
THIRD READING

Bill No: SB 24
Author: Caballero (D) and Rubio (D), et al.
Amended: 5/28/21
Vote: 21

SENATE JUDICIARY COMMITTEE: 11-0, 3/9/21
AYES: Umberg, Borgeas, Caballero, Durazo, Gonzalez, Hertzberg, Jones, Laird, Stern, Wieckowski, Wiener

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SENATE FLOOR: 38-0, 4/5/21
AYES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener, Wilk
NO VOTE RECORDED: Limón, Stern

ASSEMBLY FLOOR: 76-0, 7/8/21 (Consent) - See last page for vote

SUBJECT: Domestic violence: protective orders: information pertaining to a child

SOURCE: Author

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

Assembly Amendments make minor technical and clarifying changes.

ANALYSIS:

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

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

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 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 issued 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

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. Family Code 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.*)

This bill, as of January 1, 2023, 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. This bill requires 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.

Protocols adopted by third parties to prevent unauthorized releases of information. This bill also requires 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 this bill's requirements consistently and effectively.

This 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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee:

- 1) Likely minor and absorbable one-time costs to public schools and healthcare facilities to develop and implement protocols to prevent disclosure of a minor

child's information, as required by a DVPO. Existing law already prohibits disclosure of a child's information depending on whether a court designates information as confidential.

- 2) One-time costs (General Fund) to the Department of Justice (DOJ) of \$69,000 in fiscal year 2021-22 for modifications to the California Restraining and Protective Order System. DOJ reports it would need to add a new field to index records that restrain a party from accessing records and information pertaining to the health care, education, daycare, recreational activities or employment of a minor child.
- 3) Likely minor and absorbable costs (Trial Court Trust Fund) to the Judicial Council to update forms and rules of court related to the issuance of an ex parte DVPO.

SUPPORT: (Verified 7/9/21)

5 Stones Open Door
Alessandra Advocacy Group
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
National Association of Social Workers – California Chapter
Valley Children's Healthcare

OPPOSITION: (Verified 7/9/21)

California Association of Certified Family Law Specialists
Family Law Section of the Los Angeles County Bar Association

ARGUMENTS IN SUPPORT: 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 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.

Supporters of this bill, which include organizations that work to protect domestic violence survivors and advocate for policy changes on their behalf, argue that this 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.

ARGUMENTS IN OPPOSITION: The Family Law Section of the Los Angeles County Bar Association (LACBA) opposes this 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 this 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 this 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 this 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.

ASSEMBLY FLOOR: 76-0, 7/8/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Choi, Cooley, Cooper, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

NO VOTE RECORDED: Chen, Cunningham, Nguyen

Prepared by: Josh Tosney / JUD. / (916) 651-4113
7/9/21 11:25:13

**** **END** ****