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AB-2870 Firearms: gun violence restraining orders. (2021-2022)

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Assembly Bill No. 2870

CHAPTER 974

An act to amend Sections 18150, 18170, and 18190 of the Penal Code, relating to firearms.

[Approved by Governor September 30, 2022. Filed with Secretary of State September 30, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2870, Santiago. Firearms: gun violence restraining orders.

Existing law authorizes a court to issue a gun violence restraining order to prohibit a person from purchasing or possessing a firearm or ammunition for a period of one to 5 years, subject to renewal for additional one- to 5-year periods, if the subject of the petition poses a significant danger of self-harm or harm to another in the near future by having a firearm and the order is necessary to prevent personal injury to the subject of the petition or another. Existing law also allows a gun violence restraining order to be issued on an ex parte basis for up to 21 days. Existing law allows a petition for these gun violence restraining orders to be made by a law enforcement officer, or an immediate family member, employer, coworker, or teacher of the subject of the petition.

This bill would additionally allow a petition for these gun violence restraining orders to be made by an individual who has a child in common with the subject, an individual who has a dating relationship with the subject, or a roommate of the subject of the petition, as specified. The bill would expand the family members who can file a petition to include any person related by consanguinity or affinity within the 4th degree who has had substantial and regular interactions with the subject for at least one year.

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

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

SECTION 1. Section 18150 of the Penal Code is amended to read:

18150. (a) (1) Any of the following individuals may file a petition requesting that the court issue an ex parte gun violence restraining order enjoining the subject of the petition from having in their custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition:

(A) An immediate family member of the subject of the petition.

(B) An employer of the subject of the petition.

(C) A coworker of the subject of the petition, if they have had substantial and regular interactions with the subject for at least one year and have obtained the approval of the employer.

(D) An employee or teacher of a secondary or postsecondary school that the subject has attended in the last six months, if the employee or teacher has obtained the approval of a school administrator or a school administration staff member with a supervisory role.

(E) A law enforcement officer.

(F) A roommate of the subject of the petition.

(G) An individual who has a dating relationship with the subject of the petition.

(H) An individual who has a child in common with the subject of the petition, if they have had substantial and regular interactions with the subject for at least one year.

(2) For purposes of this subdivision, "dating relationship" has the same meaning as in paragraph (10) of subdivision (f) of Section 243.

(3) For purposes of this subdivision, "immediate family member" means any spouse, whether by marriage or not, domestic partner, parent, child, any person related by consanguinity or affinity within the second degree, or any person related by consanguinity or affinity within the fourth degree who has had substantial and regular interactions with the subject for at least one year.

(4) For purposes of this subdivision, "roommate" means a person who regularly resides in the household, or who, within the prior six months, regularly resided in the household, and who has had substantial and regular interactions with the subject for at least one year.

(5) This chapter does not require a person described in paragraph (1) to seek a gun violence restraining order.

(b) A court may issue an ex parte gun violence restraining order if the petition, supported by an affidavit made in writing and signed by the petitioner under oath, or an oral statement taken pursuant to subdivision (a) of Section 18155, and any additional information provided to the court shows that there is a substantial likelihood that both of the following are true:

(1) The subject of the petition poses a significant danger, in the near future, of causing personal injury to the subject of the petition or another by having in their custody or control, owning, purchasing, possessing, or receiving a firearm as determined by considering the factors listed in Section 18155.

(2) An ex parte 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 are inadequate or inappropriate for the circumstances of the subject of the petition.

(c) An affidavit supporting a petition for the issuance of an ex parte gun violence restraining order shall set forth the facts tending to establish the grounds of the petition, or the reason for believing that they exist.

(d) An ex parte order under this chapter shall be issued or denied on the same day that the petition is submitted to the court, unless the petition is filed too late in the day to permit effective review, in which case the order shall be issued or denied on the next day of judicial business in sufficient time for the order to be filed that day with the clerk of the court.

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

SEC. 2. Section 18170 of the Penal Code is amended to read:

18170. (a) (1) Any of the following individuals may request that a court, after notice and a hearing, issue a gun violence restraining order enjoining the subject of the petition from having in their custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition for a period of time between one to five years:

(A) An immediate family member of the subject of the petition.

(B) An employer of the subject of the petition.

(C) A coworker of the subject of the petition, if they have had substantial and regular interactions with the subject for at least one year and have obtained the approval of the employer.

(D) An employee or teacher of a secondary or postsecondary school that the subject has attended in the last six months, if the employee or teacher has obtained the approval of a school administrator or a school administration staff member with a supervisory role.

(E) A law enforcement officer.

(F) A roommate of the subject of the petition.

(G) An individual who has a dating relationship with the subject of the petition.

(H) An individual who has a child in common with the subject of the petition, if they have had substantial and regular interactions with the subject for at least one year.

(2) This chapter does not require a person described in paragraph (1) to seek a gun violence restraining order.

(b) For purposes of this subdivision, "dating relationship" has the same meaning as in paragraph (10) of subdivision (f) of Section 243.

(c) For purposes of this section, "immediate family member" means any spouse, whether by marriage or not, domestic partner, parent, child, any person related by consanguinity or affinity within the second degree, or any person related by consanguinity or affinity within the fourth degree who has had substantial and regular interactions with the subject for at least one year.

(d) For purposes of this subdivision, "roommate" means a person who regularly resides in the household, or who, within the prior six months, regularly resided in the household, and who has had substantial and regular interactions with the subject for at least one year.

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

SEC. 3. Section 18190 of the Penal Code is amended to read:

18190. (a) (1) Any of the following people may request a renewal of a gun violence restraining order at any time within the three months before the expiration of a gun violence restraining order:

(A) An immediate family member of the subject of the petition.

(B) An employer of the subject of the petition.

(C) A coworker of the subject of the petition, if they have had substantial and regular interactions with the subject for at least one year and have obtained the approval of the employer.

(D) An employee or teacher of a secondary or postsecondary school that the subject has attended in the last six months, if the employee or teacher has obtained the approval of a school administrator or a school administration staff member with a supervisory role.

(E) A law enforcement officer.

(F) A roommate of the subject of the petition.

(G) An individual who has a dating relationship with the subject of the petition.

(H) An individual who has a child in common with the subject of the petition, if they have had substantial and regular interactions with the subject for at least one year.

(2) For purposes of this subdivision, "dating relationship" has the same meaning as in paragraph (10) of subdivision (f) of Section 243.

(3) For purposes of this subdivision, "immediate family member" means any spouse, whether by marriage or not, domestic partner, parent, child, any person related by consanguinity or affinity within the second degree, or any person related by consanguinity or affinity within the fourth degree who has had substantial and regular interactions with the subject for at least one year.

(4) For purposes of this subdivision, "roommate" means a person who regularly resides in the household, or who, within the prior six months, regularly resided in the household, and who has had substantial and regular interactions with the subject for at least one year.

(5) This chapter does not require a person described in paragraph (1) to seek a gun violence restraining order.

(b) A court may, after notice and a hearing, renew a gun violence restraining order issued under this chapter if the petitioner proves, by clear and convincing evidence, that paragraphs (1) and (2) of subdivision (b) of Section 18175 continue to be true.

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

(d) At the hearing, the petitioner shall have the burden of proving, by clear and convincing evidence, that paragraphs (1) and (2) of subdivision (b) of Section 18175 are true.

(e) If the renewal petition is supported by clear and convincing evidence, the court shall renew the gun violence restraining order issued under this chapter.

(f) (1) The renewal of a gun violence restraining order issued pursuant to this section shall have a duration of between one to five years, subject to termination by further order of the court at a hearing held pursuant to Section 18185 and further renewal by further order of the court pursuant to this section.

(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) of Section 18175 are likely to continue, and shall issue the order based on that determination.

(g) A gun violence restraining order renewed pursuant to this section shall include the information identified in subdivision (a) of Section 18180.

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