

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 554 (Cortese)
Version: January 3, 2024
Hearing Date: January 11, 2024
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Restraining Orders

DIGEST

This bill clarifies that a party may seek a temporary restraining order or protective order under the Code of Civil Procedure or the Domestic Violence Prevention Act (DVPA) in any appropriate jurisdiction within the state, even if the party is not a resident.

EXECUTIVE SUMMARY

California offers two main avenues by which a person who is being harassed or abused may seek a court order to stop that harassment or abuse. The Code of Civil Procedure provides a general mechanism for persons who are being harassed to seek such an order, and the DVPA provides a mechanism for persons who are the victim of abuse perpetrated by certain family members or current or former intimate partners. Under both regimes, a court may issue a temporary restraining order (TRO) on an ex parte basis and, following a noticed hearing at which the respondent was given the opportunity to be heard, a protective order that may last for a period of months or years.

Currently, neither the civil protective order statute nor the DVPA specifies whether a nonresident may seek a TRO or protective order. To ensure that victims are not prevented from seeking protection from harassment – particularly in situations where the perpetrator lives in the state, so that another state’s court might not have jurisdiction over the perpetrator – this bill clarifies that a nonresident may petition for a TRO or protective order, and provides examples of where jurisdiction may be appropriate. The author has agreed to amend the bill to further clarify when the court may exercise jurisdiction in a TRO or protective order matter, to ensure that the bill is consistent with existing due process limitations; these amendments will be taken in the Senate Appropriations Committee.

This bill is sponsored by Restraining Orders Without Borders and is supported by over 40 individuals. The Committee has not received timely opposition to this bill.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that a court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or the United States. (Code Civ. Proc., § 410.10.)
- 2) Permits a person who has suffered harassment to seek a temporary restraining order and a protective order after a noticed hearing prohibiting harassment.
 - a) "Harassment" is unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner.
 - b) The temporary order or order issued after a hearing may enjoin a party from a range of conduct, including harassing, intimidating, attacking, stalking, threatening, or making phone calls to the petitioner. (Code Civ. Proc., § 527.6.)
- 3) Establishes the DVPA (Fam. Code, §§ 6200 et seq.), which sets forth procedural and substantive requirements for the issuance of a temporary restraining order or a protective order to, among other things, enjoin specific acts of abuse or prohibit the abuser from coming within a specified distance of the abused person. (Fam. Code, §§ 6218, 6300 et seq.)
- 4) Defines "domestic violence," for purposes of the DVPA, as abuse perpetrated against a spouse or former spouse; a cohabitant or former cohabitant; a person with whom the respondent is having or has had a dating or engagement relationship; a person with whom the respondent has had a child, as specified; a child of a party or a child who is the subject of an action under the Uniform Parentage Act, as specified; or any other person related by consanguinity or affinity within the second degree. (Fam. Code, § 6211.)
- 5) Authorizes a court to issue a personal conduct, stay-away, and/or residence exclusion order (collectively, a protective order) after a noticed hearing at which the alleged abuser may appear. (Fam. Code, §§ 6340-6347.)

- 6) States that a court may issue a personal conduct, stay-away, and/or residence exclusion under the DVPA to any person listed in 4), including a minor. (Fam. Code, § 6301(a).)

This bill:

- 1) Provides that, for purposes of a civil or DVPA restraining order or protective order, an individual need not be a resident of the state to file a petition for the order.
- 2) Provides that an individual may file a petition for a civil or DVPA restraining order or protective order in a court in this state in the following jurisdictions, including, but not limited to:
 - a) Where the petitioner resides or is temporarily located.
 - b) Where the defendant resides.
 - c) Where the offense occurred.
 - d) Any other court that may have jurisdiction over the parties or the subject matter of the case.

COMMENTS

1. Author's comment

According to the author:

Every survivor of domestic violence deserves protection and peace of mind, regardless of where they may seek refuge or move their families. SB 554 will add California to the list of 14 other states with the most comprehensive restraining order laws. Currently, the lack of clear jurisdictional guidelines leads California courts to dismiss or deny petitions for restraining orders when survivors have sought safety by relocating. This bill will allow California judges to protect innocent people and families from further trauma, abuse, or injury.

2. California's protective order mechanisms do not specify the scope of the courts' jurisdiction

California has two main provisions by which a person may seek relief from harassment or abuse from a third party. The Code of Civil Procedure permits a court to issue a protective order against a person who is "harassing" the petitioner, provided that the harassment causes the petitioner substantial emotional distress.¹ And the DVPA permits a court to issue a protective order against a respondent who is committing domestic violence against the petitioner, provided that the petitioner and respondent have, or have had, one of the enumerated familial or intimate relationships.² Under

¹ Code Civ. Proc., § 527.6.

² Fam. Code, § 6211; *see generally id.*, §§ 6200-6389.

both mechanisms, a court may issue a temporary restraining order on an ex parte basis, and then issue a permanent order following a noticed hearing at which the respondent had the opportunity to be heard.³

While the civil and DVPA protective order statutes are tailored to cover a range of harassing and abusive conduct, the statutes as currently in law do not currently specify whether, and when, a nonresident of the state may seek a protective order. According to the sponsor of this bill, the lack of clarity (here and in other states' similar laws) can lead to a situation where a victim of harassment or abuse is left without a forum to obtain a protective order: if the victim and perpetrator are residents of different states, neither state's court may believe it can exercise jurisdiction over the matter.

3. This bill clarifies that a state court may exercise jurisdiction over restraining and protective order matters brought by a nonresident of the state

This bill closes the potential gap discussed in Part 2 by clarifying that a person need not be a resident of the state in order to seek a civil or DVPA restraining order or a protective order. The bill also clarifies that a petition for such an order may be filed in any jurisdiction that is appropriate, such as where the petitioner resides or is temporarily located, where the defendant resides, or where the offense occurs. As explained below in Part 4, a court's jurisdiction in a restraining or protective order case remains subject to due process limitations. The bill will also make it easier for in-state petitioners to file in a venue convenient for them (such the county in which they temporarily reside); given the availability of remote appearances, the expanded venue options should not be overly onerous for respondents.⁴ The author has also agreed to amendments, discussed in Part 5, to clarify the intent and scope of the bill.

The bill's sponsor, Restraining Orders Without Borders, writes in support:

When our laws protecting survivors are weak, our laws protecting perpetrators are inadvertently strong. When courts are dismissing survivors' cases, it is the perpetrator they rule in favor of. When the survivor is unprotected, it is the perpetrator that is safe. It is time interstate violence is met with interstate protection by California.

4. This bill does not supersede existing law regarding personal jurisdiction

The Due Process Clause of the Fourteenth Amendment prohibits a state court from exercising personal jurisdiction over a nonresident unless that person has sufficient minimum contacts with that jurisdiction.⁵ Generally speaking, adequate minimum

³ Code Civ. Proc., § 5276(a), (j); Fam. Code, §§ 6320, 6340.

⁴ See Code Civ. Proc., § 367.75; Fam. Code, § 6303.

⁵ *International Shoe Co. v. State of Wash. Unemployment Compensation and Placement* (1945) 326 U.S. 310, 316.

contacts arise when the nonresident’s conduct creates a “substantial connection” with the forum state.⁶ The courts will look at two aspects of the nonresident’s relationship to determine whether a substantial connection exists: whether the nonresident themselves created the relationship with the forum state; and the nonresident’s contacts with the forum state itself, rather than with persons who reside there.⁷ A nonresident’s physical presence in a state is not necessary to establish minimum contacts, “it is certainly a relevant contact.”⁸ On the other hand, a relationship with a resident of the state, without more, does not establish the requisite minimum contacts with the state—“the plaintiff cannot be the only link between the defendant and the forum.”⁹ California’s long-arm statute extends the state courts’ jurisdiction as broadly as the Constitution permits.¹⁰

This bill is not intended to stretch the courts’ jurisdiction beyond constitutional limits or otherwise interfere with the due process rights of respondents.¹¹ Instead, the bill is intended to make clear that the courts’ jurisdiction over restraining order matters is not constrained by factors *other than* the requirements of the Due Process Clause. Thus, for example, this bill makes clear that a state court may exercise jurisdiction over a restraining order matter even if the petitioner is not a resident of this state; in such a case, the court would still need personal jurisdiction over the respondent, which would be appropriate if the respondent resided in the state or had sufficient minimum contacts with the state. The bill thus enables petitioners to seek restraining orders in the state, provided that the requirements of due process are met, without artificial barriers to obtaining the protection they need.

5. Amendments

As noted above, the author has agreed to amend the bill to ensure that the bill’s provisions are interpreted consistent with constitutional limits on personal jurisdiction. Due to time constraints, these amendments will be taken in the Senate Appropriations Committee. The amendments are as follows, subject to nonsubstantive changes suggested by Legislative Counsel:

At page 2, replace lines 7-16 with the following:

(2) An individual need not be a resident of the state to file a petition for an order under this section. A petition for an order as specified in paragraph (1) may be

⁶ *Walden v. Fiore* (2014) 571 U.S. 277, 284.

⁷ *Id.* at pp. 284-285.

⁸ *Id.* at p. 285.

⁹ *Ibid.*

¹⁰ Code Civ. Proc., § 410.10.

¹¹ The courts have made clear that respondents in protective order matters have the right to due process, in the form of notice and a meaningful opportunity to be heard in a manner appropriate to the nature of the case. (E.g., *In re Marriage of D.S. and A.S.* (2023) 87 Cal.App.5th 926, 935.)

filed in in any superior court in this state, consistent with Code of Civil Procedure section 410.10, which may include, but is not limited to:

- (A) The county in which the petitioner resides or is temporarily located.
- (B) The county in which the defendant resides.
- (C) The county in which the offense occurred.

At page 13, replace lines 1-9 with the following:

(a) An individual need not be a resident of the state to file a petition for an order under this part. A petition for an order under this part may be filed in any superior court in this state, consistent with Code of Civil Procedure section 410.10, which may include, but is not limited to:

- (1) The county in which the petitioner resides or is temporarily located.
- (2) The county in which the defendant resides.
- (3) The county in which the offense occurred.

SUPPORT

Restraining Orders Without Borders (sponsor)
Over 40 individuals

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: AB 1143 (Berman, Ch. 156, Stats. 2021) permitted a court, in a civil restraining order matter in which the respondent's address is unknown, to authorize another method of service if the court determines that the petitioner made a diligent effort to accomplish personal service and there is reason to believe that the respondent is evading service and cannot be located.
