



San Mateo County Bill Analysis Form

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Submitted Department: County Manager's Office

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Reviewed and Approved by County Counsel

☒ Yes ☐ No

Reviewed and Approved by County Manager

☒ Yes ☐ No ☐ N/A

Assembly Bill 61 (Ting) Gun violence restraining orders

Version Date:

☐ New Bill ☒ Amended Bill ☐ Gut & Amend

As amended August 30, 2019

Recommended Position

☐ Sponsor ☐ Support

☐ Support if Amended ☐ Oppose

☒ Other & Describe—Supervisor David Canepa will be seeking support for a Resolution urging the Governor to sign AB 61 at your September 24, 2019 Board meeting.

Summary

Assembly Bill 61 would allow, starting September 1, 2020, an employer, coworker, or an employee or teacher of a secondary or postsecondary school to file a petition requesting a gun violence restraining order (GVRO).

Background/Analysis

Existing law 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 control, owning, purchasing, possessing, or receiving any firearms or ammunition." (PC § 18100). Under existing law, only law enforcement and immediate family members may petition the court to obtain an ex parte GVRO.

Among other things, existing law also:

- Prohibits a person that is subject to a GVRO from having in his or her custody any firearms or ammunition while the order is in effect.
- Requires the court to order the restrained person to surrender all firearms and ammunition in his or her control.
- ppAllows law enforcement to obtain a temporary GVRO if the court finds, that there is reasonable cause to believe that the subject of the petition poses an immediate and present danger of causing injury to others by possessing the firearm, and the emergency GVRO is necessary to prevent personal injury to the subject of the order or another because

less restrictive alternatives have been tried and been ineffective or determined to be inadequate.

- States that every person who violates an ex parte GVRO or a GVRO issued after notice and a hearing, is guilty of a misdemeanor and shall be prohibited from having under his or her custody and 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.

Challenge

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 deadly threat to themselves and others. Family members, coworkers, employers, and teachers are the most likely to see early warning signs if someone is becoming a danger to themself[ves] or others."

In the three years that the GVRO program has been implemented 614 GVROs have been issued across the state. Although the program has seen success, parties other than law enforcement and immediate family lack access to this new public safety tool.

According to the ACLU, which is opposing the bill, "AB 61

“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.”

Solution/Recommended Proposal

This bill would, commencing September 1, 2020, expand the category of persons who may file a petition requesting an ex parte, one-year, or renewal GVRO to include:

- 1) An employer,
- 2) A coworker who has substantial and regular interactions with the subject of the petition and approval of their employer,
- 3) An employee or teacher of a secondary or postsecondary school, with approval of a school administrator or a school administration staff member with a supervisory role, that the person has attended in the last 6 months.

It should be noted that SB 61 is double jointed with AB 12 (Irwin and Ting) which would extend the duration of GVROs and their renewals to a maximum of five years. According to the authors, an extended restraint period would better permit individuals to meaningfully address the underlying criminal or mental health issues that led to the issuance of the GVRO.

Departments Impacted & Why

The District Attorney’s mandated responsibilities with regards to GVROs include: prosecution of those charged with (i) violations of GVROs, (ii) violations of subsequent five-year firearms/ammunition prohibition due to violating a GVRO, and (iii) filing GVRO petitions with false information or with the intent to harass.

The Sheriff’s Office’s mandated responsibilities with regards to the implementation of GVROs include, retaining surrendered firearms and ammunition during the restraining order period; issuance of a receipt to the restrained person at the time of surrender and storage of the weapon(s); and serving of ex-parte orders. The Sheriff’s Office is also responsible for the destruction of firearms that are not reclaimed.

Fiscal Impact

The District Attorney’s Office does not anticipate a substantial increase in GVRO cases or court proceedings should this measure be chaptered. Furthermore, the DA expects that implementation of this measure would have minimal impact on office workload and that any impact could be met with existing resources.

The Sheriff’s Office currently processes approximately 3 GVROs per year. Should this measure be adopted, they do not anticipate a substantial increase in the number of new GVROs requiring processing. Increased costs in this area are anticipated to be minimal.

Support (select list)

California District Attorneys Association
Ventura County Board of Supervisors
Giffords Law Center to Prevent Gun Violence
Brady California United Against Gun Violence
American College of Emergency Physicians, California Chapter

Opposition

National Rifle Association
Gun Owners of California
California Rifle and Pistol Association
American Civil Liberties Union of California
California Civil Liberties Advocacy

Status

9/9/19 A—Enrollment

Assembly Bill No. 61

Passed the Assembly September 9, 2019

Chief Clerk of the Assembly

Passed the Senate September 4, 2019

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2019, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend, repeal, and add Sections 18150, 18170, and 18190 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 61, Ting. Gun violence restraining orders.

Existing law authorizes a court to issue an ex parte gun violence restraining order prohibiting the subject of the petition from having in their custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition when it is shown that there is a substantial likelihood that the subject of the petition poses a significant danger of self-harm or harm to another in the near future by having in their custody or control, owning, purchasing, possessing, or receiving a firearm, and that the order is necessary to prevent personal injury to the subject of the petition or another, as specified. Existing law requires the ex parte order to expire no later than 21 days after the date on the order. Existing law also authorizes a court to issue a gun violence restraining order prohibiting the subject of the petition from having in their custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition for a period of one year when there is clear and convincing evidence that 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 the subject of the petition or another by having in their custody or control, owning, purchasing, possessing, or receiving a firearm, and that the order is necessary to prevent personal injury to the subject of the petition or another, as specified. Existing law authorizes renewal of a gun violence restraining order within 3 months of the order's expiration. Petitions for ex parte, one-year, and renewed gun violence restraining orders may be made by an immediate family member of the person or by a law enforcement officer.

This bill would, commencing September 1, 2020, similarly authorize an employer, a coworker who has substantial and regular interactions with the person and approval of their employer, or an employee or teacher of a secondary or postsecondary school, with

approval of a school administrator or a school administration staff member with a supervisory role, that the person has attended in the last 6 months to file a petition for an ex parte, one-year, or renewed gun violence restraining order.

This bill would incorporate additional changes to Sections 18170 and 18190 of the Penal Code proposed by AB 12 to be operative only if this bill and AB 12 are enacted and this bill is enacted last.

The people of the State of California do enact as follows:

SECTION 1. Section 18150 of the Penal Code is amended to read:

18150. (a) (1) An immediate family member of a person or a law enforcement officer may file a petition requesting that the court issue an ex parte gun violence restraining order enjoining the subject of the petition from having in their custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition.

(2) For purposes of this subdivision, “immediate family member” has the same meaning as in paragraph (3) of subdivision (b) of Section 422.4.

(b) A court may issue an ex parte gun violence restraining order if the petition, supported by an affidavit made in writing and signed by the petitioner under oath, or an oral statement taken pursuant to subdivision (a) of Section 18155, and any additional information provided to the court shows that there is a substantial likelihood that both of the following are true:

(1) The subject of the petition poses a significant danger, in the near future, of causing personal injury to the subject of the petition or another by having in their custody or control, owning, purchasing, possessing, or receiving a firearm as determined by considering the factors listed in Section 18155.

(2) An ex parte gun violence restraining order is necessary to prevent personal injury to the subject of the petition or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances of the subject of the petition.

(c) An affidavit supporting a petition for the issuance of an ex parte gun violence restraining order shall set forth the facts tending

to establish the grounds of the petition, or the reason for believing that they exist.

(d) An ex parte order under this chapter shall be issued or denied on the same day that the petition is submitted to the court, unless the petition is filed too late in the day to permit effective review, in which case the order shall be issued or denied on the next day of judicial business in sufficient time for the order to be filed that day with the clerk of the court.

(e) This section shall become inoperative on September 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 2. Section 18150 is added to the Penal Code, to read:

18150. (a) (1) Any of the following individuals may file a petition requesting that the court issue an ex parte gun violence restraining order enjoining the subject of the petition from having in their custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition:

(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 has attended in the last six months, if the employee or teacher has obtained the approval of a school administrator or a school administration staff member with a supervisorial role.

(E) A law enforcement officer.

(2) For purposes of this subdivision, “immediate family member” has the same meaning as in paragraph (3) of subdivision (b) of Section 422.4.

(3) This chapter does not require a person described in paragraph (1) to seek a gun violence restraining order.

(b) A court may issue an ex parte gun violence restraining order if the petition, supported by an affidavit made in writing and signed by the petitioner under oath, or an oral statement taken pursuant to subdivision (a) of Section 18155, and any additional information provided to the court shows that there is a substantial likelihood that both of the following are true:

(1) The subject of the petition poses a significant danger, in the near future, of causing personal injury to the subject of the petition

or another by having in their custody or control, owning, purchasing, possessing, or receiving a firearm as determined by considering the factors listed in Section 18155.

(2) An ex parte gun violence restraining order is necessary to prevent personal injury to the subject of the petition or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances of the subject of the petition.

(c) An affidavit supporting a petition for the issuance of an ex parte gun violence restraining order shall set forth the facts tending to establish the grounds of the petition, or the reason for believing that they exist.

(d) An ex parte order under this chapter shall be issued or denied on the same day that the petition is submitted to the court, unless the petition is filed too late in the day to permit effective review, in which case the order shall be issued or denied on the next day of judicial business in sufficient time for the order to be filed that day with the clerk of the court.

(e) This section shall become operative on September 1, 2020.

SEC. 3. Section 18170 of the Penal Code is amended to read:

18170. (a) An immediate family member of a person or a law enforcement officer may request that a court, after notice and a hearing, issue a gun violence restraining order enjoining the subject of the petition from having in their custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition for a period of one year.

(b) For purposes of this section, “immediate family member” has the same meaning as in paragraph (3) of subdivision (b) of Section 422.4.

(c) This section shall become inoperative on September 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 4. Section 18170 is added to the Penal Code, to read:

18170. (a) (1) Any of the following individuals may request that a court, after notice and a hearing, issue a gun violence restraining order enjoining the subject of the petition from having in their custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition for a period of one year:

(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 has attended in the last six months, if the employee or teacher has obtained the approval of a school administrator or a school administration staff member with a supervisory role.

(E) A law enforcement officer.

(2) This chapter does not require a person described in paragraph (1) to seek a gun violence restraining order.

(b) For purposes of this section, “immediate family member” has the same meaning as in paragraph (3) of subdivision (b) of Section 422.4.

(c) This section shall become operative on September 1, 2020.

SEC. 4.5. Section 18170 is added to the Penal Code, to read:

18170. (a) (1) Any of the following individuals may request that a court, after notice and a hearing, issue a gun violence restraining order enjoining the subject of the petition from having in their custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition for a period of time between 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 has attended in the last six months, if the employee or teacher has obtained the approval of a school administrator or a school administration staff member with a supervisory role.

(E) A law enforcement officer.

(2) This chapter does not require a person described in paragraph (1) to seek a gun violence restraining order.

(b) For purposes of this section, “immediate family member” has the same meaning as in paragraph (3) of subdivision (b) of Section 422.4.

(c) This section shall become operative on September 1, 2020.

SEC. 5. Section 18190 of the Penal Code is amended to read:

18190. (a) (1) An immediate family member of a restrained person or a law enforcement officer may request a renewal of a gun violence restraining order at any time within the three months before the expiration of a gun violence restraining order.

(2) For purposes of this subdivision, “immediate family member” has the same meaning as in paragraph (3) of subdivision (b) of Section 422.4.

(b) A court may, after notice and a hearing, renew a gun violence restraining order issued under this chapter if the petitioner proves, by clear and convincing evidence, that paragraphs (1) and (2) of subdivision (b) of Section 18175 continue to be true.

(c) In determining whether to renew a gun violence restraining order issued under this chapter, the court shall consider evidence of the facts identified in paragraph (1) of subdivision (b) of Section 18155 and any other evidence of an increased risk for violence, including, but not limited to, evidence of any of the facts identified in paragraph (2) of subdivision (b) of Section 18155.

(d) At the hearing, the petitioner shall have the burden of proving, by clear and convincing evidence, that paragraphs (1) and (2) of subdivision (b) of Section 18175 are true.

(e) If the renewal petition is supported by clear and convincing evidence, the court shall renew the gun violence restraining order issued under this chapter.

(f) The renewal of a gun violence restraining order issued pursuant to this section shall have a duration of one year, subject to termination by further order of the court at a hearing held pursuant to Section 18185 and further renewal by further order of the court pursuant to this section.

(g) A gun violence restraining order renewed pursuant to this section shall include the information identified in subdivision (a) of Section 18180.

(h) This section shall become inoperative on September 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 6. Section 18190 is added to the Penal Code, to read:

18190. (a) (1) Any of the following people may request a renewal of a gun violence restraining order at any time within the three months before the expiration of a gun violence restraining order:

(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 has attended in the last six months, if the employee or teacher has obtained the approval of a school administrator or a school administration staff member with a supervisory role.

(E) A law enforcement officer.

(2) For purposes of this subdivision, “immediate family member” has the same meaning as in paragraph (3) of subdivision (b) of Section 422.4.

(3) This chapter does not require a person described in paragraph (1) to seek a gun violence restraining order.

(b) A court may, after notice and a hearing, renew a gun violence restraining order issued under this chapter if the petitioner proves, by clear and convincing evidence, that paragraphs (1) and (2) of subdivision (b) of Section 18175 continue to be true.

(c) In determining whether to renew a gun violence restraining order issued under this chapter, the court shall consider evidence of the facts identified in paragraph (1) of subdivision (b) of Section 18155 and any other evidence of an increased risk for violence, including, but not limited to, evidence of any of the facts identified in paragraph (2) of subdivision (b) of Section 18155.

(d) At the hearing, the petitioner shall have the burden of proving, by clear and convincing evidence, that paragraphs (1) and (2) of subdivision (b) of Section 18175 are true.

(e) If the renewal petition is supported by clear and convincing evidence, the court shall renew the gun violence restraining order issued under this chapter.

(f) The renewal of a gun violence restraining order issued pursuant to this section shall have a duration of one year, subject to termination by further order of the court at a hearing held pursuant to Section 18185 and further renewal by further order of the court pursuant to this section.

(g) A gun violence restraining order renewed pursuant to this section shall include the information identified in subdivision (a) of Section 18180.

(h) This section shall become operative on September 1, 2020.

SEC. 6.5. Section 18190 is added to the Penal Code, to read:

18190. (a) (1) Any of the following people may request a renewal of a gun violence restraining order at any time within the three months before the expiration of a gun violence restraining order:

- (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 has attended in the last six months, if the employee or teacher has obtained the approval of a school administrator or a school administration staff member with a supervisorial role.
- (E) A law enforcement officer.

(2) For purposes of this subdivision, “immediate family member” has the same meaning as in paragraph (3) of subdivision (b) of Section 422.4.

(3) This chapter does not require a person described in paragraph (1) to seek a gun violence restraining order.

(b) A court may, after notice and a hearing, renew a gun violence restraining order issued under this chapter if the petitioner proves, by clear and convincing evidence, that paragraphs (1) and (2) of subdivision (b) of Section 18175 continue to be true.

(c) In determining whether to renew a gun violence restraining order issued under this chapter, the court shall consider evidence of the facts identified in paragraph (1) of subdivision (b) of Section 18155 and any other evidence of an increased risk for violence, including, but not limited to, evidence of any of the facts identified in paragraph (2) of subdivision (b) of Section 18155.

(d) At the hearing, the petitioner shall have the burden of proving, by clear and convincing evidence, that paragraphs (1) and (2) of subdivision (b) of Section 18175 are true.

(e) If the renewal petition is supported by clear and convincing evidence, the court shall renew the gun violence restraining order issued under this chapter.

(f) (1) The renewal of a gun violence restraining order issued pursuant to this section shall have a duration of between one to five years, subject to termination by further order of the court at

a hearing held pursuant to Section 18185 and further renewal by further order of the court pursuant to this section.

(2) In determining the duration of the gun violence restraining order pursuant to paragraph (1), the court shall consider the length of time that the circumstances set forth in subdivision (b) of Section 18175 are likely to continue, and shall issue the order based on that determination.

(g) A gun violence restraining order renewed pursuant to this section shall include the information identified in subdivision (a) of Section 18180.

(h) This section shall become operative on September 1, 2020.

SEC. 7. (a) Section 4.5 of this bill incorporates amendments to Section 18170 of the Penal Code proposed by both this bill and Assembly Bill 12. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2020, (2) each bill amends Section 18170 of the Penal Code, and (3) this bill is enacted after Assembly Bill 12, in which case Section 4 of this bill shall not become operative.

(b) Section 6.5 of this bill incorporates amendments to Section 18190 of the Penal Code proposed by both this bill and Assembly Bill 12. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2020, (2) each bill amends Section 18190 of the Penal Code, and (3) this bill is enacted after Assembly Bill 12, in which case Section 6 of this bill shall not become operative.

Approved _____, 2019

Governor