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SB-1200 Firearms: gun violence restraining orders. (2017-2018)

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Senate Bill No. 1200

CHAPTER 898

An act to amend Section 6103.2 of the Government Code, to amend Sections 11106, 18100, 18105, 18120, 18125, 18135, 18160, and 18180 of, and to add Sections 18121 and 18148 to, the Penal Code, relating to firearms.

[Approved by Governor September 28, 2018. Filed with Secretary of State September 28, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1200, Skinner. Firearms: gun violence restraining orders.

(1) Existing law allows a court to issue a gun violence restraining order prohibiting and enjoining a named person from having in his or her custody or control any firearms or ammunition if the person poses a significant danger of causing personal injury to himself, herself, or another by having a firearm or ammunition in his or her custody or control. Existing law establishes a civil restraining order process to accomplish that purpose.

This bill would expand the definition of ammunition to include a magazine. The bill would make conforming changes to the notice required to be given to the subject of a gun violence restraining order.

This bill would prohibit a filing fee for an application, responsive pleading, or an order to show cause that seeks to obtain, modify, or enforce a gun violence restraining order. The bill would also prohibit a fee for a subpoena filed in connection with that application, responsive pleading, or order to show cause.

(2) Existing law requires a law enforcement officer or licensed firearms dealer taking possession of firearms or ammunition pursuant to a gun violence restraining order to issue a receipt to the person surrendering the firearm or ammunition at the time of surrender. Existing law requires the person to file the receipt with the court that issued the gun violence restraining order to show that all firearms and ammunition have been surrendered.

This bill would require the court to transmit a copy of the receipt to the Department of Justice and would require the department to keep a record of this information. The bill would require a law enforcement officer, when serving a gun violence restraining order, to verbally ask the restrained person if he or she has any firearms, ammunition, or magazines in his or her possession or under his or her custody or control.

(3) Existing law permits a law enforcement officer to make a request for a temporary emergency gun violence restraining order on an ex parte basis if certain requirements are met. Under existing law, a temporary emergency gun violence restraining order is valid 21 days from the date the order is issued.

This bill would require the court to hold a hearing within 21 days of the issuance of a temporary emergency gun violence restraining order to determine if a gun violence restraining order valid for one year should be issued.

(4) Existing law permits the sheriff or marshal, in connection with the service of process of notices, to require that all fees that a public agency or other person or entity is required to pay be prepaid prior to the performance of the official act. Existing law exempts from this prepayment requirement a fee for the service of process of a protective order, restraining order, or injunction involving stalking, credible threats of violence resulting from a threat of sexual assault, domestic violence, marital dissolution, or a child custody matter.

This bill would further exempt from this prepayment requirement a fee for the service of process of a gun violence restraining order.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 6103.2 of the Government Code is amended to read:

6103.2. (a) Section 6103 does not apply to any fee or charge or expense for official services rendered by a sheriff or marshal in connection with the levy of writs of attachment, execution, possession, or sale. The fee, charge, or expense may be advanced to the sheriff or marshal, as otherwise required by law.

(b) (1) Notwithstanding Section 6103, the sheriff or marshal, in connection with the service of process or notices, may require that all fees which a public agency, or any person or entity, is required to pay under provisions of law other than this section, be prepaid by a public agency named in Section 6103, or by any person or entity, prior to the performance of any official act. This authority to require prepayment shall include fees governed by Section 6103.5.

(2) This subdivision does not apply to the service of process or notices in any action by the district attorney's office for the establishment or enforcement of a child support obligation.

(3) This subdivision does not apply to a particular jurisdiction unless the sheriff or marshal, as the case may be, imposes the requirement of prepayment upon public agencies and upon all persons or entities within the private sector.

(4) The requirement for prepayment of a fee deposit does not apply to orders or injunctions described in paragraph (1) of subdivision (x) of Section 527.6, paragraph (1) of subdivision (w) of Section 527.8, or paragraph (1) of subdivision (w) of Section 527.85 of the Code of Civil Procedure, Division 10 (commencing with Section 6200) of the Family Code (Prevention of Domestic Violence), Division 3.2 (commencing with Section 18100) of Title 2 of Part 6 of the Penal Code (Gun Violence Restraining Orders), and Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code (Elder Abuse and Dependent Adult Civil Protection Act).

However, a sheriff or marshal may submit a billing to the superior court for payment of fees in the manner prescribed by the Judicial Council irrespective of the in forma pauperis status of any party under Rules 3.50 to 3.58, inclusive, of the California Rules of Court. The fees for service, cancellation of service, and making a not found return may not exceed the amounts provided in Sections 26721, 26736, and 26738, respectively, and are subject to the provisions of Section 26731.

SEC. 2. Section 11106 of the Penal Code is amended to read:

11106. (a) (1) In order to assist in the investigation of crime, the prosecution of civil actions by city attorneys pursuant to paragraph (3) of subdivision (b), the arrest and prosecution of criminals, and the recovery of lost, stolen, or found property, the Attorney General shall keep and properly file a complete record of all of the following:

(A) All copies of fingerprints.

(B) Copies of licenses to carry firearms issued pursuant to Section 26150, 26155, 26170, or 26215.

(C) Information reported to the Department of Justice pursuant to subdivision (e) of Section 18120, Section 26225, 27875, 27920, 29180, or 29830.

(D) Dealers' Records of Sales of firearms.

(E) Reports provided pursuant to Article 1 (commencing with Section 27500) of Chapter 4 of Division 6 of Title 4 of Part 6, or pursuant to any provision listed in subdivision (a) of Section 16585.

(F) Forms provided pursuant to Section 12084, as that section read prior to being repealed on January 1, 2006.

(G) Reports provided pursuant to Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6 of Title 4 of Part 6, that are not dealers' records of sales of firearms.

(H) Information provided pursuant to Section 28255.

(I) Reports of stolen, lost, found, pledged, or pawned property in any city or county of this state.

(2) The Attorney General shall, upon proper application therefor, furnish the information to the officers referred to in Section 11105.

(b) (1) The Attorney General shall permanently keep and properly file and maintain all information reported to the Department of Justice pursuant to the following provisions as to firearms and maintain a registry thereof:

(A) Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6 of Title 4 of Part 6.

(B) Article 1 (commencing with Section 27500) of Chapter 4 of Division 6 of Title 4 of Part 6.

(C) Chapter 5 (commencing with Section 28050) of Division 6 of Title 4 of Part 6.

(D) Any provision listed in subdivision (a) of Section 16585.

(E) Former Section 12084.

(F) Section 28255.

(G) Section 29180.

(H) Any other law.

(2) The registry shall consist of all of the following:

(A) The name, address, identification of, place of birth (state or country), complete telephone number, occupation, sex, description, and all legal names and aliases ever used by the owner or person being loaned the particular firearm as listed on the information provided to the department on the Dealers' Record of Sale, the Law Enforcement Firearms Transfer (LEFT), as defined in former Section 12084, or reports made to the department pursuant to any provision listed in subdivision (a) of Section 16585, Section 28255 or 29180, or any other law.

(B) The name and address of, and other information about, any person (whether a dealer or a private party) from whom the owner acquired or the person being loaned the particular firearm and when the firearm was acquired or loaned as listed on the information provided to the department on the Dealers' Record of Sale, the LEFT, or reports made to the department pursuant to any provision listed in subdivision (a) of Section 16585 or any other law.

(C) Any waiting period exemption applicable to the transaction which resulted in the owner of or the person being loaned the particular firearm acquiring or being loaned that firearm.

(D) The manufacturer's name if stamped on the firearm, model name or number if stamped on the firearm, and, if applicable, the serial number, other number (if more than one serial number is stamped on the firearm), caliber, type of firearm, if the firearm is new or used, barrel length, and color of the firearm, or, if the firearm is not a handgun and does not have a serial number or any identification number or mark assigned to it, that shall be noted.

(3) Information in the registry referred to in this subdivision shall, upon proper application therefor, be furnished to the officers referred to in Section 11105, to a city attorney prosecuting a civil action, solely for use in prosecuting that civil action and not for any other purpose, or to the person listed in the registry as the owner or person who is listed as being loaned the particular firearm.

(4) If any person is listed in the registry as the owner of a firearm through a Dealers' Record of Sale prior to 1979, and the person listed in the registry requests by letter that the Attorney General store and keep the record electronically, as well as in the record's existing photographic, photostatic, or nonerasable optically stored form, the Attorney General shall do so within three working days of receipt of the request. The Attorney General shall, in writing, and as soon as practicable, notify the person requesting electronic storage of the record that the request has been honored as required by this paragraph.

(c) (1) If the conditions specified in paragraph (2) are met, any officer referred to in paragraphs (1) to (6), inclusive, of subdivision (b) of Section 11105 may disseminate the name of the subject of the record, the number of the firearms listed in the record, and the description of any firearm, including the make, model, and caliber, from the record relating to any firearm's sale, transfer, registration, or license record, or any information reported to the Department of Justice pursuant to any of the following:

(A) Section 26225, 27875, or 27920.

(B) Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6 of Title 4 of Part 6.

(C) Article 1 (commencing with Section 27500) of Chapter 4 of Division 6 of Title 4 of Part 6.

(D) Chapter 5 (commencing with Section 28050) of Division 6 of Title 4 of Part 6.

(E) Article 2 (commencing with Section 28150) of Chapter 6 of Division 6 of Title 4 of Part 6.

(F) Article 5 (commencing with Section 30900) of Chapter 2 of Division 10 of Title 4 of Part 6.

(G) Chapter 2 (commencing with Section 33850) of Division 11 of Title 4 of Part 6.

(H) Any provision listed in subdivision (a) of Section 16585.

(2) Information may be disseminated pursuant to paragraph (1) only if all of the following conditions are satisfied:

(A) The subject of the record has been arraigned for a crime in which the victim is a person described in subdivisions (a) to (f), inclusive, of Section 6211 of the Family Code and is being prosecuted or is serving a sentence for the crime, or the subject of the record is the subject of an emergency protective order, a temporary restraining order, or an order after hearing, which is in effect and has been issued by a family court under the Domestic Violence Prevention Act set forth in Division 10 (commencing with Section 6200) of the Family Code.

(B) The information is disseminated only to the victim of the crime or to the person who has obtained the emergency protective order, the temporary restraining order, or the order after hearing issued by the family court.

(C) Whenever a law enforcement officer disseminates the information authorized by this subdivision, that officer or another officer assigned to the case shall immediately provide the victim of the crime with a "Victims of Domestic Violence" card, as specified in subparagraph (H) of paragraph (9) of subdivision (c) of Section 13701.

(3) The victim or person to whom information is disseminated pursuant to this subdivision may disclose it as he or she deems necessary to protect himself or herself or another person from bodily harm by the person who is the subject of the record.

SEC. 3. Section 18100 of the Penal Code is amended to read:

18100. (a) A gun violence restraining order is an order, in writing, signed by the court, prohibiting and enjoining a named person from having in his or her custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition. This division establishes a civil restraining order process to accomplish that purpose.

(b) For purposes of this chapter, the term "ammunition" includes a "magazine" as defined in Section 16890.

SEC. 4. Section 18105 of the Penal Code is amended to read:

18105. The Judicial Council shall prescribe the form of the petitions and orders and any other documents, and shall promulgate any rules of court, necessary to implement this division. These forms, orders, and documents shall refer to any order issued pursuant to this chapter as a gun violence restraining order.

SEC. 5. Section 18120 of the Penal Code is amended to read:

18120. (a) A person subject to a gun violence restraining order issued pursuant to this division shall not have in his or her custody or control, own, purchase, possess, or receive any firearms or ammunition while that order is in effect.

(b) (1) Upon issuance of a gun violence restraining order issued pursuant to this division, the court shall order the restrained person to surrender all firearms and ammunition in the restrained person's custody or control, or which the restrained person possesses or owns pursuant to paragraph (2).

(2) The surrender ordered pursuant to paragraph (1) shall occur by immediately surrendering all firearms and ammunition in a safe manner, upon request of any law enforcement officer, to the control of the officer, after being served with the restraining order. A law enforcement officer serving a gun violence restraining order that indicates that the restrained person possesses any firearms or ammunition shall request that all firearms and ammunition be immediately surrendered. Alternatively, if no request is made by a law enforcement officer, the surrender shall occur within 24 hours of being served with the order, by surrendering all firearms and ammunition in a safe manner to the control of the local law enforcement agency, selling all firearms and ammunition to a licensed firearms dealer, or transferring all firearms and ammunition to a licensed firearms dealer in accordance with Section 29830. The law enforcement officer or licensed firearms dealer taking possession of any firearms or ammunition pursuant to this subdivision shall issue a receipt to the person surrendering the firearm or firearms or ammunition

or both at the time of surrender. A person ordered to surrender all firearms and ammunition pursuant to this subdivision shall, within 48 hours after being served with the order, do both of the following:

(A) File with the court that issued the gun violence restraining order the original receipt showing all firearms and ammunition have been surrendered to a local law enforcement agency or sold or transferred to a licensed firearms dealer. Failure to timely file a receipt shall constitute a violation of the restraining order.

(B) File a copy of the receipt described in subparagraph (A) with the law enforcement agency that served the gun violence restraining order. Failure to timely file a copy of the receipt shall constitute a violation of the restraining order.

(c) (1) Except as provided in paragraph (2), any firearms or ammunition surrendered to a law enforcement officer or law enforcement agency pursuant to this section shall be retained by the law enforcement agency until the expiration of any gun violence restraining order that has been issued against the restrained person. Upon expiration of any order, any firearms or ammunition shall be returned to the restrained person in accordance with the provisions of Chapter 2 (commencing with Section 33850) of Division 11 of Title 4. Firearms or ammunition that are not claimed are subject to the requirements of Section 34000.

(2) A restrained person who owns any firearms or ammunition that are in the custody of a law enforcement agency pursuant to this section is entitled to sell any firearms or ammunition to a licensed firearms dealer or transfer any firearms or ammunition to a licensed firearms dealer in accordance with Section 29830, provided that the firearm or firearms or ammunition are otherwise legal to own or possess and the restrained person otherwise has right to title of the firearm or firearms or ammunition.

(d) If a person other than the restrained person claims title to any firearms or ammunition surrendered pursuant to this section, and he or she is determined by the law enforcement agency to be the lawful owner of the firearm or firearms or ammunition, the firearm or firearms or ammunition shall be returned to him or her pursuant to Chapter 2 (commencing with Section 33850) of Division 11 of Title 4.

(e) Within one business day of receiving the receipt referred to in paragraph (2) of subdivision (b), the court that issued the order shall transmit a copy of the receipt to the Department of Justice in a manner and pursuant to a process prescribed by the department.

SEC. 6. Section 18121 is added to the Penal Code, to read:

18121. There is no filing fee for an application, a responsive pleading, or an order to show cause that seeks to obtain, modify, or enforce a gun violence restraining order or other order authorized by this division if the request for the other order is necessary to obtain or give effect to a gun violence restraining order or other order authorized by this division. There is no fee for a subpoena filed in connection with that application, responsive pleading, or order to show cause.

SEC. 7. Section 18125 of the Penal Code is amended to read:

18125. (a) A temporary emergency gun violence restraining order may be issued on an ex parte basis only if a law enforcement officer asserts, and a judicial officer finds, that there is reasonable cause to believe both of the following:

(1) The subject of the petition poses an immediate and present danger 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 or ammunition.

(2) A temporary emergency 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 have been determined to be inadequate or inappropriate for the circumstances of the subject of the petition.

(b) A temporary emergency gun violence restraining order issued pursuant to this chapter shall prohibit 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, and shall expire 21 days from the date the order is issued.

SEC. 8. Section 18135 of the Penal Code is amended to read:

18135. (a) A temporary emergency gun violence restraining order issued under this chapter shall include all of the following:

(1) A statement of the grounds supporting the issuance of the order.

(2) The date and time the order expires.

(3) The address of the superior court for the county in which the restrained party resides.

(4) The following statement:

“To the restrained person: This order will last until the date and time noted above. You are required to surrender all firearms, ammunition, and magazines that you own or possess in accordance with Section 18120 of the Penal Code and you may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive any firearm, ammunition, or magazine while this order is in effect. However, a more permanent gun violence restraining order may be obtained from the court. You may seek the advice of an attorney as to any matter connected with the order. The attorney should be consulted promptly so that the attorney may assist you in any matter connected with the order.”

(b) When serving a temporary emergency gun violence restraining order, a law enforcement officer shall verbally ask the restrained person if he or she has any firearm, ammunition, or magazine in his or her possession or under his or her custody or control.

SEC. 9. Section 18148 is added to the Penal Code, to read:

18148. Within 21 days after the date on the order, the court that issued the order or another court in the same jurisdiction, shall hold a hearing pursuant to Section 18175 to determine if a gun violence restraining order should be issued pursuant to Chapter 4 (commencing with Section 18170) after notice and hearing.

SEC. 10. Section 18160 of the Penal Code is amended to read:

18160. (a) An ex parte gun violence restraining order issued under this chapter shall include all of the following:

- (1) A statement of the grounds supporting the issuance of the order.
- (2) The date and time the order expires.
- (3) The address of the superior court in which any responsive pleading should be filed.
- (4) The date and time of the scheduled hearing.
- (5) The following statement:

“To the restrained person: This order is valid until the expiration date and time noted above. You are required to surrender all firearms, ammunition, and magazines that you own or possess in accordance with Section 18120 of the Penal Code and you may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive any firearm, ammunition, or magazine while this order is in effect. A hearing will be held on the date and at the time noted above to determine if a more permanent gun violence restraining order should be issued. Failure to appear at that hearing may result in a court making an order against you that is valid for a year. You may seek the advice of an attorney as to any matter connected with the order. The attorney should be consulted promptly so that the attorney may assist you in any matter connected with the order.”

(b) (1) An ex parte gun violence restraining order shall be personally served on the restrained person by a law enforcement officer, or any person who is at least 18 years of age and not a party to the action, as provided in Section 414.10 of the Code of Civil Procedure, if the restrained person can reasonably be located.

(2) When serving a gun violence restraining order, a law enforcement officer shall inform the restrained person of the hearing scheduled pursuant to Section 18165.

(3) When serving a gun violence restraining order, a law enforcement officer shall verbally ask the restrained person if he or she has any firearm, ammunition, or magazine in his or her possession or under his or her custody or control.

SEC. 11. Section 18180 of the Penal Code is amended to read:

18180. (a) A gun violence restraining order issued pursuant to this chapter shall include all of the following:

- (1) A statement of the grounds supporting the issuance of the order.
- (2) The date and time the order expires.
- (3) The address of the superior court for the county in which the restrained party resides.
- (4) The following statement:

"To the restrained person: This order will last until the date and time noted above. If you have not done so already, you must surrender all firearms, ammunition, and magazines that you own or possess in accordance with Section 18120 of the Penal Code. You may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive a firearm, ammunition, or magazine, while this order is in effect. Pursuant to Section 18185, you have the right to request one hearing to terminate this order at any time during its effective period. You may seek the advice of an attorney as to any matter connected with the order."

(b) When the court issues a gun violence restraining order under this chapter, the court shall inform the restrained person that he or she is entitled to one hearing to request a termination of the order, pursuant to Section 18185, and shall provide the restrained person with a form to request a hearing.