

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2607

Introduced by Assembly Member Ting

February 19, 2016

An act ~~relating to public safety~~, to amend Sections 18150, 18170, and 18190 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 2607, as amended, Ting. ~~Public safety~~. *Firearm restraining orders.*

Existing law authorizes a court to issue an ex parte gun violence restraining order prohibiting 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 when it is shown that there is a substantial likelihood that the subject of the petition poses a significant danger of harm to himself, herself, or another in the near future by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm, and that the order is necessary to prevent personal injury to himself, herself, or another, as specified. Existing law requires the ex parte order to expire no later than 21 days after the date on the order. Existing law also authorizes a court to issue a gun violence restraining order prohibiting 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 for a period of one year when there is clear and convincing evidence that the subject of the petition, or a person subject to an ex parte gun violence restraining order, as applicable, poses a significant danger of personal injury to himself,

herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm, and that the order is necessary to prevent personal injury to himself, herself, or another, as specified. Existing law authorizes renewal of a gun violence restraining order within 3 months of the order’s expiration. Petitions for ex parte, one-year, and renewed gun violence restraining orders may be made by an immediate family member of the person or by a law enforcement officer.

This bill would also authorize an employer, a coworker, a mental health worker who has seen the person as a patient in the last 6 months, or an employee of a secondary or postsecondary school that the person has attended in the last 6 months to file a petition for an ex parte, one-year, or renewed gun violence restraining order. This bill would also specify that these provisions shall not be construed to require any of those persons to seek a gun violence restraining order.

~~Existing law, as set forth in the Constitution of the United States and the California Constitution, establishes certain fundamental personal rights, including, among others, the right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches, the right to equal protection of the laws, the right to due process of law before being deprived of life, liberty, or property, the right to a trial by a jury, and the right of a defendant in a criminal case to a speedy public trial.~~

~~This bill would express the intent of the Legislature to enact legislation that would ensure that California’s public safety system is fair and just.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 18150 of the Penal Code is amended to
- 2 read:
- 3 18150. (a) (1) An immediate family ~~member of a person~~
- 4 ~~member, an employer, a coworker, a mental health worker who~~
- 5 ~~has seen the person as a patient in the prior six months, an~~
- 6 ~~employee of a secondary or postsecondary school that the person~~
- 7 ~~has attended in the last six months, or a law enforcement officer~~
- 8 may file a petition requesting that the court issue an ex parte gun
- 9 violence restraining order enjoining the subject of the petition from

1 having in his or her custody or control, owning, purchasing,
2 possessing, or receiving a firearm or ammunition.

3 (2) For purposes of this subdivision, “immediate family
4 member” has the same meaning as in paragraph (3) of subdivision
5 (b) of Section 422.4.

6 (3) *Nothing in this chapter shall be construed to require a*
7 *person described in paragraph (1) to seek a gun violence*
8 *restraining order.*

9 (b) A court may issue an ex parte gun violence restraining order
10 if the petition, supported by an affidavit made in writing and signed
11 by the petitioner under oath, or an oral statement taken pursuant
12 to subdivision (a) of Section 18155, and any additional information
13 provided to the court shows that there is a substantial likelihood
14 that both of the following are true:

15 (1) The subject of the petition poses a significant danger, in the
16 near future, of causing personal injury to himself, herself, or
17 another by having in his or her custody or control, owning,
18 purchasing, possessing, or receiving a firearm as determined by
19 considering the factors listed in Section 18155.

20 (2) An ex parte gun violence restraining order is necessary to
21 prevent personal injury to the subject of the petition or another
22 because less restrictive alternatives either have been tried and
23 found to be ineffective, or are inadequate or inappropriate for the
24 circumstances of the subject of the petition.

25 (c) An affidavit supporting a petition for the issuance of an ex
26 parte gun violence restraining order shall set forth the facts tending
27 to establish the grounds of the petition, or the reason for believing
28 that they exist.

29 (d) An ex parte order under this chapter shall be issued or denied
30 on the same day that the petition is submitted to the court, unless
31 the petition is filed too late in the day to permit effective review,
32 in which case the order shall be issued or denied on the next day
33 of judicial business in sufficient time for the order to be filed that
34 day with the clerk of the court.

35 *SEC. 2. Section 18170 of the Penal Code is amended to read:*

36 18170. (a) (1) An immediate family ~~member of a person~~
37 *member, an employer, a coworker, a mental health worker who*
38 *has seen the person as a patient in the prior six months, an*
39 *employee of a secondary or postsecondary school that the person*
40 *has attended in the last six months, or a law enforcement officer*

1 may request that a court, after notice and a hearing, issue a gun
2 violence restraining order enjoining the subject of the petition from
3 having in his or her custody or control, owning, purchasing,
4 possessing, or receiving a firearm or ammunition for a period of
5 one year.

6 *(2) Nothing in this chapter shall be construed to require a*
7 *person described in paragraph (1) to seek a gun violence*
8 *restraining order.*

9 (b) For purposes of this subdivision, “immediate family
10 member” has the same meaning as in paragraph (3) of subdivision
11 (b) of Section 422.4.

12 *SEC. 3. Section 18190 of the Penal Code is amended to read:*

13 18190. (a) (1) An immediate family member of a restrained
14 ~~person~~ *person, an employer, a coworker, a mental health worker*
15 *who has seen the person as a patient in the prior six months, an*
16 *employee of a secondary or postsecondary school that the person*
17 *has attended in the last six months, or a law enforcement officer*
18 may request a renewal of a gun violence restraining order at any
19 time within the three months before the expiration of a gun violence
20 restraining order.

21 (2) For purposes of this subdivision, “immediate family
22 member” has the same meaning as in paragraph (3) of subdivision
23 (b) of Section 422.4.

24 *(3) Nothing in this chapter shall be construed to require a*
25 *person described in paragraph (1) to seek a gun violence*
26 *restraining order.*

27 (b) A court may, after notice and a hearing, renew a gun violence
28 restraining order issued under this chapter if the petitioner proves,
29 by clear and convincing evidence, that paragraphs (1) and (2) of
30 subdivision (b) of Section 18175 continue to be true.

31 (c) In determining whether to renew a gun violence restraining
32 order issued under this chapter, the court shall consider evidence
33 of the facts identified in paragraph (1) of subdivision (b) of Section
34 18155 and any other evidence of an increased risk for violence,
35 including, but not limited to, evidence of any of the facts identified
36 in paragraph (2) of subdivision (b) of Section 18155.

37 (d) At the hearing, the petitioner shall have the burden of
38 proving, by clear and convincing evidence, that paragraphs (1)
39 and (2) of subdivision (b) of Section 18175 are true.

1 (e) If the renewal petition is supported by clear and convincing
2 evidence, the court shall renew the gun violence restraining order
3 issued under this chapter.

4 (f) The renewal of a gun violence restraining order issued
5 pursuant to this section shall have a duration of one year, subject
6 to termination by further order of the court at a hearing held
7 pursuant to Section 18185 and further renewal by further order of
8 the court pursuant to this section.

9 (g) A gun violence restraining order renewed pursuant to this
10 section shall include the information identified in subdivision (a)
11 of Section 18180.

12 ~~SECTION 1. It is the intent of the Legislature to enact~~
13 ~~legislation that would ensure that California's public safety system~~
14 ~~is fair and just.~~