
UNFINISHED BUSINESS

Bill No: SB 320
Author: Eggman (D), et al.
Amended: 8/30/21
Vote: 22

SENATE PUBLIC SAFETY COMMITTEE: 4-0, 3/9/21

AYES: Bradford, Ochoa Bogh, Skinner, Wiener

SENATE JUDICIARY COMMITTEE: 11-0, 3/23/21

AYES: Umberg, Borgeas, Caballero, Durazo, Gonzalez, Hertzberg, Jones, Laird, Stern, Wieckowski, Wiener

SENATE APPROPRIATIONS COMMITTEE: 7-0, 5/20/21

AYES: Portantino, Bates, Bradford, Jones, Kamlager, Laird, Wieckowski

SENATE FLOOR: 39-0, 6/1/21

AYES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

NO VOTE RECORDED: Melendez

ASSEMBLY FLOOR: 79-0, 9/9/21 - See last page for vote

SUBJECT: Domestic violence protective orders: possession of a firearm

SOURCE: Giffords Law Center to Prevent Gun Violence

DIGEST: This bill codifies existing Rules of Court related to the relinquishment of a firearm by a person subject to a civil domestic violence restraining order and requires the courts to notify law enforcement and the county prosecutor's office when there has been a violation of a firearm relinquishment order.

Assembly Amendments (1) add ammunition to this bill's provisions; (2) add conforming language; and (3) add double-jointing language from SB 715 (Portantino), AB 1579 (Committee on Judiciary), and AB 1171 (C. Garcia) to avoid chaptering-out issues.

ANALYSIS:

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) States that a person who is the subject of a protective order issued by the court shall not own, possess, purchase, or receive a firearm or ammunition while the protective order is in effect. A violation of this prohibition is punishable 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). (Fam. Code § 6389; Pen. Code § 29825.)
- 4) States 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).)
- 5) States that a law enforcement officer serving a protective order that indicates that the respondent is in possession of firearms shall request that the firearm be immediately surrendered. Alternatively, if a request is not made by a law enforcement officer, the relinquishment shall occur within 24 hours of being served with the order, by either 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, with the court that issued the protective order, the receipt showing the firearm was surrendered as required. 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).)
- 6) Punishes a willful and knowing violation of a civil domestic violence restraining order issued as contempt of court punishable by imprisonment in county jail for not more than one year, a fine of not more than \$1,000, or by both imprisonment and a fine. (Pen. Code § 166, subd. (c)(3).)
- 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 domestic violence restraining order that has been lawfully served, and the restrained person has failed to relinquish the firearm as required. (Pen. Code § 1524, subd. (a)(11).)
- 8) Provides that, prior to a hearing on the issuance of a civil domestic violence restraining order, the court 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) 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.)
- 12) Authorizes a juvenile court to issue a domestic violence restraining order, as specified. (Welf. & Inst. Code § 213.5.)

This bill:

- 1) Codifies California Rule of Court 5.495 related to court procedures when the court is presented with information that a restrained person is in possession of a firearm.
- 2) Requires the court to provide information about how any firearms or ammunition still in the restrained party's possession are to be relinquished, according to local procedures, and the process for submitting a receipt to the court showing proof of relinquishment.
- 3) Provides that a court holding a hearing on the matter of whether the respondent has relinquished any firearms or ammunition shall review the file to determine whether the receipt has been filed and inquire of the respondent whether they have complied with the requirement.
- 4) States that violations of the firearms prohibition of any civil domestic violence restraining order shall 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 respondent provides a receipt showing compliance at a subsequent hearing or by direct filing with the clerk of the court.
- 5) States that if the results of the court's search of records and databases 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. If evidence of compliance is not provided as required, the court shall order the court 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 or ammunition owned, possessed, or controlled by the restrained person and to address the violation of the order as appropriate and as soon as practicable.

- 6) Requires that the court 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.
- 7) Requires the juvenile court to make a determination as to whether the restrained person is in possession or control of a firearm or ammunition.

Comments

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 [Department of Justice] 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.

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

According to the Assembly Appropriations Committee:

- 1) One-time costs (General Fund) of approximately \$71,000 to the Department of Justice (DOJ) to modify the California Restraining and Protective Order System (CARPOS) to reflect notification to law enforcement.
- 2) No costs to the courts given this bill codifies an existing Rule of Court and other current court practices

SUPPORT: (Verified 9/8/21)

Giffords Law Center to Prevent Gun Violence (source)
 American Academy of Pediatrics California
 Brady California United Against Gun Violence
 Brady United Against Gun Violence
 California Partnership to End Domestic Violence
 Little Hoover Commission
 Los Angeles County Bar Association Family Law Section
 National Association of Social Workers, California Chapter
 Prosecutors Alliance of California

OPPOSITION: (Verified 9/8/21)

None received

ASSEMBLY FLOOR: 79-0, 9/9/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Mia Bonta, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin,

Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

NO VOTE RECORDED: Cooley

Prepared by: Stella Choe / PUB. S. /
9/9/21 20:42:32

**** END ****