
THIRD READING

Bill No: AB 465
Author: Eggman (D), et al.
Amended: 8/28/19 in Senate
Vote: 21

PRIOR VOTES NOT RELEVANT

SUBJECT: Firearm relinquishment: persons under protective orders

SOURCE: Author

DIGEST: This bill codifies generally existing Rules of Court related to relinquishment of firearms following the issuance of a protective order but makes specified modifications.

ANALYSIS:

Existing law:

- 1) Authorizes a court with jurisdiction over a pending criminal matter, upon good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, may issue a criminal protective order, as specified. (Pen. Code, 136.2, subd. (a).)
- 2) Prohibits a defendant subject to a criminal protective order from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect. (Pen. Code, § 136.2, subd. (d)(1); Code Civ. Proc., § 527.9, subd. (e).)
- 3) Requires a court, upon issuing a protective order, to order the respondent to relinquish any firearm in the respondent's immediate control and makes a violation of the order a crime. (Code Civ. Proc. § 527.9, subd. (b).)
- 4) Requires the respondent, upon request of any law enforcement officer, or within 24 hours of being served with the order, to surrender to sell the firearm, as specified, and file with the court a receipt showing the firearm was

surrendered or sold within 48 hours after receiving the order. (Code Civ. Proc., § 527.9, subd. (b).)

- 5) States that a person who violates a criminal protective order may be punished for the substantive crime of preventing or dissuading a witness or victim from testifying or doing other acts pursuant to Penal Code Section 136.1 which is punishable as a wobbler, or for a contempt of court. (Pen. Code, § 136.2, subd. (b).)
- 6) Provides that when a court issues a criminal protective order during a criminal case or as a condition of probation against a defendant charged with a crime of domestic violence, the court must consider all credible information to determine if there is good cause to believe that the defendant has a firearm within his or her immediate possession or control, including information provided on behalf of the defendant. (Cal. Rules of Court, rule 4.700.)
- 7) States that if the court finds good cause to believe the defendant has a firearm within his or her immediate possession or control, the court must set a review hearing to ascertain whether the defendant has complied with the requirement to relinquish the firearm. (*Id.*)
- 8) Provides that the review hearing should occur within two court days after issuance of the criminal protective order, unless the defendant is in custody at the time; if circumstances warrant, the court may extend the review hearing to occur within five court days after issuance of the criminal protective order. (*Id.*)
- 9) Requires the court to give the defendant an opportunity to present information at the review hearing to refute the allegation that he or she owns firearms. (*Id.*)
- 10) States that if the defendant is in custody at the time the criminal protective order is issued, the court should order the defendant to appear for a review hearing within two court days after the defendant's release from custody. (*Id.*)
- 11) States that the defendant may be ordered to personally appear at the review hearing. (*Id.*)
- 12) Provides that if the court has issued a criminal protective order during the pendency of a criminal case, at the review hearing if the court finds that the defendant has a firearm in or subject to his or her immediate possession or control, the court must consider whether bail, as set, or defendant's release on own recognizance is appropriate. If the defendant does not appear at the

- hearing and the court orders that bail be revoked, the court should issue a bench warrant. (*Id.*)
- 13) Provides that if the criminal protective order is issued as a condition of probation, and the court finds at the review hearing that the defendant has a firearm in or subject to his or her immediate possession or control, the court must proceed with further sentencing. (*Id.*)
 - 14) States that in any review hearing to determine whether a defendant has complied with the requirement to relinquish firearms, the burden is on the prosecution. (*Id.*)
 - 15) Authorizes protective orders to be issued by the family court in domestic violence cases. (Fam. Code, § 6380 et seq.)
 - 16) States that a person who is the subject of a protective order issued by the family court shall not own, possess, purchase, or receive a firearm or ammunition while the firearm is in effect. A violation of this prohibition is punishable as either a misdemeanor or a wobbler depending on the circumstance. (Fam. Code, § 6389; Pen. Code, § 29825.)
 - 17) Requires the family 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.)
 - 18) Requires when relevant information is presented to the family 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.)
 - 19) 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.*)
 - 20) 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.*)

- 21) 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.*)
- 22) 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.*)
- 23) Authorizes the family court to extend the date of the review hearing for a reasonable period of remove it from the calendar. (*Id.*)
- 24) 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.*)
- 25) States that the court may permit a party to appear at the review hearing by telephone. (*Id.*)
- 26) 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:

- 1) Codifies California Rule of Court 4.700.
- 2) Specifies that in one of the additional factors to be considered in determining the best interest of the child for purposes of deciding child custody shall include whether the perpetrator of domestic violence is, or has been in possession or control of a firearm or ammunition while subject to a protective order.
- 3) Codifies California Rule of Court 5.495 but makes the following changes:
 - a) Requires the court to make the determination whether the person subject to the protective order has possession or control of a firearm or ammunition when issuing temporary protective orders;

- b) Requires the court to make this determination at the first noticed hearing at which the protective order is issued, including but not limited to a temporary protective order issued on an ex parte basis, regardless of whether the noticed hearing is continued or rescheduled with respect to other procedural or factual issues before the court;
- c) Provides that if the court determines that the restrained person has possession or control of a firearm or ammunition, the court shall communicate that determination to the local law enforcement agency with jurisdiction over the restrained person;
- d) States that if the court determines that the restrained person has possession or control of a firearm or ammunition, the court shall set a review hearing to take place within two court days after the noticed hearing at which the court the determination. The court may extend the date of the review by no more than five court days for good cause evidenced by written findings on the record;
- e) States that the court may only remove the review hearing from the calendar only after making written findings, on the record, of the good cause for removing the review hearing and providing a copy of the written findings to the protected party; and,
- f) Authorizes to permit any party to appear at the review hearing by electronic means, in addition to by telephone.

Comments

According to the author of this bill:

In a 2008 California Judicial Council report titled, Recommended Guidelines and Practices for Improving the Administration of Justice in Domestic Violence Cases, the Judicial Council recommended adopting Rules of Court that would require a judge to coordinate with law enforcement (in civil cases) or the prosecutor (in criminal cases) at the earliest moment possible in domestic violence restraining order court proceedings to identify whether the subject has firearms, and if so, to set up review hearings to ensure the relinquishment actually takes place.

Rule 4.700 (criminal) was adopted in 2010 and Rule 5.495 (civil) was adopted in 2014 in accordance with the 2008 report suggestions. While the Judicial Council's recommendation in their 2008 report used prescriptive "shall" language, the civil rule that was adopted used permissive "may" language. It is

unclear why these two rules should be applied differently in the civil and criminal context and why the civil timelines for a review hearing are longer than the criminal timelines. The danger and exigency that exists when firearms are present in domestic violence situations is not diminished simply because the case is in a civil courtroom.

Since the introduction of these Rules of Court, they have been implemented on a limited, and oftentimes, inconsistent basis across California. In the civil context, this is especially concerning because the only judicial officer with knowledge of the firearm relinquishment process is the judge. Unlike in the criminal context, there is no outside law enforcement, probation officer, or prosecutor present in the courtroom to assist in conducting oversight and to ensure compliance with the firearm relinquishment.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 9/10/19)

California District Attorneys Association
California Partnership to End Domestic Violence
California Police Chiefs Association
Orange County District Attorney's Office
San Joaquin County District Attorney's Office

OPPOSITION: (Verified 9/10/19)

California Judges Association
Judicial Council of California

ARGUMENTS IN SUPPORT: According to the San Joaquin County District Attorney's Office, "Domestic violence remains one of the most significant concerns within our communities. The possession of weapons by those in engaged in these volatile situations with their family members can provide the very means to elevate the violence to a horrific conclusion. We must do everything lawfully within our power to take the firearms out of the hands of those who will be tempted to use them against others. The Courts and justice system must do all it can to verify the relinquishment of firearms and ammunition by those ordered to do so."

ARGUMENTS IN OPPOSITION: According to the Judicial Council of California, "While AB 465 uses existing rules of court as its starting point, the newly proposed Family Code statute on firearms relinquishment in Domestic Violence Prevention Act (DVPA) matters diverges significantly from the current

rule of court in ways that present significant concerns about notice coupled with workload challenges for family courts. DVPA actions are common, and they must be heard within a short period of time in order to protect alleged victims and provide due process to restrained persons. As a result, significant changes to the procedures for hearing these matters necessarily has a significant impact on court operations, calendaring, staffing assignments, and case management systems, and may well cause significant delays in other types of family law proceedings. . . .

“ . . . The Judicial Council would very much like the opportunity to engage in further discussions with the author and other stakeholders on improvements to the current process that might better protect the public as well as those who seek these orders. The language before us presents too many ambiguities and problems. The issues presented here are critical and should be addressed in a fashion that allows the partners, especially the courts, to offer solutions that will result in greater success and protection of the public.”

Prepared by: Stella Choe / PUB. S. /
9/10/19 23:11:23

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