

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

AB 3083 (Lackey)  
Version: April 3, 2024  
Hearing Date: June 18, 2024  
Fiscal: Yes  
Urgency: No  
AWM

**SUBJECT**

Domestic violence: protective orders: background checks

**DIGEST**

This bill requires that a conduct a search to determine whether the subject of a proposed order under the Domestic Violence Prevention Act (DVPA) owns or possesses a firearm as reflected in the Department of Justice Automated Firearms System; this provision replaces a search requirement that is conditioned on whether the court has funds for the search, as specified.

**EXECUTIVE SUMMARY**

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 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. If the court grants the order, the subject of the order – the restrained person – is also prohibited from possessing, purchasing, or receiving a firearm while the protective order is in place.

Current law requires a court, before a hearing on the issuance or denial of a DVPA order, to conduct a search of a variety of databases for information about the subject of the proposed order, including their criminal history and whether they have a registered firearm. This requirement, however, is conditional: a court need not conduct these searches unless (1) Judicial Council determines that the court has adequate financial resources available, or (2) the Legislature appropriates funds for searches in the annual Budget Act. The Legislature has never made such an appropriation.

This bill recasts the firearms search requirement as a requirement to search the Department of Justice Automated Firearms System for whether the subject of a

proposed DVPA order owns or possesses a firearm, and requires all courts to conduct this search, regardless of funding. The bill also provides that, if a court does not have access to the Department of Justice Automated Firearms System, it may request that the sheriff conduct the search. Finally, the bill codifies currently un-codified language making the remainder of the searches contemplated in the statute contingent on the availability of funding.

This bill is sponsored by the author and is supported by the California Police Chiefs Association, the California Reserve Police Officers' Association, and 16 other law enforcement associations. The Committee has not received timely opposition to this bill. If this Committee passes this bill, it will next be heard by the Senate Public Safety Committee.

### **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 (TRO) 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 (DVPO) 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, prior to a hearing on the issuance or denial of a DVRO, the court shall ensure that a search is or has been conducted to determine if the subject of the proposed order has or is any of the following:
  - a) A prior criminal conviction for a violent felony or a serious felony, as defined.
  - b) A misdemeanor conviction involving domestic violence, weapons, or other violence.
  - c) An outstanding warrant.
  - d) Currently on parole or probation.
  - e) A registered firearm.
  - f) A prior restraining order of a violation of a prior restraining order. (Fam. Code, § 6306(a).)
  
- 6) Requires the search in 5) to be conducted of all records and databases readily available and reasonably accessible to the court, including, but not limited to, the following, unless the information can be obtained as a result of a search conducted in another record or database:
  - a) The California Sex and Arson Registry.
  - b) The Supervised Release File.
  - c) State summary criminal history information maintained by the Department of Justice, as specified.
  - d) The Federal Bureau of Investigation's nationwide database.
  - e) Locally maintained criminal history records or databases. (Fam. Code, § 6306(a).)
  
- 7) Requires a court, prior to deciding whether to issue an order under the DVPA or when determining appropriate temporary custody and visitation orders, to consider the information in 5), excluding 5)(e); information obtained as a result of the search that does not involve a conviction shall not be considered by the court in its determination. (Fam. Code, § 6306(b).)
  
- 8) Provides that Section 6306 shall not delay the granting of an application for an order that may otherwise be granted without the information resulting from the database search; if the court finds that a DVPA protective order should be granted on the basis of the affidavit presented with the petition, the court shall issue the protective order and then ensure that a search is conducted prior to the hearing. (Fam. Code, § 6306(h).)
  
- 9) Provides for the parties to request the information on which the court relied pursuant to 7) and for the confidentiality of the information obtained pursuant to 5). (Fam. Code, § 6306(c), (d).)
  
- 10) Provides that, if the results of the search conducted to 5) indicate that the subject of the order owns a registered firearm, or if the court receive evidence of the subject's possession of a firearm or ammunition, the court shall make a written record as to

whether the subject has relinquished the firearm or ammunition, as specified; if evidence of compliance with firearms prohibitions is not provided, the court shall order the clerk to immediately notify, by the most effective means available, appropriate law enforcement officials of the issuance and contents of the protective order, information about the firearms or ammunition, and of any other information obtained through the search that the court determines is appropriate. The law enforcement officials so notified shall take all actions necessary to obtain the firearms and ammunition and to address any violation of the order, as appropriate and as soon as practicable. (Fam. Code, § 6306(f).)

- 11) Provides that Section 6306's requirement to conduct a search pursuant to 5) and consider the information received pursuant to the search shall be implemented in courts identified by the Judicial Council as having resources currently available for those purposes, and implemented in other courts to the extent that funds are appropriated for that purpose in the annual Budget Act. (Ch. 572, Stats. 2001, § 4; Ch. 765, Stats. 2012, § 4.)
- 12) Provides that a person subject to a DVPA protective order shall not own, purchase, or receive a firearm or ammunition while that protective order is in effect, and that violation of this prohibition is a crime. (Fam. Code, § 6389(a).)
- 13) Establishes procedures by which a court, upon the issuance of a DVPA protective order, shall determine whether the respondent is in possession of firearms or ammunition, for the relinquishment of firearms or ammunition, and for granting an exemption to the prohibition if the respondent requires a firearm or ammunition for a job and meets certain criteria. (Fam. Code, § 6389.)

This bill:

- 1) States all of the following:
  - a) It is the intent of the Legislature that judges issuing domestic violence restraining orders determine if the subject of the order is known to own or possess firearms in all cases. Although Chapter 765 of the Statutes of 2012 required this, the requirement was made conditional on the issuance of a specified study by the Judicial Council and a specific appropriation of funds for this purpose, which never occurred. It is vital that firearms be kept out of the hands of known abusers.
  - b) Individuals who are prohibited due to issuance of restraining orders represented 16 percent of the backlog in the Department of Justice's Armed and Prohibited Persons System in 2022.
  - c) Failure to remove firearms from domestic abusers can have tragic results. According to Attorney General Bonta, "The data is clear: Domestic violence abusers should not have firearms. When an abuser has access to a firearm, it endangers the safety and lives of those around them. Violence is not an

- accident. It is also not inevitable, and it can be prevented. Removing dangerous weapons from people who pose a danger to others is key to that goal.”
- d) According to a November 2023 report by the California Department of Justice’s Office of Gun Violence Prevention, “In the decade from 2013 to 2022, law enforcement agencies reported 1,254 gun homicides in which one or more suspected offenders were identified as a current or former intimate partner or family member of the victim.”
  - e) Therefore, it is the intent of the Legislature that, in all circumstances, judges who issue domestic violence restraining orders verify whether the subject of the order is known to own or possess one or more firearms and, if the subject of the order does, to demonstrate proof of surrender of the firearm or firearms in accordance with legal requirements.
- 2) Requires a court, before a hearing on the issuance or denial of an order under the DVPA, to ensure that a search is or has been conducted to determine if the subject of the proposed order owns or possesses a firearm as reflected in the Department of Justice Automated Firearms System.
  - 3) Requires the court, as part of its search under 2) and the other searches required to be conducted prior to a hearing on the issuance or denial of an order under the DVPA, to search the Department of Justice Automated Firearms System.
  - 4) Provides that, if a court does not have electronic or other access to the Department of Justice Automated Firearms System and if there is no preexisting agreement between the court and a law enforcement agency that the law enforcement agency will conduct a search of the California Law Enforcement Telecommunications System in order to report to the court whether the subject of the proposed order owns or possesses a firearm, upon the request of the court, the sheriff shall access the California Law Enforcement Telecommunications System in order to search the Department of Justice Automated Firearms System for the purpose of determining whether the subject of the order owns or possesses firearms; the sheriff shall report the results of this search to the court.
  - 5) States that it is the intent of the Legislature that, except with regard to a search whether the subject of a proposed order owns or possesses a firearm, Section 6306 shall be implemented in those courts identified by the Judicial Council as having resources currently available for these purposes, and implemented in other courts to the extent that funds are appropriated for these purposes in the annual Budget Act.
  - 6) Repeals Section 4 of Chapter 765 of the Statutes of 2012, which made implementation of the firearm search requirement conditional upon Judicial Council’s identification of courts with sufficient resources to conduct the search or an appropriation in the annual Budget Act for that purpose.

## COMMENTS

### 1. Author's comment

According to the author:

Guns in the hands of domestic abusers can lead to tragedies. The state must ensure that all reasonable steps are taken to ensure that firearms in the hands of abusers are identified and removed as soon as possible.

### 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 TRO on an ex parte basis; the court may issue such a short-term 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 TRO into a DVPO, or issue a DVPO if no temporary order was issued, for a term of up to five years.<sup>5</sup> At the end of a DVPO's term, the court may renew the order at the request of any party, subject to any modifications ordered by the court or stipulated to by the parties.<sup>6</sup>

The subject of a DVPA protective order – either a TRO or a DVPO – is also prohibited from possessing, purchasing, or receiving a firearm while the protective order is in place.<sup>7</sup> This prohibition is grounded in the well-established fact that an abuser's access to firearms dramatically increases the danger of further abuse or death: a victim or

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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.

<sup>6</sup> *See id.*, § 6345(a).

<sup>7</sup> Fam. Code, § 6389.

survivor of intimate partner violence is five times more likely to die when an abusive partner has access to a gun.<sup>8</sup>

### 3. The DVPA's conditional background search requirement

In 2001, the Legislature enacted SB 66 (Kuehl, Ch. 572, Stats. 2001), which added Section 6306 to the Family Code. As enacted in SB 66, Family Code 6306 required a court, prior to a hearing on the issuance or denial of a protective order under the DVPA, to conduct a search to determine whether a respondent has specified criminal convictions or any outstanding warrants, is currently on parole or probation, or has any prior restraining order or violation of restraining order; and for the court to take any information received pursuant to that search into account when issuing the protective order. SB 66 required that the search be conducted in specified databases, though did not require the search of databases that would return duplicative information. The bill was modeled after a Massachusetts law which was enacted after a man murdered his ex-girlfriend, despite a restraining order being in place, and it was determined that neither the court nor the victim knew that the man had a long history of criminal violent behavior.<sup>9</sup>

The Judicial Council and the Trial Courts' Consolidated Legislative Committee initially opposed the bill because it did not include funding to implement the background checks.<sup>10</sup> The bill was subsequently amended to make the bill's background search requirement conditional: courts identified by Judicial Council as having resources available to conduct the background searches would be required to do so, and all other courts would have to conduct the background searches only to the extent that funds were appropriated in the annual Budget Act for that purpose.<sup>11</sup>

In 2012, the Legislature enacted SB 1433 (Alquist, Ch. 765, Stats. 2012), which added, to Section 6306, the requirement that a court ensure a search is conducted on whether the subject of a proposed DVPA order has a registered firearm. SB 1433 made this new firearm search requirement subject to the same funding conditions as SB 66: courts identified by Judicial Council as having the resources to conduct firearm searches would be required to do so, and the remaining courts would not have to conduct firearm searches unless and until the Legislature appropriated funds for that purpose in the annual Budget Act.<sup>12</sup>

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<sup>8</sup> Tobin-Tyler, *Intimate Partner Violence, Firearm Injuries and Homicides: A Health Justice Approach to Two Intersecting Public Health Crises*, J. Law. Med. Ethics (2023 Spring) 51(1) 64-76, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10209983/> (link current as of June 13, 2024).

<sup>9</sup> Sen. Com. on Judiciary, Analysis of Sen. Bill No. 66 (2001-2002 Reg. Sess.) as amended Mar. 27, 2001, p. 3.

<sup>10</sup> Assem. Com. on Appropriations, Analysis of Sen. Bill. No. 66 (2001-2002 Reg. Sess.) as amended Jul. 18, 2001, p. 3.

<sup>11</sup> Assem. Com. on Appropriations, Analysis of Sen. Bill No. 66 (2001-2002 Reg. Sess.) as amended Sept. 5, 2001, p. 3.

<sup>12</sup> SB 1433 (Alquist, Ch. 765, Stats. 2012), § 4.

According to Judicial Council, the Legislature never appropriated funds for the SB 66 or the SB 1433 searches in the annual Budget Act. They report that, despite the lack of an appropriation, most courts conduct the searches contemplated by Section 6306.

4. This bill requires courts to conduct a search to determine whether the subject of a proposed DVPA protective order owns or possesses a firearm

This bill amends the DVPA's pre-order search requirement to (1) slightly modify the firearm search requirement, and (2) make the firearm search mandatory for all courts, regardless of funding.

With respect to the extent of the firearm search, the bill replaces the provision requiring the court determine whether the subject of the proposed order "has a registered firearm" with a requirement that the court determine whether the subject "owns or possesses a firearm as reflected in the Department of Justice Automated Firearms System," and adds the Department of Justice Automated Firearms System (DOJAFS) to the list of databases that the court must search. The bill also provides that, if the court does not have access to the DOJAFS and the court does not have an agreement with a law enforcement agency allowing the court to request a search of the California Law Enforcement Telecommunications System (CLETS) to conduct the search of the DOJAFS for the court, the sheriff shall, at the request of the court, conduct that search and report the results to the court.

With respect to the funding component, the bill repeals the uncodified portion of SB 66 that makes the search contingent on the court's resources or an appropriation, and adds a codified subdivision stating that it is the intent of the Legislature that, with the exception of the firearm search, Section 6306's implementation is subject to Judicial Council's determination that the court has adequate funds or an appropriation. Effectively, this change makes the firearm search mandatory while leaving the rest of Section 6306's searches conditional. The change also has the advantage of placing the conditional implementation provision in the statute, rather than in uncodified language that can easily be overlooked.

5. Arguments in support

According to a coalition of law enforcement agencies:

The reliance on an "honor system" for domestic violence offenders to surrender firearms has proven inadequate. Failure to remove guns from the hands of abusers poses significant risks to the safety and lives of victims, as evidenced by the alarming association between domestic abusers and firearm-related violence, including mass shootings.

AB 3083 seeks to rectify these shortcomings by repealing contingent language and ensuring the safety of victims. It requires family court judges, upon issuing restraining orders, to ascertain whether the subject possesses firearms. This proactive measure empowers judges to demand proof of surrender or storage of firearms with licensed dealers, aligning with existing laws prohibiting firearm possession by individuals subject to domestic violence restraining orders.

By eliminating ambiguity and strengthening enforcement mechanisms, AB 3083 aims to reduce the incidence of gun violence and murders associated with domestic violence. It prioritizes the safety and well-being of victims by ensuring that abusers are deprived of access to lethal weapons, thus mitigating the risk of further harm.

### SUPPORT

Arcadia Police Officers' Association  
Burbank Police Officers' Association  
California Police Chiefs Association  
California Reserve Police Officers' Association  
Claremont Police Officers' Association  
Corona Police Officers' Association  
Culver City Police Officers' Association  
Deputy Sheriffs' Association Monterey County  
Fullerton Police Officers' Association  
Murrieta Police Officers' Association  
Newport Police Officers' Association  
Novato Police Officers' Association  
Santa Ana Police Officers' Association  
Palos Verdes Police Officers' Association  
Pomona Police Officers' Association  
Riverside Police Officers' Association  
Riverside Sheriffs' Association  
Upland Police Officers' Association

### OPPOSITION

None received

### RELATED LEGISLATION

Pending Legislation: AB 2759 (Petrie-Norris, 2024) modifies the exemption to the DVPA's firearm prohibition for persons who are required to carry a firearm or ammunition for their job, as specified. AB 2759 is pending before this Committee and is set to be heard on the same day as this bill.

Prior Legislation:

SB 320 (Eggman, Ch. 685, Stats. 2021) codified Rules of Court related to the relinquishment of a firearm by a person subject to a civil domestic violence restraining order and requires the courts to notify law enforcement and the county prosecutor's office when there has been a violation of a firearm relinquishment order.

SB 1433 (Alquist, Ch. 765, Stats. 2012) added, to Section 6306, the requirement that a court conduct a search to determine whether the proposed subject of a DVPA protective order owns a firearm, subject to the implementation limitations in SB 66. SB 1433 is discussed in further detail in Part 3 of this analysis.

SB 66 (Kuehl, Ch. 572, Stats. 2001) added Section 6306 to the Family Code, with its implementation limited to (1) the courts identified by the Judicial Council as having resources available for its purpose, and (2) for the remaining courts, to the extent that funds are appropriated for purposes of SB 66 in the annual Budget Act. SB 66 is discussed in further detail in Part 3 of this analysis.

**PRIOR VOTES:**

Assembly Floor (Ayes 70, Noes 0)  
Assembly Appropriations Committee (Ayes 15, Noes 0)  
Assembly Public Safety Committee (Ayes 8, Noes 0)  
Assembly Judiciary Committee (Ayes 12, Noes 0)

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