

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

AB 818 (Petrie-Norris)  
Version: March 29, 2023  
Hearing Date: June 20, 2023  
Fiscal: Yes  
Urgency: No  
AWM

**SUBJECT**

Protective orders

**DIGEST**

This bill requires a law enforcement officer to serve a domestic violence protective order issued under the Domestic Violence Prevention Act (DVPA) and confiscate firearms obtained on the scene of a domestic violence incident, as specified.

**EXECUTIVE SUMMARY**

Existing law requires a law enforcement officer who is present at the scene of a reported domestic violence incident to serve temporary restraining orders and emergency protective orders at the request of the petitioner, whether or not the respondent has been taken into custody. A longstanding component of these protective orders is the requirement that the subject of the order (i.e., the restrained person) relinquish any firearms or ammunition for the duration of the order, for the safety of all involved. Separate sections of the Family Code and Penal Code make clear that firearms and ammunition should be confiscated by law enforcement when a DVPA protective order is served.

Unfortunately, stakeholders report that some law enforcement agencies decline to serve a DVPA protective order at the request of the victim at the scene of the domestic violence incident; instead, these agencies refer the victim to a different law enforcement agency rather than complete the service and confiscate the firearms and ammunition. Victims are then forced to locate and drive to a subsequent local law enforcement agency and attempt to get them to serve the protective order and remove the firearms from the perpetrator. This unnecessary delay increases the danger to the victim and the person who ultimately accomplishes the service and is tasked with taking custody of the respondent's firearms and ammunition.

This bill eliminates any ambiguity regarding the obligation of law enforcement to serve a DVPA protective order at the request of a victim, by clarifying that a law enforcement officer must serve a domestic violence order and confiscate any firearms, upon request by a petitioner, even if that request is not made at the scene of a domestic violence incident. The author and sponsor hope that this will eliminate the risks created when law enforcement declines to serve a protective order at the request of the victim.

This bill is sponsored by the author and is supported by Giffords and WEAVE. There is no known opposition. If this Committee passes this bill, it will be heard by the Senate Public Safety Committee.

### **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 a protective order 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) Authorizes a court to issue an ex parte temporary restraining order or emergency protective order without a noticed hearing. (Fam. Code, §§ 6320-6327.)
- 3) Provides that a temporary restraining order or emergency protective order shall, on the request of the petitioner, be served on the respondent, whether or not the respondent has been taken into custody, by a law enforcement officer who is present at the scene of reported domestic violence involving the parties to the proceeding.
  - a) The petitioner must provide the officer with an endorsed copy of the order and a proof of service that the officer shall complete and transmit to the issuing court.
  - b) There is a rebuttable presumption that the proof of service was signed on the date of service.
  - c) If the protected person cannot produce an endorsed copy of the order, the law enforcement officer must immediately make an inquiry to the California Restraining and Protective Order System to verify the existence of the order.
  - d) Upon service, the law enforcement officer shall advise the respondent to go to the local court to obtain a copy of the order and its full terms and conditions. (Fam. Code, § 6383.)
- 4) Authorizes a court to issue a personal conduct, stay-away, and/or residence exclusion order after a noticed hearing at which the alleged abuser may appear. (Fam. Code, §§ 6340-6347.)

- 5) Provides that a person subject to a protective order shall not own, possess, purchase, or receive a firearm or ammunition while the protective order is in effect; a violation of this prohibition is a misdemeanor or a wobbler. (Fam. Code, § 6389(a), (g); Pen. Code, § 29825.)
  - a) All forms providing that a protective order has been requested or granted must contain a notice regarding the requirement to relinquish firearms and ammunition and prohibition on possession for the duration of the order. (Fam. Code, § 6389(b).)
  - b) Provides that, upon issuance of a protective order, the court shall order the respondent to relinquish any firearms and ammunition, which shall occur by surrendering any firearms or ammunition in a safe manner as specified; if a law enforcement officer is serving a protective order that indicates the respondent possesses weapons or ammunition, the law enforcement officer must request that the firearm or ammunition be immediately surrendered. (Fam. Code, § 6389(c).)
  
- 6) Requires specified law enforcement officers, when at the scene of a domestic violence incident involving a threat to human life or a physical assault, serving a protective order under the DPVA, or serving a gun violence restraining order, to take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the law enforcement officer or other persons present. (Pen. Code, § 18250.)

This bill:

- 1) Clarifies that a law enforcement officer, when present at a scene of reported domestic violence, must serve, at the request of the petitioner, all types of protective orders issued under the DVPA (including orders issued after a hearing), and that law enforcement must serve a DVPA protective order at the request from a petitioner to serve an order whether or not at the scene of a reported domestic violence incident.
- 2) Clarifies that, when service of a DVPA protective order is made pursuant to 1), the law enforcement officer providing service must comply with Family Code section 6389's obligation to request that the respondent surrender any firearms or ammunition.
- 3) Prohibits law enforcement from charging a fee for service under 1).
- 4) Requires, when a firearm is obtained at the scene of a domestic violence incident or during service under 1), the law enforcement officer enter, or cause to be entered, the firearm into the Department of Justice Automated Firearms System, as specified.

- 5) Clarifies that the requirement that a law enforcement officer's obligation under 6), above, to take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or otherwise lawful suit applies under the following circumstances:
- a) The law enforcement officer is at the scene of a domestic violence incident involving a threat to human life or a physical assault.
  - b) The law enforcement officer is serving a DVPA protective order.
  - c) The law enforcement officer is serving a gun violence restraining order.

### COMMENTS

#### 1. Author's comment

According to the author:

In California, approximately one in three women and nearly as many men experience some form of domestic violence during their lifetimes. The risk of homicide increases by at least 500 percent when a firearm is present in the home during an incident of domestic violence. More than 80,000 domestic violence incidents are reported annually in California – and more go unreported.

Current law requires that a person who is subject to a domestic violence or gun violence restraining order be prohibited from having firearms and ammunition. When the person becomes prohibited, that information is entered into the statewide database (CLETS); if they currently own a registered firearm, the person who is now prohibited and known to have a firearm or firearms will show up in the state's Armed Prohibited Persons System (APPS). When serving the order, an officer is required to inform the now restrained party they are prohibited from having firearms and ammunition and remove firearms in plain sight, obtained through a consensual search, or relinquished by the party to comply with the order.

However, advocates for victims of domestic violence often report that when a protected party (victim of domestic violence) requests that law enforcement serve the order, some agencies refer victims to another law enforcement agency elsewhere. Victims are then forced to locate and drive to a subsequent local law enforcement agency and attempt to get them to serve the protective order and remove the firearms from the perpetrator.

This 'punting' by law enforcement agencies is concerning because many, if not all, victims are already living in fear for their lives. In addition, this referral to another agency undermines the goal of the firearms prohibitions and the APPS system: to identify those who currently own firearms, ensure the time between prohibition and relinquishment is reduced, and to rapidly get guns out of the

hands of those who courts have determined under state statutes should not have them.

AB 818 strengthens the goal of these policies and APPS by requiring that law enforcement agencies remove firearms from a prohibited person when requested by a victim and enter that information in the statewide database. This bill will help protect victims of domestic violence and those at risk of harming themselves or others – and make our communities safer.

## 2. The DVPA, firearm relinquishment, and service of orders

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,”<sup>1</sup> and courts are required to construe it broadly in order to accomplish the statute’s purpose.<sup>2</sup> A victim of domestic violence needing immediate protection may seek a temporary restraining order on an ex parte basis; the court may issue a short-term temporary order enjoining the abuser from a range of conduct, including harassing, threatening, and contacting the victim.<sup>3</sup> After a noticed hearing, the court may extend the temporary order, or issue a non-temporary order if no temporary order was issued, for a term of up to five years.<sup>4</sup> These non-temporary orders may be renewed indefinitely at the discretion of the court.<sup>5</sup>

When a DVPA protective order is entered against a person, it becomes a misdemeanor or wobbler for that person to own, possess, purchase, or receive a firearm.<sup>6</sup> Firearms that are within the possession or control of the restrained person when the order is entered must be relinquished: “[u]pon issuance of a protective 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.”<sup>7</sup> The relinquishment process “shall occur by immediately surrendering the firearm in a safe manner, upon request of any law enforcement officer, to the control of the officer, after being served with the protective order.”<sup>8</sup> “Alternatively,” if there is no request for relinquishment, “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 ... .”<sup>9</sup> Within 48 hours of service of the order, the restrained person must file a receipt with the court that

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<sup>1</sup> *Caldwell v. Coppola* (1990) 219 Cal.App.3d 859, 863.

<sup>2</sup> *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1498.

<sup>3</sup> See Fam. Code, §§ 240-246, 6320-6327.

<sup>4</sup> See *id.*, §§ 6340-6347.

<sup>5</sup> *Id.*, § 6345.

<sup>6</sup> *Id.*, § 6389; Pen. Code, § 29825.

<sup>7</sup> Fam. Code, § 6389(c).

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

issued the order and the law enforcement agency that served it showing that the firearm was surrendered to law enforcement or sold to a licensed gun dealer.<sup>10</sup>

For a victim of domestic violence, serving a protective order comes with serious risks. Abusers frequently become more violent when their victims leave and take steps to protect themselves;<sup>11</sup> 50 to 75 percent of domestic violence homicides occur after the victim has left the abuser.<sup>12</sup> That risk increases even further if the abuser has access to a firearm.<sup>13</sup>

Current provisions in the Family and Penal Codes provide victims with the option of requesting that a law enforcement officer serve a protective order when the officer is on the scene for a domestic violence incident.<sup>14</sup> Current law also requires that, when a law enforcement officer serves a protective order, the officer must also request that any firearms or ammunition listed in the order be surrendered.<sup>15</sup> According to Giffords, however:

[A]dvocates for victims of domestic violence often report that when a victim of domestic violence requests that law enforcement serve the firearm-prohibiting order, some agencies refer victims to another law enforcement agency elsewhere or refuse to serve the order. Victims are then forced to locate and drive to a subsequent local law enforcement agency and attempt to get them to serve the protective order and remove the firearms from the prohibited party. Alternatively, they must rely on non-law enforcement process serves or lay people who cannot remove those firearms from the prohibited person. Without service, the order is not enforceable and the person whom the court sought to prohibit is not, in fact, prohibited from having firearms.

3. This bill clarifies that a law enforcement officer must serve a DVPA protective order at the request of the petitioner and take custody of firearms and ammunition under specified circumstances

This bill is intended to clarify the obligations of law enforcement vis-à-vis the service of a DVPA protective order and the relinquishment of firearms and ammunition listed in

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<sup>10</sup> *Ibid.*

<sup>11</sup> Gillis, *The Most Common Fears About Leaving an Unsafe Relationship*, Psychology Today (Jul. 8, 2022), <https://www.psychologytoday.com/us/blog/invisible-bruises/202207/the-most-common-fears-about-leaving-unsafe-relationship>. All links in this analysis are current as of June 16, 2023.

<sup>12</sup> Kasperkevic, *Private Violence: up to 75% of abused women who are murdered are killed after they leave their partners*, The Guardian (Oct. 20, 2014), <https://www.theguardian.com/money/us-money-blog/2014/oct/20/domestic-private-violence-women-men-abuse-hbo-ray-rice>.

<sup>13</sup> E.g., Campbell, et al., *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study*, Am. J. Public Health, Vol. 93(7) (July 2003), 1089-1097.

<sup>14</sup> Fam. Code, § 6383; Pen. Code, § 18250.

<sup>15</sup> Fam. Code, § 6389.

the order. The bill adds to the DVPA's service provision language that is identical to the Penal Code's provisions for law enforcement to serve a protective order when at the scene of an alleged domestic violence incident and to take possession of any firearms or weapon in sight or discovered through a lawful search. The bill also specifies that any firearms so seized must be entered in the Department of Justice's Automated Firearms System.

The bill also clarifies that law enforcement has an obligation to serve all types of DVPA protective orders – including orders issued after a hearing – and that the obligation arises upon request from a petitioner under any circumstance, not only when the officer is at the scene of an alleged domestic violence incident between the parties to the protective order. The bill further prohibits law enforcement from charging a fee for the service of the order.

### SUPPORT

Giffords  
WEAVE

### OPPOSITION

None known

### RELATED LEGISLATION

Pending Legislation: AB 36 (Gabriel, 2023) prohibits, 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 expands 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 is pending before the Assembly Appropriations Committee.

Prior Legislation:

AB 2791 (Bloom, Ch. 417, Stats. 2022) required, beginning January 1, 2024, marshal and sheriff departments to accept electronic requests for service of court documents, as specified.

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 required the courts to notify law enforcement and the county prosecutor's office when there has been a violation of a firearm relinquishment order.

SB 465 (Eggman, Ch. 137, Stats. 2020) was, when it was heard by this Committee, similar to SB 320 but expanded and expedited some of the processes in the Rules of

Court. SB 320 was gutted and amended on the Senate Floor to address a different subject matter.

**PRIOR VOTES:**

Assembly Floor (Ayes 80, Noes 0)  
Assembly Appropriations Committee (Ayes 15, Noes 0)  
Assembly Public Safety Committee (Ayes 8, Noes 0)  
Assembly Judiciary Committee (Ayes 10, Noes 0)

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