil court in domestic violence cases. (Fam. Code, § 6380 et seq.)

Existing law provides that when making a protective order where both parties are present in court, the court shall inform both the petitioner and the respondent of the terms of the order, including notice that the respondent is prohibited from owning, possessing, purchasing or receiving or attempting to own, possess, purchase or receive a firearm or ammunition, and including notice of the penalty of the violation. (Fam. Code, § 6304.)

This bill requires the court to additionally provide information about how any firearms 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.

Existing law states that a person who is the subject of a protective order issued by the court shall not own, possess, purchase, or receive a firearm or ammunition while the protective order is in effect. A violation of this prohibition is punishable as either a misdemeanor (owning or possessing a firearm when prohibited from doing so by a restraining order) or a wobbler (purchasing or receiving or attempting to purchase or receive a firearm when prohibited from doing so by a restraining order). (Fam. Code, § 6389; Pen. Code, § 29825.)

Existing law states that upon issuance of a restraining order, the court shall order the respondent to relinquish any firearm in the respondent's immediate possession or control or subject to the respondent's immediate possession or control. (Fam. Code, § 6389, subd. (c)(1).)

Existing law states that a law enforcement officer serving a protective order that indicates that the respondent is in possession of firearms shall request that the firearm be immediately surrendered. Alternatively, if a request is not made by a law enforcement officer, the relinquishment shall occur within 24 hours of being served with the order, by either surrendering the firearm in a safe manner to the control of local law enforcement officials, or by selling the firearm to a licensed gun dealer, as specified. A receipt shall be issued to the person relinquishing the firearm at the time of relinquishment and the person shall do both of the following within 48 hours of being served with the order:

- File, with the court that issued the protective order, the receipt showing the firearm was surrendered as required. Failure to timely file a receipt shall constitute a violation of the protective order; and,
- File a copy of the receipt with the law enforcement agency that served the protective order. Failure to timely file a copy of the receipt shall constitute a violation of the protective order.

(Fam. Code, § 6389, subd. (c)(2).)

This bill provides that a court holding a hearing on the matter of whether the respondent has relinquished any firearms shall review the file to determine whether the receipt has been filed and inquire of the respondent whether they have complied with the requirement.

This bill states that violations of the firearms prohibition of any civil domestic violence restraining order shall be reported to the prosecuting attorney in the jurisdiction where the order has been issued within two business days of the court hearing unless the respondent provides a receipt showing compliance at a subsequent hearing or by direct filing with the clerk of the court

Existing law punishes a willful and knowing violation of a civil domestic violence restraining order issued as contempt of court punishable by imprisonment in county jail for not more than one year, a fine of not more than \$1,000, or by both imprisonment and a fine. (Pen. Code, § 166, subd. (c)(3).)

Existing law authorizes the issuance of a search warrant when the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody of or controlled by, a person who is prohibited by a civil domestic violence restraining order that has been lawfully served, and the restrained person has failed to relinquish the firearm as required. (Pen. Code, § 1524, subd. (a)(11).)

Existing law requires, prior to a hearing on the issuance of a civil domestic violence restraining order, the court to ensure that a search has been conducted to determine if the subject of the proposed order has a prior criminal conviction for a violent felony or a serious felony, has a misdemeanor conviction involving domestic violence, weapons, or other violence, has an outstanding warrant, is currently on parole or probation; has a registered firearm; or has a prior restraining order or a violation of a prior restraining order. The search shall be conducted of all

records and databases readily available and reasonably accessible to the court, as provided. (Fam. Code, § 6306, subd. (a).)

Existing law provides that if the results of the court's search of records and databases indicate that an outstanding warrant exists against the subject of the order, the court shall order the clerk of the court to immediately notify appropriate law enforcement officials and law enforcement officials shall take all actions necessary to execute any outstanding warrants or any other actions as appropriate and as soon as practicable. (Fam. Code, § 6306, subd. (e).)

This bill states that if the results of the court's search of records and databases indicate that the subject of the order owns a registered firearm or if the court receives evidence of the subject's possession of a firearm, the court shall make a written record as to whether the subject has relinquished the firearm and provided proof of the required storage, sale, or relinquishment of the firearm. If evidence of compliance is not provided, the court shall order the court of the court to immediately notify law enforcement officials and law enforcement officials shall take all actions necessary to obtain those and any other firearms owned, possessed, or controlled by the restrained person and to address the violation of the order as appropriate and as soon as practicable.

Existing law requires when relevant information is presented to the court at any noticed hearing that a restrained person has a firearm, the court must consider that information to determine, by a preponderance of the evidence, whether the person subject to a protective order has a firearm in his or her immediate possession or control. (Cal. Rules of Court, rule 5.495.)

Existing law provides that in making a determination under this rule, the court may consider whether the restrained person filed a firearm relinquishment, storage, or sales receipt or if an exemption from the firearm prohibition was granted. This determination may be made at any noticed hearing when a domestic violence protective order is issued, at a subsequent review hearing or any subsequent hearing while the order remains in effect. (*Id.*)

Existing law states that if the court makes a determination that the restrained person has a firearm in violation the protective order, the court must make a written record of the determination and provide a copy to any party who is present at the hearing and, upon request, to any party not present at the hearing. (*Id.*)

Existing law states that when the court is provided with information relevant to whether the person subject to a protective order has a firearm in his or her immediate possession or control, the court may set a review hearing to be held within 10 court days after the noticed hearing at which the information was presented. (*Id.*)

Existing law provides that if the restrained person is not present when the court sets the review hearing, the protected person must provide notice of the review hearing to the restrained person at least two court days before the review hearing, by personal service or by mail to the restrained person's last known address. (*Id.*)

Existing law authorizes the court to extend the date of the review hearing for a reasonable period of remove it from the calendar. (*Id.*)

Existing law requires the court to order the restrained person to appear at the review hearing; the court may conduct the hearing in the absence of the protected person. (*Id.*)

Existing law states that the court may permit a party to appear at the review hearing by telephone. (*Id.*)

Existing law states that if the court determines that the restrained person has a firearm in violation of the protective order, the court must consider that determination when deciding the issue of child custody. (*Id.*)

This bill codifies California Rule of Court 5.495.

Existing law requires the court, in making the determination of the best interest of the child for purposes of deciding child custody, to consider specified factors, including whether the perpetrator of domestic violence is restrained by a protective order or restraining order and has complied with that order. (Fam. Code, § 3044.)

This bill additionally requires that the court consider whether a party is a restrained person in possession or control of a firearm when making specified determinations related to child custody and visitation matters.

Existing law authorizes a juvenile court to issue a domestic violence restraining order, as specified. (Welf. & Inst. Code, § 213.5.)

This bill additionally requires the juvenile court to make a determination as to whether the restrained person is in possession or control of a firearm.

COMMENTS

1. Need for This Bill

According to the author of this bill:

In California, 33% of women and 27% of men experience some form of domestic violence during their lifetimes. We know that the presence of a firearm in the home during an incident of domestic violence increases the risk of homicide by at least 500%. Although California has led the charge when it comes to comprehensive firearm legislation, recovering firearms from those who are mandated to relinquish them has proven to be more difficult.

The Armed Prohibited Persons System (APPS) data show consistently that over 20,000 people in California are armed and prohibited – and that’s only identifying those with firearms known to the state of California. California DOJ has consistently recommended that steps be taken at the local level to ensure relinquishment as close to the time of prohibition as possible.

Under existing law, when a person is the subject of a domestic violence restraining order they automatically become a prohibited person. In 2014, the Judicial Council adopted Rule 5.495 laying out the procedures courts could take

to ensure relinquishment and to coordinate with law enforcement where necessary. Because the rule is optional, it has been implemented inconsistently throughout California. Codifying Rule of Court 5.495, and strengthening requirements for courts to communicate with law enforcement when an order has been violated, demonstrates California's commitment to removing firearms from prohibited persons at the earliest point in time while also ensuring consistent and robust implementation of the policy across all 58 counties of our state.

The inconsistency in implementation is especially concerning in the civil context because the only person with the ability to address the firearm prohibition as close to the time of prohibition as possible is the judge hearing the case. Unlike in the criminal context, there is no outside law enforcement, probation officer, or prosecutor present in the courtroom to address compliance or violations with the firearms relinquishment process.

In civil domestic violence restraining order cases the burden is too often on the victim to know about the rule of court process and to request that the court conduct a hearing to ensure the restrained person is no longer armed. Making sure courts, litigants, and attorneys know how important it is to address the firearms prohibition at the earliest point possible will protect victims of domestic violence, their families and communities, and law enforcement.

2. Codifies Existing Rules of Court

In 2014, the Judicial Council adopted Rule of Court 5.495 related to firearm relinquishment procedures when a civil domestic violence restraining order has been issued. These rules of court were created in order to address a procedural gap in existing statutes that prohibit a restrained person from owning, possessing, or controlling a firearm for the duration of the restraining order but do not provide for a procedure for the court to determine whether its order to relinquish firearms has been complied with. Specifically, the rules:

- Require the court to consider relevant information, when presented at a noticed hearing, to determine whether the person subject to a civil domestic violence order has a prohibited firearm;
- Provide procedures regarding the court's determination of whether the firearm has been relinquished;
- Provide that the court may make its determination at the time the domestic violence restraining order is issued or at a subsequent noticed hearing while the order remains in effect;
- Specify that documentation of the court's determination be provided to the parties;
- Specify remedies to be applied if the court determines that a restrained person has failed to relinquish a prohibited firearm; and,
- For cases in which the court defers consideration of the matter to a review hearing, specifies the timing of the hearing, specified notice requirements if the restrained person was not

present when the court set the review hearing, specifies who must be present at the hearing and provides that a party may appear by telephone.

According to the author and sponsor of this bill, these rules of court are not mandatory and thus implementation of these procedures has been inconsistent throughout different counties. This bill codifies Rule of Court 5.495 in the Family Code so that the standards and procedures for ensuring the relinquishment of a firearm following the issuance of a civil restraining order would consistently apply throughout the state.

3. Judicial Council Report

In 2008, Judicial Council issued a report recommending guidelines for improving the administration of justice in domestic violence cases. On the issue of firearms relinquishment, the report stated that while California and federal law bars persons subject to restraining orders from possessing or purchasing firearms or ammunition, a court's order to relinquish firearms are not self-implementing. The restrained party is responsible for surrendering any firearms to law enforcement or selling them to a licensed gun dealer but some gun owners are extremely reluctant to comply. (*Recommended Guidelines and Practices for Improving the Administration of Justice in Domestic Violence Cases: Final Report of the Domestic Violence Practice and Procedure Task Force* (Jan. 2008) Administrative Office of the Courts, p. 21.)

The report states:

Ultimately, public safety is best served when law enforcement and the entire justice system take immediate action to remove firearms, whether registered or not, from the hands of a person who is statutorily barred from possessing them. The courts have a necessary and important role in achieving this goal, but because they are not investigative or enforcement agencies, the courts must rely on justice system entities to provide necessary information and to enforce compliance with firearm relinquishment orders.

(*Ibid.*) This bill requires the court to notify law enforcement officials and the county prosecutor's office when there has been a violation of a firearm relinquishment order related to a civil domestic violence restraining order.

4. Argument in Support

According to Giffords Law Center to Prevent Gun Violence, the sponsor of this bill:

Senate Bill 320 would strengthen and clarify court processes for ensuring firearm relinquishment by people who, under current law, should not have guns because they have a domestic violence restraining order against them. When a protected party has provided information to the court about a restrained party having firearms, that case must be recognized as involving even greater risk. To address this risk, the bill would build on existing law that currently directs courts to review relevant records, as specified, prior to a hearing on issuance of a protective order, to determine whether the respondent failed to relinquish firearms. It provides for notification to law enforcement so that appropriate steps can be taken to reduce risk to that protected person and the public generally.

Additionally, this bill would codify an existing rule of court adopted by the Judicial Council that has been unevenly implemented across the state, requiring courts to consider information about unlawful firearm access and failure to comply with relinquishment requirements, including the significance of a violation, when ruling on child custody and visitation. In codifying the rule of court, the bill would also permit courts to hold compliance review hearings to verify that people subject to domestic violence-related protective orders have relinquished their firearms. As a result, this bill supports court processes and procedures by providing for clarity and consistency statewide. By ensuring that restrained parties receive necessary information about their relinquishment obligations, it also will increase the likelihood that those required to relinquish firearms as a result of a domestic violence restraining order will be able to do so effectively and safely.

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