



Roll Call Training Bulletin

Produced by: SPD Professional Standards Unit
Prepared by: Rosalia Cabrera

Daniel Hahn, Chief of Police

Volume 70

August 6, 2019

ASSEMBLY BILL 2526: Temporary Emergency Gun Violence Restraining Order

SUMMARY:

Assembly Bill 2526 took effect on January 1, 2019, and requires that a law enforcement officer who petitions the court for a temporary emergency gun violence restraining order (GVRO) sign a declaration, which cites his/her statements to the judicial officer, under penalty of perjury, and document the judicial officer's order on the appropriate form. A temporary emergency GVRO may be obtained in writing, if time and circumstances permit; however, a judicial officer is authorized to orally issue a temporary emergency GVRO based on oral statements of the law enforcement officer.

HISTORY:

Assembly Bill 1014 took effect on January 1, 2016, and established the GVRO process in the first instance. This law enables a law enforcement officer or immediate family member to petition the court for a GVRO against a person who presents a threat to him/herself or another. If a petition for a temporary GVRO is granted, the restrained person is prohibited from having in his/her custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, any firearm or ammunition for up to 21 days. The court will subsequently determine whether to issue a long-term GVRO that could remain in effect up to one year.

The three types of GVRO that may be available include the following:

1. Temporary emergency GVR
2. *Ex parte* GVRO
3. GVRO issued after notice and a hearing.

1. TEMPORARY EMERGENCY GUN VIOLENCE RESTRAINING ORDER (MOST COMMON) – A

law enforcement officer may petition the court for a temporary emergency GVRO to prevent a person who poses an **IMMEDIATE AND PRESENT DANGER OF PERSONAL INJURY TO HIM/HERSELF OR ANOTHER** from having in his/her custody and control, owning, purchasing, possessing, receiving, or attempting to purchase or receive a firearm or ammunition.

A. Who may petition the court for a temporary emergency GVRO?

- Only a law enforcement officer may petition the court for a temporary emergency GVRO.

B. What is the burden of proof?

- The petitioning officer must establish *reasonable cause* to believe that (1) the person to be restrained poses an *immediate and present danger* to him/herself or another by having in his/her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition, **and** that (2) the temporary emergency GVRO is necessary, either because less restrictive alternatives have been tried and found to be



Roll Call Training Bulletin

Produced by: SPD Professional Standards Unit
Prepared by: Rosalia Cabrera

Daniel Hahn, Chief of Police

Volume 70

ineffective, or have been deemed inadequate or inappropriate under the circumstances.

C. What is the process to petition the court for a temporary emergency GVRO?

- (1) Completing a petition for temporary emergency GVRO (CV/E-207) in the field is similar to completing a request for domestic violence emergency protective order (EPO-001). (A Word document may be attached to the CV/E-207 if the narrative portion of the form cannot accommodate all information that must be cited).
 - To petition the court for a temporary emergency GVRO during business hours (8:30 am-4:00 pm) or after hours (after 4:00 pm) contact the county operator at (916) 875-6900 and request to speak with the on-call Judge.
 - If a Judge is unable via phone the officer will need to respond to the Gordon D. Schaber Courthouse located at 720 9th Street, 1st Floor Rm. 102, Window #14 to have a Court staff member escort the Officer to the Presiding Judge who will review and rule on the request for a Temporary GVRO.
 - Present the judicial officer with the facts of the call for service. The petitioning officer must describe the number, type, and location of any firearms and/or ammunition believed to be in the possession or under the control of the person to be restrained.
 - If the on-call Judge finds reasonable cause to issue a temporary emergency GVRO, the officer must complete the CV/E-207 and serve the pink copy on the restrained person.
 - The officer must ensure that the restrained person is properly served and provided notice of the hearing date, which must be on a Friday within 21 calendar days. All hearings are heard in Department 47 on the 8:30 a.m. calendar.
 - Court Liaison will schedule and notify the petitioning officer about the court date.
 - The officer must HAND-DELIVER the remaining white and yellow copies to the Records Division prior to the end of his/her shift to ensure that the temporary emergency GVRO is immediately entered into the California Restraining and Protective Order System (CARPOS).
 - Within 48 hours of issuance, Records Division personnel must HAND-DELIVER the original CV/E-207 to the court's Civil Filing Counter, Window 14, located at 720 9th Street, Room 102.
 - Records Division personnel must also forward an electronic copy of the CV/E-207 to the Court Liaison Unit, which must schedule the petitioning officer to appear at the hearing. The hearing date is listed on the CV/E-207 under Section 6 **NOTICE OF HEARING DATE**. The petitioning officer will not receive a subpoena from the City Attorney's Office.
- (2) The officer must complete a property receipt (SPD 779) itemizing any confiscated firearms and/or ammunition, and provide a copy of the receipt to the restrained person. When completing the SPD 779, the officer must include all identifying information of the firearm (e.g. make, model, caliber, serial number) and/or ammunition.



Roll Call Training Bulletin

Produced by: SPD Professional Standards Unit
Prepared by: Rosalia Cabrera

Daniel Hahn, Chief of Police

Volume 70

2. **EX PARTE GUN VIOLENCE RESTRAINING ORDER** – An immediate family member, law enforcement officer, **or any person who currently resides with, or has resided with the subject within 6 months**, may petition the court for an *ex parte* GVRO to prevent a person who poses a **SIGNIFICANT DANGER, IN THE NEAR FUTURE, OF PERSONAL INJURY TO HIM/HERSELF OR ANOTHER** from having in his/her custody and control, owning, purchasing, possessing, receiving, or attempting to purchase or receive a firearm or ammunition.
- A. Who may petition the court for an *ex parte* GVRO?
- An immediate family member or law enforcement officer may petition the court for an *ex parte* GVRO. An immediate family member includes a spouse or domestic partner; grandparent (or step-grandparent), parent (or step-parent), child, or grandchild, and his/her spouse; or person who regularly resides in the household, or who regularly resided in the household within the prior six months.
 - If an officer does not believe that a temporary emergency GVRO is supported by reasonable cause, he/she may petition the court for an *ex parte* GVRO, or as an alternative, inform an immediate family member of the *ex parte* GVRO process. The requisite forms are available on the court's website: www.saccourt.ca.gov/restraining-orders/firearms.aspx.
- B. What is the burden of proof?
- The petitioning officer must establish a *substantial likelihood* that (1) the person to be restrained poses a *significant danger, in the near future*, of causing personal injury to him/herself or another by having in his/her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition; **and** (2) the *ex parte* GVRO is necessary, either because less restrictive alternatives have been tried and found to be ineffective, or have been deemed inadequate or inappropriate under the circumstances.
 - To determine whether the person to be restrained poses a significant danger in the near future of causing personal injury to him/herself or another, the court will consider a recent threat of violence directed toward him/herself or another; violation of certain protective orders currently in effect (Family Code §§ 136.2, 646.91; Code of Civil Procedure § 527.6; Welfare and Institutions Code § 15657.03); conviction for unlawful possession of a firearm; and a pattern of violent acts/threats within the past 12 months to him/herself or another.
 - The court may also consider unlawful and reckless use, display, or brandishing of a firearm; history of attempted, threatened, or actual use of physical force against another; a prior felony arrest; history of violating a protective order cited above; documentary evidence of recent criminal offenses or ongoing abuse of controlled substances or alcohol; and evidence of acquisition of firearms or other deadly weapons.



Roll Call Training Bulletin

Produced by: SPD Professional Standards Unit
Prepared by: Rosalia Cabrera

Daniel Hahn, Chief of Police

Volume 70

- The officer should conduct a records check to determine whether the person to be restrained is the registered owner of any firearms, and consider any indication that he/she will soon acquire firearms and/or ammunition.

C. What is the process to petition the court for an *ex parte* GVRO?

- The officer must complete: (1) a civil case cover sheet (CM-010), (2) a petition for gun violence restraining order (GV-100), and (3) a CLETS information form (CLETS-001), each in its entirety, as well as (4) sections one and two of the notice of court hearing (GV-109), and (5) sections one and two of the temporary gun violence restraining order (GV-110). (Form MC-025 may be attached to the GV-100 if the narrative portion of the form cannot accommodate all information that must be recited). The completed forms must be filed at the Gordon D. Schaber Courthouse Civil Filing Counter, Window 14, during the court's normal operating hours.
 - If filed by 11:30 a.m., and the court issues an *ex parte* GVRO, it will be available for pick-up at 4:00 p.m. the same day. Otherwise, it will be available for pick-up after 4:00 p.m. the next business day.
- An officer *other than the petitioning officer* must serve the following forms on the restrained person at least five calendar days before the hearing date determined by the court: (1) filed-stamped copy of GV-100, (2) file-stamped copy of GV-109, (3) file-stamped copy of GV-110, (4) blank copy of the response to petition for gun violence restraining order (GV-120), (5) blank copy of the form entitled, "How Can I Respond to a Petition for a Gun Violence Restraining Order?" (GV-120-INFO), and (6) blank copy of a proof of service by mail (GV-250).
 - The officer serving these forms must complete a proof of service (GV-200) and must **HAND-DELIVER** the original proof of service to the Records Division prior to the end of his/her shift.
- Within one business day of service, Records Division personnel must enter the GV-200 into CARPOS, noting the serving officer's name.
- Prior to the hearing date, Records Division personnel must **HAND-DELIVER** the original GV-200 to the court's Civil Filing Counter, Window 14.
- Records Division personnel must also forward an electronic copy of the GV-110 to the Court Liaison Unit, which must schedule the petitioning officer to appear at the hearing. The petitioning officer will not receive a subpoena from the City Attorney's Office.

3. **GUN VIOLENCE RESTRAINING ORDER ISSUED AFTER NOTICE AND HEARING** – An immediate family member or law enforcement officer may petition the court for GVRO issued after notice and hearing to prevent a person who poses a **SIGNIFICANT DANGER OF PERSONAL INJURY TO HIM/HERSELF OR ANOTHER** from having in his/her custody and control, owning, purchasing, possessing, receiving, or attempting to purchase or receive a firearm or ammunition.

A. Who may petition the court for a GVRO issued after notice and hearing?

- A law enforcement officer prior to expiration of a temporary emergency GVRO; or



Roll Call Training Bulletin

Produced by: SPD Professional Standards Unit
Prepared by: Rosalia Cabrera

Daniel Hahn, Chief of Police

Volume 70

- An immediate family member or law enforcement officer prior to expiration of an *ex parte* GVRO.
- B. What is the burden of proof?
 - The petitioner must establish *by clear and convincing evidence* that (1) the person to be restrained poses a *significant danger* of causing personal injury to him/herself or another by having in his/her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition; **and** (2) the GVRO is necessary, either because less restrictive alternatives have been tried and found to be ineffective, or have been deemed inadequate or inappropriate under the circumstances.
 - The evidentiary factors applicable to issuance of an *ex parte* GVRO also apply to issuance of a GVRO issued after notice and hearing.
- C. What is the process to obtain a GVRO issued after notice and hearing?
 - If information not previously recited in form GV-100 has come to the attention of the petitioning officer, the officer should present the courtroom clerk with “amended” versions of forms GV-100, GV-109, and GV-110.
 - If no additional information has come to the attention of the petitioning officer, the officer must only complete sections one and two of the gun violence restraining order after hearing (GV-130).
 - Only if the respondent fails to appear at the hearing, an officer *other than the petitioning officer* must serve upon the respondent (1) the file-stamped copy of GV-130 and (2) a blank copy of a request to terminate gun violence restraining order (GV-600).
 - The officer serving these forms must complete a proof of service (GV-200) and must HAND-DELIVER the original proof of service to the Records Division prior to the end of his/her shift.
 - Within one business day of service, Records Division personnel must enter the GV-200 into CARPOS, noting the serving officer’s name.
 - As soon as possible thereafter, Records Division personnel must HAND-DELIVER the original GV-200 to the court’s Civil Filing Counter, Window 14.

4. CONSIDERATIONS APPLICABLE TO ALL GUN VIOLENCE RESTRAINING ORDERS

A. Surrendering firearms and ammunition

- A person served with a temporary emergency GVRO, *ex parte* GVRO, or GVRO issued after notice and hearing must immediately surrender any and all firearms and/or ammunition in a safe manner upon request by the serving officer. If no such request is made, the restrained person must surrender, or sell/transfer any and all firearms and/or ammunition to a licensed firearms dealer within 24 hours. (Penal Code § 18120(b)(2).)
 - The restrained person must (1) file the original receipt documenting surrender, or sale/transfer of his/her firearms and/or ammunition with the court, and (2) file a copy of the same receipt with the law enforcement agency.



Roll Call Training Bulletin

Produced by: SPD Professional Standards Unit

Daniel Hahn, Chief of Police

Prepared by: Rosalia Cabrera

Volume 70

- If any firearms or ammunition are confiscated, the officer must provide the restrained person with a property receipt (SPD 779) and complete an incident report documenting the incident.
- The Evidence & Property Division must retain any confiscated firearms or ammunition while the GVRO remains in effect, unless the restrained person causes them to be sold or transferred, and must return the confiscated firearms or ammunition to the restrained person upon expiration or termination of the GVRO.

B. Search warrant requirements

- If the officer believes that the restrained person has any firearms or ammunition in his/her home, and the restrained person refuses to comply with the officer's request to surrender any firearms or ammunition, the officer **MUST** obtain a search warrant to enter the home and take possession of any firearms or ammunition. (Penal Code § 1524(a)(14).)
 - A restrained person's ownership or possession of a firearm and/or ammunition with knowledge that he/she is restrained is a misdemeanor, subjecting the restrained person to a five-year firearms/ammunition prohibition. However, GVRO laws do not independently authorize the officer to confiscate any firearms or ammunition from the restrained person's home without voluntary consent or a search warrant.

C. Calls for service regarding mental health subjects and domestic violence

- An officer who determines that the subject of a call for service will be detained for examination of his/her mental condition pursuant to Welfare and Institutions Code section 5150 must confiscate any firearm or other deadly weapon owned by, in the possession of, or under the custody and control of the detainee pursuant to Welfare and Institutions Code section 8102(a).
 - Officers should continue to follow the procedure set forth in General Order 522.01.I.
- An officer who responds to a call for service regarding domestic violence involving a threat to human life or a physical assault must confiscate any firearm or other deadly weapon in plain sight, or discovered with voluntary consent or upon execution of a search warrant, pursuant to Penal Code section 18250(a).
 - Officers should continue to follow the procedure set forth in General Order 533.04.C.
- Officers should consider petitioning the court for a GVRO when a call for service does not involve a mental health subject or domestic violence. Such circumstances may include, but are not limited to, erratic behavior resulting from the abuse of alcohol or a controlled substance, or criminal threats.

D. Legal representation

- The petitioning officer, or another officer sufficiently familiar with the details of the call, must appear at the hearing to extend a temporary emergency GVRO or *ex parte* GVRO.



Roll Call Training Bulletin

Produced by: SPD Professional Standards Unit

Daniel Hahn, Chief of Police

Prepared by: Rosalia Cabrera

Volume 70

- The City Attorney's Office will represent the officer in the event that the restrained person/respondent is represented by counsel.
- If the officer first learns at the hearing that the restrained person/respondent is represented by counsel, the petitioning officer may request a continuance to seek representation from the City Attorney's Office. (Penal Code § 18195.)
- If the Judge approves the GVRO during the hearing, the officer will need to serve the subject with the GVRO.
- The City Attorney's Office will represent the petitioning officer in the event that the restrained person submits a written request to terminate a GVRO already in effect. (Penal Code § 18185.)