

**899SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

SB 899 (Skinner)  
Version: March 20, 2024  
Hearing Date: April 16, 2024  
Fiscal: Yes  
Urgency: No  
AWM

**SUBJECT**

Protective orders: firearms

**DIGEST**

This bill 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.

**EXECUTIVE SUMMARY**

The Domestic Violence Prevention Act (DVPA) is intended to prevent acts of domestic violence, abuse and sexual abuse and to provide for a separation of the persons involved in the violence; it does so by establishing procedures by which a victim of domestic violence may obtain a temporary restraining order, and, after a hearing, a protective order that requires the abuser to stay away from the victim. In recognition of the high rates of gun violence after the issuance of a protective order by the restrained person, an order issued under the DVPA requires the subject of the order to relinquish any firearms or ammunition in their possession, either to law enforcement or a licensed gun dealer, as specified.

In recent years, the Legislature has made many modifications to the DVPA to increase the safety of victims of domestic violence and reduce the rate of post-order violence by restrained persons. These changes were not, however, added to California's other restraining or protective order procedures, which include general harassment protective orders, protective orders for harassment at work or at school, protective orders against a person abusing an elder or dependent adult, and a variety of protective orders available under the Penal Code. This means that, under current law, issues of firearm and ammunition relinquishment and service of a protective order by law enforcement differ based on the type of order issues, and victims of harassment or abuse not covered by the DVPA may be receiving less protection.

This bill is intended to eliminate the disparities by bringing the various protective order regimes mentioned above into conformity with the DVPA. In doing so, the bill does not introduce any entirely new procedures for firearm and ammunition relinquishment or service of orders; it merely ensures that the procedures are consistent across the board. The bill also brings the protective order procedures set forth in the Penal Code into conformity with the DVPA and makes other changes to the Penal Code; these issues were considered by the Senate Public Safety Committee.

This bill is sponsored by GIFFORDS and is supported by the Brady United Against Gun Violence, the California Partnership to End Domestic Violence, the City of Alameda, Everytown for Gun Safety, the Family Violence Appellate Project, the Legislative Coalition to Prevent Child Abuse, the Los Angeles County Sheriff's Department, NeverAgainCA, the Office of the San Diego City Attorney, the Prosecutors Alliance of California, San Diegans for Gun Violence Prevention, Smart Justice California, Women for Values and Ethics, and six individuals. 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 procedures to obtain a restraining order and, after a hearing, protective order to prohibit acts of harassment, or unlawful violence or a credible threat of violence at a workplace or postsecondary educational institution.
  - a) "Harassment" is defined as unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner.
  - b) The temporary order or order issued after a hearing may enjoin a party from a range of conduct, including harassing, intimidating, attacking, stalking, threatening, or making phone calls to the petitioner. (Code Civ. Proc., §§ 527.6, 527.8, 527.85.)
- 2) Establishes a procedure for a victim or a witness to obtain a protective order upon good cause to believe that harm to, or intimidation or dissuasion of, the victim or witness is reasonably likely to occur. (Pen. Code, § 136.2.)
- 3) Establishes a procedure for the issuance of a protective order to an elder or dependent adult, as defined, who has suffered abuse, to enjoin the subject of the order from engaging in specific acts of abuse or to exclude the person from the elder or dependent adult's residence. A petition for such an order may be brought on

behalf of the elder or dependent adult by a conservator, trustee, attorney-in-fact acting within a power of attorney, legally appointed guardian, or other person legally authorized to seek relief on behalf of the elder or dependent adult. (Welf. & Inst. Code, § 15657.03)

- a) An elder or dependent adult has suffered abuse, for the purpose of obtaining an order, if they have been the victim of enumerated harms, including physical harm, isolation or abandonment, financial abuse, and the deprivation of care by a custodian of goods or services that are necessary to avoid physical harm or mental suffering. (Welf. & Inst. Code, § 15610.07.)
- 4) Requires a person subject to a temporary restraining order or an injunction issued pursuant to 1)-3) (the respondent) to relinquish any firearm in their possession, as follows:
- a) Upon the issuance of a relinquishment order, the court shall order the respondent to relinquish any firearm in the person's immediate possession or control, or subject to the respondent's immediate possession or control, either by surrendering the firearm to the control of local law enforcement or selling the firearm to a licensed gun dealer, as specified. The respondent shall file with a court a receipt showing that the firearm was surrendered or sold within 48 hours of receiving the order.
  - b) The order shall state that the respondent is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect, the requirement that the respondent relinquish or sell the firearm for the duration, and the expiration date for relinquishment.
  - c) The order shall prohibit the person from possessing or controlling any firearm for the duration of the order. At the expiration of the order, the law enforcement agency shall return any relinquished firearms unless the agency determines that the firearm was stolen or that other legal grounds exist to prohibit the respondent from resuming possession.
  - d) The court may grant an exemption from relinquishment if the respondent can show that a particular firearm is necessary as a condition of continued employment and the current employer is unable to reassign the respondent to another position, as specified.
  - e) During the relinquishment period, the respondent may make one sale of all firearms in possession of a local law enforcement agency pursuant to the relinquishment order. (Code Civ. Proc., § 527.9.)
- 5) Establishes the DVPA, which sets forth procedural and substantive requirements for the issuance of a temporary restraining order or 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, §§ 6200 et seq.)
- a) "Domestic violence," for purposes of the DVPA, is defined 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.)
- 6) Prohibits a person who is the subject of a DVPA protective order (the respondent) from owning, possessing, purchasing, or receiving a firearm or ammunition while the order is in effect, as follows:
- a) The Judicial Council shall include (1) a notice on all forms providing notice that a protective order has been requested or granted that the respondent shall be ordered to relinquish possession or control of any firearms or ammunition and not to purchase or receive, or attempt to purchase or receive, any firearms or ammunition for the duration of the order, and (2) require the petitioner to describe the number, types, and locations of any firearms or ammunition presently known by the petitioner to be possessed or controlled by the respondent.
  - b) Upon issuance of the order, the court shall order the respondent to relinquish any firearm or ammunition in the respondent's immediate possession or control or subject to the respondent's immediate control. The relinquishment shall occur by immediately surrendering the firearm or ammunition to the control of a law enforcement officer at the request of an officer or, if a request is not made, within 24 hours of service of the order, as specified.
  - c) Every law enforcement agency in the state shall develop, adopt, and implement written policies and standards for law enforcement officers who request immediate relinquishment of firearms or ammunition.
  - d) If the respondent declines to relinquish possession of a firearm or ammunition based on assertion of the right against self-incrimination, as provided by the Fifth Amendment to the United States Constitution and Section 15 of Article 1 of the California Constitution, the court may grant use immunity for the act of relinquishing the firearm or ammunition.
  - e) The order shall prohibit the person from possessing or controlling any firearm for the duration of the order. At the expiration of the order, the law enforcement shall return any relinquished firearms unless the agency determines that the firearm was stolen or that other legal grounds exist to prohibit the respondent from resuming possession.
  - f) A local law enforcement may charge the respondent a fee for the storage of a firearm or ammunition, which shall not exceed the actual cost of the storage.
  - g) The court may grant an exemption from relinquishment if the respondent can show that a particular firearm is necessary as a condition of continued employment and the current employer is unable to reassign the respondent to another position, as specified.
  - h) During the relinquishment period, the respondent may make one sale of all firearms in possession of a local law enforcement agency pursuant to the relinquishment order.

- i) If the respondent notifies the court that the respondent owns a firearm or ammunition that is not in their immediate possession, the court may limit the order to exclude that firearm or ammunition if the court is satisfied that the respondent is unable to gain access to that firearm or ammunition while the order is in effect. (Fam. Code, § 6389.)
- 7) Requires a court, prior to a hearing on the issuance or denial of a DVPA protective order, to ensure that a search is or has been conducted to determine if the subject of the proposed order has specified prior convictions; has an outstanding warrant; is on parole or on 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 and reasonably accessible to the court. The court shall consider the information obtained in the search as part of its decision of whether to issue a protective order.
  - a) If the results of the search 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 or ammunition and provided proof of the required storage, sale, or relinquishment of the firearm or ammunition.
  - b) If evidence of compliance with firearms is not provided pursuant to 6), the court shall order the clerk of the court to immediately notify appropriate law enforcement officials of the issuance and content of the protective order, information about the firearm or ammunition, and of any other information obtained through the search that the court deems appropriate. The law enforcement officials so notified 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 any violation of the order as appropriate. (Fam. Code, § 6306.)
- 8) Requires a court, when making a DVPA protective order, where both parties are present in court, to inform the petitioner and 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 ammunition, and notice of the penalty for a violation. The information provided shall include how any firearms or ammunition still in the restrained party's possession are to be relinquished and the process for submitting a receipt to the court showing proof of relinquishment. (Fam. Code, § 6304.)
- 9) Requires, when relevant information is presented to the court at a noticed hearing that a restrained person has a firearm or ammunition, the court must determine, by a preponderance of the evidence, whether the person is subject to a DVPA protective order and is in violation of 6). The court may set a review hearing to make the

determination, as specified. If the court determines that a violation has occurred, the court shall make a written record of the determination. (Fam. Code, § 6322.5.)

- 10) Requires a law enforcement officer to serve a protective order on the respondent at the request of the petitioner, or if the law enforcement officer is present at the scene of reported domestic violence involving the parties.
  - a) The petitioner shall provide the officer with an endorsed copy of the order and a proof of service that the officer shall transmit to the issuing court.
  - b) If a firearm is obtained at the scene of domestic violence or during service, the law enforcement officer shall enter the firearm into the Department of Justice's Automated Firearms System.
  - c) If the law enforcement officer determines that a protective officer has been issued but not served, the law enforcement officer shall immediately notify the respondent of the terms of the order and where a written copy of the order can be obtained, and at that time enforce the order.
  - d) A peace officer who makes an arrest pursuant to a protective or restraining order that is regular upon its face shall not be civilly liable for false arrest if the peace officer, in making the arrest, has reasonable cause to believe that the person against whom the order is issued has notice of the order and has violated the order.
  - e) A peace officer is not exonerated from liability for use of excessive force in the enforcement of the order.
  - f) Specified peace officers must take temporary custody of any firearm or deadly weapon in plain sight or discovered pursuant to a consensual or otherwise lawful search as necessary for the protection of the peace officer or others present in specified circumstances, including the service of a DVPA protective order or gun violence restraining order. (Fam. Code, § 6838.)
  
- 11) Provides that when a family court finds that a party seeking custody of a child has perpetrated domestic violence within the previous five years of the other party seeking custody of the child, or against the child or the child's siblings, or against a person with whom the party seeking custody has a relationship, there is a rebuttable presumption that award of sole or joint physical or legal custody of the child is detrimental to the best interest of the child; among the factors the court shall consider in making this determination is whether the perpetrator is the subject of a DVPA protective order and in possession of a firearm or ammunition in violation of 6). (Fam. Code, § 3044.)
  
- 12) Provides that a person who is subject to a temporary restraining order, injunction, or protective order and possesses a firearm in violation of 5) or 7) is guilty of a misdemeanor or a wobbler. (Pen. Code, § 29825.)
  
- 13) Provides for the issuance of a gun violence restraining order, which is a written, signed court order prohibiting and enjoining a named person from having in their

her custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition. (Pen. Code, pt. 6, tit. 2, div. 3.2, §§ 18100 et seq.)

- 14) Requires a court, prior to the issuance of a gun violence restraining order, to conduct the background search described in 8). (Pen. Code, § 18110.)
- 15) Requires a person subject to a gun violence restraining order to relinquish to law enforcement or sell any firearms or ammunition in their possession and provide a receipt to the court within 48 hours, as specified. (Pen. Code, § 18120.)
- 16) Establishes the Department of Justice (DOJ) Automated Firearms System and requires a law enforcement agency that has taken custody of any surrendered or relinquished firearms pursuant to 7) or 15) to enter information about those firearms into the system. (Pen. Code, § 11108.2.)
- 17) Makes it a crime to carry a concealed firearm or to openly carry an unloaded handgun or other firearm, as specified, and exempts from the crime a person carrying the firearm for the purpose of complying with 7). (Pen. Code, §§ 25400, 25555, 26350, 26379, 26400, 26540.)
- 18) 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 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(a)(11).)
- 19) Establishes procedures and requirements for firearms and ammunition dealers and the relinquishment or sale of firearms after a person is convicted of specified offenses. (Pen. Code, §§ 28100, 29810, 29830, 30342.)

This bill:

- 1) States that the Legislature finds and declares both of the following:
  - a) The intent expressed in the Safety for All Act of 2016 is to safeguard the ability of law-abiding, responsible Californians to own and use firearms for lawful means while requiring background checks for ammunition purchases in the manner required for firearm purchases so that neither firearms nor ammunition get into the hands of dangerous individuals.
  - b) To the extent that this act amends the Safety for All Act of 2016, the amendments are consistent with and further that intent. The amendments ensure that ammunition, which, pursuant to Section 527.9 of the Code of Civil Procedure or Section 18120 of the Penal Code, is required to be sold to a licensed ammunition vendor, can be sold in a manner that is consistent with

the decision of the United States Supreme Court in *Henderson v. U.S.*, (2015) 575 U.S. 622.

- 2) Extends the firearm and ammunition relinquishment or sale procedures currently in place for DVRA restraining and protective orders to civil harassment, workplace violence, postsecondary school violence, elder abuse, and gun violence protective orders, and protective orders issued during the pendency of a criminal proceeding or following specified criminal convictions.<sup>1</sup> These harmonized requirements include:
- a) Requiring 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.
  - b) Requiring a court holding a hearing on this matter to review the file to determine whether the receipt has been filed and inquire of the respondent whether they have complied with the requirement.
  - c) Providing that a violation of the firearms prohibition of any restraining order under this section 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 restrained party provides a receipt showing compliance at a subsequent hearing or by direct filing with the clerk of the court.
  - d) Providing that, if the person does not file a receipt with the court within 48 hours after receiving the order for a registered firearm in their possession, the court shall order the clerk of the court to immediately notify, by the most effective means available, appropriate law enforcement officials of the issuance and contents of a protective order, information about the firearm or ammunition, and of any other information the court deems appropriate.
  - e) Providing that, if a respondent declines to relinquish possession of a firearm or ammunition based on the assertion of the right against self-incrimination, as provided by the Fifth Amendment to the United States Constitution and the California Constitution, the court may grant use immunity for the act of relinquishing the firearm or ammunition.
  - f) Requiring a court, when relevant information is presented at a noticed hearing that a restrained person is in possession of a firearm or ammunition, to consider that information and determine, by a preponderance of the evidence, whether the person subject to a protective order has a firearm or ammunition in, or subject to, their immediate possession or control in violation of the firearm and ammunition prohibition; the court must follow specified procedures around making a written record of the determination,

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<sup>1</sup> Going forward, this analysis uses "protective order" to refer to protective orders, restraining orders, and injunctions as they are variously named in the relevant statutes.



- setting a review hearing, and extending the date of the hearing for good cause.
- 3) Extends the requirement for service of a DVPA protective order by law enforcement to include service of civil harassment, workplace violence, postsecondary school violence, elder abuse, and gun violence protective orders, and protective orders issued during the pendency of a criminal proceeding or following specified criminal convictions, including:
    - a) Requiring a peace officer to serve the protective order on the respondent at the request of the petitioner, whether or not the respondent has been taken into custody.
    - b) Requiring the petitioner to provide the peace officer with an endorsed copy of the order or, if the protected person cannot produce an endorsed copy of the order, requiring the peace officer to verify the existence of the order in the California Restraining and Protective Order System.
    - c) Providing that a peace officer who makes an arrest pursuant to a protective or restraining order that is regular upon its face shall not be civilly liable for false arrest if the peace officer, in making the arrest, has reasonable cause to believe that the person against whom the order is issued has notice of the order and has violated the order.
    - d) Providing that these provisions do not exonerate a peace officer from unreasonable use of force in the enforcement of the order.
  - 4) Requires a court to consider as a factor, as part of a custody determination in which the court has found that a party seeking custody of the child perpetrated domestic violence against specified individuals, whether the perpetrator is a restrained person in possession of a firearm or ammunition in violation of a civil harassment, workplace violence, postsecondary school violence, elder abuse, pretrial protective order, or gun violence protective order.
  - 5) Provides that the return of firearms or ammunition by law enforcement after the end of a protective order shall be governed by Chapter 2 of Division 11 of Title 4 of the Penal Code. The bill states that this is declarative of existing law.
  - 6) Adds, to the provisions authorizing a search warrant, the possession of ammunition in violation of a DVPA order, or the possession of firearm or ammunition in the possession of a person who is subject to the firearm prohibitions in a civil harassment, workplace violence, postsecondary school violence, elder abuse, or pretrial protective order, and the person has failed to relinquish the firearm or ammunition as required by law.
  - 7) Requires a law enforcement agency to enter or cause to be entered into the Automated Firearms System each firearm that has been reported stolen, lost, found,

recovered, held for safekeeping, surrendered or relinquished in connection with the protective orders set forth in 2) and DVPA protective orders.

- 8) Modifies various criminal statutes relating to the wrongful possession or transportation of a firearm to exempt from the crime acts to comply with court-ordered relinquishment, as specified.
- 9) Establishes procedures by which a dealer who took possession of a firearm or ammunition from an owner can transfer possession to another person if the dealer cannot legally return the firearm to the owner.
- 10) States that certain modifications to the Penal Code are declarative of existing law.

### COMMENTS

#### 1. Author's comment

According to the author:

Prohibiting people who are a danger to themselves or others from having firearms has proven to be a very effective tool at curbing firearm violence. However, we need to ensure that when people are ordered to turn over their firearms, they know how to do this and if they fail to comply, key system actors are following up. Prior legislation has created a process for this in the context of domestic violence restraining orders. This process has been successful at getting more people who should not have firearms to store or sell currently owned firearms. This bill extends this successful approach to all firearm-prohibiting restraining orders, including, for example, gun violence (aka "red flag") restraining orders, civil harassment restraining orders, and workplace violence prevention orders. SB 899 will further the goal of ensuring that people who should not have firearms comply with lawful court orders and making our communities safe.

#### 2. Relevant recent updates to the State's gun and ammunition laws

The State has a number of provisions by which a person who is being abused or harassed, or who is in immediate danger of abuse or harassment, may seek an order from the court to protect them from the perpetrator.<sup>2</sup> When such order is issued, the person subject to the order must also relinquish, or sell, any firearms or ammunition

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<sup>2</sup> See Code Civ. Proc., §§ 527.6, 527.8, 527.85; Fam. Code, §§ 6200 et seq.; Pen. Code, §§ 136.2, 18100 et seq.

they possess; this requirement is in recognition of the tragic fact that “abusers who possess guns tend to inflict the most severe abuse.”<sup>3</sup>

The Legislature has made several modifications to the DVPA’s protective order provisions in the last several years, to increase the effectiveness of the process and reduce violence by the subject of an order in violation of that order. In 2021, the Legislature enacted SB 320 (Eggman, Ch. 685, Stats. 2021), which codified procedures set forth in the Rules of Court for the relinquishment of firearms in connection with DVPA protective orders. The Senate passed SB 320 with a vote of 37-0. And last year, the Legislature enacted AB 818 (Petrie-Norris, Ch. 242, Stats. 2023), which clarified the obligation of peace officers to serve DVPA protective orders at the request of the petitioner. The Senate passed AB 818 with a vote of 38-0.

In 2016, the voters approved The Safety For All Act of 2016, which appeared on the ballot as Proposition 63.<sup>4</sup> The Safety for All Act implemented a number of major changes to California’s gun and ammunition laws, including:

- Requiring individuals to pass a background check and obtain DOJ authorization to purchase ammunition.
- Requires most ammunition sales to be made through licensed ammunition vendors and reported to DOJ.
- Prohibiting possession of large-capacity magazines and requiring their disposal.
- Requiring lost or stolen firearms and ammunition to be reported to law enforcement.
- Prohibiting persons convicted of stealing a firearm from possessing firearms.
- Establishing new procedures for enforcing laws prohibiting firearm possession.
- Requiring DOJ to provide information about prohibited persons to the federal National Instant Criminal Background Check System.<sup>5</sup>

The Safety for All Act also included a provision authorizing the Legislature to amend the measure by a vote of 55 percent of the members, so long as the amendments are consistent with and further the intent of the Act.<sup>6</sup>

### 3. This bill aligns the procedures for, and treatment of, various civil protective orders with those in place for DVPA protective orders

As discussed above, the Legislature has taken significant action in recent years to increase the effectiveness of DVPA protective orders, including through stronger

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<sup>3</sup> Campbell, et al., *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study*, Am. J. Public Health, 2003 July, 93(7), pp. 1079-1089.

<sup>4</sup> See Prop. 63, as approved by voters, Gen. Elec. (Nov. 8, 2016).

<sup>5</sup> *Ibid.* A district court ruled that portions of the Act relating to large-capacity magazines are unconstitutional (see *Duncan v. Bonta* (S.D.Cal., Sept. 22, 2023) \_\_\_ F.Supp.3d \_\_\_, 2023 WL 6180472), but that ruling has been stayed by the United States Court of Appeals for the Ninth Circuit (*Duncan v. Bonta* (9th Cir. 2023) 83 F.4th 803).

<sup>6</sup> See Prop. 63, as approved by voters, Gen. Elec. (Nov. 8, 2016), § 13.

firearm relinquishment procedures, requiring service of DVPA protective orders by law enforcement, and requiring the courts to conduct greater oversight over the relinquishment process. These measures were in response to the ongoing, heartbreaking prevalence of domestic violence.<sup>7</sup>

But domestic partners are not the only victims of abuse. California has a number of other statutory procedures for obtaining a protective order when someone other than a domestic partner is engaging in harassment or abuse, including a general civil harassment protective order, protective orders for harassment at work or at school, and protective orders for the victims of elder abuse.<sup>8</sup> Like DVPA protective orders, these other civil orders require the relinquishment of firearms and ammunition; however, in the course of updating the DVPA process, the Legislature did not simultaneously update these measures.

This bill extends the DVPA procedures for ensuring the relinquishment of firearms and ammunition owned or in the possession of a person who is subject to DVPA protective order to a person who is the subject of a gun violence restraining order, or a civil harassment, workplace violence or postsecondary violence temporary restraining order and injunction, elder abuse restraining orders, or a protective order issued during the pendency of criminal proceedings and following specified criminal convictions. The bill is intended to ensure that the commonsense firearm and ammunition procedures for the DVPA are available to victims of all types of harassment and abuse.<sup>9</sup> Additionally, as stakeholders have explained, having a uniform procedure for all of these protective order procedures will make it easier for the courts issuing the orders to impose the proper procedures and provide the correct types of notice, instead of having to remember several different sets of rules that vary with the type of the order.

The bill also clarifies that the return of firearms and ammunition relinquished under the DVPA by a law enforcement agency is governed by existing Penal Code provisions that apply to “[a]ny person who claim title” to a firearm or ammunition in the custody or control of law enforcement.<sup>10</sup> This addition matches the changes being made in the

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<sup>7</sup> For example, the CDC reports that about 41 percent of women and 26 percent of men experience contact sexual violence, physical violence, and/or stalking by an intimate partner and reported an intimate partner violence-related impact during their lifetime. (CDC, Fast Facts: Preventing Intimate Partner Violence (last reviewed Oct. 11, 2022), <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html> (link current as of April 11, 2024).

<sup>8</sup> Code Civ. Proc., §§ 527.7, 527.8, 527.85; Welf. & Inst. Code, § 15657.03.

<sup>9</sup> 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.

<sup>10</sup> See Pen. Code, § 33850.

other protective order contexts, so the return procedures will also be uniform across protective order types. The bill also states that this provision is declarative of existing law, which appears consistent with the scope of the Penal Code provisions.

In addition to the bill's changes to the civil and DVPA protective order procedures, the bill also makes a number of changes to the Penal Code relating to searches and exemptions to specific firearm offenses. The Senate Public Safety Committee, which passed this bill with a vote of 5-0, considered those issues; the analysis of that Committee is incorporated herein by reference. The amendments to the Penal Code include amendments to statutes adopted as part of the Safety for All Act, which is why this bill is keyed as requiring 55 percent of the Legislature's votes to pass.<sup>11</sup>

#### 4. Arguments in support

According to GIFFORDS, the sponsor of the bill:

Currently, DVROs are the only civil firearm-prohibiting orders with specific relinquishment procedural requirements and follow-up, codified under SB 320 (Eggman, 2022). Criminal protective orders (CPOs) have a separate set of protocols shaped by rule of court but not codified. GIFFORDS sponsored SB 320 and appreciated the legislature's leadership in moving that important measure forward. Since SB 320 has been in place, courts have reported an uptick in compliance with these orders. Other orders have prohibitions for firearms but lack procedures like those in SB 320. This bill would replicate the SB 320 framework for all civil firearm-prohibiting orders and for CPOs so that no matter how someone becomes prohibited, the same information and follow-up for non-compliance will be provided. Having consistent requirements for informing prohibited persons about relinquishment procedures and compliance is critical for consistency, reducing risk, and realizing training and implementation efficiencies.

This bill will also reduce the number of persons currently in or being added to the Armed and Prohibited Persons System (APPS). People who purchased firearms legally at one time but are later prohibited and fail to relinquish their firearms are listed in APPS which now has roughly 24,000 people. By implementing the same procedures included in SB 320 across the various case types, California will reduce the time between the firearm prohibition being issued by the court and compliance with that order, thereby increasing safety and decreasing the number of people in APPS. Overall, this bill will help remove firearms from those courts have determined should not have them earlier in the process and help protect individuals and communities from gun violence.

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<sup>11</sup> See Prop. 63, as approved by voters, Gen. Elec. (Nov. 8, 2016).

### **SUPPORT**

GIFFORDS (sponsor)  
Brady United Against Gun Violence  
California Partnership to End Domestic Violence  
City of Alameda  
Everytown for Gun Safety  
Family Violence Appellate Project  
Legislative Coalition to Prevent Child Abuse  
Los Angeles County Sheriff's Department  
NeverAgainCA  
Office of the San Diego City Attorney  
Prosecutors Alliance of California  
San Diegans for Gun Violence Prevention  
Smart Justice California  
Women for Values and Ethics  
Six individuals

### **OPPOSITION**

None received

### **RELATED LEGISLATION**

#### **Pending Legislation:**

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 the Assembly Public Safety Committee.

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 Assembly Appropriations Committee.

AB 2759 (Petrie-Norris, 2024) authorizes modifies the process by which a court may make an exemption to the DVPA firearm relinquishment requirement. AB 2759 is pending on the Assembly Floor.

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)

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