

SENATE JUDICIARY COMMITTEE
Senator Hannah-Beth Jackson, Chair
2019-2020 Regular Session

AB 1796 (Levine)
Version: July 14, 2020
Hearing Date: July 30, 2020
Fiscal: Yes
Urgency: No
JT

SUBJECT

Domestic violence: restraining orders

DIGEST

This bill requires courts to provide a drop box, during and after business hours, for the filing of petitions for domestic violence restraining orders.

EXECUTIVE SUMMARY

Changes to everyday life associated with the COVID-19 pandemic have led to increased rates of domestic violence. Shelter-in-place orders, jobs losses, and school closures deteriorate strained relationships and keep victims confined with abusers. Many victims find it more difficult to seek help, escape to a safe location, report abuse to law enforcement, or go to court to get a restraining order. To help ensure victims of domestic violence continue to have access to courts during the pandemic, the Judicial Council has adopted emergency rules that extend the duration of restraining orders, provide for remote proceedings, and require that courts provide a means for the filing of requests for restraining orders, whether by physical location, drop box, or, if feasible, through electronic means.

This bill would require courts to allow for the submission of domestic violence restraining orders by drop boxes located on court premises, during and after normal business hours. The bill would provide that deadlines applicable to such petitions would apply to petitions submitted by drop box, and would require the Judicial Council to develop rules and assist courts in developing local rules or procedures necessary to effectuate the bill's requirements.

The bill is supported by Change for Justice, California Partnership to End Domestic Violence, Jewish Family Services of Los Angeles, and the California Chapter of the National Association of Social Workers. It has no opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides for the issuance of a “temporary restraining order” (TRO). (Fam. Code § 240 et seq.)¹
 - a) Provides that, with specified exceptions, a TRO may be granted without notice to the respondent if it is alleged that irreparable injury would result to the petitioner before the matter can be heard on notice. (§ 241.)
 - b) If the TRO is granted without notice, requires a hearing to be held on the petition within 21 days of the date the TRO is granted, or 25 days if the court finds good cause. (§ 242(a).)
 - c) If the hearing is heard after that timeframe, provides that the TRO is unenforceable, unless the court grants a continuance for a reasonable period. (§§ 242(b) & 245.)
- 2) Establishes the Domestic Violence Protection Act ([DVPA] § 6200 et seq.), which sets forth procedural and substantive requirements for the issuance of a protective order to enjoin, among other things, specified acts of abuse (§§ 6318; 6320).
- 3) Defines “protective order,” for purposes of the DVPA and 1), above, as a restraining order, whether issued ex parte, after notice and hearing, or in a judgment, that is an order enjoining specified acts of abuse, excluding a person from a dwelling, or enjoining other specified behavior. (§ 6218.)
- 4) Defines “domestic violence” as abuse perpetrated against a spouse, cohabitant, a person the abuser dates, a person who has a child with the abuser, a child, and immediate relatives. (§ 6211.)
- 5) Defines “abuse” as any of the following:
 - a) Intentionally or recklessly causing or attempting to cause bodily injury.
 - b) Sexual assault.
 - c) Placing a person in reasonable apprehension of imminent serious bodily injury to that person or to another.
 - d) Engaging in enumerated harmful behaviors, including disturbing the peace of the other party. (§§ 6203(a); 6320.)
- 6) Requires that an ex parte order be issued or denied the same day the application is submitted to the court, unless the application is filed too late in the day to permit effective review, in which case the order must be issued or denied on the next day of judicial business, as specified. (§ 6326.)

¹ All further statutory references are to the Family Code, unless otherwise specified.

- 7) Requires courts that are closed during business hours on a court day to provide a drop box for depositing documents to be filed with the clerk. Provides that a document so deposited is deemed filed that day unless filed after 4:00pm or on a judicial holiday, in which case it is deemed deposited for filing on the next court day. (Ca. Rule Ct. 2.210.)
- 8) Provides for the extension of the duration of restraining orders, provides for remote proceedings, and requires that courts provide a means for the filing of ex parte requests for temporary restraining orders and requests to renew restraining orders, whether by physical location, drop box, or, if feasible, through electronic means. (Emergency Rules Ct, Rules 3, 8.)

This bill:

- 1) Requires any court or court facility that receives petitions for domestic violence restraining orders or temporary restraining orders to permit such petitions to be submitted in a drop box located on the court premises, during or after normal business hours.
- 2) Provides that the deadlines applicable to any action taken by the court with respect to a petition filed directly with the court also apply to any action taken with respect to a petition submitted in a drop box.
- 3) Requires the Judicial Council to develop rules and to assist courts in developing local rules or procedures necessary to effectuate the bill's provisions.

COMMENTS

1. Domestic violence restraining orders

The DVPA seeks to prevent acts of domestic violence, abuse, and sexual abuse, and to provide for a separation of persons involved in domestic violence for a period sufficient to enable them to seek a resolution. The DVPA's "protective purpose is broad both in its stated intent and its breadth of persons protected." (*Caldwell v. Coppola* (1990) 219 Cal.App.3d 859, 863.) The DVPA must be broadly construed in order to accomplish the statute's purpose. (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1498.) The Act enables a party to seek a "protective order," also known as a restraining order, which may be issued to protect a petitioner who presents "reasonable proof of a past act or acts of abuse." (§ 6300; see § 6218.)

Petitioners who need immediate protection may seek a TRO, which becomes effective upon receiving a judge's signature and being served on the respondent. TROs may be issued "ex parte" (Latin for "by or for one party") – that is, without formal notice to, or

the presence of, the respondent. (*See* § 241.)² Because a restrained party would not have had the opportunity to defend their interests, TROs are of necessity short in duration. If a noticed hearing is not held within 21 days (or 25 if the court finds good cause), the TRO is no longer enforceable, unless a court grants a continuance. (§§ 242 & 245.) After a duly noticed hearing, however, the court is authorized to extend the original TRO into a “permanent” protective order (also known as orders after hearing) that may last up to five years. (§§ 6345, 6302.)

2. Requires courts to receive domestic violence restraining order petitions via drop box

Changes to everyday life associated with the COVID-19 pandemic have led to increased rates of domestic violence.³ Shelter-in-place orders, jobs losses, and school closures deteriorate strained relationships and keep victims confined with abusers. Many victims find it more difficult to seek help, escape to a safe location, report abuse to law enforcement, or go to court to get a restraining order.

According to the author: “County shelter-in-place orders due to the coronavirus have impacted all aspects of life, but have been particularly difficult for victims of domestic violence.” The author and sponsors jointly add that “[f]or victims, the process to seek a temporary restraining order (TRO) or a domestic violence restraining order (DVRO) has been complicated by the closure of or limited access to the courts. Even during a pandemic, timely access to the courts is necessary to protect vulnerable individuals and prevent harm to victims of domestic violence.”

To help ensure victims of domestic violence continue to have access to courts during the pandemic, the Judicial Council has adopted emergency rules that extend the duration of restraining orders, provide for remote proceedings, and require that courts provide a means for the filing of requests for restraining orders, whether by physical location, drop box, or, if feasible, through electronic means. (Emergency Rules Ct, Rules 3, 8.) Additionally, Rule of Court 2.210 requires courts that are closed during business hours on a court day to provide a drop box for depositing documents to be filed with the clerk. The rule also provides that a document so deposited is deemed filed that day unless filed 4:00pm or on a judicial holiday, in which case it is deemed deposited for filing on the next court day. (Ca. Rule Ct. 2.210.)

² A TRO is distinct from an “emergency protective order,” which is an order specifically requested by a law enforcement official and that a judicial officer finds necessary to prevent the occurrence or recurrence of domestic violence, child abuse, child abduction, or abuse of an elder or dependent adult. (§§ 6250, 6250.3, 6251.) An emergency protective order is not subject to the provisions governing TROs. (*See* § 240.)

³ Newberry, Laura & Santa Cruz, Nicole, *Domestic abuse victims in ‘worst-case scenario’ during outbreak, providers say* (March 24, 2020) Los Angeles Times, available at

<https://www.latimes.com/california/story/2020-03-24/womens-shelters-brace-for-surge-in-domestic-violence-as-coronavirus-quarantines-isolate-survivors> (as of May 16, 2020).

This bill would require any court or court facility that receives petitions for domestic violence restraining orders or temporary restraining orders to permit such petitions to be submitted in a drop box located on the court premises, during or after normal business hours. The bill would provide that the deadlines applicable to any action taken by the court with respect to a petition filed directly with the court also apply to any action taken with respect to a petition submitted in a drop box. The bill would require the Judicial Council to develop rules and to assist courts in developing local rules or procedures necessary to effectuate this provision.

The author writes:

Currently, a victim's available options to file a request for a TRO or DVRO are at the discretion of each court. In-person filing during business hours is required, but access to alternative methods of filing, such as physical drop boxes, are inconsistent at best and unavailable at worst. A requirement for all courts to provide drop box locations for TRO and DVRO filings during and after business hours can help bridge the equity gap through consistent access across the state and by increasing access to low-income victims that may not have availability to file during business hours. Without additional alternatives to file a TRO or a DVRO, victims of domestic violence will continue to be exposed to harm with limited opportunities to escape a dangerous cycle of violence.

Change for Justice, in support of the bill, adds:

Stay-at-home orders issued during the COVID-19 pandemic have led to an alarming spike in acts of domestic violence. For months, victims have been locked in with abusers with little ability to seek out resources. The ability for a victim to receive relief from the courts in the form of a restraining order could mean the difference between life and death for them. As courts continue to operate on a limited basis for the foreseeable future, it is integral that the system be allowed to adapt to the rapidly changing needs of the public during this pandemic, and especially of those in harm's way.

SUPPORT

California Partnership to End Domestic Violence
Change for Justice
Jewish Family Services of Los Angeles
National Association of Social Workers, California Chapter

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

SB 1141 (Rubio, 2020) would provide that coercive control is a form of domestic abuse for purposes of the DVPA. The bill is pending in the Assembly Judiciary Committee.

AB 2517 (Gloria, 2020) would authorize courts to make a finding in a domestic violence restraining order issued after notice and a hearing that specific debts were incurred as a result of domestic violence. The bill will be heard in this Committee the same day as this bill.

Prior Legislation: None known.

PRIOR VOTES:

This bill was amended June 24, 2020, to delete and replace its contents with provisions relating to a new subject. All prior votes on the bill occurred before these amendments and thus are not relevant.
