

Date of Hearing: May 19, 2020
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 2532 (Irwin) – As Amended May 7, 2020

SUMMARY: Authorizes a district attorney, county counsel, or city attorney to file a petition on behalf of a law enforcement officer, requesting the issuance or renewal of a gun violence restraining order (GVRO), and may represent the officer at any subsequent related court proceeding. Specifically, **this bill:**

- 1) Authorizes a district attorney, county counsel, or city attorney to file a petition on behalf of a law enforcement officer, requesting the issuance or renewal of a GVRO, and may represent the officer at any subsequent related court proceeding.
- 2) Allows a district attorney to make an ex parte application to extend the time for filing a petition to determine if a seized firearm should be returned to the owner of the firearm.
- 3) Provides that a district attorney shall inform the owner or person who had possession of the firearm or other deadly weapon, at that person's last known address, by registered mail, return receipt requested, that the person has 30 days from the receipt of the notice to confirm the person's desire for a hearing, and the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. In the event that the person does not reside at the last known address the district attorney shall make a diligent, good faith effort to find the whereabouts of the person.
- 4) Provides that if a person communicates, to a licensed psychotherapist, a serious threat of physical violence against a reasonably identifiable victim or victims and that threat is conveyed to the district attorney that person may not have possession or custody and control of a deadly weapon for five years from the date of the report.
- 5) States that upon release of a person that has been detained for examination or their mental health, and where a firearm or other deadly weapon has been confiscated, a district attorney has 30 days to file a petition for a hearing to determine if the return of a firearm or other deadly weapon would be likely to result in endangering the person or others, and to notify the person that they have 30 days in which to respond, and if they fail to respond the firearm an order of default will issue.
- 6) Requires the court to transmit a copy of an order of default to the Department of Justice (DOJ).
- 7) Requires the court if a firearm is disposed with, as specified, to transmit a copy of the order to the DOJ.
- 8) Makes several conforming changes.

EXISTING LAW:

- 1) 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.)
- 2) Requires, upon issuance of a GVRO, the court to order the restrained person to surrender to the local law enforcement agency all firearms and ammunition in the restrained person's custody or control, or which the restrained person possesses or owns. (Pen. Code, § 18120, subd. (b)(1).)
- 3) Allows an immediate family member of a person or a law enforcement officer to file a petition requesting that the court issue an ex parte GVRO, that expires no later than 21 days from the date of the order, enjoining the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition. (Pen. Code, §§ 18150 and 18155, subd. (c).)
- 4) States that the court, before issuing an ex parte GVRO, shall examine on oath, the petitioner and any witness the petitioner may produce, or in lieu of examining the petitioner and any witness the petitioner may produce, the court may require the petitioner and any witness to submit a written affidavit signed under oath. (Pen. Code, § 18155, subd. (a).)
- 5) Requires a showing that the subject of the petition poses a significant danger, in the near future, of personal injury to himself or herself, or to another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm as determined by considering specified factors, and that less restrictive alternatives have been ineffective, or are inappropriate for the situation, before an ex parte gun violence restraining order may be issued. (Pen. Code, § 18150, subd. (b).)
- 6) Specifies in determining whether grounds for a gun violence restraining order exist, the court shall consider all evidence of the following:
 - a) A recent threat of violence or act of violence by the subject of the petition directed toward another;
 - b) A recent threat of violence or act of violence by the subject of the petition directed toward himself or herself;
 - c) A violation of an emergency protective order that is in effect at the time the court is considering the petition;
 - d) A recent violation of an unexpired protective order;
 - e) A conviction for any specified offense resulting in firearm possession restrictions; or,
 - f) A pattern of violent acts or violent threats within the past 12 months, including, but not limited to, threats of violence or acts of violence by the subject of the petition directed

toward himself, herself, or another. (Pen. Code, § 18155, subd. (b)(1).)

- 7) States that an ex parte gun violence restraining order shall be personally served on the restrained person by a law enforcement officer, or any person who is at least 18 years of age and not a party to the action, if the restrained person can reasonably be located. When serving a gun violence restraining order, a law enforcement officer shall inform the restrained person of the hearing that will be scheduled to determine whether to issue a gun violence restraining order. (Pen. Code, § 18160, subd. (b).)
- 8) Requires, within 21 days from the date an ex parte gun violence restraining order was issued, before the court that issued the order or another court in the same jurisdiction, the court to hold a hearing to determine if a gun violence restraining order should be issued. (Pen. Code, § 18160, subd. (c).)
- 9) Allows the following persons to request a court, after notice and a hearing, to issue a gun violence restraining order 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:
 - a) An immediate family member of the subject of the petition;
 - b) An employer of the subject of the petition;
 - c) A coworker of the subject of the petition if they have had substantial and regular interactions with the subject for at least one year and have obtained the approval of the employer;
 - d) An employee or teacher of a secondary or postsecondary school that the subject of the petition has attended in the last six months. if the employee or teacher has obtained the approval of a school administrator or school administration staff member with a supervisory role; and
 - e) A law enforcement officer. (Pen. Code, § 18190, subd. (a)(1)(A)-(E).)
- 10) States at the hearing, the petitioner shall have the burden of proving, by clear and convincing evidence, that both of the following are true:
 - a) The subject of the petition, or a person subject to an ex parte gun violence restraining order, as applicable, poses a significant danger of personal injury to himself or herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition; and
 - b) A gun violence restraining order is necessary to prevent personal injury to the subject of the petition, or the person subject to an ex parte gun violence restraining order, 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. (Pen. Code, § 18175, subd. (b)(1) & (2).)

- 11) Provides if the court finds that there is clear and convincing evidence to issue a gun violence restraining order, the court shall issue a gun violence restraining order 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. If the court finds that there is not clear and convincing evidence to support the issuance of a gun violence restraining order, the court shall dissolve any temporary emergency or ex parte gun violence restraining order then in effect. (Pen. Code, § 18175, subd. (c)(1) & (2))
- 12) Requires the court to inform the restrained person that he or she is entitled to one hearing to request a termination of the gun violence restraining order and provide the restrained person with a form to request a hearing. (Pen. Code, § 18180, subd. (b).)
- 13) States that it is a misdemeanor offense for every person who files a petition for an ex parte gun violence restraining order or a gun violence restraining order issued after notice and a hearing knowing the information in the petition to be false or with the intent to harass. (Pen. Code, § 18200.)
- 14) Provides that it is a misdemeanor offense for every person who owns or possesses a firearm or ammunition with knowledge that he or she is prohibited from doing so by a gun violence restraining order and he or she shall be prohibited from having in his or her custody or 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.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "As communities across California continue to endure the trauma of gun violence, I am committed to finding every opportunity we can to continue to make a difference in this fight. Following on my efforts from last year with AB 12 and AB 339 which improved upon Gun Violence Restraining Orders and required every law enforcement agency to create policies to use them, I have been presented with an important change that can help increase their use. District Attorneys across the state are willing to step up and assist law enforcement officers in filing for and defending GVROs in court. As a result of their limited jurisdiction however they have been precluded from joining City Attorneys and County Counsels in representing law enforcement in these petitions. AB 2532 will fix this and add thousands of attorneys to the fight against gun violence in California."
- 2) **Argument in Support:** The *California District Attorneys Association* states, "As tragic events in Ventura County in 2018 and many others across the country have repeatedly demonstrated, firearms in the hands of mentally ill or potentially violent persons can present the gravest dangers to our communities. Recognizing this risk, legislators provided law enforcement and family members with the ability to obtain Gun Violence Restraining Orders (GVROs) against individuals who pose a danger to themselves or others. In addition to GVROs, the law allows law enforcement to file a civil petition for weapons forfeitures — even when the person is not currently charged with a crime or held in a mental health facility.

“Unfortunately, although the civil firearm forfeiture statutes, PC Section 18400 and W&I Code Section 8102 specify that a ‘law enforcement agency’ may petition a court to prolong the seizure of a firearm or deadly weapon, the definition of a law enforcement agency does not include district attorneys. Because law enforcement personnel are city and county employees, these proceedings are being handled by city attorneys and county counsels across the state.

“The California District Attorneys Association believes that this omission is unintentional. AB 2532 will correct this oversight by amending existing statutes to incorporate a district attorney as a proper party. This change makes abundant good sense. District attorneys are uniquely situated to address these petitions, in part, because prosecutors are charged with the responsibility of prosecuting crimes or litigating issues of mental health that form the basis for the forfeiture. District attorneys have been expressly designated as the proper party for litigating similar issues in Welfare and Institutions Code § 8103.

“We must continue to do everything possible to restrict access to firearms by those who are mentally ill or potentially violent. AB 2532 addresses an important oversight in achieving that objective and we appreciate your commitment to this vital public safety issue.”

- 3) **Argument in Opposition:** The *California Rifle and Pistol Association* states, “We are expressing our strong opposition to AB 2532. AB 2532 would amend the GVRO procedures that were created by AB 1014 of 2014. CRPA opposed the current GVRO procedures because they provide a mechanism for an individual to lose the right to keep and bear arms with no due process of law. AB 2532 will further compound these problems by authorizing district attorney, county counsel, or city attorney to file a petition on behalf of a law enforcement officer, requesting the issuance or renewal of these orders, and to represent an officer in any subsequent court proceedings related to the issuance.

“The GVRO system allows for *ex parte* procedures, the individual whose rights are restricted does not have a right to contest any allegation until up to 21 days after the issuance of the original order. Even if the court finds in favor of the person whose rights were restricted, it may take that individual several months to have their firearm returned.....The current GVRO procedures went into effect a little over three years ago. The expansion of authorized petitioners in AB 61 of 2019 do not go into effect until September 2020. There is no evidence that the expansion of GVRO authority is prudent.”

- 4) **Prior Legislation:** AB 61 (Ting), Chapter 725, Statutes of 2019, expanded the category of persons that may file a petition requesting a court to issue an *ex parte* temporary GVRO, a one year GVRO, or a renewal of a GVRO, to include an employer, a coworker who has 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 a school administrator or a school administration staff member with a supervisory role.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County District Attorney's Office
California District Attorneys Association
California Peace Officers Association
Ventura County District Attorney's Office

Oppose

California Attorneys for Criminal Justice
California Rifle and Pistol Association, INC.

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