

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

AB 887 (Levine)  
Version: June 14, 2021  
Hearing Date: June 22, 2021  
Fiscal: Yes  
Urgency: No  
JT

**SUBJECT**

Domestic violence: restraining orders

**DIGEST**

This bill requires courts, by January 1, 2023, to allow for e-filing of petitions for domestic violence restraining orders.

**EXECUTIVE SUMMARY**

As courts were shuttered in response to the COVID-19 pandemic, the Judicial Council adopted emergency rules of court to provide for electronic filings and remote proceedings in a number of contexts, including petitions for domestic violence restraining orders. Although not without its downsides, the use of such technology, on the whole, can promote access to justice by making filings and appearances more convenient and efficient.

This bill would require trial courts, as soon as possible, but not later than January 1, 2023, to accept electronically-filed domestic violence restraining order petitions, including temporary restraining order petitions. Courts with appropriate technology would be required to provide electronic copies of documents to the petitioner if requested. The bill would also require information regarding access to self-help services regarding domestic violence restraining orders to be prominently visible on the courts' websites. The Judicial Council would be required to develop or amend rules as necessary to implement the bill's provisions. Finally, the bill would also prohibit a filing fee for the electronic petitions.

The bill is author-sponsored and supported by a range of organizations. There is no known opposition.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Establishes the Domestic Violence Protection Act ([DVPA] Fam. Code § 6200 et seq.),<sup>1</sup> which sets forth procedural and substantive requirements for the issuance of a “protective order,” whether issued ex parte, after notice and hearing, or in a judgment, that enjoins specified acts of abuse, excluding a person from a dwelling, or enjoining other specified behavior. (§§ 6218, 6300 et seq.)
- 2) Authorizes the issuance of a temporary restraining order (§ 240 et seq.), which generally requires notice to the respondent unless there is a showing that great or irreparable injury would result to the petitioner before the matter can be heard on notice (§ 241), but expressly authorizes ex parte restraining orders for several purposes under the DVPA (§ 6320 et seq.). Provides that a temporary restraining order generally lasts 21 days, although the court may grant continuances for a reasonable period. (§ 242, 245.) Generally requires that the respondent be personally served with a copy of the petition, the temporary restraining order, if any, and the notice of the hearing on the petition, at least five days before the hearing. (§ 243.)
- 3) Provides that an ex parte restraining order may be extended for up to five years (and subsequently renewed) following a hearing for which notice was provided to the respondent at least five days before the hearing. (§§ 6320.5, 6340, 6345, 6302.)
- 4) Provides that 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 protective order or other order authorized by the DVPA when the request for the other order is necessary to obtain or give effect to a protective order. (§ 6222.) Provides that there is no fee for a subpoena filed in connection with that application, responsive pleading, or order to show cause. (*Id.*)
- 5) Requires, in Emergency Rules of Court, that courts provide a means of filing ex parte requests for protective orders even during court shutdowns, whether by physical location, drop box, or electronic means; deems service on the respondent to be complete if the respondent appears at the hearing in which the court grants the restraining order. (Cal. Rules of Court, Emergency Rule 8 (April 6, 2020).)
- 6) Authorizes, in the Emergency Rules of Court: conducting proceedings remotely, including by video, audio, and telephonic means; the electronic and authentication of documentary evidence; e-filing and e-service; the use of remote interpreting; and the use of remote reporting and electronic recording to make the official record of an action or proceeding. (Cal. Rules of Court, Emergency Rule 3(a)(3) (April 6, 2020).)

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<sup>1</sup> All further statutory references are to the Family Code, unless otherwise specified.

This bill:

- 1) Requires trial courts, as soon as possible, but no later than January 1, 2023, to accept electronically filed petitions for domestic violence restraining orders, including domestic violence temporary restraining orders.
- 2) Requires the notice of court date, copies of the request to mail on respondent, and the temporary restraining order, if granted, to be remitted to the petitioner by regular mail unless the petitioner indicates on the petition that they will retrieve these documents from the court. However, if the court has the appropriate technology and the petitioner stipulates that they are willing to accept an electronic copy, the court must provide an electronic copy of the documents.
- 3) Requires information about access to self-help services regarding domestic violence restraining orders to be prominently visible on the superior court's internet website.
- 4) Requires the Judicial Council to develop or amend rules and forms as necessary to implement the bill's provisions.
- 5) Prohibits a fee for any filings related to an electronic petition.

### COMMENTS

#### 1. Domestic violence

According to Katie Ray-Jones, the National Domestic Violence Hotline's Chief Executive, "[d]omestic violence is rooted in power and control."<sup>2</sup> When abusers lose control of their intimate partners, they resort to a variety of tactics to subjugate them. The Center for Disease Control states that intimate partner violence may consist of physical violence, sexual violence, and psychological aggression, which includes expressive aggression (insulting, name calling) and coercive control (behaviors that involve monitoring, controlling, or threatening the victim).<sup>3</sup> Statistics on domestic violence, which likely underrepresent its true extent, are harrowing. A fact sheet by the National Coalition to End Domestic Violence states:

- At least one in three women in California have experienced domestic violence.
- 166,890 domestic violence-related calls were made to law enforcement in California in 2018.

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<sup>2</sup> 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).

<sup>3</sup> *The National Intimate Partner and Sexual Violence Survey: 2010-2012 State Report* (April 2017), p. 14, available at <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf> (as of May 16, 2020).

- In 2018, domestic violence homicides comprised 10.7 percent of California homicides in 2018 and accounted for 20 percent of all violent crimes.
- In a single day in 2019, 81 percent of California domestic violence shelters served 5,644 adults and children. 1,236 requests for service went unmet due to lack of resources.<sup>4</sup>

Meanwhile, changes to everyday life associated with the COVID-19 pandemic have led to increased rates of domestic violence.<sup>5</sup> Shelter-in-place orders, job 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.

## 2. 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) and courts are required to construe it broadly 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.)

Victims of domestic violence who need immediate protection may seek a temporary restraining order, which may be decided ex parte (without notice to the respondent) and generally must be issued or denied the same court day the petition is filed. (See §§ 241, 6320 et seq.) Because the restrained party would not have had the opportunity to defend their interests, ex parte orders are short in duration. If a noticed hearing is not held within 21 days (or 25 if the court finds good cause), a temporary restraining order is no longer enforceable, unless a court grants a continuance. (§§ 242 & 245.) The respondent must be personally served with a copy of the petition, the temporary restraining order, if any, and the notice of the hearing on the petition, at least five days before the hearing. (§ 243.) After a duly noticed hearing, the court is authorized to extend the original temporary restraining order for up to five years, which may then be renewed. (§§ 6302, 6340, 6345.) Additionally, a protective order may be issued in a judgement entered in a proceeding for dissolution of marriage, nullity of marriage, legal separation of the parties, or in a parentage action. (§ 6360.)

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<sup>4</sup> National Coalition Against Domestic Violence, *Domestic Violence in California*, available at [https://assets.speakcdn.com/assets/2497/ncadv\\_california\\_fact\\_sheet\\_2020.pdf](https://assets.speakcdn.com/assets/2497/ncadv_california_fact_sheet_2020.pdf) (as of Feb. 20, 2021).

<sup>5</sup> 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 February 20, 2020).

### 3. Emergency rules of court

The COVID-19 pandemic, and the ensuing economic collapse, created the need for urgent court intervention, but court shutdowns and reduced court operations made court intervention more difficult. The Judicial Council recognized the critical nature of some family law orders by issuing emergency orders to protect family law litigants, mostly in the early days of the pandemic when many courts across the state shut down most of their operations.

One of the key family law emergency orders issued by the Judicial Council extends the time period for existing domestic violence and other protective orders; requires that courts provide a means of filing ex parte requests for protective orders even during court shutdowns, whether by physical location, drop box, or electronic means; and deems service on the respondent to be complete if the respondent appears at the hearing in which the court grants the restraining order.<sup>6</sup> These protective orders can include establishing a temporary custody and visitation order, or temporarily changing an existing custody and visitation order.<sup>7</sup> Thus, emergency domestic violence protective orders, including related child custody orders, have been available throughout the pandemic to protect families and children across the state.

Additionally, another emergency rule adopted by the Judicial Council authorized: courts to require that judicial proceedings and court operations be conducted remotely, including by video, audio, and telephonic means; the electronic and authentication of documentary evidence; e-filing and e-service; the use of remote interpreting; and the use of remote reporting and electronic recording to make the official record of an action or proceeding.<sup>8</sup> These rules have been implemented unevenly across the state and will sunset 90 days after the state of emergency is lifted.

### 4. Provides for e-filing of domestic violence restraining order petitions

This Committee recently held a joint hearing with the Assembly Judiciary Committee on the subject of the effect of the COVID-19 pandemic on California's justice system. The background paper described the challenges that some family law attorneys experienced during the pandemic:

Not all courts were able to accommodate e-filing. In some courts, filings are required to be made at a drop box inside the court, but courthouses and lobbies were closed. This periodically makes filing requests for orders, even temporary restraining orders to protect domestic violence

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<sup>6</sup> Cal. Rules of Court, Emergency Rule 8 (April 6, 2020).

<sup>7</sup> See § 6323.

<sup>8</sup> Cal. Rules of Court, Emergency Rule 3(a)(3) (April 6, 2020).

victims and their children, very difficult. Having e-filing as an option across the state would be much more efficient for litigants.<sup>9</sup>

This bill seeks to make e-filing of domestic violence restraining order petitions a permanent option. As soon as possible, but not later than January 1, 2023, trial courts throughout the state would be required to accept electronically-filed domestic violence restraining order petitions, including temporary domestic violence restraining order petitions. If the court has the appropriate technology, the petitioner would be able to receive electronic copies of the documents; otherwise they can receive the documents through regular mail or may choose to retrieve the documents from the court. The bill would also require information regarding access to self-help services regarding domestic violence restraining orders to be prominently visible on the superior court's website. The Judicial Council would be required to develop or amend rules as necessary to implement the bill's provisions. Finally, the bill would also prohibit a filing fee for the electronic petitions.

The author writes:

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. For 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.

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 are inconsistent at best and unavailable at worst. A requirement for all courts to provide online filing 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 for 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.

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<sup>9</sup> Joint Informational Hearing of Assembly and Senate Committees on Judiciary, *COVID and the Courts: Assessing the Impact on Access to Justice, Identifying Best Practices, and Plotting the Path Forward* (Feb. 23, 2021) Background Paper, <https://sjud.senate.ca.gov/content/2020-21-informationaloversight-hearings> (as of Mar. 21, 2021). The background paper also suggested drop boxes or filing windows should be made available for litigants without internet access. (*Id.* at 8.) Last year the author carried AB 1796, which would have required drop boxes for domestic violence restraining order petitions. The bill passed this Committee unanimously but was held in the Senate Appropriations Committee.

5. Support

Several supporters write:

AB 887 would require court facilities that receive and process petitions for domestic violence restraining orders (DVROs) and temporary restraining orders (TROs) to allow for electronic submission of the petitions. 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 is allowed to adapt to the rapidly changing needs of the public during this pandemic, and especially of those in harm's way.

We are cognizant of the pressures the state and the judicial branch are facing, but we simply cannot stop moving forward with creating additional safe alternatives for victims and survivors to seek safety and justice. AB 887 increases access to justice and will provide victims with an important option to ensure safe access and prevent future harm to these victims.

The California State Sheriff's Association adds:

The COVID-19 pandemic created enormous challenges for California residents, and exposed numerous holes in local and state governmental processes, including access to justice. Currently, there are courts that only allow DVRO and TRO petitions to be submitted in person during normal court business hours. This can be especially problematic for victims of domestic violence, as their abusers may have enhanced knowledge of their victims' whereabouts or prevent them from leaving their homes.

**SUPPORT**

American Association of University Women California  
Association of Certified Family Law Specialists  
California Partnership to End Domestic Violence  
California State Sheriffs Association  
Change for Justice  
Los Angeles County Bar Association – Family Law Section  
Love & Alvarez Psychology, Inc.  
Plumas Rural Services

San Diego County District Attorney's Office

**OPPOSITION**

None known

**RELATED LEGISLATION**

Pending Legislation: SB 538 (Rubio, 2021) would provide for electronic filing and remote appearances in the context of domestic violence restraining orders and gun violence restraining orders. The bill passed this Committee unanimously and is now pending in the Assembly Judiciary Committee.

Prior Legislation: AB 1796 (Levine, 2020) would have required courts to provide drop boxes for domestic violence restraining order petitions. The bill passed this Committee unanimously but was held in the Senate Appropriations Committee.

**PRIOR VOTES:**

Assembly Floor (Ayes 78, Noes 0)

Assembly Appropriations Committee (Ayes 16, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)

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