

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2759 (Petrie-Norris)
Version: April 10, 2024
Hearing Date: June 18, 2024
Fiscal: No
Urgency: No
AWM

SUBJECT

Domestic violence protective orders: possession of a firearm

DIGEST

This bill clarifies and strengthens the applicability of, and procedures for obtaining, an existing exemption that allows a person who is the subject of a protective order issued under the Domestic Violence Prevention Act (DVPA) to carry a firearm or ammunition in connection with their employment, despite the DVPA's general rule that a person who is the subject of a DVPA order is prohibited from possessing a firearm or ammunition.

EXECUTIVE SUMMARY

The DVPA seeks to prevent acts of domestic violence, abuse, and sexual abuse, and to provide for a separation of persons involved in domestic violence for a period sufficient to enable them to seek a resolution. A person subject to a DVPA protective order is prohibited from owning, possessing, purchasing, or receiving, a firearm or ammunition while the protective order is in effect. Violation of this prohibition is punishable as a misdemeanor. Current law authorizes a person subject to a DVPA protective order to obtain an exemption from this prohibition for a specific firearm or ammunition if they are able to demonstrate a particular firearm is necessary as a condition of continued employment and the current employer is unable to reassign the person to another position where a firearm is unnecessary. The exemption provision provides both a general exemption and an exemption for a respondent who is a peace officer who can demonstrate that their employment and personal safety depend on their ability to carry a firearm; however, the interplay between these two provisions, and requirements for granting each exemption, are somewhat muddled.

This bill revises and recasts the DVPA's firearm prohibition exemptions in order to provide clear guidance to parties and courts on when, and how, a respondent may seek and obtain an exemption to the prohibition for a firearm necessary for the respondent's

current job. The bill's provisions break out the peace officer and non-peace officer exemptions, so as to give courts clear guidance as to which prong of the exemption applies, and clarify that the exemption should be granted under either prong only if the court finds, by a preponderance of the evidence, that the respondent does not pose an additional threat of harm to the protected party or the public by having access to a specific firearm or ammunition. The bill also clarifies how an exemption may be extended in duration or modified, as needed. The author has agreed to minor technical amendments to clarify when and how an exemption may be extended.

This bill is sponsored by the Women's Foundation California, Solis Policy Institute, and is supported by Brady Against Gun Violence, the California District Attorneys Association, the Los Angeles County District Attorney's Office, and Messaging for Success. The Committee has not received timely opposition to this bill. The Senate Public Safety Committee passed this bill with a vote of 5-0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the DVPA (Fam. Code, §§ 6200 et seq.), which sets forth procedural and substantive requirements for the issuance of an emergency protective order, an ex parte temporary restraining order (TRO), or a longer-term restraining order issued after a noticed hearing (known as orders after hearing, or for purposes of this analysis, a DVRO) to, among other things, enjoin specific acts of abuse or prohibit the abuser from coming within a specified distance of the abused person. (Fam. Code, §§ 6218, 6300 et seq.)
- 2) Defines "domestic violence," for purposes of the DVPA, as abuse perpetrated against a spouse or former spouse; a cohabitant or former cohabitant; a person with whom the respondent is having or has had a dating or engagement relationship; a person with whom the respondent has had a child, as specified; a child of a party or a child who is the subject of an action under the Uniform Parentage Act, as specified; or any other person related by consanguinity or affinity within the second degree. (Fam. Code, § 6211.)
- 3) Requires that a judge, in courts identified by the Judicial Council has having sufficient resources or for which there has been an appropriation by the Legislature, ensure a search of specified records and databases is conducted before a hearing on a protective order to determine if the subject of the proposed order has a registered firearm. (Fam. Code, § 6306(a).)¹

¹ The limitation on which courts are required to conduct the pre-hearing search is set forth in uncodified sections of SB 1433 (Alquist, Ch. 765, Stats. 2012) and SB 66 (Kuehl, Ch. 572, Stats. 2001). According to Judicial Council, most courts are performing these background checks, though the Legislature has not

- 4) Provides that a person subject to a protective order shall not own, possess, purchase, or receive a firearm or ammunition while that protective order is in effect; a violation of this restriction is punishable as a misdemeanor or a wobbler. (Fam. Code, § 6389(a).)
- 5) Requires a court, upon issuance of a protective order, to order the respondent to immediately relinquish any firearm or ammunition in their immediate possession or control, or subject to their immediate possession or control. (Fam. Code, § 6389(c).)
- 6) Permits a court to grant an exemption from the relinquishment order in 5) for a particular firearm or ammunition if the respondent can show that a particular firearm is necessary as a condition of continued employment and that the current employer is unable to reassign the respondent to another position where a firearm or ammunition is unnecessary.
 - a) If the court grants an exemption, the order shall provide that the firearm or ammunition shall be in the physical possession of the respondent only during scheduled work hours and during travel to and from the place of employment.
 - b) If the respondent is a peace officer who is required, as a condition of employment, to carry a firearm or ammunition and whose personal safety depends on the ability to carry a firearm or ammunition, a court may allow the peace officer to continue to carry a firearm or ammunition, either on duty or off duty, if the court finds by a preponderance of the evidence that the officer does not pose a threat of harm. Prior to making this finding, the court shall require a mandatory psychological evaluation of the peace officer and may require the peace officer to enter into counseling or other remedial treatment program to deal with any propensity for domestic violence. (Fam. Code, § 6389(h).)

This bill:

- 1) Reorganizes and adds to the provisions allowing the subject of a DVPA protective order to continue to possess a firearm or ammunition when necessary as a condition of employment, as set forth below.
- 2) Separates the continued possession of a firearm provisions into separate paragraphs for respondents who are currently sworn peace officers and all other respondents.
- 3) Provides, for respondents who are currently sworn peace officers who are required, as a condition of continued employment, to carry a firearm, ammunition, or a firearm or ammunition and whose current employer is unable to reassign the peace officer to another position where the use of a firearm or ammunition is unnecessary,

appropriated funds for that purpose. AB 3083 (Lackey, 2024), which is pending before this Committee, would eliminate the uncodified section making the firearm search conditional upon funding.

that a court may grant an exemption to allow the peace officer to continue to carry a firearm, ammunition, or a firearm and ammunition, either on or off duty, if the court finds by a preponderance of the evidence, in writing or on the record, both of the following:

- a) The peace officer's personal safety depends on the ability to carry that specific firearm, ammunition, or firearm and ammunition outside of scheduled work hours.
 - b) The peace officer does not pose an additional threat of harm to a protected party or the public by having access to that specific firearm, ammunition, or firearm and ammunition, including whether the peace officer might use the firearm for a purpose other than the purpose permitted by the court.
- 4) Requires a court, prior to making the finding in 3), to require a mandatory psychological evaluation of the peace officer by a licensed mental health professional with domestic violence expertise. The court must consider the results of the evaluation and may require the peace officer to enter into counseling or another remedial treatment program to deal with a propensity for domestic violence.
- 5) Provides, for respondents who are not currently sworn peace officers but who are required to carry a specific firearm, ammunition, or firearm and ammunition during work hours as a condition of employment, and whose current employer is unable to reassign them to another position where a firearm or ammunition is unnecessary, that a court may grant an exemption to allow the respondent to possess a specific firearm, ammunition, or firearm and ammunition only during scheduled work hours if the court finds by a preponderance of the evidence, in writing or on the record, that the respondent does not pose an additional threat of harm to a protected party or to the public by having access to the specific firearm, ammunition, or firearm and ammunition only during scheduled work hours, including whether the respondent might utilize the firearm or ammunition for a purpose other than the purpose permitted by the court.
- a) The court may order a psychological evaluation of the respondent by a licensed mental health professional with domestic violence expertise to assist the court in making this determination.
 - b) If the court grants an exemption, the order shall provide that the specific firearm, ammunition, or firearm and ammunition shall be in the physical possession of the respondent only during scheduled work hours and that the exemption does not authorize the respondent to possess any other firearm or ammunition, or to possess the specific firearm, ammunition, or firearm and ammunition outside of scheduled work hours.
- 6) Provides that, if the court grants an exemption under 3) or 5) during the pendency of a temporary restraining order and the court subsequently issues a restraining order after hearing on the same application, the court shall review and make a finding, in writing or on the record, as to whether the exemption remains appropriate, based on

the same criteria for the initial finding, in light of the issuance of the order after hearing. This review and finding shall occur at the time the order after hearing is issued.

- 7) Provides that, if the court grants an exemption under 3) or 5) during an initial order after hearing and the court subsequently renews the initial order at the request of the protected party, the court shall review and make a finding, in writing or on the record, as to whether the exemption remains appropriate, based on the same criteria for the initial finding, in light of the renewal. This review and finding shall occur at the time the order after hearing is renewed.
- 8) Provides that a court may terminate or modify an exemption granted pursuant to 3) or 5) at any time if the respondent demonstrates a need to modify the specific firearm, ammunition, or firearm and ammunition authorized by the court, or if the respondent no longer meets the requirements in this section or otherwise violates the restraining order.

COMMENTS

1. Author's comment

According to the author:

Under existing California law, the vast majority of persons subject to a domestic violence restraining order must surrender all firearms and ammunition they own or possess. There is, however, a state exemption to this law. Family Code section 6389(h) permits peace officers or others whose professional duties require them to carry a particular firearm to continue to do so under certain circumstances. The exemption is limited in scope so that those subject to a domestic violence civil restraining order who can safely perform their job duties may continue to do so where appropriate, which can support ongoing financial stability for domestic violence victims and their families.

Unfortunately, the exemption for those whose continued employment requires they have a firearm is generally unclear, vague, limited, and contradictory. This increases the possibility that someone receives an exemption who should not have one, putting victims and the public at risk.

AB 2759 proposes several changes to make the law fairer, more consistent, and offer better protection to survivors of domestic violence and the public at-large. For instance, this bill clarifies that the exemption is only valid while the respondent's employment status doesn't change, and should the restraining order need to be renewed, the court must review and determine if the exemption remains appropriate.

Furthermore, this bill clarifies that these exemptions may only be granted if the person is not otherwise prohibited from having a firearm under any state or federal law, and also ensures that those with the exemption cannot purchase any additional firearms and must surrender any additional firearms or ammunition in their possession.

2. Background on the DVPA

The DVPA seeks to prevent acts of domestic violence, abuse, and sexual abuse, and to provide for a separation of persons involved in domestic violence for a period sufficient to enable them to seek a resolution. The DVPA's "protective purpose is broad both in its stated intent and its breadth of persons protected" and courts are required to construe it broadly in order to accomplish the statute's purpose.² The DVPA enables a party to seek a "protective order," also known as a restraining order, which may be issued to protect a petitioner who presents "reasonable proof of a past act or acts of abuse," and are among the most common restraining orders issued throughout the state.³

Victims of domestic violence who need immediate protection may seek a temporary restraining order, which may be decided ex parte and generally must be issued or denied the same court day the petition is filed.⁴ Because the restrained party would not have had the opportunity to defend their interests, TROs are short in duration. After a duly noticed hearing at which the respondent had the opportunity to appear, the court is authorized to extend the original temporary restraining order into a DVPO that lasts for up to five years; the DVPO may be renewed for a period of five years or permanently.⁵

This bill addresses a provision of the DVPA – Family Code section 6389 – that applies to both TROs and DVPOs; going forward, this bill refers to both types of orders as "DVPA protective orders."

3. The DVPA's firearm prohibition and the exemption for job-related firearms

A person subject to a DVPA protective order is prohibited from owning, possessing, purchasing, or receiving, a firearm or ammunition while the protective order is in effect.⁶ Violation of this prohibition is punishable as a misdemeanor.⁷ This prohibition is grounded in the well-established fact that an abuser's access to firearms dramatically

² *Caldwell v. Coppola* (1990) 219 Cal.App.3d 859, 863; *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1498.

³ Fam. Code, §§ 6218, 6300; Judicial Council of California, *Judges Guide to Restraining Orders: Domestic Violence Restraining Orders* (Oct. 2023) p. 1.

⁴ Fam. Code, §§ 6320 et seq.

⁵ *Id.*, §§ 6302, 6340, 6345.

⁶ *Id.*, § 6389(a).

⁷ *Ibid.*; Pen. Code, § 29825.

increases the danger of further abuse or death: a victim or survivor of intimate partner violence is five times more likely to die when an abusive partner has access to a gun.⁸

When the court issues a DVPA protective order, the court must also order the respondent to relinquish any firearm or ammunition in the respondent's immediate possession or control or subject to the respondent's immediate possession or control.⁹ The court may, however, grant an exemption from the relinquishment requirement for a particular firearm (i.e., one specific firearm) or ammunition if the respondent can show that: (1) a particular firearm or ammunition is necessary as a condition of continued employment, and (2) the respondent's current employer is unable to reassign the respondent to another position where a firearm or ammunition is unnecessary.¹⁰ If the court grants an exemption, the order generally must provide that the respondent may possess the firearm or ammunition only during scheduled work hours and while traveling to and from work.¹¹ Additionally, if the respondent is a peace officer who is required, as a condition of employment, to carry a firearm or ammunition and their personal safety depends on the ability to carry a firearm or ammunition, and the court finds, by a preponderance of the evidence that the respondent does not pose a threat of harm, the court may allow the respondent to continue to carry a firearm or ammunition on or off duty.¹² Before allowing a peace officer-respondent to carry a firearm or ammunition off duty, the court must require the respondent to undergo a psychological evaluation and may require them to enter into counseling or other remedial treatment program to deal with any propensity for domestic violence.¹³

As the author notes, the statute setting forth these exemptions is not a model of clarity. The ordering of the clauses, and the lack of explanation about the relationship between the general and peace officer exemption, raises questions about the scope of the peace officer exemption. Does the peace officer need to meet a different standard to maintain possession of their firearm while on duty vs. off duty? Does the "personal safety" requirement relate only to the officer's off-duty safety? Does "threat of harm" relate only to a threat against the person protected by the DVPA protective order? Does the

⁸ Tobin-Tyler, *Intimate Partner Violence, Firearm Injuries and Homicides: A Health Justice Approach to Two Intersecting Public Health Crises*, J. Law. Med. Ethics (2023 Spring) 51(1) 64-76, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10209983/> (link current as of June 13, 2024).

⁹ Fam. Code, § 6389(c). In November 2023, the United States Supreme Court heard oral argument in *United States v. Rahimi*. (See *United States v. Rahimi*, Supreme Court Docket No. 22-915.) The case arises from an opinion of the United States Court of Appeals for the Fifth Circuit holding that a federal law prohibiting a person subject to a domestic violence restraining order violated the Second Amendment of the United States Constitution. (See *United States v. Rahimi* (5th Cir. 2023) 61 F.4th 443, 448.) The outcome in *Rahimi* could implicate California's laws at issue in this bill, but for the time being, the State retains the authority to prohibit the persons who are the subject of a restraining order from possessing firearms.

¹⁰ Fam. Code, § 6389(h).

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*

off-duty exemption relate to all firearms in the officer's possession? This bill seeks to answer these and other related questions about this jumbled provision of existing law.

4. This bill clarifies the DVPA's firearm prohibition exemptions and the procedures for granting or denying such an exemption

This bill revises and recasts the DVPA's firearm prohibition exemptions in order to provide clear guidance to parties and courts on when, and how, a respondent may seek and obtain an exemption to the prohibition for a firearm necessary for the respondent's current job.

First, the bill creates distinct provisions for how the court should consider and grant firearm exemptions for respondents who are peace officers and respondents who are not peace officers. Under this bill, therefore, it would be clear which provisions apply to a respondent making a request for an exemption based on whether the respondent is a peace officer or not.

Second, the bill clarifies and strengthens the requirements for a respondent who is peace officer to obtain a firearm exemption. Specifically, the bill provides that when a respondent is currently employed as a peace officer where carrying a firearm is required, and reassignment of that officer is not possible, a court may allow the respondent to continue to carry a specified firearm or ammunition, either on or off duty, if the court finds, by a preponderance of the evidence, that: (1) the respondent's personal safety depends on ability to carry that specific firearm or ammunition while off duty, and (2) the respondent does not pose an additional threat of harm to the protected party or the public because they can access the firearm, including whether the respondent might use the firearm for a purpose not permitted by the exemption. The bill retains the requirement that the court the peace officer to undergo a psychological evaluation as a condition of the exemption and court's authority to order the officer to enter into counseling.

Third, the bill clarifies and strengthens the requirements for a respondent who is not a peace officer to obtain a firearm exemption. For a respondent who is not a peace officer, a court may grant a firearm exemption if the respondent is required to carry a specific firearm or ammunition and the current employer cannot reassign the respondent; however, the exemption is available only for periods while the respondent is at work, not while the respondent is off the clock. The court may grant the exemption if the court finds, by a preponderance of the evidence, that the respondent does not pose an additional threat of harm to the protected party or the public by having access to the specified firearm or ammunition during scheduled work hours, including whether the respondent might use the firearm for a purpose not authorized by the exemption. The bill permits the court to order a psychological evaluation of the respondent by a licensed mental health professional with domestic violence expertise.

Finally, the bill adds procedural clarity to the firearm exemption by setting forth (1) how an exemption granted during a TRO can be reviewed and, if the findings remain accurate, carried over to a DVRO; (2) how an exemption granted in a DVRO can be reviewed and, if the findings remain accurate, carried over to a renewed DVRO; and (3) how the court may terminate or modify an exemption due to changed circumstances at the respondent's place of employment or evidence that the respondent no longer meets the criteria for an exemption. The author has agreed to minor technical amendments to clarify the process for extending an exemption when the underlying DVRO is renewed.

5. Amendments

As noted above, the author has agreed to minor technical amendments to clarify the provisions setting forth how a firearm exemption can be extended when a DVRO is renewed, including matching the language to the existing Family Code section regarding DVRO renewals. The amendments are set forth below, subject to any nonsubstantive changes the Office of Legislative Counsel may make. Additions are bold and in underline, and deletions are in strikethrough.

Amendment

At page 8, in lines 5-13, modify paragraph (2) as follows:

(2) If an exemption is granted ~~following an initial restraining order, after hearing~~ and the court subsequently renews the ~~initial-restraining order~~ **pursuant to Family Code section 6345** at the request of ~~the protected a~~ party, the court shall review and make a finding, in writing or on the record, as to whether the exemption remains appropriate, based upon the criteria set forth in paragraph (1) or (2) of subdivision (h), as applicable, in light of the renewal. This ~~review and~~ finding shall ~~occur~~ **be made** at the time the restraining order after hearing is renewed.

6. Arguments in support

According to the District Attorney's Office for the County of Los Angeles:

Family Code section 6389 conflates relinquishment exceptions for peace officers and non-peace officers and is, admittedly, confusing. The standard for granting an exemption is slightly different for peace officers because in some circumstances, a peace officer may have a need to carry a firearm off duty to protect themselves.

AB 2759 requires that if a peace officer seeks to possess a specified firearm or ammunition off duty, the peace officer must show, by a preponderance of evidence, the peace officer's personal safety depends on the ability to carry that firearm or ammunition outside of scheduled work hours; and by a

preponderance of evidence, the peace officer does not pose an additional threat of harm to a protected party or the public by having access to the firearm or ammunition, including whether the peace officer might use the firearm for a purpose other than for the reasons of employment and personal safety.

This is a more robust determination that aims to ensure law enforcement officers do not continue to possess a firearm even if their employment requires it unless they can prove it is necessary for safety off duty; and there is no evidence the peace officer will misuse the firearm or present a threat to others including the alleged victim of domestic violence.

For non-peace officers the court would apply the same standard that applies to peace officers. However, for a non-peace officer the exemption would be limited only to scheduled work hours and the exemption would specify that the respondent is not authorized to possess any other firearm or ammunition, or to possess the specific firearm, ammunition, or firearm and ammunition outside of scheduled work hours...

AB 2759 is a common-sense domestic violence gun control measure that our Office is pleased to support.

SUPPORT

Women's Foundation, Solis Policy Institute (sponsor)
Brady Against Gun Violence
California District Attorneys Association
Los Angeles County District Attorney's Office
Messaging for Success

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation:

SB 899 (Skinner, 2024) extends procedures relating to firearm and ammunition relinquishment by the subject of domestic violence protective orders to the subjects of other protective orders under which the possession of a firearm or ammunition is already prohibited. SB 899 is pending before the Assembly Public Safety Committee.

AB 3083 (Lackey, 2024) requires a court, in connection with a hearing on a petition for a domestic violence protective order, to determine whether the subject of the proposed

order possesses or owned any firearm, rather than just a registered firearm. AB 3803 is pending before this Committee and is set to be heard on the same date as this bill.

AB 2822 (Gabriel, 2024) requires a law enforcement agency to include, in its incident report for domestic violence calls, a space for officers to document whether a firearm or deadly weapon was removed from the location of the domestic violence call. AB 2822 is pending before the Senate Appropriations Committee.

Prior Legislation:

AB 818 (Petrie-Norris, Ch. 242, Stats. 2023) requires a law enforcement officer to serve a domestic violence protective order issued under the DVPA and confiscate firearms obtained on the scene of a domestic violence incident, as specified.

AB 36 (Gabriel, 2023) would have prohibited, beginning July 1, 2024, a person subject to a protective order from owning, possessing, purchasing, or receiving a firearm or ammunition within three years after the expiration of the order, and expanded the grounds on which a search warrant may be issued when a person is prohibited from owning a firearm and the person has failed to relinquish the firearm. AB 36 died in the Assembly Appropriations Committee.

SB 320 (Eggman, Ch. 685, Stats. 2021) codified 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.

AB 465 (Eggman, Ch. 137, Stats. 2020) was gutted and amended in the Senate to be similar to SB 320, but also would have expedited and expanded certain requirements relating to domestic violence restraining orders and implemented a corresponding rule for criminal restraining orders. The bill was placed on the inactive file and was subsequently gutted and amended again to address a different subject matter.

PRIOR VOTES:

Senate Public Safety Committee (Ayes 5, Noes 0)
Assembly Floor (Ayes 72, Noes 0)
Assembly Judiciary Committee (Ayes 12, Noes 0)
Assembly Public Safety Committee (Ayes 8, Noes 0)
