

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

SB 741 (Min)
Version: March 30, 2023
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Fiscal: No
Urgency: No
AWM

SUBJECT

Domestic violence restraining orders: prehearing discovery

DIGEST

This bill requires a party seeking prehearing discovery from another party in a proceeding for a protective order under the Domestic Violence Prevention Act (DVPA) to obtain court approval, as specified.

EXECUTIVE SUMMARY

A growing body of academic evidence discusses the tragic phenomenon of “abuse by litigation,” wherein abusers perpetuate the abuse of their victims through the judicial system. Stakeholders report that this practice is rampant in proceedings to obtain a protective order under the DVPA: respondents engage in needless, extensive discovery as a way to prolong the process, delay the issuance of an order, and force contact with and wear down the victim. While there is no question that a respondent has a due process right to legitimate and necessary discovery, abusers should not be able to wield the discovery process to retraumatize their victims and impede the issuance of meritorious protective orders.

To avoid gratuitous, harassing prehearing discovery in DVPA protective order proceedings, this bill requires a party to obtain court approval before seeking prehearing discovery from another party via a noticed motion; the court may grant approval only if the motion establishes that there is good cause for the discovery sought. The bill also provides that, if the court determines that the requested method of discovery – for example, an in-person deposition – would cause undue trauma to the party from whom discovery is sought, the court may order that the discovery be conducted through the less-obtrusive method – for example, written interrogatories – if the different method would be sufficient to produce the necessary information. The bill further specifies that it does not affect a party’s right to seek discovery from third parties without a court order.

This bill is sponsored by the author and is supported by Calegislation, the Family Violence Law Center, and the University of California, Irvine School of Law Domestic Violence Clinic. 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) Authorizes a court to issue an ex parte temporary restraining order or emergency protective order without a noticed hearing. (Fam. Code, §§ 6320-6327.)
- 3) Authorizes a court to issue a personal conduct, stay-away, and/or residence exclusion order after a noticed hearing at which the alleged abuser may appear. (Fam. Code, §§ 6340-6347.)
- 4) Authorizes a court to order restitution to a petitioner for expenses including loss of earnings and out-of-pocket expenses caused by the abuser, including expenses for medical care and temporary housing, as part of an order issued after notice and hearing. (Fam. Code, § 6342.)
- 5) 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).)
- 6) Establishes the Civil Discovery Act, which provides the processes and procedures for obtaining discovery – including depositions, interrogatories, and requests for documents – in civil cases. (Code Civ. Proc., pt. 4, tit. 4, §§ 2016.010 et seq.)

This bill:

- 1) Provides that prehearing discovery sought from another party in a proceeding for a protective order under the DVPA may be conducted only if specifically authorized by the court.

- 2) Provides that a party seeking authorization for prehearing discovery from another party in a DVPA protective order proceeding must file a written motion that sets forth the specific type or types of discovery sought and the specific evidence the discovery is necessary to uncover. The motion must be filed no later than six court days prior to the hearing.
- 3) Provides that a court may grant a motion under 2) in whole or in part only if the party seeking discovery shows that there is good cause for the discovery sought.
 - a) The court shall not authorize duplicative methods of discovery if a single method would be sufficient to provide the evidence sought.
 - b) The court may, at its discretion, order a different method of discovery than the method sought if it determines that the method sought would cause undue trauma to the party subject to the discovery and a different method of discovery would be sufficient to provide the evidence sought.
- 4) Provides that, unless the court specifies alternate procedures, including, but not limited to, shorter response times and limits on the number of requests that may be propounded, discovery ordered under 3) shall be conducted consistent with the Civil Discovery Act.
- 5) Provides that 1)-4) do not preclude parties from seeking discovery from third parties within the statutory time limits relevant to the claims of domestic abuse.

COMMENTS

1. Author's comment

According to the author:

Domestic violence accounts for more than fifteen percent of all violent crimes in California and more than ten percent of all California homicides. While domestic violence restraining orders (DVROs) have proven to be an effective legal remedy for the protection of survivors, the lack of clarity on the discovery process has been exploited to detriment of victims. SB 741 will reduce the risk of harassment and intimidation of domestic violence survivors, prevent unnecessary delay in the adjudication of DVRO requests, and ensure that parties only use prehearing discovery when necessary and with good cause, reducing the cost and burden of discovery and promoting judicial economy.

2. This bill requires a party to a protective order proceeding under the DVPA to obtain court permission to conduct discovery, to ensure victims are not subjected to needless, re-traumatizing “litigation abuse”

Domestic violence frequently evolves into a cyclic pattern of behavior that even if broken by the victim is difficult for the perpetrators to give up.¹ Merely ending the relationship does not protect the victim: victims of domestic violence are six times more likely to be killed by their abuser after physical separation than before.² And even when the victim breaks off physical contact with an abuser and manages to escape further violence, abusers frequently seek to continue asserting their control using coercive tactics to limit the victim’s individual liberty.³

Due to the relentless efforts of many perpetrators of domestic violence to inflict continued physical and mental abuse, many victims are forced to seek domestic violence restraining orders. The DVPA permits an abuse victim to seek a restraining order in order to separate the parties until additional legal remedies can be obtained to stop the violence.⁴ But a restraining order does not prevent an abuser from forcing the victim to interact with them through the judicial system. Litigation abuse – also known as “paper abuse” – is abuse through repeat, generally frivolous litigation filed by the abuser that perpetuates numerous horrors against the victim: the victim has to appear in court with the abuser and take time from work, taking care of children, or their daily lives to do so; the victim has to serve papers and accept papers from the abuser, which can require the victim to disclose their address to the abuser; and the victim has to deplete their own finances to defend against the abuser’s claims.⁵

Stakeholders report that respondents in DVPA cases frequently engage in abuse of the discovery process to filibuster the issuance of a protective order and to force contact with and/or harass the petitioner. Needless, redundant discovery requests can retraumatize a victim and also force them to incur legal fees, document production costs, and other expenses. Neither the DVPA nor the Civil Discovery Act currently has any guardrails for prehearing discovery in DVPA protective order proceedings, so parties seeking relief from excessive requests have no clear avenue for doing so.

This bill introduces a framework through which a party can obtain meritorious prehearing discovery from another party in a DVPA protective order proceeding while preventing duplicative, unnecessary requests. This bill requires a party seeking

¹ Przekop, *One More Battleground: Domestic Violence, Child Custody, and the Batterers’ Relentless Pursuit of their Victims Through the Courts* (2011) 9 *Seattle Journal for Social Justice* 1053, 1058.

² Campbell, *How Domestic Violence Batterers Use Custody Proceedings in Family Courts to Abuse Victims and How Can Put a Stop to It* (2017) 24 *UCLA Women’s L.J.* 41, 42.

³ Przekop, *supra*, at p. 1058.

⁴ See Fam. Code, div. 10, §§ 6200 et seq.

⁵ See, e.g., Klein, *How Domestic Abusers Weaponize the Courts*, *The Atlantic* (Jul. 18, 2019), available at <https://www.theatlantic.com/family/archive/2019/07/how-abusers-use-courts-against-their-victims/593086/> (link current as of April 7, 2023).

prehearing discovery from another party to seek court authorization for the discovery via a written motion submitted at least six court days prior to the hearing. The motion must set forth types of discovery sought and the evidence the discovery is necessary to uncover. The court may grant the motion only if there is good cause shown for the discovery and may not authorize duplicative methods of discovery if a single method is sufficient to obtain the evidence sought. The court may also, at its discretion, grant permission for a different method of discovery than the one sought in the motion, if the court determines that (1) the method sought would cause undue trauma to the party subject to the discovery, and (2) a different method would be sufficient to obtain the necessary evidence. This provision is intended to allow a court to prevent needlessly traumatic or invasive requests – for example, a deposition that would force the victim to spend an extensive amount of time with their abuser – while still protecting a party’s right to obtain evidence. Finally, the bill provides that discovery authorized under its provisions shall be conducted pursuant to the Civil Discovery Act unless the court orders alternative procedures, such as shorter timeframes.

3. Arguments in support

According to the Family Law Violence Center:

Domestic violence survivors need prompt and unencumbered access to the protection that restraining orders provide. California law currently contains a lack of procedural clarity that creates opportunity for domestic abusers to delay or deny victims access to this important protection. For example, some respondents and counsel engage in extensive and needless discovery requests, serving deposition notices and interrogatories and delaying domestic violence relief that is available under a preponderance of the evidence legal standard. SB 741 resolves this ambiguity and will allow Courts to more expeditiously adjudicate domestic violence survivors’ requests for more DVROs, consistent with legislative intent. This is important because research shows that the most dangerous time for a domestic violence survivor is when he or she leaves an abusive partner. Research also shows that civil restraining orders are the most effective legal remedy for preventing future abuse.

SUPPORT

Calegislation

Family Violence Law Center

University of California, Irvine School of Law Domestic Violence Clinic

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

SB 459 (Rubio, 2023) requires a court to agree to a modification of a DVPA protective order only if the court determines that the modification is in the best interest of the protected person. SB 459 is pending before the Senate Judiciary Committee.

AB 818 (Petrie-Norris, 2023) authorizes a temporary restraining order, emergency protective order, or order issued after hearing under the DVPA to be served, at the request of the petitioner, by a law enforcement officer designated for that purpose; and requires a law enforcement officer to take temporary custody of a firearm or other deadly weapon discovered in plain sight or during a lawful search when the law enforcement officer is serving a protective order, at the scene due to a domestic violence incident, or is serving a gun violence restraining order. AB 818 is pending on before the Assembly Public Safety Committee.

Prior Legislation: AB 2391 (Cunningham, Ch. 84, Stats. 2022) allows a person protected by a domestic violence protective order to seek an order declaring the restrained person a vexatious litigant and imposing financial security requirements on that person when the restrained person has filed at least one meritless action against the protected person that harassed or intimidated the protected person.
