
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: SB 538 **Hearing Date:** April 27, 2021
Author: Rubio
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Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Domestic violence and gun violence restraining orders*

HISTORY

Source: City of San Diego

Prior Legislation: AB 1796 (Levine), held in Senate Appropriations in 2020
SB 1200 (Skinner), Ch. 898., Stats. 2018
AB 1014 (Skinner), Ch. 872, Stats. 2014

Support: California Partnership to End Domestic Violence; Change for Justice; Los Angeles County District Attorney's Office; San Diegans for Gun Violence Prevention; San Diego City Attorney's Office; The People Concern

Opposition: None known

PURPOSE

This purpose of this bill is to provide for electronic filing and remote appearances in the context of domestic violence restraining orders and gun violence restraining orders.

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 (DOJ). (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; or a law enforcement officer. (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 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 if a GVRO is issued, the order has a duration of one to five years, subject to termination by further order of the court at a hearing and renewal by further order of the court. (Pen. Code, § 18175, subd. (e).)

Existing law allows a restrained person to file one written request per year during the effective period of the order for a hearing to terminate the order. (Pen. Code, § 18185.)

Existing law allows a request for renewal of a GVRO. Provides the renewal of a GVRO has a duration of between one to five years. (Pen. Code, § 18190.)

Existing law provides 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 provides that every person who violates a temporary emergency GVRO, an ex parte GVRO, a GVRO issued after notice and a hearing, or by a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a GVRO described under California law, 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 GVRO. (Pen. Code, § 18205.)

This bill requires that a court or court facility that receives petitions for any restraining order permit those petitions to be submitted electronically during and after normal business hours. Requires that the deadlines applicable to any action taken by the court with respect to a petition filed directly with the court apply to any action taken with respect to a petition submitted electronically.

This bill requires the superior court of each county to develop local rules and instructions for electronic filing permitted and requires they be posted on its internet website.

This bill requires that the superior court of each county provide, and post on its internet website, a phone number for the public to call to obtain information about electronic filing. Requires the phone number be staffed during regular business hours, and requires court staff to respond to all telephonic inquiries within one business day.

This bill provides that a party or witness may appear remotely at the hearing on a petition for a GVRO. Requires the superior court of each county to develop local rules and instructions for remote appearances and requires they be posted on its internet website.

This bill requires that the superior court of each county provide, and post on its internet website, a phone number for the public to call to obtain assistance regarding remote appearances. Requires the phone number be staffed 30 minutes before the start of the court session at which the hearing will take place, and during the court session.

This bill provides that there is no fee for any filings related to a petition filed to obtain a GVRO.

This bill contains similar provisions with respect to domestic violence restraining orders (DVROs).

COMMENTS

1. Need for This Bill

According to the author:

California continues to face systemic barriers preventing survivors of abuse from seeking DVROs and GVROs. Transportation, dependent care, poverty, and paid jobs all present hurdles for individuals seeking restraining orders. Furthermore, in the case of domestic violence victims many have voiced the courthouse is the most anxiety-inducing place they must go while pursuing safety for themselves, their children, and their family members. Petitioners can become confused or frustrated by the unfamiliar process; they see their perpetrator at the courthouse, or they are harassed or intimidated or by the abuser. These issues deprive domestic violence victims and families in crisis of access to justice, and of the safety, they seek and deserve.

Electronic filing will allow restraining orders to be automatically and electronically integrated into a court's electronic case management system. This would allow judges and court staff to share and view filings simultaneously and from multiple locations, providing court efficiencies and cost savings.

SB 538 would allow petitions for domestic violence restraining orders and gun violence restraining orders to be filed electronically. The bill would also permit parties and witnesses to appear remotely at a hearing on a petition for these specific types of restraining orders. Additionally, SB 538 will require each county Superior Court to place on their website the following:

- Instructions for parties seeking to file electronically.
- A telephone number for obtaining information about the electronic filing process.
- Instructions regarding virtual log-in and appearance information for remote hearings; and
- A telephone number for obtaining information about the remote hearing process. This telephone number shall be staffed beginning 30 minutes prior to the court session.

2. Gun Violence Restraining Orders

California's GVRO laws, modeled after domestic violence restraining order laws, went into effect on January 1, 2016. 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: a temporary emergency GVRO, an ex parte GVRO, and 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 (1) 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 (2) 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 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. 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 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.*)

3. Emergency Rules Related to COVID-19

The COVID-19 pandemic led to the temporary closure of courts throughout the state. In recognition of the public's need for continued access to the courts, the Judicial Council adopted emergency rules in the early days of the pandemic to provide access to the courts in a manner that was consistent with the Governor's stay-at-home order and public health guidelines.

Of relevance to this bill is the emergency rule pertaining to emergency protective orders, temporary restraining orders, and criminal protective orders that were requested, issued, or set to expire during the state of emergency related to the pandemic. (<https://www.courts.ca.gov/documents/appendix-i.pdf>) The rule applies to DVROs as well as GVROs. The rule provides: "Any temporary restraining order or gun violence emergency protective order issued or set to expire during the state of emergency related to the COVID-19 pandemic must remain in effect for a period of time that the court determines is sufficient to allow for a hearing on the long-term order to occur, for up to 90 days." (*Id.*) The rule further provides: "Upon the filing of a request to renew a restraining order after hearing that is set to expire during the state of emergency related to the COVID-19 pandemic, the current restraining order after hearing must remain in effect until a hearing on the renewal can occur, for up to 90 days from the date of expiration." (*Id.*) The rule additionally requires that courts provide a means of filing ex parte requests for temporary restraining orders and requests to renew restraining orders, and specifies that this may be done by providing a physical location, drop box, or through electronic means, if feasible. (*Id.*)

Another emergency rule adopted by the Judicial Council authorized courts to require that judicial proceedings and court operations be conducted remotely, including by video, audio, and telephonic means; the electronic exchange and authentication of documentary evidence; e-filing and e-service; the use of remote interpreting; and the use of remote reporting and electronic recording to make the official record of an action or proceeding. (*Id.*) These rules will sunset 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until amended or repealed by the Judicial Council.

4. Effect of This Bill

This bill seeks to make electronic filing and remote appearances in the context of DVROs and GVROs permanent. As stated above, the current rules permitting e-filing and remote appearances are temporary in nature and stem from the state of emergency due to the pandemic. Specifically, this bill requires that a court or court facility that receives petitions for any restraining order permit those petitions to be submitted electronically during and after normal business hours, and requires that the deadlines applicable to any action taken by the court with respect to a petition

filed directly with the court apply to any action taken with respect to a petition submitted electronically. This bill allows a party or witness to appear remotely at the hearing on a petition for a GVRO. This bill also requires each county superior court to develop local rules and instructions for electronic filing and remote appearances and to post those rules and instructions on the court's website. This bill additionally requires that each county superior court provide a staffed phone number for the public to call to obtain information about electronic filing and assistance regarding remote appearances.

For a more detailed analysis of the provisions of this bill pertaining to DVROs, please see the Senate Judiciary Committee analysis dated April 6, 2021.

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