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AB-1493 Gun violence restraining order: petition. (2019-2020)

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Assembly Bill No. 1493

CHAPTER 733

An act to amend Sections 18115 and 18175 of the Penal Code, relating to firearms.

[Approved by Governor October 11, 2019. Filed with Secretary of State October 11, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1493, Ting. Gun violence restraining order: petition.

Existing law authorizes an immediate family member of a person or a law enforcement officer to request that a court, after notice and a hearing, issue a gun violence restraining order against that person. Under existing law, the petitioner has the burden of proving, by clear and convincing evidence, that the subject of the petition poses a significant danger of causing personal injury and that the order is necessary to prevent personal injury, as specified. Under existing law, the restraining order prohibits the subject of the petition from having in their custody or control, or owning, purchasing, possessing, or receiving, a firearm or ammunition for a duration of one year, subject to earlier termination or renewal by the court.

Existing law requires the Judicial Council to prescribe the form of the petitions and orders and any other documents, and to promulgate any rules of court, necessary to implement those provisions.

This bill would, commencing September 1, 2020, authorize the subject of the petition to file a form with the court relinquishing the subject's firearm rights and stating that the subject is not contesting the petition. If the subject files that form, the bill would require the court to issue a gun violence restraining order, as specified, and to provide notice of the order to all parties. The bill would make conforming changes.

The bill would require the clerk of the court to enter the relinquishment of firearm rights form directly into the California Restraining and Protective Order System. If the court is unable to provide this notification to the department by electronic transmission, the bill would require the court to transmit a copy of the form to a local law enforcement agency, which would be required to submit the form directly into the system, as specified. By requiring local law enforcement agencies to submit the form into the system, the bill would impose a state-mandated local program.

This bill would incorporate changes to Section 18175 of the Penal Code proposed by AB 12 to be operative only if this bill and AB 12 are enacted and this bill is enacted last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

SECTION 1. Section 18115 of the Penal Code is amended to read:

18115. (a) The court shall notify the Department of Justice when a gun violence restraining order has been issued or renewed under this division no later than one court day after issuing or renewing the order.

(b) The court shall notify the Department of Justice when a gun violence restraining order has been dissolved or terminated under this division no later than five court days after dissolving or terminating the order. Upon receipt of either a notice of dissolution or a notice of termination of a gun violence restraining order, the Department of Justice shall, within 15 days, document the updated status of any order issued under this division.

(c) The notices required to be submitted to the Department of Justice pursuant to this section shall be submitted in an electronic format, in a manner prescribed by the department.

(d) When notifying the Department of Justice pursuant to subdivision (a) or (b), the court shall indicate in the notice whether the person subject to the gun violence restraining order has filed a relinquishment of firearm rights pursuant to subdivision (d) of Section 18175 or was present in court to be informed of the contents of the order or if the person failed to appear. The person's filing of relinquishment of firearm rights or the person's presence in court constitutes proof of service of notice of the terms of the order.

(e) (1) Within one business day of service, a law enforcement officer who served a gun violence restraining order shall submit the proof of service directly into the California Restraining and Protective Order System, including their name and law enforcement agency, and shall transmit the original proof of service form to the issuing court.

(2) Within one business day of receipt of proof of service by a person other than a law enforcement officer, the clerk of the court shall submit the proof of service of a gun violence restraining order directly into the California Restraining and Protective Order System, including the name of the person who served the order. If the court is unable to provide this notification to the Department of Justice by electronic transmission, the court shall, within one business day of receipt, transmit a copy of the proof of service to a local law enforcement agency. The local law enforcement agency shall submit the proof of service directly into the California Restraining and Protective Order System within one business day of receipt from the court.

(3) Within one business day of issuance of a gun violence restraining order based on a relinquishment of firearm rights pursuant to subdivision (d) of Section 18175, the clerk of the court shall enter the relinquishment of firearm rights form directly into the California Restraining and Protective Order System. If the court is unable to provide this notification to the Department of Justice by electronic transmission, the court shall, within one business day of receipt, transmit a copy of the relinquishment of firearm rights form to a local law enforcement agency. The local law enforcement agency shall submit the relinquishment of firearm rights form directly into the California Restraining and Protective Order System within one business day of receipt from the court.

SEC. 2. Section 18175 of the Penal Code is amended to read:

18175. (a) In determining whether to issue a gun violence restraining order under this chapter, the court shall consider evidence of the facts identified in paragraph (1) of subdivision (b) of Section 18155 and may consider any other evidence of an increased risk for violence, including, but not limited to, evidence of the facts identified in paragraph (2) of subdivision (b) of Section 18155.

(b) At the hearing, the petitioner has the burden of proving, by clear and convincing evidence, that both of the following are true:

(1) The subject of the petition, or a person subject to a temporary emergency gun violence restraining order or an ex parte gun violence restraining order, as applicable, poses a significant danger of causing personal injury to themselves or another by having in the subject's or person's custody or control, owning, purchasing, possessing, or receiving a firearm, ammunition, or magazine.

(2) A gun violence restraining order is necessary to prevent personal injury to the subject of the petition, or the person subject to an ex parte gun violence restraining order, as applicable, 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, or the person subject to an ex parte gun violence restraining order, as applicable.

(c) (1) If the court finds that there is clear and convincing evidence to issue a gun violence restraining order, the court shall issue a gun violence restraining order that prohibits the subject of the petition from having in the subject's custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm, ammunition, or magazine.

(2) If the court finds that there is not clear and convincing evidence to support the issuance of a gun violence restraining order, the court shall dissolve any temporary emergency or ex parte gun violence restraining order then in effect.

(d) (1) Commencing September 1, 2020, the subject of the petition may file a form with the court relinquishing the subject's firearm rights for the duration specified on the petition or, if not stated in the petition, for one year from the date of the proposed hearing, and stating that the subject is not contesting the petition.

(2) If the subject of the petition files a form pursuant to paragraph (1), the court shall issue, without any hearing, the gun violence restraining order at least five court days before the scheduled hearing. If the subject files the form within five court days before the scheduled hearing, the court shall issue, without any hearing, the gun violence restraining order as soon as possible. The court shall provide notice of the order to all parties.

(3) If the subject of the petition files a form pursuant to paragraph (1) and has not already surrendered all firearms, ammunition, and magazines in the subject's custody or control or those that the subject possesses or owns, the subject shall follow the procedures in Section 18120 but shall surrender the firearms, ammunition, and magazines within 48 hours of filing the form relinquishing firearm rights.

(e) A gun violence restraining order issued under this chapter has a duration of one year, subject to termination by further order of the court at a hearing held pursuant to Section 18185 and renewal by further order of the court pursuant to Section 18190.

SEC. 2.1. Section 18175 of the Penal Code is amended to read:

18175. (a) In determining whether to issue a gun violence restraining order under this chapter, the court shall consider evidence of the facts identified in paragraph (1) of subdivision (b) of Section 18155 and may consider any other evidence of an increased risk for violence, including, but not limited to, evidence of the facts identified in paragraph (2) of subdivision (b) of Section 18155.

(b) At the hearing, the petitioner has the burden of proving, by clear and convincing evidence, that both of the following are true:

(1) The subject of the petition, or a person subject to a temporary emergency gun violence restraining order or an ex parte gun violence restraining order, as applicable, poses a significant danger of causing personal injury to themselves or another by having in the subject's or person's custody or control, owning, purchasing, possessing, or receiving a firearm, ammunition, or magazine.

(2) A gun violence restraining order is necessary to prevent personal injury to the subject of the petition, or the person subject to an ex parte gun violence restraining order, as applicable, 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, or the person subject to an ex parte gun violence restraining order, as applicable.

(c) (1) If the court finds that there is clear and convincing evidence to issue a gun violence restraining order, the court shall issue a gun violence restraining order that prohibits the subject of the petition from having in the subject's custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm, ammunition, or magazine.

(2) If the court finds that there is not clear and convincing evidence to support the issuance of a gun violence restraining order, the court shall dissolve any temporary emergency or ex parte gun violence restraining order then in effect.

(d) A gun violence restraining order issued under this chapter has a duration of one year, subject to termination by further order of the court at a hearing held pursuant to Section 18185 and renewal by further order of the court pursuant to Section 18190.

(e) This section shall become inoperative on September 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 2.2. Section 18175 is added to the Penal Code, to read:

18175. (a) In determining whether to issue a gun violence restraining order under this chapter, the court shall consider evidence of the facts identified in paragraph (1) of subdivision (b) of Section 18155 and may consider any other evidence of an increased risk for violence, including, but not limited to, evidence of the facts identified in paragraph (2) of subdivision (b) of Section 18155.

(b) At the hearing, the petitioner has the burden of proving, by clear and convincing evidence, that both of the following are true:

(1) The subject of the petition, or a person subject to a temporary emergency gun violence restraining order or an ex parte gun violence restraining order, as applicable, poses a significant danger of causing personal injury to themselves or another by having in the subject's or person's custody or control, owning, purchasing, possessing, or receiving a firearm, ammunition, or magazine.

(2) A gun violence restraining order is necessary to prevent personal injury to the subject of the petition, or the person subject to an ex parte gun violence restraining order, as applicable, 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, or the person subject to an ex parte gun violence restraining order, as applicable.

(c) (1) If the court finds that there is clear and convincing evidence to issue a gun violence restraining order, the court shall issue a gun violence restraining order that prohibits the subject of the petition from having in the subject's custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm, ammunition, or magazine.

(2) If the court finds that there is not clear and convincing evidence to support the issuance of a gun violence restraining order, the court shall dissolve a temporary emergency or ex parte gun violence restraining order then in effect.

(d) (1) The subject of the petition may file a form with the court relinquishing the subject's firearm rights for the duration specified on the petition or, if not stated in the petition, for one year from the date of the proposed hearing, and stating that the subject is not contesting the petition.

(2) If the subject of the petition files a form pursuant to paragraph (1), the court shall issue, without any hearing, the gun violence restraining order at least five court days before the scheduled hearing. If the subject files the form within five court days before the scheduled hearing, the court shall issue, without any hearing, the gun violence restraining order as soon as possible. The court shall provide notice of the order to all parties.

(3) If the subject of the petition files a form pursuant to paragraph (1) and has not already surrendered all firearms, ammunition, and magazines in the subject's custody or control or those that the subject possesses or owns, the subject shall follow the procedures in Section 18120 but shall surrender the firearms, ammunition, and magazines within 48 hours of filing the form relinquishing firearm rights.

(e) (1) The court shall issue a gun violence restraining order under this chapter for a period of time of one to five years, subject to termination by further order of the court at a hearing held pursuant to Section 18185 and renewal by further order of the court pursuant to Section 18190.

(2) In determining the duration of the gun violence restraining order pursuant to paragraph (1), the court shall consider the length of time that the circumstances set forth in subdivision (b) are likely to continue, and shall issue the order based on that determination.

(f) This section shall become operative on September 1, 2020.

SEC. 3. Sections 2.1 and 2.2 of this bill incorporate amendments to Section 18175 of the Penal Code proposed by both this bill and Assembly Bill 12. Those sections of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2020, (2) each bill amends Section 18175 of the Penal Code, and (3) this bill is enacted after Assembly Bill 12, in which case Section 2 of this bill shall not become operative.

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.