

BOARD of SUPERVISORS



City Hall
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MEMORANDUM

TO: William Scott, Police Chief
Paul Miyamoto, Sheriff
Chesa Boudin, District Attorney
Manohar Raju, Public Defender

FROM: John Carroll, Assistant Clerk,
Public Safety and Neighborhood Services Committee,
Board of Supervisors

DATE: November 18, 2020

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following proposed legislation, introduced by Supervisor Stefani on November 10, 2020:

File No. 201283

Ordinance amending the Police Code to require peace officers who request a temporary emergency gun violence restraining order to serve and file a copy with the court no later than three days after issuance and to apply the California Penal Code provision penalizing violations of different types of gun violence restraining orders under California law to persons who are subject to parallel gun violence restraining orders issued by an out-of-state jurisdiction.

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Office of Chair Mandelman
Office of Supervisor Stefani
Rowena Carr, Police Department
Asja Steeves, Police Department
Johanna Saenz, Sheriff's Department
Katherine Johnson, Sheriff's Department
Nancy Crowley, Sheriff's Department
Rich Jue, Sheriff's Department
Christian Kropff, Sheriff's Department
Tera Anderson, Office of the District Attorney

1 [Police Code - Gun Violence Restraining Orders]

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3 **Ordinance amending the Police Code to require peace officers who request a**
4 **temporary emergency gun violence restraining order to serve and file a copy with the**
5 **court no later than three days after issuance and to apply the California Penal Code**
6 **provision penalizing violations of different types of gun violence restraining orders**
7 **under California law to persons who are subject to parallel gun violence restraining**
8 **orders issued by an out-of-state jurisdiction.**

9 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
10 **Additions to Codes** are in *single-underline italics Times New Roman font*.
11 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
12 **Board amendment additions** are in double-underlined Arial font.
13 **Board amendment deletions** are in ~~strikethrough Arial font~~.
14 **Asterisks (* * * *)** indicate the omission of unchanged Code
15 subsections or parts of tables.

13

14 Be it ordained by the People of the City and County of San Francisco:

15

16 Section 1. Article 36D of the Police Code is hereby amended by revising Sections
17 3600D and 3601D, to read as follows:

18 **SEC. 3600D. BACKGROUND; STATEMENT OF POLICY.**

19 (a) California Penal Code section 18100 et seq. allows local law enforcement
20 agencies to use Gun Violence Restraining Orders (“GVRO”) as a tool for prohibiting and
21 enjoining an individual from having custody or control, owning, purchasing, possessing, or
22 receiving any firearms or ammunition when that individual poses an immediate and present
23 danger of causing personal injury to self or others. Assembly Bill No. 12 (AB 12) and
24 Assembly Bill No. 61 (AB 61), each approved by the Governor on October 11, 2019,
25 expanded the circumstances, procedures, and scope under California law for the issuance of

1 GVROs. Both AB 12 and AB 61 are operative on September 1, 2020. Assembly Bill No. 2617
2 (AB 2617), approved by the Governor on September 29, 2020, amended California Penal Code sections
3 18140 and 18205 to strengthen procedural requirements applicable to peace officers and expand
4 applicable California Penal Code provisions to persons who are subject to certain gun violence
5 restraining orders issued by an out-of-state jurisdiction. AB 2617 is operative on January 1, 2021.

6 (b) There are three types of GVROs available in California:

7 (1) the temporary emergency protective order, available to peace officers where
8 there is reasonable cause to believe the subject of the GVRO poses an immediate and
9 present danger of causing personal injury to self or others;

10 (2) the temporary ex parte GVRO, available to peace officers, family members,
11 and other authorized persons, where there is a showing of a substantial likelihood that the
12 individual who is the subject of the GVRO poses a significant danger of causing personal
13 injury to self or others; and

14 (3) the one-to-five-years ban, available to law enforcement, family members, and
15 other authorized persons, which may be imposed after notice and a hearing where there is a
16 finding by clear and convincing evidence that the individual who is the subject of the GVRO
17 poses a significant danger of personal injury to self or others.

18 All three types of GVROs require a finding that the GVRO is necessary to prevent
19 personal injury to self or others because less restrictive alternatives either have been tried and
20 found to be ineffective, or have been determined inadequate or inappropriate for the
21 circumstances. AB 2617 expanded the applicable California Penal Code section to persons who are
22 subject to certain gun violence restraining orders issued by an out-of-state jurisdiction.

23 The foregoing description in this subsection (b) of the three types of GVROs
24 reflects California law as amended by AB 12, ~~and~~ AB 61, and AB 2617.

1 (c) It is the policy of the City to use GVROs in circumstances where there is a nexus
2 between the use or threat of use of a firearm or ammunition by the individual who is the
3 subject of the GVRO and the danger presented to self or others, and the GVRO is necessary
4 to prevent an injury to self or others. This tool is not intended to be used in circumstances
5 where there would be no value in obtaining a GVRO, such as when an individual is already
6 prohibited from obtaining or having access to a firearm, for the same period of time, or more,
7 that a GVRO could be in effect.

8 **SEC. 3601D. GUN VIOLENCE RESTRAINING ORDERS.**

9 (a) Temporary Emergency Protective Orders. The Police Department (“SFPD”) shall
10 seek to obtain a temporary emergency protective order when one or more officers are on the
11 scene of an incident and there is reasonable cause to believe that: (1) the subject of the
12 prospective GVRO poses an immediate and present danger of causing personal injury to self
13 or others by having custody or control, owning, purchasing, possessing, receiving, or
14 attempting to purchase or receive, a firearm or ammunition; and (2) the GVRO is necessary to
15 prevent personal injury to self or others because less restrictive alternatives either have been
16 tried and found to be ineffective, or have been determined to be inadequate or inappropriate
17 for the circumstances. The SFPD officer who requests a temporary emergency gun violence
18 restraining order shall:

19 _____ (1) If the request is made orally, sign a declaration under penalty of perjury reciting the
20 oral statements provided to the judicial officer and memorialize the order of the court on the form
21 approved by the Judicial Council.

22 _____ (2) Serve the order on the restrained person, if the restrained person can reasonably be
23 located.

24 _____ (3) File a copy of the order with the court as soon as practicable, but not later than
25 three court days, after issuance.

1 (4) Have the order entered into the computer database system for protective and
2 restraining orders maintained by the Department of Justice.

3 (b) Temporary Ex Parte GVROs. SFPD shall seek to obtain a temporary ex parte
4 GVRO when one or more officers believe that: (1) there a substantial likelihood that the
5 individual who is the subject of the GVRO poses a significant danger, in the near future, of
6 causing personal injury to self or others by having custody or control, owning, purchasing,
7 possessing, or receiving a firearm or ammunition as determined by considering the factors
8 listed in California Penal Code 18155; and (2) the GVRO is necessary to prevent injury to self
9 or others because less restrictive alternatives either have been tried and found to be
10 ineffective, or have been determined to be inadequate or inappropriate for the circumstances.

11 (c) One-to-Five-Years Bans. SFPD shall seek to obtain a court order for one-to-five
12 years, when there is a finding by clear and convincing evidence that: (1) the subject of the
13 GVRO poses a significant danger of causing personal injury to self or others by having
14 custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition; and
15 (2) A GVRO is necessary to prevent personal injury to self or others because less restrictive
16 alternatives either have been tried and found to be ineffective, or have been determined to be
17 inadequate or inappropriate for the circumstances. SFPD shall re-examine every such court
18 order at least two months prior to its expiration to determine whether re-petitioning the court to
19 extend the ban is warranted.

20 (d) Subsections (a)-(c) shall be implemented in a manner that is consistent with
21 California law. Accordingly, before September 1, 2020 (i.e., before the provisions of AB 12
22 and AB 61 are operative), subsections (a)-(c) are operative only to the extent permitted by
23 California law before September 1, 2020. As of September 1, 2020, subsections (a)-(c) are
24 fully operative.

1 (e) California Penal Code section 18205 makes “every person who owns or possesses a firearm
2 or ammunition with knowledge that they are prohibited from doing so by a temporary emergency gun
3 violence restraining order issued pursuant to Chapter 2 (commencing with Section 18125), an ex parte
4 gun violence restraining order issued pursuant to Chapter 3 (commencing with Section 18150), a gun
5 violence restraining order issued after notice and a hearing issued pursuant to Chapter 4 (commencing
6 with Section 18170), or by a valid order issued by an out-of-state jurisdiction that is similar or
7 equivalent to a gun violence restraining order described in this division, is guilty of a misdemeanor and
8 shall be prohibited from having custody or control of, owning, purchasing, possessing, or receiving, or
9 attempting to purchase or receive, a firearm or ammunition for a five-year period, to commence upon
10 the expiration of the existing gun violence restraining order.” A valid GVRO issued by an out-of-state
11 jurisdiction that is similar or equivalent to a gun violence restraining order as specified in Cal. Penal
12 Code section 18205 must be issued upon a showing by clear and convincing evidence that the person
13 poses a significant danger of causing personal injury to themselves or another because of owning or
14 possessing a firearm or ammunition.

15 Section 2. Effective Date. This ordinance shall become effective 30 days after
16 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
17 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
18 of Supervisors overrides the Mayor’s veto of the ordinance.

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1 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
5 additions, and Board amendment deletions in accordance with the "Note" that appears under
6 the official title of the ordinance.

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9 APPROVED AS TO FORM:
10 DENNIS J. HERRERA, City Attorney

11 By: /s/ _____
12 ALICIA CABRERA
13 Deputy City Attorney

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LEGISLATIVE DIGEST

[Police Code - Gun Violence Restraining Orders]

Ordinance amending the Police Code to require peace officers who request a temporary emergency gun violence restraining order to serve and file a copy with the court no later than three days after issuance and to apply the California Penal Code provision penalizing violations of different types of gun violence restraining orders under California law to persons who are subject to parallel gun violence restraining orders issued by an out-of-state jurisdiction.

Existing Law

Currently, peace officers may use Gun Violence Restraining Orders (“GVRO”) as a tool for prohibiting and enjoining an individual from having custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition when that individual poses an immediate and present danger of causing personal injury to self or others.

Amendments to Current Law

These amendments require peace officers who request a temporary emergency gun violence restraining order to serve and file a copy with the court no later than three days after issuance and to apply the California Penal Code provision penalizing violations of different types of gun violence restraining orders under California law to persons who are subject to parallel gun violence restraining orders issued by an out-of-state jurisdiction.

Background Information

These amendments update local law to conform with California state law.

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Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Stefani

Subject:

Police Code - Gun Violence Restraining Orders

The text is listed:

Ordinance amending the Police Code to require peace officers who request a temporary emergency gun violence restraining order to serve and file a copy with the court no later than three days after issuance and to apply the California Penal Code provision penalizing violations of different types of gun violence restraining orders under California law to persons who are subject to parallel gun violence restraining orders issued by an out-of-state jurisdiction

Signature of Sponsoring Supervisor: /s/ Catherine Stefani