


<p>California Department of Justice DIVISION OF LAW ENFORCEMENT Kevin Gardner, Chief</p> 	<h1>INFORMATION BULLETIN</h1>	
<p><i>Subject:</i></p> <p>Gun Violence Restraining Order Process</p>	<p><i>No.</i></p> <p>2019-BOF-02</p>	<p><i>Contact for information:</i></p> <p>Bureau of Firearms (916) 227-7527</p>
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TO: All California Law Enforcement Agencies

This information bulletin provides a brief summary of Penal Code sections 18100 through 18205 (Assembly Bill 1014 (Stats. 2014, ch. 872)) which became effective January 1, 2016. This legislation establishes procedures authorizing a court to issue a Gun Violence Restraining Order (GVRO). This information bulletin also outlines recent changes to GVRO laws, effective January 1, 2019.

Penal Code Section 18100 et seq. (Assembly Bill 1014 (Stats. 2014, ch. 872)) – Gun Violence Restraining Orders

Two Types of Gun Violence Restraining Orders

There are two initial types of GVROs that can, if appropriate, be extended for up to one year. A **Temporary Emergency GVRO** may only be sought by a law enforcement officer. (Pen. Code, § 18125.) To obtain this order, a court must find (1) that the subject of the petition poses an *immediate and present danger* of causing personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm; and (2) the 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 have been determined to be inadequate or inappropriate for the circumstances of the subject of the petition. (*Ibid.*)

The second type of GVRO is an **Ex Parte GVRO**, which may be sought by a law enforcement officer or an immediate family member. In this case, the order is issued if the court finds that (1) the subject of the petition poses a significant danger, *in the near future*, of causing personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm as determined by considering the factors listed in Penal Code section 18155; and (2) the 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. (Pen. Code, § 18150.) Unlike the Temporary Emergency GVRO, this application must be supported by an affidavit that sets forth the facts tending to establish the grounds of the petition, or the reason for believing that they exist. (*Ibid.*)

What a GVRO Does

A GVRO prohibits someone from possession of a firearm or ammunition. Specifically, the GVRO can order the following conditions upon the person:

- Not possess a firearm or ammunition
- Not purchase a firearm or ammunition
- Relinquish any firearms and/or ammunition to law enforcement, sell them, or store them with a licensed firearms dealer.

How to Obtain a GVRO

The court process for obtaining a GVRO is as follows:

A family member, household member, or law enforcement officer can request that a civil court in their jurisdiction issue a GVRO based on facts they present through a formal, written application, and/or at a hearing before a judge. This does not involve filing a criminal complaint and seeking a GVRO does not preclude the petitioner from seeking any other available legal remedy. After the petition is filed, a judge considers the information presented by the petitioner and assesses whether the person is presently at risk of harming themselves or someone else or poses a significant danger, in the near future, of causing personal injury to himself, herself, or another. If issued, both types of initial orders will 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 an effective review, in which case the order shall be issued or denied on the next day of judicial business. The order will be in effect for 21 days or less.

Law Enforcement Duties

If the GVRO is a Temporary Emergency GVRO, the law enforcement officer who requests the order must do all of the following:

- (a) If the order is obtained orally, memorialize the order of the court on the form approved by the Judicial Council.
- (b) Serve the order to the restrained person, if the restrained person can reasonably be located.
- (c) File a copy of the order with the court as soon as practicable after issuance.
- (d) Have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice. (Pen. Code, § 18140.)

The above steps should be taken as soon as possible, as the restrained person will not be prohibited from possessing firearms and/or ammunition until all steps are completed.

Extending the Duration of the GVRO

Within 21 days, and before the temporary GVRO expires, an immediate family member of a person or a law enforcement officer may request that a court, after notice and a hearing, issue a GVRO enjoining the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition for a period of up to one year.¹ (Pen. Code, § 18170 et seq.)

At the hearing, the petitioner shall have the burden of proving, by clear and convincing evidence, that both of the following are true: (1) the subject of the petition, or a person subject to an Ex Parte GVRO, as applicable, poses a significant danger of causing personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition; (2) a GVRO is necessary to prevent personal injury to the subject of the petition, or the person subject to an Ex Parte GVRO, as applicable, 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, or the person subject to an Ex Parte GVRO, as applicable. (Pen. Code, § 18175, subd. (b).)

If the court finds that there is clear and convincing evidence to issue a GVRO, the court shall issue a GVRO that prohibits the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition. (Pen. Code, § 18175, subd. (c).) 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 or Ex Parte GVRO then in effect. (*Ibid.*)

¹ See the Recent Updates section regarding SB 1200 (Stats. 2018, ch. 898) – Firearms: Gun Violence Restraining Orders, which requires a court that issues a temporary emergency GVRO (issued on the basis of a law enforcement officer’s attestation) to hold a hearing within 21 days to determine if the GVRO should be extended to one year.

Firearms surrendered under the GVRO may be held by law enforcement, sold by the owner to a federally licensed firearm dealer, or stored by a federally licensed firearm dealer. If at the expiration of the order the subject of the petition is not otherwise prohibited from purchasing a firearm and a new GVRO has not been issued, all firearms may be returned pursuant to the issuance of a law enforcement gun release (LEGR). (See Pen. Code, § 33850 et seq.; see also <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/legr.pdf>)

Recent Updates

The following changes to GVRO laws took effect on January 1, 2019:

AB 2176 (Stats. 2018, ch. 185) – Firearms

- Requires that a receipt given by an officer who takes custody of a firearm or other deadly weapon at the scene of a domestic violence incident, when serving a protective order, or when serving a GVRO, shall include the name and residential mailing address of the owner of the firearm or other deadly weapon.

AB 2526 (Stats. 2018, ch. 873) – Temporary Emergency Gun Violence Restraining Orders

- Allows a judicial officer to issue a temporary emergency Gun Violence Restraining Order (GVRO) orally based on the statements of a law enforcement officer. A temporary GVRO may be obtained in writing, if time and circumstances permit.
- Requires an officer who requests a temporary emergency GVRO to sign a declaration under penalty of perjury reciting the oral statements provided to the judicial officer and to memorialize the order of the court, if the request is made orally.

SB 1200 (Stats. 2018, ch. 898) – Firearms: Gun Violence Restraining Orders

- Expands the definition of “ammunition,” for the purposes of the GVRO law, to include a “magazine.”
- Requires a law enforcement officer, when serving a GVRO, to verbally ask the restrained person if he or she has any firearms, ammunition, or magazines in his or her possession or under his or her custody or control.
- Requires a court that issues a temporary emergency GVRO (issued on the basis of a law enforcement officer’s attestation) to hold a hearing within 21 days to determine if the GVRO should be extended to one year.

a list of applicable forms see <http://www.courts.ca.gov/33683.htm> or <http://www.courts.ca.gov/forms.htm?filter=GVP>.

If you have any questions regarding this Information Bulletin, please contact the Department of Justice, Bureau of Firearms, at (916) 227-7527.