

AMENDED IN ASSEMBLY APRIL 18, 2018

AMENDED IN ASSEMBLY MARCH 22, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 2888

Introduced by Assembly Members Ting, Muratsuchi, and Reyes
(Coauthor: Senator Allen)

February 16, 2018

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2888, as amended, Ting. Gun violence 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 similarly authorize, but not require, 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.

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, an employer,
- 4 a coworker, ~~a mental health worker who has seen the person as a~~
- 5 ~~patient in the prior six months~~, an employee of a secondary or
- 6 postsecondary school that the person has attended in the last six
- 7 months, or a law enforcement officer may file a petition requesting
- 8 that the court issue an ex parte gun violence restraining order
- 9 enjoining the subject of the petition from having in his or her
- 10 custody or control, owning, purchasing, possessing, or receiving
- 11 a firearm or ammunition.
- 12 (2) For purposes of this subdivision, “immediate family
- 13 member” has the same meaning as in paragraph (3) of subdivision
- 14 (b) of Section 422.4.
- 15 (3) This chapter does not require a person described in paragraph
- 16 (1) to seek a gun violence restraining order.
- 17 (b) A court may issue an ex parte gun violence restraining order
- 18 if the petition, supported by an affidavit made in writing and signed
- 19 by the petitioner under oath, or an oral statement taken pursuant
- 20 to subdivision (a) of Section 18155, and any additional information

1 provided to the court shows that there is a substantial likelihood
2 that both of the following are true:

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

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

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

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

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

24 18170. (a) (1) An immediate family member, an employer,
25 a coworker, ~~a mental health worker who has seen the person as a~~
26 ~~patient in the prior six months~~, an employee of a secondary or
27 postsecondary school that the person has attended in the last six
28 months, or a law enforcement officer may request that a court,
29 after notice and a hearing, issue a gun violence restraining order
30 enjoining the subject of the petition from having in his or her
31 custody or control, owning, purchasing, possessing, or receiving
32 a firearm or ammunition for a period of one year.

33 (2) This chapter does not require a person described in paragraph
34 (1) to seek a gun violence restraining order.

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

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

39 18190. (a) (1) An immediate family member of a restrained
40 person, an employer, a coworker, ~~a mental health worker who has~~

1 ~~seen the person as a patient in the prior six months~~, an employee
2 of a secondary or postsecondary school that the person has attended
3 in the last six months, or a law enforcement officer may request a
4 renewal of a gun violence restraining order at any time within the
5 three months before the expiration of a gun violence restraining
6 order.

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

10 (3) This chapter does not require a person described in paragraph
11 (1) to seek a gun violence restraining order.

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

16 (c) In determining whether to renew a gun violence restraining
17 order issued under this chapter, the court shall consider evidence
18 of the facts identified in paragraph (1) of subdivision (b) of Section
19 18155 and any other evidence of an increased risk for violence,
20 including, but not limited to, evidence of any of the facts identified
21 in paragraph (2) of subdivision (b) of Section 18155.

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

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

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

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