

Date of Hearing: June 8, 2021

ASSEMBLY COMMITTEE ON JUDICIARY  
Mark Stone, Chair  
SB 24 (Caballero and Rubio) – As Amended May 28, 2021

**SENATE VOTE:** 38-0

**SUBJECT:** DOMESTIC VIOLENCE PROTECTIVE ORDERS: INFORMATION  
PERTAINING TO A CHILD

**KEY ISSUE:** SHOULD A COURT BE ABLE TO SPECIFICALLY BAR A PARTY RESTRAINED UNDER A DOMESTIC VIOLENCE PROTECTIVE ORDER FROM ACCESSING RECORDS AND INFORMATION REGARDING THE PARTIES' MINOR CHILD; AND SHOULD ENTITIES THAT HAVE THOSE RECORDS AND INFORMATION – SUCH AS SCHOOLS, DAYCARE FACILITIES, DOCTOR'S OFFICES, AND SUMMER CAMPS – BE REQUIRED TO DEVELOP PROTOCOLS TO COMPLY WITH THESE PROTECTIVE ORDERS?

**SYNOPSIS**

*This domestic violence prevention bill was introduced in response to a tragic story of abuse that occurred in Madera, California, when an estranged husband, with a domestic violence restraining order against him, allegedly learned of his wife's whereabouts from an appointment confirmation call from her doctor's office. He is alleged to have shot her to death in the parking lot of the health office, while she shielded her children from the bullets. This bill, effective January 1, 2023, would specifically allow a court, in a temporary domestic violence restraining order, or an order after hearing, to bar a restrained party from accessing records or information regarding health care, education, daycare, recreational activities, or employment of the parties' children. The bill would also require that providers of essential care to children, including schools, health care facilities, and daycare facilities, as well as those that provide recreational activities or employment, develop protocols to comply with such restraining orders. The Judicial Council would be required to update any forms or rules to implement the bill.*

*The bill is supported by groups who advocate against domestic violence, crime victims, and social workers. They state that the bill will make it more difficult for abusers to stalk their victims and easier to safeguard information about the children and, by extension, the lives of vulnerable children and families. Family law attorneys oppose the bill, unless amended, with one group of attorneys requesting that the orders contemplated by this bill only be available in an order after hearing and not in a temporary order, and another group requesting that the orders only be granted if the victim meets a higher standard of proof. Both requested amendments would actually weaken existing law and could put victims of domestic violence and their children in more danger than they are today.*

**SUMMARY:** Allows, effective January 1, 2023, an ex parte domestic violence restraining order (and, as a result, also an order after hearing) to include a provision restraining a party from accessing records regarding health care, education, daycare, recreational activities, or employment of a minor child of the parties. Specifically, **this bill:**

- 1) Notwithstanding the provision that allows noncustodial parents access to their children's records and information, 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. Allows a parent or guardian to provide a copy of the order to an essential care provider or a discretionary services organization.
  - a) Defines "essential care provider" to include a public or private school, health care facility, daycare facility, dental facility, or other similar organization that frequently provides essential social, health, or care services to children.
  - b) Defines "discretionary services organization" to include any organization that provides nonessential services to children, such as recreational activities, entertainment, and summer camps, as well as a place of employment of a minor.
- 2) Requires an essential care service provider, on or before February 1, 2023, to develop protocols to ensure that parties restrained pursuant to 1), above, are not able to access records or information pertaining to the child in the possession of the essential care service provider, including, at a minimum, designating appropriate personnel to receive the protective order, establishing a means of ensuring that the restrained party is not able to access the records or information, and implementing a procedure for documenting receipt of a copy of the protective order.
- 3) Requires a discretionary services organization to adopt the protocols set forth in 2) within 30 days of receipt of a first restraining order under 1), above.
- 4) Prohibits essential care providers and discretionary services organizations that are provided with a restraining order issued pursuant to 1), above, from releasing information or records pertaining to the child to the restrained party, regardless of whether the essential care provider or discretionary services organization has finalized protocols as required by 2) and 3).
- 5) Requires the Judicial Council to develop or update any forms or rules necessary to implement this bill.
- 6) Becomes operative January 1, 2023.

**EXISTING LAW:**

- 1) Authorizes a court, under the Domestic Violence Protection Act (DVPA), to issue and enforce domestic violence restraining orders, including emergency protective orders (EPOs), temporary (or ex parte) restraining orders (TROs), and longer-term or permanent restraining orders (also known as orders after hearing). (Family Code Sections 6200 *et seq.* Unless stated otherwise, all further statutory references are to the Family Code.)
- 2) Permits a court to issue an ex parte, temporary domestic violence protective order enjoining a party from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, credibly impersonating, falsely personating, harassing, telephoning, destroying personal property, contacting, coming within a specified distance of, or disturbing the peace of the other party, and, in the discretion of the court, on a showing of good cause, of other named

family or household members. Permits a court to issue an ex parte order excluding a party from a dwelling, as provided. Permits a court to issue an ex parte order enjoining a party from specified behavior that the court determines necessary to effectuate the above orders. Also permits the court to issue an ex parte order determining temporary custody and visitation of a minor child. (Section 6320 *et seq.*)

- 3) Allows a court to issue any order made under 2), above, after notice and a hearing. (Section 6340.)
- 4) Provides that, notwithstanding any other provision of law, access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, shall not be denied to a parent because that parent is not the child's custodial parent. (Section 3025.)
- 5) Allows 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. Provides that a disclosure of the information without a court order is punishable by a sanction of up to \$1,000, subject to certain exceptions. Prohibits third-party recipients of the confidential information from further disseminating the information unless (a) doing so effectuates the purposes of the DVPA or is in the best interest of the minor; (b) no more information than necessary is disclosed; (c) and a delay would be caused by first obtaining a court order. Provides that 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. (Section 6301.5.)
- 6) Provides that an intentional and knowing violation of a protective order, including 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 the fine and imprisonment. (Penal Code Section 273.6.)
- 7) Provides that a failure of a person to exercise due care is presumed if the person violated a statute, the violation proximately caused death or an injury, the death or injury resulted from an occurrence of the nature which the statute was designed to prevent, and the person suffering the death or injury was one of the class of persons for whose protection the statute was adopted. The presumption may be rebutted by, among other things, proof that the person violating the statute did what might reasonably be expected of a person of ordinary prudence, acting under similar circumstances, who desired to comply with the law. (Evidence Code Section 669.)

**FISCAL EFFECT:** As currently in print this bill is keyed fiscal.

**COMMENTS:** This domestic violence prevention bill, introduced in response to a tragic story, would, as of January 1, 2023, specifically allow a court, after a temporary domestic violence restraining order or an order after hearing has been issued, to bar a restrained party from accessing records or information regarding health care, education, daycare, recreational activities, or employment of the parties' children. The bill would also require that providers of essential care to children, including schools, health care facilities, and daycare facilities, as well as those that provide recreational activities or employment, develop protocols to comply with

such restraining orders. Finally, the Judicial Council would be required to update any forms or rules necessary to implement the bill.

In support of the bill, the authors write:

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 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.

***Impacts of domestic violence are widespread.*** Domestic violence is a serious criminal justice and public health problem most often perpetrated against women. (U.S. Department of Justice, *Nature and Consequences of Intimate Partner Violence: Findings from the National Violence against Women Survey* (2001).) According to the National Intimate Partner and Sexual Violence Survey, more than one in every three women and about one in every three men in the United States have experienced rape, physical violence, and/or stalking by an intimate partner in their lifetime. (Sharon Smith, *et al.*, *The National Intimate Partner and Sexual Violence Survey: 2015 Data Brief – Updated Release* (National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, Nov. 2018), pp. 8-9.) These abuses take various forms, but all of them exert a severe negative impact on the physical and/or psychological health of the victim.

Additionally, the COVID-19 pandemic has led to increased rates of domestic violence. (Laura Newberry and Nicole Santa Cruz, *Domestic abuse victims in 'worst-case scenario' during outbreak, providers say*, Los Angeles Times (March 24, 2020).) Shelter-in-place orders, job losses, and school closures deteriorated strained relationships and kept victims confined with their abusers. Additionally many victims found 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 with their abuser almost always with them and many government institutions operating under reduced capacity.

***Tragic story led to this bill's introduction.*** In May, 2020, Calley Jean Garay, a 32-year mother of three, left her husband and obtained a domestic violence restraining order against him. In July 2020, she was shot to death 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. (See, e.g., *Mother shot, killed protecting children*, The Madera Tribune, available at <http://www.maderatribune.com/single-post/2020/07/18/mother-shot-killed-protecting-children> (as of Feb. 20, 2020); Yesenia Amaro, *This 'bizarre' Madera homicide case might change California's domestic law*, Fresno Bee (Jan. 12, 2021, updated Feb. 22, 2021).)

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) (HIPAA), which generally prohibits the unauthorized disclosure of an individual's protected health information, the authors argue 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 and further abusing them. The authors write that this bill is necessary to prevent a domestic violence perpetrator from tracking down and killing their victim through information about shared children. The authors have called this bill Calley's Law.

***Basics on 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 restraining order, which may be issued to protect a petitioner who presents reasonable proof of a past act of abuse. Courts have the authority to issue "necessary orders suited to individual circumstances." (*Ibid.*)

Victims of domestic violence who need immediate protection may seek an ex parte protective order, also known as a temporary restraining order, that can be issued without formal notice to, or the presence of, the respondent. (*See* Section 241.) Because a restrained party may 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 days if the court finds good cause), the ex parte protective order is no longer enforceable, unless a court grants a continuance. (Sections 242, 245.) After a duly noticed hearing, however, the court is authorized to extend the original ex parte order for up to five years; and the order can then be renewed and can be made permanent. (Sections 6345.)

Under existing law, a court may issue an ex parte temporary protective order enjoining a party from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, credibly impersonating, falsely personating, harassing, telephoning, destroying personal property, contacting, coming within a specified distance of, or disturbing the peace of the other party, and, in the discretion of the court, on a showing of good cause, make the order applicable to other named family or household members. (Section 6320.) The court can also exclude a party from a dwelling and determine temporary custody and visitation of a minor child. (Sections 6321, 6323.) Of particular relevance to this bill, a court may issue an ex parte order enjoining a party from specified behavior that the court determines necessary to effectuate any of the above orders. (Section 6322.) In addition, any protective order that can be issued ex parte can be issued after notice and a hearing. (Section 6340.)

Given this broad authority, the court today could issue protective orders that restricted a restrained party from accessing information and records about their children, effectively what this bill is seeking to do. However, the vast majority of parties seeking restraining orders are not represented by counsel – Judicial Council estimates that up to 90 percent of family law litigants are unrepresented. Thus, even though parties today could request the protection this bill seeks to add, they may very likely not know to ask the court for it.

***This bill provides clear guidance on restraining a party to a domestic violence restraining order from accessing records or information about their children.*** This bill seeks to make the existing ability of a court to limit access of a restrained party to their children’s information more explicit, and to provide procedures to make it easier to seek such orders and for third parties to comply with them. The bill does so by specifically authorizing a court, effective January 1, 2023, to include in an ex parte restraining order (and by extension, in an order after hearing) 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 Judicial Council is required to develop or update forms or rules necessary to implement the bill, so that the domestic violence restraining orders forms will provide this restraining order provision as an option to request on the petition. This will help an unrepresented party – who are the vast majority of domestic violence litigants – to easily seek a protective order with such a provision.

The party protected by the restraining order can then provide a copy of the order to the third party, be they an “essential care provider,” defined to include a public or private school, health care facility, daycare facility, dental facility, or other similar organization that frequently provides essential social, health, or care services to children, or a “discretionary services organization,” defined to include any organization that provides nonessential services to children, such as recreational activities, entertainment, and summer camps, as well as a place of employment of a child. Once provided with a copy of the order, the essential care provider or discretionary services organization is then prohibited from releasing information or records pertaining to the child to the restrained party.

To make sure these third-party organizations understand their responsibility to protect information and records regarding children in these cases, the bill requires that they develop protocols to ensure that restrained parties are not able to access records or information pertaining to the child in the possession of the third party, including, at a minimum, designating appropriate personnel to receive the protective order, establishing a means of ensuring that the restrained party is 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 difference between essential care providers and discretionary services organizations is that the former must develop the protocols by February 1, 2023, while the latter only need to develop the protocols within 30 days of their receipt of the first 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. However, regardless of whether the third party has developed protocols, they are still required to comply with restraining order.

***Family law attorney organizations oppose the bill unless amended to address various concerns.*** The Family Law Section of the Los Angeles County Bar Association (LACBA) opposes the bill, unless it is amended, to address their concern that courts may, at an ex parte hearing with no participation by the respondent, make such an order without a “minimum preliminary factual showing by the applicant that such orders are needed to protect the safety of the applicant and/or child.” LACBA suggests that the following be added to the bill: “In making this ex parte order, the Court shall consider whether the petitioning party has presented sufficient evidence that the safety of the protected party(ies) warrants this restriction.” The author and supporters counter that adding such a demand for greater proof in an ex parte order would actually put victims of domestic violence and their children in more danger than they are today.

This proposed amendment would actually *raise the standard of proof* for such an order above what it is today and, particularly for the vast majority of unrepresented litigants, make it more difficult to obtain such protective orders. An ex parte order is designed to quickly protect the petitioner (and potentially their children) while letting the parties come back to court quickly, generally in three weeks, to more fully present their case. The requested change would, by contrast, make it harder to get that immediate protection and could result in more tragedies.

The California Association of Certified Family Law Specialists (ACFLS) opposes the bill unless it is amended to apply only to orders after hearing. Like LACBA, ACFLS is concerned that because the court's decision on an ex parte order is based on an allegation made by just one party, a parent could be cut off from "having or accessing information about a child solely based on what was presented to the judge by the other parent":

The parental relationship is founded on more than just custodial time with a child, and knowledge about a child's education and health is an important facet of that relationship. While there certainly are cases where a perpetrator should not have access to their child's information and whereabouts, that will not be so in many cases. In those cases, a parent will run the risk of having preprinted form orders issued that cut off access to information.

However, as stated above, the goal of the ex parte order provision in the bill is to prevent immediate harm to the victim and children through accessing information about the parties' children. This bill simply makes it easier for the petitioner to request such a provision be included in a restraining order, if needed, and for a court to grant such a provision in a restraining order. But this does not imply that all domestic violence petitions will seek such an order, or that courts will grant such requests in all cases. The petitioner would have to decide whether to request the provision, and—if such a request is made--the court would then have to decide whether to grant it. If this bill were to prohibit such a restraint in an ex parte order, it would actually weaken existing law, which today broadly allows such restrictions.

**ARGUMENTS IN SUPPORT:** 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. Writes the California Partnership to End Domestic Violence:

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.

SB 24 makes a small change to the current form. This bill seeks to add a separate section that a judge can select to allow the school, medical, and dental information of a child to be protected from an abusive parent. This way, it will be clear which protective order forms have this additional protection and which do not, and third party institutions, such as schools and medical offices, have a clear court order giving them guidance on how to properly enforce these restraining orders.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

5 Stones Open Door  
Alessandra Advocacy Group  
California Partnership to End Domestic Violence  
Crime Victims United  
Fresno Council on Child Abuse Prevention  
Haven Women's Center of Stanislaus  
National Association of Social Workers – California Chapter

**Opposition**

California Association of Certified Family Law Specialists (unless amended)  
Los Angeles County Bar Association, Family Law Section (unless amended)

**Analysis Prepared by:** Leora Gershenzon / JUD. / (916) 319-2334