

SENATE RULES COMMITTEE

AB 1014

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THIRD READING

Bill No: AB 1014
Author: Skinner (D), Williams (D), et al.
Amended: 8/21/14 in Senate
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 5-2, 6/24/14
AYES: Hancock, De León, Liu, Mitchell, Steinberg
NOES: Anderson, Knight

SENATE APPROPRIATIONS COMMITTEE: 5-0, 8/14/14
AYES: De León, Hill, Lara, Padilla, Steinberg
NO VOTE RECORDED: Walters, Gaines

ASSEMBLY FLOOR: 55-17, 5/31/13 - See last page for vote

SUBJECT: Gun violence restraining orders

SOURCE: Author

DIGEST: This bill, beginning January 1, 2016, authorizes a law enforcement officer or immediate family member of a person, to seek, and a court to issue, a gun violence restraining order (GVRO), as specified, prohibiting a person from having in his/her custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition, as specified.

Senate Floor Amendments of 8/21/14 delay the implementation to January 1, 2016; make a number of technical amendments; modify the process described in the legislation; and eliminate the section that expressly permits a court to, at the request of the district attorney, grant use immunity.

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ANALYSIS: Existing federal law provides that certain people are prohibited from owning or possessing a firearm:

Any person who:

1. Has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year.
2. Is a fugitive from justice.
3. Is an unlawful user of or addicted to any controlled substance, as defined.
4. Has been adjudicated as a mental defective or who has been committed to a mental institution.
5. Being an alien:
 - A. Is illegally or unlawfully in the U.S.; or
 - B. Except as specified, has been admitted to the U.S. under a nonimmigrant visa, as defined.
6. Has been discharged from the Armed Forces under dishonorable conditions.
7. Having been a citizen of the United States, has renounced his citizenship.
8. Is subject to a court order that:
 - A. Was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate.
 - B. Restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child:
 - (1) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
 - (2) By its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would

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reasonably be expected to cause bodily injury.

9. Has been convicted in any court of a misdemeanor crime of domestic violence.

Existing state law provides that certain people are prohibited from owning or possessing a firearm. This includes:

1. Lifetime Ban

- A. Anyone convicted of a felony;
- B. Anyone addicted to a narcotic drug;
- C. Any juvenile convicted of a violent crime with a gun and tried in adult court;
- D. Any person convicted of a federal crime that would be a felony in California and sentenced to more than 30 days in prison, or a fine of more than \$1,000; and
- E. Anyone convicted of certain violent misdemeanors, e.g., assault with a firearm; inflicting corporal injury on a spouse or significant other, brandishing a firearm in the presence of a police officer.

2. 10 Year Ban

Anyone convicted of numerous misdemeanors involving violence or threats of violence.

3. Five Year Ban

Any person taken into custody, assessed, and admitted to a designated facility due to that person being found to be a danger to themselves or others as a result of a mental disorder, is prohibited from possessing a firearm during treatment and for five years from the date of their discharge.

4. Temporary Bans

Persons who are bound by a temporary restraining order or injunction or a protective order issued under the Family Code or the Welfare and Institutions Code, may be prohibited from firearms ownership for the duration of that court order.

This bill establishes a system authorizing persons to seek, and the courts to issue, various types of GVROs, as follows:

1. Defines a “gun violence restraining order” as an order, in writing, signed by the court, prohibiting and enjoining a named person from having in his/her custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition.
2. Requires the Judicial Council to prescribe the form of petitions and orders and any other documents, and shall promulgate any rules of the court necessary for implementation.
3. States that when notifying the Department of Justice (DOJ) the court shall indicate in the notice whether the person subject to the GVRO was present in court to be informed of the contents of the order or if the person failed to appear.
4. Requires within one business day of service, a law enforcement officer who served a GVRO to submit the proof of service directly into the California Restraining and Protective Order System, including his/her name and law enforcement agency, and shall transmit the original proof of service form to the issuing court.
5. Requires within one business day of receipt of proof of service by a person other than a law enforcement officer, the clerk of the court shall submit the proof of service of a GVRO directly into the California Restraining and Protective Order System, including the name of the person who served the order. If the court is unable to provide this notification to the DOJ by electronic transmission, the court shall, within one business day of receipt, transmit a copy of the proof of service to a local law enforcement agency. The local law enforcement agency shall submit the proof of service directly into the California Restraining and Protective Order System within one business day of receipt from the court.
6. Requires notices submitted to the DOJ to be submitted in electronic format.
7. Provides for the following three types of GVROs:
 - A. A temporary emergency GVRO – may be issued on an ex parte basis only if a law enforcement officer asserts and a judicial officer finds that there is reasonable cause to believe that a person poses an immediate and present

danger of causing personal injury to himself, herself, or others by having in his/her custody or control, owning, purchasing, possessing, or receiving firearms.

- (1) Prohibits the person from having in his/her custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive a firearm or ammunition, and shall expire 21 days from the date of the order.
- (2) Requires the law enforcement officer who requested the emergency GVRO to serve the order on the restrained person and enter into the DOJ computer database system for protective and restraining orders.
- (3) Requires the courts to designate at least one judge, commissioner, or referee to be reasonably available to issue emergency GVROs at all times, whether or not court is in session.

B. Ex parte GVRO – may be requested by an immediate family member of a person or a law enforcement officer by filing a petition requesting the court issue an order enjoining the person from having in his/her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition.

- (1) Authorizes a court to issue an ex parte GVRO if the petition is supported by a written and signed affidavit, as specified, showing that there is a substantial likelihood that the person will, in the near future, cause personal injury to himself/herself or another by having in his/her custody or control, owning, purchasing, possessing or receiving a firearm.
- (2) Requires an ex parte GVRO to be issued or denied on the same day the petition is submitted to the court, or no later than the next day of judicial business under specified circumstances.
- (3) Provides for numerous factors for the court to consider prior to issuing an ex parte GVRO.
- (4) Provides that the ex parte GVRO expires no later than 21 days from the date of the order.

- (5) Provides for a scheduled hearing to be held within 21 days of the order to determine if a more permanent GVRO should be issued. Failure to appear could result in an order valid for one year.
- C. GVRO issued after notice and hearing – may be requested by an immediate family member of a person or a law enforcement officer, which would enjoin the person from having in his/her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition for a period of one year.
- (1) Provides that at the hearing, the petitioner has the burden of proving by clear and convincing evidence that there is a substantial likelihood that the person poses a significant danger of personal injury to himself/herself or others by having in his/her custody or control, owning, purchasing, possessing, or receiving a firearm.
 - (2) 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 GVROs or ex parte GVROs in effect.
 - (3) GVROs may be renewed for one year by further order of the court.
 - (4) Provides that the restrained person is entitled to one hearing to request a termination of the order, and the court is to provide a form to request such a hearing.
 - (5) Provides that an immediate family member of the restrained person or a law enforcement officer may request a renewal of a GVRO at any time within the three months before expiration of a GVRO.
8. Requires a GVRO to be personally served by law enforcement or a person at least 18 years of age and not a part to the action, if the subject of the GVRO is not present in court when the GVRO is issued.
 9. Makes it a misdemeanor for a person to file a petition for a GVRO knowing the information to be false or with the intent to harass.
 10. Makes it a misdemeanor for a person who knowingly violates a GVRO, and prohibits the person from having firearms or ammunition for a five-year period, to commence upon the expiration of the existing GVRO.

11. Mandates that if a specified peace officer is serving a GVRO, that officer shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a lawful search, and adds DOJ peace officers to the list of persons required to take temporary custody of firearms in these situations.
12. Provides that a search warrant may be issued when the property or things to be seized are firearms or ammunition that are in the custody or control of, or is owned or possessed by, a person who is the subject of a GVRO.
13. Provides upon issuance of a GVRO, the court shall order the restrained person to surrender to the local law enforcement agency any firearms or ammunition in the person's custody or control, or which the restrained person owns or possesses.
14. Provides that if the surrender is not requested by a law enforcement agency, the surrender must occur within 24 hours of being served the order, to the law enforcement agency or by selling the firearms or ammunition to a licensed gun dealer, as specified.
15. Requires the firearms or ammunition surrendered to a law enforcement agency to be retained until the expiration of the GVRO.
16. States that those provisions shall become operative January 1, 2016.
17. Contains double-jointing language with SB 1154 (Hancock).

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

According to the Senate Appropriations Committee:

- One-time significant costs potentially in excess of \$250,000 (General Fund*) to the Judicial Council to develop forms, instructions, standards, and procedures.
- Potentially significant ongoing costs to the trial courts, potentially in the hundreds of thousands to low millions of dollars (General Fund*) to hold hearings, issue warrants, and issue gun violence restraining orders. Actual costs would be dependent of the volume of petitions filed by law enforcement and family members.

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- One-time and ongoing costs of about \$200,000 (General Fund) to DOJ to upgrade automation systems to accommodate the new information, provide training to various entities to facilitate the process of submittal, recording, and tracking of gun violence restraining order status.
- Ongoing potentially significant state-reimbursable costs (General Fund) for law enforcement to retain surrendered firearms and ammunition during the restraining order period, issue a receipt to the restrained person at the time of surrender, and serve ex parte restraining orders.
- Non-reimbursable local law enforcement agency costs for enforcement and incarceration, offset to a degree by fine revenue for misdemeanor violations of the provisions of this bill.

*Trial Court Trust Fund

SUPPORT: (Verified 8/22/14)

California Attorney General Kamala Harris
Alameda County Board of Supervisors
Alameda County District Attorney Nancy O'Malley
American Association for Suicidology
American College of Emergency Physicians, California Chapter
Brady Campaign to Prevent Gun Violence, California Chapters
Brady Campaign to Prevent Gun Violence, Orange County Chapter
California Association of Mental Health Peer-Run Organizations
California Democratic Party
California Partnership to End Domestic Violence
California Police Chiefs Association
California Psychiatric Association
California State Sheriffs Association
Cities of Berkeley, Long Beach, Los Angeles, Oakland, Sacramento, and Santa Barbara
Cleveland School Remembers
Coalition Against Gun Violence, Santa Barbara
Coalition to Stop Gun Violence
Courage Campaign
Democratic Club of Sunnyvale
Disability Rights California
Everytown for Gun Safety
Friends Committee on Legislation

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Jewish Community Relations Council of San Francisco, the Peninsula, Marin,
Sonoma, Alameda, and Contra Costa Counties
Jewish Public Affairs Committee of California
Law Center to Prevent Gun Violence
Los Angeles City Attorney Mike Feuer
Los Angeles City Councilmember Paul Krekorian
Lutheran Office of Public Policy – California
Nevada County Suicide Prevention Taskforce
Physicians for Social Responsibility, Sacramento Chapter
Physicians for Social Responsibility, San Francisco – Bay Area Chapter
PICO California
San Diego City Councilmember David Alvarez
Santa Barbara Chief of Police, Cam Sanchez
Santa Barbara County Board of Supervisors
Santa Barbara County District Attorney Joyce Dudley
South County Citizens Against Gun Violence – Orange County
University of California Student Association
Ventura County Board of Supervisors
Violence Prevention Coalition of Greater Los Angeles
Violence Prevention Coalition of Orange County
Women Against Gun Violence
Women For: Orange County
Youth Alive!

OPPOSITION: (Verified 8/22/14)

California Association of Federal Firearms Licensees
California Sportsman’s Lobby
Department of Finance
Gun Owners of California
Outdoor Sportsmen’s Coalition of California
Safari Club International
Taxpayers for improving Public Safety

ARGUMENTS IN SUPPORT: The California Police Chiefs Association writes, “AB 1014, modeled on our state’s domestic violence restraining order laws, provides family members and law enforcement with important new legal tools. AB 1014 allows for the removal of firearms from individuals who are at risk for committing acts of violence. It establishes a process for obtaining a Gun Violence Restraining Order (GVRO) from a court in order to temporarily limit (for one year,

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unless renewed) the individual's access to firearms when there are warning signs or indications that the person is at risk for violence.”

ARGUMENTS IN OPPOSITION: Safari Club International writes, “The functional equivalent of what this bill proposes can already be accomplished under existing law without the additional costs that would result from AB 1014. It is better to utilize and enforce existing laws than to add another unnecessary layer of statute.”

ASSEMBLY FLOOR: 55-17, 5/31/13

AYES: Achadjian, Alejo, Ammiano, Atkins, Bloom, Blumenfield, Bocanegra, Bonilla, Bonta, Bradford, Brown, Buchanan, Ian Calderon, Campos, Chau, Chesbro, Cooley, Daly, Dickinson, Eggman, Fong, Fox, Frazier, Beth Gaines, Garcia, Gatto, Gomez, Gonzalez, Gordon, Gray, Hall, Roger Hernández, Jones-Sawyer, Levine, Linder, Lowenthal, Medina, Mitchell, Mullin, Muratsuchi, Nazarian, Pan, V. Manuel Pérez, Quirk, Quirk-Silva, Rendon, Salas, Skinner, Stone, Ting, Weber, Wieckowski, Williams, Yamada, John A. Pérez

NOES: Allen, Bigelow, Conway, Dahle, Donnelly, Hagman, Harkey, Jones, Logue, Maienschein, Mansoor, Melendez, Morrell, Nestande, Olsen, Patterson, Waldron

NO VOTE RECORDED: Chávez, Gorell, Grove, Holden, Perea, Wagner, Wilk, Vacancy

JG:k 8/22/14 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** **END** ****