

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

SB 24 (Caballero)
Version: March 4, 2020
Hearing Date: March 9, 2021
Fiscal: Yes
Urgency: No
JT

SUBJECT

Domestic violence: protective orders: information pertaining to a child

DIGEST

This bill enhances protections against a third party's disclosure of a minor's protected information under a domestic violence restraining order.

EXECUTIVE SUMMARY

Calley Jean Garay was a domestic violence victim who fled her abuser only to be tracked down and killed following an inadvertent disclosure by a third party that revealed her whereabouts. This horrific tragedy, the author asserts, reveals a key vulnerability confronting victims who flee from their abusers: the restrained parent's ability to access information about a minor child provides a way of finding them.

To prevent such avoidable tragedies, the author has introduced this bill, which would, as of January 1, 2023, authorize a court to include in an ex parte restraining order a provision restraining a party from accessing records and information pertaining to the health care, education, daycare, recreational activities, or employment of a minor child of the parties. The bill would require certain third parties that provide services to children to adopt protocols to ensure that restrained parties are not able to access records or information pertaining to the child. The bill requires the Judicial Council to update forms or rules as necessary.

The bill is author-sponsored and is supported by organizations that assist domestic violence survivors. It has no opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Domestic Violence Protection Act ([DVPA] Fam. Code § 6200 et seq.),¹ which sets forth procedural and substantive requirements for the issuance of a protective order to enjoin, among other things, specific acts of abuse. (§ 6218.)
- 2) Authorizes a minor or their guardian to petition a court to designate as confidential information regarding the minor that was obtained in connection with a request for a domestic violence restraining order, including their name, address, and the circumstances surrounding the request for a restraining order with respect to the minor. (§ 6301.5.) If the petition is granted, the confidential information is maintained in a confidential case file and does not become a part of the public file in the proceeding or any subsequent proceedings under the Family Code. (*Id.* at (c).) A disclosure of the information without a court order is punishable by a sanction of up to \$1,000, subject to certain exceptions. These provisions prohibit third party recipients of the confidential information from further disseminating the information unless doing so effectuates the purposes of the DVPA or is in the best interest of the minor, no more information than necessary is disclosed, and a delay would be caused by first obtaining a court order. (*Id.* at (c)(2)(B).) Third parties who violate these requirements are subject to a sanction only if they disclose the information in a manner that recklessly or maliciously disregards these requirements. (*Id.*)
- 3) Provides that an intentional violation of a domestic violence restraining order is a misdemeanor punishable by a fine of not more than \$1,000, or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. (Pen. Code § 273.6.)

This bill:

- 1) Authorizes a court to include in an ex parte restraining order a provision restraining a party from accessing records and information pertaining to the health care, education, daycare, recreational activities, or employment of a minor child of the parties.
- 2) Requires certain third parties that provide services to children to adopt protocols to ensure that restrained parties pursuant to 1), above, are not able to access records or information pertaining to the child in the possession of the third parties. At a minimum, the protocols must include designating appropriate personnel to receive such protective orders, establishing a means of ensuring that the restrained party is

¹ All further statutory references are to the Family Code, unless otherwise specified.

identified and not able to access the records or information, and implementing a procedure for documenting receipt of a copy of the protective order.

- a) Such protocols must, by February 1, 2023, be adopted as a matter of course by “essential care providers,” defined to include organizations that frequently provide essential social, health, or care services to children.
 - b) By contrast, “discretionary services organizations,” defined as organizations that provide non-essential services to children, such as recreational activities, entertainment, and summer camps, are required to adopt a protocol only if they are provided with a copy of a restraining order issued pursuant to 1), above.
- 3) Prohibits essential care providers and discretionary services organizations that are provided with a restraining order issues pursuant to 1), above, from releasing information or records pertaining to the child to the restrained party.
 - 4) Requires the Judicial Council to update forms or rules as necessary.
 - 5) Becomes operative January 1, 2023.

COMMENTS

1. Domestic violence

According to Katie Ray-Jones, the National Domestic Violence Hotline’s Chief Executive, “[d]omestic violence is rooted in power and control.”² When abusers lose control of their intimate partners, they resort to a variety of tactics to subjugate them. The Center for Disease Control states that intimate partner violence may consist of physical violence, sexual violence, and psychological aggression, which includes expressive aggression (insulting, name calling) and coercive control (behaviors that involve monitoring, controlling, or threatening the victim).³ Statistics on domestic violence, which likely underrepresent its true extent, are harrowing. A fact sheet by the National Coalition to End Domestic Violence states:

- At least one in three women in California have experienced domestic violence.
- 166,890 domestic violence-related calls were made to law enforcement in California in 2018.
- In 2018, domestic violence homicides comprised 10.7 percent of California homicides in 2018 and accounted for 20 percent of all violent crimes.

² Newberry, Laura & Santa Cruz, Nicole, *Domestic abuse victims in ‘worst-case scenario’ during outbreak, providers say* (March 24, 2020) Los Angeles Times, available at <https://www.latimes.com/california/story/2020-03-24/womens-shelters-brace-for-surge-in-domestic-violence-as-coronavirus-quarantines-isolate-survivors> (as of May 16, 2020).

³ *The National Intimate Partner and Sexual Violence Survey: 2010-2012 State Report* (April 2017), p. 14, available at <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf> (as of May 16, 2020).

- In a single day in 2019, 81 percent of California domestic violence shelters served 5,644 adults and children. 1,236 requests for service went unmet due to lack of resources.⁴

Meanwhile, changes to everyday life associated with the COVID-19 pandemic have led to increased rates of domestic violence.⁵ Shelter-in-place orders, job losses, and school closures deteriorate strained relationships and keep victims confined with abusers. Many victims find it more difficult to seek help, escape to a safe location, report abuse to law enforcement, or go to court to get a restraining order.

2. Purpose of the measure

In May of 2020, Calley Jean Garay, a 32-year mother of three, left her husband and obtained a domestic violence restraining order against him. In July, she was shot to death while shielding her children in the parking lot of a health center in Madera, following a medical appointment. It has been alleged that the husband was the killer and that he learned of Calley's whereabouts after the health center mistakenly called him when attempting to confirm Calley's appointment.⁶

While the release of Calley's appointment information may have been a violation of the federal Health Insurance Portability and Accountability Act of 1996 (104 P.L. 191), which generally prohibits the unauthorized disclosure of an individual's protected health information, the author argues that this case reveals a key vulnerability confronting victims who flee from their abusers: the restrained party's ability to access information about a minor child of the parties provides a potential means of tracking them down. The author writes:

Over half of the killings of women in the United States are related to intimate partner violence, according to the Centers for Disease Control and Prevention. One such case of domestic violence that occurred in my district ended in the brutal murder of a young mother, Calley, in broad daylight by her husband, while she shielded their 3 children from the bullets. I was devastated when I

⁴ National Coalition Against Domestic Violence, *Domestic Violence in California*, available at https://assets.speakcdn.com/assets/2497/ncadv_california_fact_sheet_2020.pdf (as of Feb. 20, 2021).

⁵ Newberry, Laura & Santa Cruz, Nicole, *Domestic abuse victims in 'worst-case scenario' during outbreak, providers say* (March 24, 2020) Los Angeles Times, available at <https://www.latimes.com/california/story/2020-03-24/womens-shelters-brace-for-surge-in-domestic-violence-as-coronavirus-quarantines-isolate-survivors> (as of February 20, 2020).

⁶ *Mother shot, killed protecting children*, The Madera Tribune, <http://www.maderatribune.com/single-post/2020/07/18/mother-shot-killed-protecting-children> (as of Feb. 20, 2020); Amaro, Yesenia, *This 'bizarre' Madera homicide case might change California's domestic law*, Fresno Bee (Jan. 12, 2021), available at <https://www.fresnobee.com/news/local/article248131480.html> (as of Feb. 20, 2020); Amaro, Yesenia, *She was helping the family of a Madera homicide victim. Now she's suspended from her job* (updated Feb. 10, 2021), available at <https://www.fresnobee.com/news/local/article248930379.html> (as of Feb. 20, 2020).

learned of this tragic murder of such a courageous young mother, and even more so upon learning that her death could have been avoided. Calley's tragedy highlights opportunities in the law that can be strengthened to help survivors of domestic violence. SB 24 makes revisions to the domestic violence restraining order form to allow for the protection of a child's school, medical, and dental information from an abusive parent. This bill also requires third party institutions, such as schools, dental offices, or medical offices, to develop protocols when they receive a copy of such a court order. [...] We need to honor Calley's life and bravery, and SB 24 is a step in the right direction to ensure that this never happens again to a person fleeing from violence.

3. Domestic violence restraining orders

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" (*Caldwell v. Coppola* (1990) 219 Cal.App.3d 859, 863) and courts are required to construe it broadly in order to accomplish the statute's purpose (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1498). The act enables a party to seek a "protective order," also known as a restraining order, which may be issued to protect a petitioner who presents "reasonable proof of a past act or acts of abuse." (§ 6300; *see* § 6218.)

Victims of domestic violence who need immediate protection may seek an "ex parte" protective order, also known as a temporary restraining order, that is issued without formal notice to, or the presence of, the respondent. (*See* § 241.) Because a restrained party would not have had the opportunity to defend their interests, ex parte orders are short in duration. If a noticed hearing is not held within 21 days (or 25 if the court finds good cause), the ex parte protective order is no longer enforceable, unless a court grants a continuance. (§§ 242 & 245.) After a duly noticed hearing, however, the court is authorized to extend the original ex parte order for up to five years, which may then be renewed. (§§ 6340, 6345, 6302.) Additionally, a protective order may be issued in a judgement entered in a proceeding for dissolution of marriage, nullity of marriage, legal separation of the parties, or in a parentage action. (§ 6360.)

4. Enhances protections against a restrained party's access to a minor's information

a. Seeks to close a gap in the implementation of existing protections

Existing law provides certain protections related to a minor's information in connection with restraining orders. Section 6301.5 authorizes a minor or their guardian to petition a court to designate as confidential information regarding the minor that was obtained in connection with a request for a domestic violence restraining order, including their name, address, and the circumstances surrounding the request for a restraining order

with respect to the minor. If the petition is granted, the confidential information is maintained in a confidential case file and does not become a part of the public file in the proceeding or any subsequent proceedings under the Family Code. (*Id.* at (c).) A disclosure of the information without a court order is punishable by a sanction of up to \$1,000, subject to certain exceptions. These provisions prohibit third party recipients of the confidential information from further disseminating the information unless (1) doing so effectuates the purposes of the DVPA or is in the best interest of the minor, (2) no more information than necessary is disclosed, and (3) a delay would be caused by first obtaining a court order. (*Id.* at (c)(2)(B).) Third parties who violate these requirements are subject to a sanction only if they disclose the information in a manner that recklessly or maliciously disregards these requirements. (*Id.*)

Supporters of the bill, which include organizations that work to protect domestic violence survivors and advocate for policy changes on their behalf, argue that the bill closes a gap in existing law:

There are many options on a domestic violence restraining order that a judge can order. While a judge has the discretion to decide whether the perpetrator should have the right to the medical and school information of the shared children of a couple, there is no option on the domestic violence restraining order form that orders this protection; therefore, when the protective order is printed and given to the parties involved, it does not explicitly say that school, medical or dental information about the shared children be protected from the perpetrator. This makes it difficult for a school or medical office to enforce. If there is no clear language stating otherwise, then these institutions will not deny a parent their legal right to information about their child.

The bill would, as of January 1, 2023, authorize a court to include in an ex parte restraining order a provision restraining a party from accessing records and information pertaining to the health care, education, daycare, recreational activities, or employment of a minor child of the parties. The bill would require the Judicial Council to develop or update any forms or rules of court that are necessary to implement these provisions. The author argues that these changes will result in restraining orders that make it clear when a party must withhold the minor's information from an abusive parent. The need for clarity in such orders is especially important given that the vast majority of family law litigants are unrepresented.

b. Protocols adopted by third parties to prevent unauthorized releases of information

The bill would also require certain third parties that provide services to children to adopt protocols to ensure that restrained parties are not able to access records or information pertaining to the child. These protocols must include designating appropriate personnel to receive such protective orders, establishing a means of ensuring that the restrained party is identified and not able to access the records or

information, and implementing a procedure for documenting receipt of a copy of the protective order. This requirement is intended to help ensure that third parties implement the bill's requirements consistently and effectively.

The bill differentiates between "essential care providers," such as medical offices, schools, and daycares, and "discretionary services organizations," such as recreational organizations and summer camps. Essential care providers must, by February 1, 2023, proactively adopt a protocol for preventing the release of a minor's protected information even if they have not yet been provided with a copy of a restraining order that protects the information. Discretionary services organizations, on the other hand, are required to adopt a protocol only if they are provided with a copy of a restraining order. This distinction is intended to reduce the burden on third parties that may be less likely to be targeted by the restrained party. A third party that is provided with a copy of a restraining order must withhold the information, even if they have not yet finalized a protocol.

SUPPORT

California Partnership to End Domestic Violence
Central California Coalition of Child Abuse Prevention Councils
Crime Victims United
Fresno Council on Child Abuse Prevention
Haven Women's Center of Stanislaus
The Alessandra Advocacy Group
5 Stones Open Door

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

AB 277 (Valladares & Davies, 2021) would change the Safe at Home program, which enables victims of domestic abuse, among others, to keep their address confidential and designate the Secretary of State as their agent for service of process and receipt of mail, by clarifying which languages the service is provided in.

Prior Legislation:

AB 925 (Gloria, Ch. 294, Stats. 2019) expanded the circumstances in which it is permissible to disclose a minor's confidential information contained in certain protective orders.

AB 953 (Baker, Ch. 284, Stats. 2017) established processes for a minor or a minor's guardian to petition the court to keep all information regarding the minor obtained when issuing a protective order for victims of domestic abuse or harassment, including the minor's name, address, and the circumstances surrounding the protective order with respect to that minor, in a confidential case file.
