

Assembly Bill No. 2607

Passed the Assembly June 1, 2016

Chief Clerk of the Assembly

Passed the Senate June 30, 2016

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2607, Ting. 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.

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

SECTION 1. Section 18150 of the Penal Code is amended to read:

18150. (a) (1) An immediate family member, an employer, a coworker, a mental health worker who has seen the person as a patient in the prior six months, an employee of a secondary or postsecondary school that the person has attended in the last six months, or a law enforcement officer may file a petition requesting that the court issue an ex parte gun violence restraining order enjoining the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition.

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

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

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

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

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

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

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

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

18170. (a) (1) An immediate family member, an employer, a coworker, a mental health worker who has seen the person as a patient in the prior six months, an employee of a secondary or postsecondary school that the person has attended in the last six months, or a law enforcement officer may request that a court, after notice and a hearing, issue a gun violence restraining order enjoining the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition for a period of one year.

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

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

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

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

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

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

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

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

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

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

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

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

Approved _____, 2016

Governor