

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

SB 459 (Rubio)
Version: April 17, 2023
Hearing Date: April 25, 2023
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Domestic violence: restraining orders

DIGEST

This bill requires the Judicial Council of California, by January 1, 2025, to create a specified form for the modification of an existing restraining order issued under the Domestic Violence Prevention Act (DVPA).

EXECUTIVE SUMMARY

Current law establishes procedures by which a victim of domestic violence may seek a protective order to enjoin their abuser from specified content through the civil courts. In the criminal context, a protective order may be issued pretrial if the prosecutor believes a victim or witness is at risk of harm or intimidation; and if a defendant is convicted of certain crimes, including crimes involving domestic violence, the court must consider whether to enter a protective order to protect the victim of the crime. While both types of orders are subject to modification if circumstances have changed, the author reports that victims find the modification process difficult to navigate.

This bill requires the Judicial Council of California to create a specific form for litigants to use when seeking a modification of a domestic violence protective order issued under the DVPA. The bill requires the Judicial Council to create the form on or before January 1, 2025. The author has agreed to nonsubstantive amendments to clarify the requirement.

This bill is sponsored by the author and is supported by Community Solutions and the Youth Power Project. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the DVPA (Fam. Code, §§ 6200 et seq.), which sets forth procedural and substantive requirements for the issuance of 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.)
- 2) Grants the court the discretion to set the duration of a DVPA protective order issued after a noticed hearing, up to a maximum of five years. (Fam. Code, § 6345(a).)
 - a) At any point during the duration of the order, it may be modified or terminated by the court upon a written stipulation filed with the court or by the motion of a party. (Fam. Code, § 6345(a).)
 - b) The order may be renewed at the request of either party, for a period of five years or permanently; renewed orders are subject to modification, termination, and renewal under the same terms as the original order. (Fam. Code, § 6345(a).)
- 3) Establishes procedures by which a court in a criminal case may issue a protective order to protect against actual or reasonably likely harm to, or intimidation or dissuasion of, a victim or witness. (Pen. Code, § 136.2.)
- 4) Requires, when a defendant has been convicted of specified crimes involving domestic violence, human trafficking, or crimes involving the defendant to register as a sex offender with local authorities, the court to consider issuing an order restraining the defendant from any contact with a victim of the crime, for a period of up to 10 years. (Pen. Code, § 136.2(i).)

This bill:

- 1) Requires the Judicial Council of California, on or before January 1, 2025, to create a form for the modification of a protective order issued under the DVPA.

COMMENTS

1. Author's comment

According to the author:

SB 459 is a common sense piece of legislation that expands victims' rights and abilities to end their abuse. Countless studies have shown the reality that for victims of domestic violence, the abuse does not stop because of a restraining order. Countless examples exist of abusive partners taking advantage of the

limitations of current restraining orders may result in harassment on their child's school/campus, abusing victims directly through shared children or even in some cases, can be fatal for victims and/or their children. In California, around 40% of restraining orders are violated, and this trend will continue as long as there is no clear path for victims to modify their restraining orders. If a victim seeks to modify an existing domestic violence restraining order (DVRO) they become subject to a maze of non-domestic violence forms, Codes of Civil Procedures, and statutes that Family Law standards force them to navigate. Unfortunately, current law may make it easier for an abusive partner to terminate an active DVRO than a victim seeking to modify it.

Furthermore, many issues preclude victims from modifying restraining orders, which can easily be addressed by simply clarifying and streamlining the process. This action will even extend to all legal professionals who will, because of the bill and due to their evident inexperience with how to modify a DVRO, be able to navigate this process effectively in cases.

2. This bill requires the Judicial Council of California to create a form specifically for the modification of civil protective orders

Under the DVPA, a victim of domestic violence may go to court themselves and seek a protective order through the civil courts.¹ A court may modify a protective order at any point upon receipt of a stipulation or on the motion of a party.² The author and supporters of the bill report that many victims of domestic violence find it difficult to navigate the modification process when they need to seek additional protections from the court.

To make it easier for a party to seek a modification of a protective order, this bill requires the Judicial Council of California, by January 1, 2025, to create a form by which a party may request a modification of a DVPA protective order from a civil court. Providing a form for parties who wish to modify a protective order should make it easier for victims of domestic violence, many of whom are unrepresented, seek the additional protection they need from the courts. The author has agreed to nonsubstantively amend the bill to clarify the form requirement. The Committee is not aware of any opposition to this bill.

3. Amendments

As noted above, the author has agreed to nonsubstantively amend the bill to clarify Judicial Council's obligation to create the forms addressed by this bill. The amendment,

¹ Fam. Code, §§ 6200 et seq.

² *Id.*, § 6345(a).

subject to any nonsubstantive changes the Office of Legislative Counsel may make, is as follows:

On page 3, delete lines 11-13, and insert:

(e) On or before January 1, 2025, the Judicial Council shall create one or more specific forms for the purpose of requesting a modification of an existing restraining order.

SUPPORT

Community Solutions
Youth Power Project

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: AB 467 (Gabriel, 2023) clarifies that a criminal protective order may be modified throughout the duration of the order. AB 467 is pending on the Assembly Floor.

Prior Legislation:

SB 935 (Min, Ch. 88, Stats. 2022) clarifies that certain protective orders issued under the DVPA may be renewed more than once

AB 454 (Silva, Ch. 101, Stats. 2011) added procedural requirements for an action to terminate or modify a DVPA protective order, including requiring providing notice to the party protected by the order if the protected party is not the party seeking the termination or modification.

AB 99 (Cohn, Ch. 125, Stats. 2005) extended the maximum duration of a DVPA protective order from three years to five years and extended the duration of a renewed order from three years to five years; the bill did not affect the court's ability to renew a DVPA protective order on a permanent basis in lieu of a specified term.
