

Date of Hearing: June 29, 2021  
Counsel: Matthew Fleming

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Reginald Byron Jones-Sawyer, Sr., Chair

SB 320 (Eggman) – As Amended June 14, 2021

**SUMMARY:** Codifies existing Rules of Court related to the relinquishment of a firearm by a person subject to a civil domestic violence restraining order; requires the court to notify law enforcement and the county prosecutor's office when there has been a violation of a firearm/ammunition relinquishment order, and clarifies that specified provisions of law pertaining to a relinquishment of a firearm also apply to ammunition. Specifically, **this bill:**

- 1) Requires the court, when issuing a protective order, to provide information about relinquishing any firearms and ammunition that are still in the restrained party's possession, according to local procedures, and the process for submitting a receipt to the court showing proof of relinquishment.
- 2) Requires the court, when holding a hearing, to review the file to determine whether the receipt showing proof of relinquishment has been filed and inquire of the respondent whether they have complied with the requirement.
- 3) Requires the court to report violations of the firearms prohibition of a restraining order to the prosecuting attorney in the jurisdiction where the order has been issued within two business days of the court hearing unless the restrained party provides a receipt showing compliance at a subsequent hearing or by direct filing with the clerk of the court.
- 4) Requires every law enforcement agency in the state to develop, adopt, and implement written policies and standards for law enforcement officers who request immediate relinquishment of firearms or ammunition.
- 5) States that if the results of the court's search of records and databases, prior to issuing a civil domestic violence restraining order (DVRO), indicate that the subject of the order owns a registered firearm, or if the court receives evidence of the subject's possession of a firearm or ammunition, the court shall make a written record as to whether the subject has relinquished the firearm and provided proof of the required storage, sale, or relinquishment of the firearm.
- 6) States that if evidence of compliance with a relinquishment order is not provided, the court shall order the clerk of the court to immediately notify law enforcement officials and law enforcement officials shall take all actions necessary to obtain those and any other firearms and ammunition owned, possessed, or controlled by the restrained person and to address the violation of the order as appropriate and as soon as practicable.
- 7) Codifies the following Rules of Court that pertain to family or juvenile law domestic violence protective orders:

- a) When relevant information is presented to the court at a noticed hearing that a restrained person has a firearm or ammunition, the court shall consider that information and determine, by a preponderance of the evidence, whether the person subject to a protective order has a firearm in, or subject to, their immediate possession or control;
  - b) In making such a determination, 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;
  - c) The court may make the determination at a noticed hearing when a domestic violence protective order is issued, at a subsequent review hearing, or at any subsequent family or juvenile law hearing while the order remains in effect;
  - d) If the court makes a determination that the restrained person has a firearm or ammunition in violation of a protective order, the court shall 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;
  - e) When presented with information that a restrained person has a firearm or ammunition, the court may set a review hearing to determine whether there has been a violation of the protective order;
  - f) The review hearing shall be held within 10 court days after the noticed hearing at which the information was presented. If the restrained person is not present when the court sets the review hearing, the protected person shall 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;
  - g) The court may, for good cause, extend the date of the review hearing for a reasonable period or remove it from the calendar;
  - h) The court shall order the restrained person to appear at the hearing;
  - i) The court may conduct the review hearing in the absence of the protected person;
  - j) The court may permit a party to appear by telephone; and,
  - k) The determination may be considered by the court in issuing an order to show cause for contempt, as specified, or an order for monetary sanctions, as specified.
- 8) Requires the court to consider whether a party is a restrained person in possession or control of a firearm or ammunition when making specified determinations related to child custody and visitation matters.
- 9) Requires the juvenile court, when issuing a DVRO, to make a determination as to whether the restrained person is in possession or control of a firearm or ammunition, and applies the procedures for firearm relinquishment.

10) Specifies that certain penalties do not apply if the restrained person is a juvenile.

11) Makes additional conforming changes.

**EXISTING LAW:**

- 1) Authorizes protective orders to be issued by the civil court in domestic violence cases. (Fam. Code, § 6380 et seq.)
- 2) Provides that when making a protective order where both parties are present in court, the court shall inform both the petitioner and the respondent of the terms of the order, including notice that the respondent is prohibited from owning, possessing, purchasing or receiving or attempting to own, possess, purchase or receive a firearm or ammunition, and including notice of the penalty of the violation. (Fam. Code, § 6304.)
- 3) Prohibits a person who is the subject of a protective order from owning, possessing, purchasing, or receiving a firearm or ammunition while the protective order is in effect. (Fam. Code, § 6389.)
- 4) Punishes a violation of the prohibition as either a misdemeanor (owning or possessing a firearm when prohibited from doing so by a restraining order) or a wobbler (purchasing or receiving or attempting to purchase or receive a firearm when prohibited from doing so by a restraining order). (*Id.*; Pen. Code, § 29825.)
- 5) Provides that upon issuance of a restraining order, the court shall order the respondent to relinquish any firearm in the respondent's immediate possession or control or subject to the respondent's immediate possession or control. (Fam. Code, § 6389, subd. (c)(1).)
- 6) Requires a law enforcement officer serving a protective order that indicates that the respondent is in possession of firearms to request their immediate surrender. If a request is not made by the officer, the relinquishment shall occur within 24 hours of being served with the order, by surrendering the firearm in a safe manner to the control of local law enforcement officials, or by selling the firearm to a licensed gun dealer, as specified. A receipt shall be issued to the person relinquishing the firearm at the time of relinquishment and the person shall do both of the following within 48 hours of being served with the order:
  - a) File the relinquishment receipt with the court. Failure to timely file a receipt shall constitute a violation of the protective order; and
  - b) File a copy of the receipt with the law enforcement agency that served the protective order. Failure to timely file a copy of the receipt shall constitute a violation of the protective order. (Fam. Code, § 6389, subd. (c)(2).)
- 7) Authorizes the issuance of a search warrant when the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody of or controlled by, a person who is prohibited by a civil DVRO that has been lawfully served, and the restrained person has failed to relinquish the firearm as required. (Pen. Code, § 1524, subd. (a)(11).)

- 8) Requires, prior to a hearing on the issuance of a civil DVRO, the court to ensure that a search has been conducted to determine if the subject of the proposed order has a prior criminal conviction for a violent felony or a serious felony, has a misdemeanor conviction involving domestic violence, weapons, or other violence, has an outstanding warrant, is currently on parole or probation; has a registered firearm; or has a prior restraining order or a violation of a prior restraining order. The search shall be conducted of all records and databases readily available and reasonably accessible to the court, as provided. (Fam. Code, § 6306, subd. (a).)
- 9) Provides that if the results of the court's search of records and databases indicate that an outstanding warrant exists against the subject of the order, the court shall order the clerk of the court to immediately notify appropriate law enforcement officials and law enforcement officials shall take all actions necessary to execute any outstanding warrants or any other actions as appropriate and as soon as practicable. (Fam. Code, § 6306, subd. (e).)
- 10) Requires when relevant information is presented to the 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.)
- 11) 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.*)
- 12) States that if the court makes a determination that the restrained person has a firearm in violation of 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.*)
- 13) 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.*)
- 14) 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.*)
- 15) Authorizes the court to extend the date of the review hearing for a reasonable period of time to remove it from the calendar. (*Id.*)
- 16) 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.*)
- 17) States that the court may permit a party to appear at the review hearing by telephone. (*Id.*)

- 18) 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.*)
- 19) Requires the 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.)
- 20) Authorizes a juvenile court to issue a DVRO, as specified. (Welf. & Inst. Code, § 213.5.)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

- 1) **Author's Statement:** According to the author, “In California, 33% of women and 27% of men experience some form of domestic violence during their lifetimes. We know that the presence of a firearm in the home during an incident of domestic violence increases the risk of homicide by at least 500%. Although California has led the charge when it comes to comprehensive firearm legislation, recovering firearms from those who are mandated to relinquish them has proven to be more difficult.

“The Armed Prohibited Persons System (APPS) data show consistently that over 20,000 people in California are armed and prohibited – and that’s only identifying those with firearms known to the state of California. California DOJ has consistently recommended that steps be taken at the local level to ensure relinquishment as close to the time of prohibition as possible.

“Under existing law, when a person is the subject of a domestic violence restraining order they automatically become a prohibited person. In 2014, the Judicial Council adopted Rule 5.495 laying out the procedures courts could take to ensure relinquishment and to coordinate with law enforcement where necessary. Because the rule is optional, it has been implemented inconsistently throughout California. Codifying Rule of Court 5.495, and strengthening requirements for courts to communicate with law enforcement when an order has been violated, demonstrates California’s commitment to removing firearms from prohibited persons at the earliest point in time while also ensuring consistent and robust implementation of the policy across all 58 counties of our state.

“The inconsistency in implementation is especially concerning in the civil context because the only person with the ability to address the firearm prohibition as close to the time of prohibition as possible is the judge hearing the case. Unlike in the criminal context, there is no outside law enforcement, probation officer, or prosecutor present in the courtroom to address compliance or violations with the firearms relinquishment process.

“In civil domestic violence restraining order cases the burden is too often on the victim to know about the rule of court process and to request that the court conduct a hearing to ensure the restrained person is no longer armed. Making sure courts, litigants, and attorneys know how important it is to address the firearms prohibition at the earliest point possible will

protect victims of domestic violence, their families and communities, and law enforcement.”

- 2) **Judicial Council Report:** In 2008, the Judicial Council published a report that recommended guidelines for improving the administration of justice in domestic violence cases. On the issue of firearms relinquishment, the report stated that while California and federal law bars persons subject to restraining orders from possessing or purchasing firearms or ammunition, a court’s order to relinquish firearms are not self-implementing. The restrained party is responsible for surrendering any firearms to law enforcement or selling them to a licensed gun dealer but some gun owners are extremely reluctant to comply. (*Recommended Guidelines and Practices for Improving the Administration of Justice in Domestic Violence Cases: Final Report of the Domestic Violence Practice and Procedure Task Force* (Jan. 2008) Administrative Office of the Courts, p. 21, available at: [https://www.courts.ca.gov/documents/dvpp\\_rec\\_guidelines.pdf](https://www.courts.ca.gov/documents/dvpp_rec_guidelines.pdf), [as of June 15, 2021].)

The report states:

Ultimately, public safety is best served when law enforcement and the entire justice system take immediate action to remove firearms, whether registered or not, from the hands of a person who is statutorily barred from possessing them. The courts have a necessary and important role in achieving this goal, but because they are not investigative or enforcement agencies, the courts must rely on justice system entities to provide necessary information and to enforce compliance with firearm relinquishment orders. (*Ibid.*)

This would bill make changes to enhance communication with law enforcement related to identifying people subject to, or in violation of, the relinquishment requirement. Specifically, this bill:

- Requires the court to notify the parties of how any firearms still in the restrained party’s possession are to be relinquished and how to submit a receipt to the court.
  - Requires a court holding a hearing regarding the firearm relinquishment to review the file to determine whether the receipt regarding relinquishment has been filed and to inquire as to whether the person has complied with the requirement.
  - Requires violations of the relinquishment requirement to be reported to the prosecuting attorney in the jurisdiction where the order has been issued within two business days of the court hearing unless the restrained party provides a receipt showing compliance at a subsequent hearing or by direct filing with the clerk of the court.
  - Requires the court, in performing the search to see if the person has, among other things, a registered firearm, to make a written record as to whether the person has relinquished their firearms, and if evidence has not been provided, to notify law enforcement officials, who must then take all actions necessary to ensure the individual relinquishes the firearms.
- 3) **Existing California Rules of Court:** In 2014, the Judicial Council adopted Rule of Court 5.495 related to firearm relinquishment procedures when a civil DVRO has been issued. These rules of court were created in order to address a procedural gap in existing statutes that

prohibit a restrained person from owning, possessing, or controlling a firearm for the duration of the restraining order but do not provide for a procedure for the court to determine whether its order to relinquish firearms has been complied with. Specifically, the rules:

- Require the court to consider relevant information, when presented at a noticed hearing, to determine whether the person subject to a civil domestic violence order has a prohibited firearm;
- Provide procedures regarding the court's determination of whether the firearm has been relinquished;
- Provide that the court may make its determination at the time the DVRO is issued or at a subsequent noticed hearing while the order remains in effect;
- Specify that documentation of the court's determination be provided to the parties;
- Specify remedies to be applied if the court determines that a restrained person has failed to relinquish a prohibited firearm; and,
- For cases in which the court defers consideration of the matter to a review hearing, specifies the timing of the hearing, specified notice requirements if the restrained person was not present when the court set the review hearing, specifies who must be present at the hearing and provides that a party may appear by telephone.

According to the author and sponsor of this bill, these rules of court are not mandatory and therefore the implementation of these procedures has been inconsistent throughout different counties. In fact, "Rules of Court have the force of law and are as binding as procedural statutes as long as they are not inconsistent with statutory or constitutional law." (*R.R. v. Superior Court* (2009) 180 Cal.App.4th 185, 205.) Nevertheless, this bill would codify Rule of Court 5.495 in the Family Code so that the standards and procedures for ensuring the relinquishment of a firearm and ammunition following the issuance of a civil restraining order would consistently apply throughout the state.

- 4) **Conforming Changes Regarding Ammunition:** Existing law prohibits a person who is the subject of a protective order issued by the family court from owning, possessing, purchasing, or receiving a firearm or ammunition. Existing law also provides procedures for how a person may legally relinquish their firearm in order to comply with that prohibition. However, the current law governing these procedures only references firearms, and makes no mention of ammunition. This bill would add in references to ammunition in order to make it clear to all parties that a person must also relinquish their ammunition, and the legal procedures for making sure that the court is properly apprised of the fact that a person has done so.
- 5) **Argument in Support:** According to the bill's sponsor, *Gifford's*: "The presence of a firearm in the home during an incident of domestic violence increases the risk of homicide by at least 500%; over half of female victims of domestic violence homicide in the United States are killed with firearms. California lawmakers have passed important legislation providing criminal and civil remedies to address this public health issue however, a gap remains

regarding the procedures for ensuring restrained parties understand and promptly comply with the firearms relinquishment and prohibition requirements. This bill works to address this gap and offers life-saving opportunities to ensure firearm relinquishment or seizure takes place.

“This bill would strengthen court processes for ensuring firearm relinquishment by people who, under current law, are no longer permitted to own, possess, or purchase firearms because they are subject to a domestic violence restraining order. When a protected party has provided information to the court about a restrained party having firearms, we know that matter involves greater risk of harm to the protected person, family and community members, and law enforcement. SB 320 would build on existing law that currently directs courts to review relevant records prior to a hearing on issuance of a protective order to determine whether the respondent failed to relinquish firearms. It also provides for notification to law enforcement so that appropriate steps can be taken to reduce risk to protected persons, members of law enforcement, and the public generally.

“In addition to adding new language that would require information be provided to restrained parties to make it easier for them to comply with firearm relinquishment procedures, this bill would codify an existing court rule (5.495) adopted by the Judicial Council that has been unevenly implemented across the state. This rule directs courts to consider information about unlawful firearm or ammunition access and failure to comply with relinquishment requirements, including conducting review hearings to verify compliance and notifying law enforcement of violations. The bill would also require courts to consider the significance of a violation when ruling on child custody and visitation.

“Civil domestic violence restraining order cases almost always involve self-represented parties. As a result, those seeking protection rely heavily on the courts to ensure that orders are effective and provide the remedies that have been enacted in California, including ensuring that firearms are in fact relinquished and prohibitions around future purchases are put into place. This bill would encourage courts to utilize straightforward, existing mechanisms to reduce the risk of firearm violence and ensure compliance with the law and court orders.

Those who have used violence against their partners and who become subject to protective and restraining orders too often are able to illegally keep guns and use them to threaten, terrorize, maim, or murder their family members, law enforcement officers, or others in their community. This bill makes Californians safer by codifying best practices and ensuring that courts and law enforcement consistently verify that restrained parties are in fact disarmed. We believe this policy will save lives.

#### **6) Related Legislation:**

- a) SB 374 (Min) would provide that reproductive coercion is a form of domestic violence for which a restraining order may be granted. SB 374 is pending in the Assembly Appropriations Committee.
- b) SB 538 (Rubio) would require courts to receive domestic violence restraining order petitions or gun violence restraining order petitions electronically. SB 538 is pending in



this Committee.

- 7) **Prior Legislation:** AB 465 (Eggman), Chapter 137, Statutes of 2020, would have codified Rules of Court that pertaining to criminal court and family court processes for determining if a restrained party failed to relinquish a firearm as required by a protective order. AB 465 was amended into an unrelated bill and signed by the Governor.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

American Academy of Pediatrics, California  
Brady Campaign  
Brady Campaign California  
California District Attorneys Association  
California Partnership to End Domestic Violence  
Family Violence Appellate Project  
Giffords  
Little Hoover Commission  
Los Angeles County Bar Association - Family Law Section  
National Association of Social Workers, California Chapter  
Neveragainca  
Prosecutors Alliance of California  
The Violence Prevention Coalition of Orange County  
Weave  
Women Against Gun Violence

### **Oppose**

None

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