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AB-2617 Firearms: gun violence restraining orders. (2019-2020)

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Assembly Bill No. 2617

CHAPTER 286

An act to amend Sections 18140 and 18205 of the Penal Code, relating to firearms.

[Approved by Governor September 29, 2020. Filed with Secretary of State September 29, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2617, Gabriel. Firearms: gun violence restraining orders.

Existing law allows a court to issue an order restraining an individual from possessing a firearm for the duration of the order. Existing law allows the court to issue a temporary emergency gun violence restraining order on an ex parte basis if the possession of a firearm by the subject of the petition poses an immediate and present danger. Existing law requires a law enforcement officer who requests a temporary emergency gun violence restraining order to take certain steps, including filing a copy of the order with the court as soon as practicable after issuance.

This bill would instead require the law enforcement officer to file a copy of the order with the court as soon as practicable, but not later than 3 court days, after issuance.

Under existing law, a person who owns or possesses a firearm or ammunition with the knowledge that they are prohibited from doing so by a gun violence restraining order is guilty of a misdemeanor and shall be prohibited from having custody or control of, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition for a 5-year period, commencing upon the expiration of the existing gun violence restraining order.

This bill would specify that this offense also applies to persons who are subject to certain gun violence restraining orders, as described, issued by an out-of-state jurisdiction.

This bill would state that its provisions are severable.

By expanding the application of an existing crime, this bill would impose a state-mandated local program.

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 no reimbursement is required by this act for a specified reason.

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

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

SECTION 1. Section 18140 of the Penal Code is amended to read:

18140. A law enforcement officer who requests a temporary emergency gun violence restraining order shall do all of the following:

- (a) If the request is made orally, sign a declaration under penalty of perjury reciting the oral statements provided to the judicial officer and memorialize the order of the court on the form approved by the Judicial Council.
- (b) Serve the order on the restrained person, if the restrained person can reasonably be located.
- (c) File a copy of the order with the court as soon as practicable, but not later than three court days, after issuance.
- (d) Have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice.

SEC. 2. Section 18205 of the Penal Code is amended to read:

18205. (a) Every person who owns or possesses a firearm or ammunition with knowledge that they are prohibited from doing so by a temporary emergency gun violence restraining order issued pursuant to Chapter 2 (commencing with Section 18125), an ex parte gun violence restraining order issued pursuant to Chapter 3 (commencing with Section 18150), a gun violence restraining order issued after notice and a hearing issued pursuant to Chapter 4 (commencing with Section 18170), or by a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a gun violence restraining order described in this division, is guilty of a misdemeanor and shall be prohibited from having custody or control of, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition for a five-year period, to commence upon the expiration of the existing gun violence restraining order.

(b) For purposes of this section, a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a gun violence restraining order described in this section must be issued upon a showing by clear and convincing evidence that the person poses a significant danger of causing personal injury to themselves or another because of owning or possessing a firearm or ammunition.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 4. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.