

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

SB 538 (Rubio)  
Version: March 16, 2021  
Hearing Date: April 6, 2021  
Fiscal: Yes  
Urgency: No  
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**SUBJECT**

Domestic violence and gun violence restraining orders

**DIGEST**

This bill provides for electronic filing and remote appearances in the context of temporary domestic violence restraining orders and gun violence restraining orders.

This analysis is limited to the Family Code provisions in this Committee's jurisdiction.

**EXECUTIVE SUMMARY**

A silver lining of the COVID-19 pandemic is that it has forced courts to adopt technology that enables litigants to initiate and participate in judicial proceedings remotely. As courts were shuttered in response to the public health crisis, the Judicial Council adopted emergency rules of court to provide for electronic filings and remote proceedings in a number of contexts, including domestic violence restraining order petitions. Although not without its downsides, the use of this technology, on the whole, promotes access to justice by making filings and appearances more convenient and efficient.

This bill, with respect to temporary domestic violence restraining order petitions, would require courts to: (1) permit those petitions to be filed electronically; (2) permit parties and witnesses to appear remotely at the hearing on the petition; (3) provide telephone numbers for the public to call to obtain information regarding electronic filing and remote appearances; and (4) develop, and post on their websites, local rules and instructions for electronic filing and remote appearances. The bill is sponsored by the City of San Diego and supported by Change for Justice, Su Casa – Ending Domestic Violence, and the YWCA of San Gabriel Valley. Amendments are described on page 7. If this Committee passes the bill, it will be referred to the Senate Rules Committee to be considered for referral to the Senate Public Safety Committee.

**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) 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).)
- 5) 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).)

This bill:

- 1) Requires a court or court facility that receives petitions for temporary domestic violence restraining orders to permit those petitions to be filed electronically.

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

- 2) Permits parties and witnesses to appear remotely at a hearing on a petition for a temporary domestic violence restraining order.
- 3) Requires the superior court of each county to provide telephone numbers for the public to call to obtain information regarding electronic filing and remote appearances, respectively.
- 4) Requires the superior court of each county to develop, and to post on its internet website, local rules and instructions for electronic filing and remote appearances, respectively.
- 5) Adds similar provisions applicable to gun violence restraining orders under the Penal Code.

### COMMENTS

#### 1. Author's statement

The author writes:

This bill will strengthen protections for survivors of domestic violence by requiring California's Superior Courts to maintain procedures allowing parties to electronically file for Domestic Violence Restraining Orders (DVROs) and Gun Violence Restraining Orders (GVROs). SB 538 will also allow parties and witnesses to appear remotely at the hearing on a petition. California continues to face systemic barriers preventing survivors of abuse from seeking DVROs and GVROs, which is critical when a victim is dealing with trauma associated with seeing the perpetrator in person. In addition, various barriers like transportation, dependent care, poverty, and paid jobs all present hurdles for individuals seeking restraining orders. By allowing restraining orders to be automatically integrated into a court's electronic case management system, this would allow for victims to seek the vital protection needed for safety concerns. It will also allow judges and court staff to share and view filings simultaneously, and from multiple locations, providing court efficiencies and cost savings.

Furthermore, domestic violence victims have voiced the courthouse is the most anxiety-inducing place they must go to while pursuing safety for themselves, their children, and their family. Petitioners that deal with trauma and anxiety can become confused or frustrated by the unfamiliar process or even worse, they endure continuous harassment or intimidation by their abuser. These issues deprive domestic violence victims and families access to justice in a time of crisis, and of the safety, they seek and deserve.

## 2. 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.
- 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.

## 3. 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

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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).

<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).

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.)

#### 4. Emergency rule of court for ex parte domestic violence restraining order petitions

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.

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

<sup>7</sup> See Family Code Section 6323.

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.

#### 5. Informational hearing on COVID-19 and the courts

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. With respect to remote proceedings, the background paper<sup>9</sup> for the hearing included the following findings:

- Procedures for continuing court operations in a time of crisis must preserve the accessibility of the courts for all litigants.<sup>10</sup>
- Having e-filing as an option across the state is much more efficient for litigants.<sup>11</sup>
- Consideration should be given to providing at least the following two options for filing court documents: electronic filing and a drop box that is accessible for dropping court filings even if the courthouse is closed.<sup>12</sup>
- Courts have had varying levels of success with remote proceedings during the pandemic. Given the availability and quality of video conferencing programs, remote proceedings are likely an essential component of the courts' emergency procedures going forward. At the same time, steps must be taken to provide alternatives for litigants who do not have the necessary access to the technology necessary to participate equally in remote proceedings.<sup>13</sup>
- Remote proceedings work better in some types of proceedings than in others. The ease and expedience of remote proceedings must be balanced against the potential harm to parties, witnesses, and other participants who, for a variety of reasons, will not be able to engage as thoroughly in a remote proceeding as they would in person. The choice of technology should consider cost to users; accessibility to users without computers (perhaps by cell phone); accessibility to users with disabilities; ability to accommodate self-represented litigants and witnesses who are not English speakers; ability for users to present documentary evidence or use visual aids, including by telephone or smartphone; ability of the

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

<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).

<sup>10</sup> *Id.* at 25.

<sup>11</sup> *Id.* at 7.

<sup>12</sup> *Id.* at 27.

<sup>13</sup> *Id.*

court to provide confidentiality where necessary, as well as public access (or a recording available to the public) as a general rule; and the ability of the technology to generate an official public record.<sup>14</sup>

Testimony in the hearing from court officers and practitioners identified some pitfalls with remote proceedings in the context of family law: low-income individuals may be at a disadvantage if they lack the technology to participate remotely; parties may feign technical difficulties as a dilatory tactic; and children may overhear sensitive information that they would not otherwise be exposed to. Nevertheless, the consensus was that remote proceedings, on the whole, promote access to justice by making it easier to appear in court without missing work or having to find child care; taking down the temperature in the most contentious of hearings, including restraining orders; and keeping people in comfortable settings without having to be in the same room as an abusive partner.

6. Electronic filing and remote appearances for temporary domestic violence restraining order petitions

This bill, with respect to temporary domestic violence restraining order petitions, would require courts to: (1) permit those petitions to be filed electronically; (2) permit parties and witnesses to appear remotely at the hearing on the petition; (3) provide telephone numbers for the public to call to obtain information regarding electronic filing and remote appearances; and (4) develop, and post on their websites, local rules and instructions for electronic filing and remote appearances.

The bill's sponsor, the City of San Diego, writes, in a letter echoed by bill supporter Change for Justice:

The pandemic has proven that electronic systems can be effectively employed in our state's judicial system. SB 538 will allow restraining orders to be automatically integrated into a court's electronic case management system, by way of e-filing. This would allow judges and court staff to share and view filings simultaneously, and from multiple locations, providing court efficiencies and cost savings.

Furthermore, for domestic violence victims, the courthouse is the most anxiety-inducing place they must go while pursuing safety for themselves, their children, and their family members. Petitioners can become confused or frustrated by the unfamiliar process. Often, when they see their perpetrator at the courthouse, they are harassed or intimidated or by their abuser. These issues deprive domestic violence victims and families in crisis access to justice and the safety they seek and deserve.

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<sup>14</sup> *Id.*

SB 538 will increase access to court, and thus safety, for those victims who cannot get to court because they cannot get time off from work, cannot get child care, or won't go to court because of personal safety concerns.

### Amendments

To ensure that court fees do not disadvantage low-income litigants and prevent them from using electronic filing or appearing remotely, the author has agreed to amend the bill to provide that fees cannot be charged for electronic filing or remote appearances under the bill's provisions. Additionally, the author has agreed to amend the bill to ensure it applies to domestic violence restraining order petitions in a noticed hearing.

### SUPPORT

City of San Diego (sponsor)  
Change for Justice  
Su Casa – Ending Domestic Violence  
YWCA of San Gabriel Valley

### OPPOSITION

None known

### RELATED LEGISLATION

Pending Legislation: AB 887 (Levine, 2021) requires courts to receive domestic violence restraining order petitions electronically by January 1, 2023. The bill passed the Assembly Judiciary Committee by a vote of 11-0 and is pending in the Assembly Appropriations Committee.

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

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