

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

AB 2024 (Pacheco)  
Version: May 16, 2024  
Hearing Date: June 4, 2024  
Fiscal: No  
Urgency: No  
AWM

**SUBJECT**

Domestic violence: restraining orders

**DIGEST**

This bill requires a court clerk to file an ex parte application for a temporary restraining order under the Domestic Violence Prevention Act (DVPA) if certain conditions are met.

**EXECUTIVE SUMMARY**

Existing law, the DVPA, seeks to prevent acts of domestic violence, abuse, and sexual abuse and to provide for a separation of persons involved in the domestic violence for a period sufficient to enable these persons to seek a resolution of the causes of the violence. Existing law thus enables a party to seek a restraining order or a protective order to enjoin specific acts of abuse, exclude a person from a dwelling, or enjoin other specified behavior.

A temporary restraining order may be ordered without notice to the restrained party on an ex parte basis. These actions, typically used in emergency situations, allow a court to issue a short-term order quickly. Once a temporary restraining order has issued, the person who obtained the order may seek a longer-term protective order that requires the restrained person to be given notice and the opportunity to be heard. After the noticed hearing, the court may extend the original temporary restraining order into a permanent restraining order for a period of up to five years, with the possibility of renewal.

According to the author, certain courts across the state have been rejecting ex parte applications for restraining orders on the basis of minor errors in the requests. These rejections – which may or may not be relevant to the merits of the application – force an applicant to re-submit their request for a protective order at one of the most dangerous times in an abusive relationship: when the victim stands up for themselves. To avoid

this delay, this bill requires that a court clerk file DVPA ex parte applications that meet specified minimum criteria for filing, thereby ensuring that the application will be reviewed by a judge. The bill does not alter the standard by which an ex parte temporary restraining order is granted; it merely ensures that applications are filed and reviewed on the merits, rather than rejected for what may be irrelevant, minor errors.

This bill is sponsored by the author and is supported by the American Association of University Women, the California District Attorneys Association, and the Junior Leagues of California State Public Affairs Committee. The Committee has not received timely opposition to this bill.

### **PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Establishes the DVPA, 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, §§ 6200 et seq.)
  - a) "Domestic violence," for purposes of the DVPA, is defined 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.)
- 2) Authorizes a court to issue an ex parte temporary restraining order under the DVPA without a noticed hearing. (Fam. Code, §§ 6320-6327.)
- 3) Authorizes a court to issue a personal conduct, stay-away, and/or residence exclusion order under the DVPA after a noticed hearing at which the alleged abuser may appear. (Fam. Code, §§ 6340-6347.)
- 4) Provides that an order described in 2) or 3) to restrain any person may issue if an affidavit or testimony and any additional information provided to the court pursuant to a specified background check show, to the satisfaction of the court, reasonable proof of a past act or acts of abuse; the court may issue the order based solely on the affidavit or testimony of the person requesting the restraining order. (Fam. Code, § 6300(a).)
- 5) Provides that an ex parte restraining order issued pursuant to 2) shall not be denied solely because the other party was not provided with notice. (Fam. Code, § 6300(b).)

This bill:

- 1) Provides that an ex parte restraining order issued pursuant to the DVPA shall not be rejected for filing by the court clerk if it is submitted on mandatory Judicial Council forms, includes all of the forms required to issue an order, and identifies the party submitting the request and the party who is the subject of the requested order.

## COMMENTS

### 1. Author's comment

According to the author:

In almost all domestic abuse cases, leaving an abuser is the most dangerous time for a victim. A restraining order is a court order that helps to protect the victim from being physically or sexually abused, threatened, stalked or harassed. This bill will prohibit the denial of an ex parte restraining order because of small errors in the petition from a court clerk prior to review by a judicial officer. Thus, ensuring timely protection.

### 2. Background on the DVPA

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,"<sup>1</sup> and courts are required to construe it broadly in order to accomplish the statute's purpose.<sup>2</sup> The DVPA enables a party to seek a protective order, also known as a restraining order, which may be issued to protect a petitioner who demonstrates "reasonable proof of a past act or acts of abuse" by the target of the proposed order.<sup>3</sup>

A victim of domestic violence needing immediate protection may seek a temporary restraining order on an ex parte basis; the court may issue a short-term temporary order enjoining the abuser from a range of conduct, including harassing, threatening, and contacting the victim.<sup>4</sup> After a noticed hearing, the court may extend the temporary order, or issue a non-temporary order if no temporary order was issued, for a term of up to five years.<sup>5</sup> At the end of a non-temporary restraining order's term, the court may renew the order at the request of any party, subject to any modifications ordered by the

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<sup>1</sup> *Caldwell v. Coppola* (1990) 219 Cal.App.3d 859, 863.

<sup>2</sup> *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1498.

<sup>3</sup> Fam. Code, § 6300; *see id.*, § 6218.

<sup>4</sup> *See id.*, §§ 240-246, 6320-6327.

<sup>5</sup> *See id.*, §§ 6340-6347.

court or stipulated to by the parties.<sup>6</sup> The renewed order may be permanent, or for a term of five years or more.<sup>7</sup>

3. This bill clarifies that applications for ex parte temporary restraining orders under the DVPA must not be rejected for filing if they meet specified baseline criteria

According to the author, there is a lack of consistency in the state's courts' approaches to filing DVPA ex parte temporary restraining order requests. Specifically, the author reports that some court clerks will reject ex parte applications – meaning the clerks will not file them – on the basis of minor errors that may not affect the merits of the application. When an application is rejected for filing, the applicant is denied the opportunity for a judge to review the application on the merits, and will be forced to file a new application in order to obtain a temporary restraining order.

This bill is intended to provide uniformity for the courts by establishing a baseline for when a DVPA ex parte restraining order application must be filed. The bill provides that a clerk must file such an application when three conditions are met: (1) the application is filed on mandatory Judicial Council forms; (2) the application includes all of the forms required to issue an order; and (3) the application identifies the party seeking the order and the party who is the subject of the requested order. Under this approach, requests for ex parte restraining orders that meet the three criteria will be filed and a judge will determine whether the application meets the legal requirements for an order to issue. This bill does not affect the legal standard for issuing an ex parte temporary restraining order; it merely ensures that applicants who meet a minimum threshold of completeness will have their application filed and considered by a judge.

4. Arguments in support

According to the American Association of University Women:

Individuals seeking protection should not be unduly burdened by the court to produce extensive evidentiary requirements, particularly when there is an immediate need for intervention to prevent further harm. Past actions are a strong indicator of current and future behaviors, and people at risk for significant harm should be protected as quickly as possible.

AB 2024 represents a crucial step forward in ensuring the safety and protection of individuals who have experienced abuse. By providing clear guidelines for the issuance of restraining orders and streamlining the process for obtaining protection, this legislation will make a tangible difference in the lives of countless individuals across our state.

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<sup>6</sup> See *id.*, § 6345(a).

<sup>7</sup> *Ibid.*

**SUPPORT**

American Association of University Women  
California District Attorneys Association  
Junior Leagues of California State Public Affairs Committee

**OPPOSITION**

None received

**RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation: AB 2694 (Blanca Rubio, Ch. 219, Stats. 2018) clarified that a temporary restraining order under the DVPA may issue without notice to the restrained party.

**PRIOR VOTES:**

Assembly Floor (Ayes 66, Noes 0)  
Assembly Judiciary Committee (Ayes 10, Noes 0)

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