

CONCURRENCE IN SENATE AMENDMENTS
AB 61 (Ting, et al.)
As Amended August 30, 2019
Majority vote

SUMMARY:

Expands the category of persons that may file a petition requesting a court to issue an ex parte temporary gun violence restraining order (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 the school administration staff.

The Senate Amendments:

- 1) Delay implementation of this measure until September 1, 2020.
- 2) Clarify that school administration staff means a school administrator or a school administration staff member with a supervisorial role.
- 3) Double joint this bill with AB 12 (Irwin) of the current legislative session to avoid chaptering issues.

COMMENTS:

According to the Author:

"Gun violence and mass shootings can no longer be tolerated or accepted. We need to provide the people in all our communities with more tools to take firearms out of the hands of individuals that pose a deadly threat to themselves and others. Family members, co-workers, employers, and teachers are most likely to see early warning signs if someone is becoming a danger to themselves or others.

"In these circumstances, existing law enables family members and law enforcement to prevent gun-related tragedies before they happen by pursuing a gun violence restraining order (GVRO) in court. If granted by a court, a GVRO results in a temporary seizure of firearms possessed by a dangerous individual and a prohibition of their ability to purchase new firearms. This bill logically expands who can petition a court for a GVRO by adding co-workers, employers, and teachers."

Arguments in Support:

According to the California Chapters of the Brady Campaign to Prevent Gun Violence, "Existing law allows law enforcement and immediate family members to petition the court to obtain a Gun Violence Restraining Order when a person is at risk of injury to self or others by having a firearm. The order would temporarily prohibit the purchase or possession of firearms while the order is in effect and would allow a warrant to be issued to seize firearms or ammunition from a person subject to the order. AB 61 would similarly authorize an employer, a coworker, a mental health worker who has seen the person as a patient in the prior six months, or an employee of a secondary or postsecondary school that the person as a patient in the prior six months, or an

employee of a secondary or postsecondary school that the person has attended in the last six months, to file a petition for a Gun Violence Restraining Order.

"Those who teach or work with a person and have frequent interaction may see the early warning signs and be the first to know that the person is at severe risk of harming self or others with a firearm. These people need the ability to directly petition the court for a temporary firearm prohibition, particularly if law enforcement is not responsive to an urgent concern. For example, last February, 17 people were killed and 17 more were injured at Stoneman Douglas High School in Parkland, Florida. The shooter was a former student of the school and there had been several warnings raised about his potential for violence. AB 61 would provide school employees the opportunity to petition the court for a gun violence restraining order on a similar young person.

"The Gun Violence Restraining Order statute is modeled after California's domestic violence restraining order laws and ensures due process and a rigorous standard of proof. A noticed hearing before the court is required within 21 days. In fact, the law provides more protections than the state's domestic violence restraining order or mental health commitment laws. The person subject to the temporary order expires after one year (unless renewed) or is revoked by the court."

Arguments in Opposition:

According to the American Civil Liberties Union (ACLU), "The ACLU of California does not oppose gun control measures that regulate the acquisition or use of guns – so long as those regulations contribute to public safety and do not raise civil liberties issues. Additionally, we do not oppose laws that authorize protective orders to remove guns from people who pose a risk to themselves or others, provided there are nondiscriminatory criteria for defining people as dangerous, and a fair process for those affected to object and be heard by a court.

"AB 61, however, poses a significant threat to civil liberties by expanding the authorization to seek ex parte orders, with all the ensuing consequences, without an opportunity for the person to be heard or contest the matter.

"The statutory scheme creating the Gun Violence Restraining Order (Penal Code Sections 18100-18205) was established in 2014 (AB 1014, Skinner). Under this scheme a family member, or any law enforcement officer, who has reason to believe a person owns a gun and poses a significant danger to themselves or others, may petition the court for an ex parte order to prohibit the subject from possessing a gun for up to 21 days, at which time a hearing is held to determine whether to extend the order for to one year.

"An ex parte order means the person subject to the restraining order is not informed of the court proceeding and therefore has no opportunity to contest the allegations. We support the efforts to prevent gun violence, but we must balance that important goal with protection of civil liberties so we do not sacrifice one in an attempt to accomplish the other. We believe AB 1014 was crafted in order to properly strike that balance. By expanding the parties that could apply for such an ex parte restraining order to include all the parties listed above, many of whom lack the relationship or skills required to make an appropriate assessment, AB 61 upsets that balance and creates significant potential for civil rights violations."

FISCAL COMMENTS:

According to the Senate Appropriations Committee:

- 1) GVRO petitions: Potentially-significant workload cost pressure to the court to the extent that expanding the population of individuals eligible to petition the court for a GVRO results in additional petitions filed, subsequently prompting new hearings and the issuance of warrants and GVROs. (General Fund*)

Additionally, unknown, potentially-significant workload cost pressures to the court to adjudicate charges brought against defendants who possess, own, receive, or purchase (or attempt to do so) a firearm or ammunition while being refrained from doing so by a GVRO that was petitioned for by an individual who would be allowed to do so by this bill. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to fund additional staff and resources. For example, the Budget Act of 2019 appropriated \$41.8 million from the General Fund to backfill continued reduction in fine and fee revenue for trial court operations.

- 2) APPS administration & enforcement: Potential increase in costs to the Department of Justice for administration and enforcement of the Armed Prohibited Persons System (APPS) list to the extent that expanding the population of individuals eligible to petition for GVROs increases workload to monitor changes to the APPS list based on new GVROs issued, renewed, dissolved, or terminated. Additional one-time workload costs to modify an information system (the California Restraining and Protective Orders System) to accommodate the changes proposed by this bill. (Special fund**, General Fund)
- 3) Prosecution & incarceration: Unknown potential increase in non-reimbursable local enforcement and incarceration costs to prosecute and incarcerate those charged with and found guilty of 1) violations of GVROs, 2) violations of the subsequent five-year firearms/ammunition prohibition due to violating a GVRO; and, 3) filing GVRO petitions with false information or with the intent to harass. Costs would be offset, to a degree, by fee and assessment revenue. (Local funds)
- 4) Mandated law enforcement activities: Potential increase in local law enforcement agency costs, potentially state-reimbursable 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 orders. (General Fund)

*Trial Court Trust Fund

**Dealers Record of Sale Special Account (DROS)—structurally imbalanced

VOTES:

ASM PUBLIC SAFETY: 6-2-0

YES: Jones-Sawyer, Bauer-Kahan, Kamlager-Dove, Quirk, Santiago, Wicks

NO: Lackey, Diep

ASSEMBLY FLOOR: 54-17-9

YES: Aguiar-Curry, Bauer-Kahan, Berman, Bloom, Boerner Horvath, Bonta, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Chu, Daly, Frazier, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager-Dove, Levine, Limón, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi,

Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Blanca Rubio, Santiago, Smith, Mark Stone, Ting, Weber, Wicks, Wood, Rendon

NO: Bigelow, Brough, Cooley, Cunningham, Dahle, Diep, Flora, Fong, Gallagher, Kiley, Lackey, Mathis, Melendez, Obernolte, Patterson, Voepel, Waldron

ABS, ABST OR NV: Arambula, Chen, Choi, Cooper, Eggman, Gray, Mayes, Rodriguez, Salas

ASM PUBLIC SAFETY: 4-3-1

YES: Jones-Sawyer, Bauer-Kahan, Santiago, Wicks

NO: Lackey, Diep, Quirk

ABS, ABST OR NV: Kamlager-Dove

ASM PUBLIC SAFETY: 8-0-0

YES: Jones-Sawyer, Lackey, Bauer-Kahan, Diep, Kamlager-Dove, Quirk, Santiago, Wicks

UPDATED:

VERSION: August 30, 2019

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