
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: SB 899 **Hearing Date:** March 12, 2024
Author: Skinner
Version: February 27, 2024
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Protective orders: firearms*

HISTORY

Source: GIFFORDS

Prior Legislation: SB 320 (Eggman), Ch. 685, Stats. 2021

Support: California Partnership to End Domestic Violence; Everytown for Gun Safety Action Fund; Family Violence Appellate Project; NeverAgainCA; San Diegans for Gun Violence Prevention; San Diego City Attorney; Women Against Gun Violence

Opposition: None known

PURPOSE

The purpose of this bill is to extend firearm and ammunition relinquishment procedures that exist for purposes of domestic violence restraining orders to other specified protective orders.

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

Existing law states that a person who is the subject of a domestic violence 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 domestic violence 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 requires the relinquishment to occur by immediately surrendering the firearm or ammunition in a safe manner, upon request of a law enforcement officer, to the control of the officer, after being served with the protective order. Alternatively, if the request is not made by a

law enforcement officer, the relinquishment shall occur within 24 hours of being served, by either surrendering the firearms or ammunition in a safe manner to the control of local law enforcement, or by selling, transferring, or relinquishing for storage to a licensed gun dealer. (Fam. Code § 6389, subd. (c)(2).)

Existing law requires a receipt to be issued to the person relinquishing the firearm or ammunition at the time of relinquishment and requires, within 48 hours after being served the order, the person to file the receipt with the court that issued the protective order and file a copy of the receipt with the law enforcement agency that served the protective order. (Fam. Code § 6389, subd. (c)(2)(A) and (B).)

Existing law provides that a court holding a hearing on the matter of relinquishment shall review the file to determine whether the receipt has been filed and inquire of the respondent whether they have complied with the requirement. (Fam. Code § 6389, subd. (c)(4).)

Existing law requires a violation of the firearms prohibition of a domestic violence restraining order to 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 restrained party provides a receipt showing compliance at a subsequent hearing or by direct filing with the clerk of the court. (Fam. Code, § 6389, subd. (c)(4).)

Existing law requires a person who is the subject of a civil harassment, workplace violence or postsecondary violence temporary restraining order or injunction, elder abuse restraining order, or a restraining order issued during the pendency of criminal proceedings or following specified criminal convictions, to relinquish any firearm in that person's immediate possession or control, or subject to that person's immediate possession or control, within 24 hours of being served with the order, either by surrendering the firearm to the control of local law enforcement officials, or by selling the firearm to a licensed gun dealer, as specified. (Code Civ. Proc., § 527.9, subd. (a)-(b).)

Existing law requires a person ordered to relinquish any firearm pursuant to the above provision to file with the court a receipt showing the firearm was surrendered to the local law enforcement agency or sold to a licensed gun dealer within 48 hours after receiving the order. (*Ibid.*)

Existing law states that where both parties are present in court for a domestic violence restraining order, 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 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 provides that if the results of a search of all records and databases readily available and reasonably accessible by the court 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 or ammunition, the court shall make a written record as to whether the subject has relinquished the firearm or ammunition and provided proof of the required storage, sale, or relinquishment of the firearm or ammunition. (Fam. Code, § 6306, subd. (f).)

Existing law states that if evidence of compliance is not provided as required, 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 or ammunition owned, possessed, or controlled by the restrained person and to address the violation of the order as appropriate and as soon as practicable. (*Ibid.*)

Existing law states that if evidence of compliance with firearms prohibitions is not provided as required, the court shall order the clerk of the court to immediately notify, by the most effective means available, appropriate law enforcement officials of the issuance and contents of a protective order, information about the firearm or ammunition, and of any other information obtained through the search that the court determines is appropriate. The law enforcement officials so notified shall take all actions necessary to obtain those and any other firearms or ammunition owned, possessed, or controlled by the restrained person and to address any violation of the order with respect to firearms or ammunition as appropriate and as soon as practicable. (*Ibid.*)

Existing law states that when relevant information is presented to the court at a noticed hearing that a restrained person has a firearm or ammunition, the court shall consider that information and determine, by a preponderance of the evidence, whether the person subject to a protective order has a firearm or ammunition in, or subject to, their immediate possession or control in violation of the firearm and ammunition prohibition. (Fam. Code, § 6322.5, subd. (a).)

Existing law defines a gun violence restraining order (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 establishes a civil restraining order process to prohibit and enjoin the subject of a GVRO from having in his or her custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition. (*Id.*)

This bill extends the firearm and ammunition relinquishment procedures that currently apply to domestic violence restraining orders to GVROs, civil harassment, workplace violence or postsecondary violence temporary restraining orders and injunctions, elder abuse restraining orders, and protective orders issued during the pendency of criminal proceedings and following specified criminal convictions. Specifically:

- Requires the court to provide information about 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.
- Requires the court to provide the person with information on 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.
- States that a court holding a hearing on this matter shall review the file to determine whether the receipt has been filed and inquire of the respondent whether they have complied with the requirement.

- States that violations of the firearms prohibition of any restraining order under this section 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 restrained party provides a receipt showing compliance at a subsequent hearing or by direct filing with the clerk of the court.
- Provides that if the person does not file a receipt with the court within 48 hours after receiving the order for a registered firearm in their possession, the court shall order the clerk of the court to immediately notify, by the most effective means available, appropriate law enforcement officials of the issuance and contents of a protective order, information about the firearm or ammunition, and of any other information the court deems appropriate.
- States that if the respondent declines to relinquish possession of a firearm or ammunition based on the assertion of the right against self-incrimination, as provided by the Fifth Amendment to the United States Constitution and the California Constitution, the court may grant use immunity for the act of relinquishing the firearm or ammunition.
- States that when relevant information is presented to the court at a noticed hearing that a restrained person has a firearm or ammunition, the court shall consider that information and determine, by a preponderance of the evidence, whether the person subject to a protective order has a firearm or ammunition in, or subject to, their immediate possession or control in violation of the firearm and ammunition prohibition, and requires the court to follow specified procedures around making a written record of the determination, setting a review hearing, and extending the date of the hearing for good cause.

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 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).)

This bill adds “ammunition” to the above warrant provision.

This bill additionally allows a search warrant to be issued for ammunition that a person is prohibited from owning due to a civil harassment, workplace violence or postsecondary education violence temporary restraining order, elder abuse restraining orders, or a protective order issued during the pendency of a criminal case and following specified criminal convictions, and the person has failed to relinquish the firearm or ammunition as required.

Existing law requires a law enforcement agency to enter or cause to be entered into the Department of Justice (DOJ) Automated Firearms System each firearm that has been reported stolen, lost, found, recovered, held for safekeeping, surrendered or relinquished within 7 calendar days after being notified of the precipitating event. (Pen. Code, § 11108.2, subd. (a).)

This bill adds the firearms that have been relinquished or surrendered pursuant to the provisions of this bill.

This bill makes additional conforming changes to existing firearm statutes and states that it is the intent of the Legislature that these amendments do not constitute a change in, but are declaratory of existing law.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Prohibiting people who are a danger to themselves or others from having firearms has proven to be a very effective tool at curbing firearm violence. However, we need to ensure that when people are ordered to turn over their firearms, that they know how to do this and that if they fail to comply, courts are following up and when necessary, alerting law enforcement. Prior legislation has created a process for this in the context of domestic violence restraining orders. This process has been successful at getting more people who should not have firearms to turn in their weapons. This bill extends this successful process to all firearm restraining orders, including, for example, gun violence (aka “red flag”) restraining orders, civil harassment restraining orders, and workplace violence restraining orders. SB 899 will further the goal of ensuring that people who should not have firearms comply with lawful court orders, and making our communities safe.

2. Firearm Relinquishment Procedures

In 2022, the Legislature strengthened firearm relinquishment procedures that would apply to persons who are the subject of a domestic violence restraining order. (SB 320 (Eggman), Ch. 685, Stats. 2021.) Specifically, the law requires the court to provide information about 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. If evidence of relinquishment has not been provided to the court, the court must notify law enforcement, and law enforcement must take all necessary actions to obtain the firearms and ammunition unlawfully in the possession of the restrained person. The law also requires that if the court finds at a noticed hearing that the subject of the restraining order has violated the firearms prohibition, the violation shall be reported to the prosecuting attorney 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.

This bill extends those same procedures to ensuring the relinquishment of firearms and ammunition owned or in the possession of a person who is subject to a GVRO, or a civil harassment, workplace violence or postsecondary violence temporary restraining order and injunction, elder abuse restraining orders, or a protective order issued during the pendency of criminal proceedings and following specified criminal convictions.

3. Proposition 63

Proposition 63, the “Background Checks for Ammunition Purchases and Large-Capacity Ammunition Magazine Ban Initiative,” was approved by California voters on the November 8,

2016 ballot. This initiative (1) requires individuals to pass a background check and obtain DOJ authorization to purchase ammunition, (2) requires most ammunition sales to be made through licensed ammunition vendors and reported to DOJ, (3) prohibits possession of large-capacity magazines and requires their disposal, (4) requires lost or stolen firearms and ammunition to be reported to law enforcement, (5) prohibits persons convicted of stealing a firearm from possessing firearms, (6) establishes new procedures for enforcing laws prohibiting firearm possession, and (7) requires DOJ to provide information about prohibited persons to federal National Instant Criminal Background Check System. ([California Proposition 63, Background Checks for Ammunition Purchases and Large-Capacity Ammunition Magazine Ban \(2016\) - Ballotpedia](#) [as of Mar. 1, 2024].)

The Legislature may not amend the statute enacted by voter initiative without subsequent voter approval unless the initiative permits such amendment, and then only upon whatever conditions the voters attached to the Legislature's amendatory powers. (*People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 568; see also Cal. Const., art. II, § 10, subd. (c).) The California Constitution states, "The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval." (Cal. Const., art. II, § 10, subd. (c).) Therefore, unless the initiative expressly authorizes the Legislature to amend, only the voters may alter statutes created by initiative.

The purpose of California's constitutional limitation on the Legislature's power to amend initiative statutes is to protect the people's initiative powers by precluding the Legislature from undoing what the people have done, without the electorate's consent. Courts have a duty to jealously guard the people's initiative power and, hence, to apply a liberal construction to this power wherever it is challenged in order that the right to resort to the initiative process is not improperly annulled by a legislative body. (*Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473.)

As to the Legislature's authority to amend Proposition 63, Section 13 of the initiative states:

This Act shall be broadly construed to accomplish its purposes. The provisions of this measure may be amended by a vote of 55 percent of the members of each house of the Legislature and signed by the Governor so long as such amendments are consistent with and further the intent of this Act.

This bill would amend Proposition 63 to exempt the sale of ammunition to a licensed ammunition vendor by a person required to relinquish that ammunition due to specified protective orders. As such, this bill is keyed as requiring 55 percent of members of the Legislature.

4. Argument in Support

According to the California Partnership to End Domestic Violence:

Currently, DVROs are the only civil firearm-prohibiting orders with specific relinquishment procedural requirements and follow-up, codified under SB 320 (Eggman, 2022). Since SB 320 has been in place, courts have reported an uptick in compliance with these orders. Other civil orders have prohibitions for firearms

but lack procedures issued through SB 320. This bill would replicate the SB 320 framework for all civil firearm prohibiting and criminal protective orders so that in any case someone becomes prohibited from owning firearms, clear information and necessary follow-up will be provided. Having consistent requirements for informing prohibited persons about relinquishment procedures and compliance is critical for consistency, reducing risk, and creating training and implementation efficiencies.

This bill will also reduce the number of persons currently in or being added to the Armed and Prohibited Persons System (APPS). People who purchased firearms legally at one time but are later prohibited and fail to relinquish their firearms are listed in APPS, a database which now has roughly 24,000 people. By implementing the same procedures included in SB 320 across the various case types, California will reduce the time between the firearm prohibition being issued by the court and compliance with that order, thereby increasing safety and decreasing the number of people in APPS.

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