

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 935 (Min)
Version: February 7, 2022
Hearing Date: March 29, 2022
Fiscal: No
Urgency: No
AWM

SUBJECT

Domestic violence: protective orders

DIGEST

This bill clarifies that certain protective orders issued under the Domestic Violence Protection Act (DVPA) may be renewed more than once.

EXECUTIVE SUMMARY

An estimated 34.9 percent of California women and 31.1 percent of California men have experienced domestic violence in the form of intimate partner physical violence, intimate partner sexual violence, and/or intimate partner stalking.¹ The DVPA establishes procedures through which the victim of domestic violence can obtain a protective order against their abuser on an emergency ex parte basis and for a term of up to five years after a noticed hearing. The DVPA also allows a protective order to be renewed, giving the court the discretion to renew the order for another five-year term or, if the abuser's conduct warrants it, permanently.

According to the author, some courts have interpreted the DVPA to prohibit subsequent renewals after the first five-year renewal. Under this interpretation, a protective order automatically expires after the five-year renewal period, leaving the victim of abuse without legal protection from their abuser. While the text of the statute does not clearly prohibit subsequent renewals, this bill is intended to eliminate any ambiguity by explicitly authorizing subsequent renewals.

This bill is sponsored by the author and supported by the California Association of Certified Family Law Specialists, the California District Attorneys Association, the California Partnership to End Domestic Violence, the Family Violence Appellate Project,

¹ National Coalition Against Domestic Violence, *Domestic Violence in California* (2020), https://ncadv.org/assets/2497/ncadv_california_fact_sheet_2020.pdf (last visited 3/10/22).

the Little Hoover Commission, 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) Provides for the issuance of DVPA ex parte orders and orders issued after a noticed hearing at which the alleged abuser may appear. (Fam. Code, §§ 6320-6327, 6340-6347.)
- 3) 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).)
- 4) Allows a court to renew a DVPA protective order issued after a noticed hearing, upon request of a party, for five years or permanently.
 - a) The request for a renewed order may be made at any time within three months of the order's expiration date.
 - b) The renewed order is subject to modification or termination on the same bases as the original order. (Fam. Code, § 6345(a).)

This bill:

- 1) Clarifies that DVPA protective orders that have already been renewed by the court for a five-year term may be subsequently renewed under the same statute and subject to the same procedures.

COMMENTS

1. Author's comment

According to the author:

The domestic violence restraining order, also known as a DVRO, is one of the most important resources available to survivors of abuse. When reviewing DVROs, judges currently have the discretion to choose whether to renew them

for an additional five years or to renew them permanently. Unfortunately, current law is often misinterpreted to mean that a DVRO may only be renewed once. When this happens, it can have disastrous outcomes for survivors who are left vulnerable to their abusers as a result of lapsed orders.

Survivors of abuse should not have to worry every five years if a judge will misinterpret existing statute and refuse to renew a DVRO. To ensure that survivors have access to renew DVROs as current law intends, SB 935 clarifies current statute by stating that a DVRO may be renewed as many times as necessary. The bill makes clear the original intent of the Domestic Violence Prevention Act by providing clarity to judges and litigants, and addresses the cycles of abuse, trauma, and lethality risk that necessitated earlier orders and may present ongoing danger.

2. This bill clarifies that domestic violence protective orders may be renewed multiple times

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,"² and courts are required to construe it broadly in order to accomplish the statute's purpose.³ 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.⁴

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.⁵ 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.⁶ 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 court or stipulated to by the parties.⁷ The renewed order may be permanent, or for a term of five years.⁸ The statute does not prohibit the victim from seeking multiple renewals – either for additional five-year terms, or for a permanent order following a five-year or multiple five-year orders.

² *Caldwell v. Coppola* (1990) 219 Cal.App.3d 859, 863.

³ *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1498.

⁴ Fam. Code, § 6300; *see id.*, § 6218.

⁵ *See id.*, §§ 240-246, 6320-6327.

⁶ *See id.*, §§ 6340-6347.

⁷ *See id.*, § 6345(a).

⁸ *Ibid.*

According to the author, some courts have expressed confusion as to whether a non-temporary protective order may be renewed more than once, i.e., after an initial five-year renewal. As a result, these courts have refused to renew a protective order after its initial five-year renewal, leaving victims of domestic violence with no legal protection from their abusers. Given that the statute does not prohibit multiple renewals, it is unclear why courts believe they are not authorized to renew an order multiple times; there is no apparent basis for cutting off the court's discretion to renew an order after a second five-year period, particularly in light of the fact that orders can also be renewed on a permanent basis. And as a policy matter, prohibiting subsequent renewals makes little sense: at the end of ten years, victims of domestic violence would be left with no choice but to lose the protection of the order and wait until they suffer *additional* harm at the hands of the abuser before seeking a brand-new protective order.

In order to eliminate any ambiguity about the court's authority to renew a previously renewed domestic violence protective order, this bill adds an explicit reference to "subsequent renewals" in the statute authorizing renewals.

3. Arguments in support

According to the University of California, Irvine School of Law Domestic Violence Clinic, writing in support:

Attorneys and advocates working with domestic violence survivors across the state have identified the lack of judicial consistency and understanding about renewal of [domestic violence restraining orders (DVROs)] as problems endangering abuse victims. Currently, some judges do not think subsequent renewals of renewed DVROs are statutorily allowed, and they deny these renewal requests even when abused individuals face or fear ongoing abuse.

For example, one of our Domestic Violence Clinic clients had this experience in November 2021, when a judge expressed that he did not want to "overrule" the prior judge who issued a five-year renewal instead of a permanent renewal. This judge stated that he did not think the law permitted him to issue a subsequent renewal even though the petitioner experienced ongoing reasonable apprehension of further abuse. While responding with the Legislature's protective purpose, we recognized the need for the clarification contained in SB 935...

SB 935, introduced by Senator Min, will ensure that judges – who have significant discretion in renewal of restraining orders – recognize their power to award ongoing protection from abuse.

SUPPORT

California Association of Certified Family Law Specialists
California District Attorneys Association
California Partnership to End Domestic Violence
Family Violence Appellate Project
Little Hoover Commission
University of California, Irvine School of Law Domestic Violence Clinic

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

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 1596 (Hayashi, Ch. 572, Stats. 2010) provided that an action to renew a DVPA protective order may be brought within three months of the end date of the order.

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.