
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 3083 **Hearing Date:** July 2, 2024
Author: Lackey
Version: April 3, 2024
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Domestic violence: protective orders: background checks*

HISTORY

Source: Author

Prior Legislation: SB 320 (Eggman, Ch. 685, Stats. of 2021)
SB 1433 (Alquist, Ch. 765, Stats. of 2012)
SB 66 (Kuehl, Ch. 572, Stats. of 2001)

Support: California Association of Highway Patrolmen; California District Attorneys Association; Peace Officers Research Association of California

Opposition: None known

Assembly Floor Vote: 70 - 0

PURPOSE

The purpose of this bill is to require a court to conduct a search of specified databases, including the Department of Justice Automated Firearms System (AFS) to determine whether a person subject to a proposed domestic violence restraining order (DVRO) owns a firearm.

Existing law provides for an automated system for tracking firearms and assault weapon owners who might fall into a prohibited status. The online database, which is known as the Armed Prohibited Persons System (APPS), cross-references all handgun and assault weapon owners across the state against criminal history records to determine whether a person is prohibited from possessing a firearm. (Pen. Code, § 30000, et seq.)

Existing law 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. (Fam. Code, § 6300, et seq.)

Existing law requires, before a hearing on a protective order, that the court ensures a search of specified records and databases is conducted to determine if the subject of the proposed order has a registered firearm. (Fam. Code, § 6306, subd. (a).)

Existing law mandates the court search all records and databases readily available and reasonably accessible to the court, including, but not limited to the following:

- The California Sex and Arson Registry (CSAR);
- The Supervised Release File;
- State summary criminal history information maintained by the DOJ, as specified;
- The Federal Bureau of Investigation's nationwide database; and
- Locally maintained criminal history records or databases. (Fam. Code, § 6306, subd. (a)(1-5).)

Existing law provides that a record or database need not be searched if the information available in that record or database can be obtained as a result of a search conducted in another record or database. (Fam. Code, § 6306, subd. (a)(5).)

Existing law states prior to deciding whether to issue a protective or restraining order or when determining appropriate temporary custody and visitation orders, the court shall consider the following information obtained pursuant to a search of records, as specified:

- A conviction for a serious or violent felony, as defined;
- A misdemeanor conviction involving domestic violence, weapons, or other violence;
- An outstanding warrant;
- Parole or probation status;
- A prior restraining order; and
- A violation of a prior restraining order. (Fam. Code, § 6306, subd. (b)(1).)

Existing law provides that information obtained as a result of the search that does not involve a conviction, as specified, shall not be considered by the court in making a determination regarding the issuance of a DVRO. That information shall be destroyed and shall not become part of the public file in this or any other civil proceeding. (Fam. Code, § 6306, subd. (b)(2).)

Existing law provides that Family Code 6306 shall not delay the granting of an application for an order that may otherwise be granted without the information resulting from the database search; if the court finds that a DVPA protective order should be granted on the basis of the affidavit presented with the petition, the court shall issue the protective order and then ensure that a search is conducted prior to the hearing. (Fam. Code, § 6306(h).)

Existing law provides that, if the results of the search conducted to 5) indicate that the subject of the order owns a registered firearm, or if the court receive evidence of the subject's possession of a firearm or ammunition, the court shall make a written record as to whether the subject has relinquished the firearm or ammunition, as specified; if evidence of compliance with firearms

prohibitions is not provided, the court shall order the clerk to immediately notify, by the most effective means available, appropriate law enforcement officials of the issuance and contents of the protective order, information about the firearms or ammunition, and of any other information obtained through the search that the court determines is appropriate. The law enforcement officials so notified shall take all actions necessary to obtain the firearms and ammunition and to address any violation of the order, as appropriate and as soon as practicable. (Fam. Code, § 6306(f).)

Existing law provides that a person subject to a DVPA protective order shall not own, purchase, or receive a firearm or ammunition while that protective order is in effect, and that violation of this prohibition is a crime. (Fam. Code, § 6389(a).)

Existing law establishes procedures by which a court, upon the issuance of a DVPA protective order, shall determine whether the respondent is in possession of firearms or ammunition, for the relinquishment of firearms or ammunition, and for granting an exemption to the prohibition if the respondent requires a firearm or ammunition for a job and meets certain criteria. (Fam. Code, § 6389.)

This bill requires a court, before a hearing on the issuance or denial of an order under the DVPA, to ensure that a search is or has been conducted to determine if the subject of the proposed order owns or possesses a firearm as reflected in the Department of Justice Automated Firearms System.

This bill requires the court, as part of its search described above and the other searches required to be conducted prior to a hearing on the issuance or denial of an order under the DVPA, to search the Department of Justice Automated Firearms System.

This bill provides that, if a court does not have electronic or other access to the Department of Justice Automated Firearms System and if there is no preexisting agreement between the court and a law enforcement agency that the law enforcement agency will conduct a search of the California Law Enforcement Telecommunications System in order to report to the court whether the subject of the proposed order owns or possesses a firearm, upon the request of the court, the sheriff shall access the California Law Enforcement Telecommunications System in order to search the Department of Justice Automated Firearms System for the purpose of determining whether the subject of the order owns or possesses firearms; the sheriff shall report the results of this search to the court.

This bill states that it is the intent of the Legislature that, except with regard to a search whether the subject of a proposed order owns or possesses a firearm, Section 6306 shall be implemented in those courts identified by the Judicial Council as having resources currently available for these purposes, and implemented in other courts to the extent that funds are appropriated for these purposes in the annual Budget Act.

This bill repeals Section 4 of Chapter 765 of the Statutes of 2012, which made implementation of the firearm search requirement conditional upon Judicial Council's identification of courts with sufficient resources to conduct the search or an appropriation in the annual Budget Act for that purpose.

This bill sets forth several legislative findings and declarations establishing the need for the bill.

COMMENTS

1. Need for This Bill

According to the Author:

Existing law requires a court to check if a person subject to a restraining or protective order owns a weapon and, consequently, will be prohibited from owning or possessing a firearm upon the order. However, after the passage of that bill, the mandate was not fully enacted. Due to the contingency language within its origin language in SB 1433 (Alquist) of 2012, some counties did not comply since the proposal was only a mandate if a budget allocation was to be made, as many counties are not well enough funded to enforce these background checks. However, the 2022-23 budget did allocate money for APPS-related activities, but this was not broad enough to trigger the mandate. This being said, the policy within SB 1433 should be carried out whether the budget allocation has been made or not. Guns in the hands of domestic abusers can lead to tragedies. The state must ensure that all reasonable steps are taken to ensure that firearms in the hands of abusers are identified and removed as soon as possible.

2. Department of Justice Firearm Databases and the Automated Firearm System

Registration of firearms in California functions through a web of interrelated firearm databases managed by the Department of Justice, which is responsible for retaining records related to a range of firearm-related conduct involving firearm dealers and owners, as well as transfers between certain parties. These records pertain to firearms surrendered to or recovered by law enforcement, issuance of concealed carry permits, firearms voluntarily registered by their owners, dealer records of sale (DROS)(including records of private party transfers), importation of firearms by new residents, persons prohibited from purchasing or possessing firearms, and ownership of relics, curios and other now-prohibited weapons, such as assault weapons.¹ The web of databases tracking and storing this information includes roughly 20 systems operated by the DOJ, among the largest and most active of which are the Armed and Prohibited Persons System (APPS), the Automated Firearms System (AFS), the Concealed Carry Weapons system (CCW), the Dealers Record of Sale Entry System (DROS), Assault Weapons Registration (AWR), and the Mental Health Reporting System (MHRP).

The function of most of these systems is self-explanatory, but perhaps the largest and certainly the most pertinent to this bill is the Automated Firearms System, or AFS. The AFS was created in 1980 to identify lost or stolen firearms and connect firearms with persons, and tracks serial numbers of every firearm owned by government agencies, handled by law enforcement (seized, destroyed, held in evidence, reported stolen, recovered), voluntarily recorded in AFS, required to be registered with the DOJ (i.e. assault weapons or imported weapons), or handled by a firearms dealer through transactions, as well as concealed carry permit records.² California is one of only

¹ Penal Code §§ 11106, 11108.2, 11108.3, 28100 et. seq, 17000, 27560, 27565, 28000, 30900. For a relational diagram of DOJ's Firearms Databases and Applications, see the Departments 2023 Armed and Prohibited Persons Report, p. 54. [Armed and Prohibited Persons System Report 2023 \(ca.gov\)](#)

² The AFS is codified at Penal Code § 11106. Prior to 2014, most entries in AFS were handguns. Now, all newly acquired firearms, both handguns and long guns, are entered into AFS. See the DOJ AFS page for more info: [Automated Firearms System Personal Information Update | State of California - Department of Justice - Office of the Attorney General](#)

a few states that has authorized state law enforcement to maintain a central database of gun and ammunition sale records to be accessed by courts and law enforcement personnel for public safety purposes. As of January 1, 2024, the APPS system (a database separate from but that shares information with AFS) contained 3,466,823 armed and not prohibited individuals (i.e. registered firearm owners). However, this does not reflect existing firearm owners who acquired new firearms, and it is unclear exactly how many firearms are listed in AFS.³

The DOJ has perennially bemoaned the state of its system of firearm databases and recommended that the Legislature take steps to consolidate and update them, stating that “this network of systems is incredibly complex and cumbersome to operate and navigate [but that] Despite this monumental challenge, DOJ has been able to meet most legislative reporting mandates using these outdated databases [...] Working to modify or maintain these legacy systems is no longer cost-effective or a technologically viable option as the databases have become outdated and no longer meet the demands of the Legislature and DOJ.”⁴ Consequently, the DOJ has embarked on the Firearms IT Systems Modernization Project (FITSM), which has received considerable funding in the latest Budget Act (AB 107, Stats. of 2023-24). It is unclear whether at the conclusion of FITSM the AFS will still exist or be named as such.

3. The Domestic Violence Protection Act (DVPA) Generally

California’s Domestic Violence Protection Act (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” and courts are required to construe it broadly in order to accomplish the statute’s purpose.⁵ 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.”⁶

Victims of domestic violence who need immediate protection may seek a temporary restraining order, which may be decided *ex parte* (without notice to the respondent) and generally must be issued or denied the same court day the petition is filed.⁷ Because the 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), a temporary restraining order is no longer enforceable, unless a court grants a continuance. The respondent must be personally served with a copy of the petition, the temporary restraining order, if any, and the notice of the hearing on the petition, at least five days before the hearing.⁸ After a duly noticed hearing, the court is authorized to extend the original temporary restraining order for up to five years, which may then be renewed.⁹

In 2021, SB 320 (Eggman), Chapter 685, Statutes of 2021, codified Rule of Court 5.495 in the Family Code and made compliance mandatory so that standards and procedures for ensuring the relinquishment of a firearm and ammunition following the issuance of a civil restraining order

³ 2023 Armed and Prohibited Persons Report, p. 20

⁴ *Armed and Prohibited Persons Report, 2023*, pp. 44-45.

⁵ *Caldwell v. Coppola* (1990) 219 Cal.App.3d 859, 863; *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1498

⁶ Fam. Code, §§ 6218, 6300.

⁷ Fam. Code, §§ 241, 6320 et seq.

⁸ Fam. Code, §§ 242, 243 & 245.

⁹ Fam. Code, §§ 6302, 6340, 6345.

would consistently apply throughout the state. It also required, in order to fill the gaps in court communication with justice partners identified by the 2008 Judicial Council report, the court to notify law enforcement officials and the county prosecutor's office when there has been a violation of a firearm relinquishment order related to a DVRO.

A person who is the subject of a domestic violence restraining order under the DVPA is prohibited from owning, possessing, purchasing, or receiving a firearm or ammunition while that protective order is in effect. A person who owns or possesses a firearm while a domestic violence restraining order is in effect may be punished by a misdemeanor with up to one year in county jail. A person who purchases or receives, or attempts to purchase or receive a firearm or ammunition while the protective order is in effect is punishable as either a misdemeanor or state-prison felony.¹⁰

4. DVPA Background Check Requirement and Effect of This Bill

In 2012, the Legislature enacted SB 1433 (Alquist, Ch. 765, Stats. 2012), which added, to Family Code Section 6306, a requirement that a court ensure a search is conducted on whether the subject of a proposed DVPA order has a registered firearm. SB 1433 made this new firearm search requirement subject to a specific funding condition: courts identified by Judicial Council as having the resources to conduct firearm searches would be required to do so, and the remaining courts would not have to conduct firearm searches unless and until the Legislature appropriated funds for that purpose in the annual Budget Act.¹¹ According to information provided to the Senate Judiciary Committee by the Judicial Council, although the Legislature never appropriated funds for the SB 1433 searches in the annual Budget Act, most courts conduct the searches contemplated by Section 6306 regardless.

Under Section 6306, prior to a hearing on the issuance or denial of a DVPA order, the court must ensure that a search has been conducted to determine if the subject of the proposed order "has a registered firearm," and specifies that the search shall be conducted of all records and databases readily available and reasonably accessible to the court. Existing law specifies which databases must be searched, but qualifies that a record or database need not be searched if the information available in that record or database can be obtained as a result of a search conducted in another record or database.

With respect to the extent of the firearm search, this bill replaces the provision requiring the court determine whether the subject of the proposed order "has a registered firearm" with a requirement that the court determine whether the subject "owns or possesses a firearm as reflected in AFS," and adds the AFS to the list of databases that the court must search. The bill also provides that, if the court does not have access to the AFS and the court does not have an agreement with a law enforcement agency allowing the court to request a search of the California Law Enforcement Telecommunications System (CLETS) to conduct the search of the AFS for the court, the sheriff shall, at the request of the court, conduct that search and report the results to the court.

Additionally, this bill repeals uncodified language in SB 1433's predecessor bill that originally made the Section 6306 search contingent on court resources or an appropriation, and adds a

¹⁰ Pen. Code, § 29825.

¹¹ This funding condition was identical to that included in SB 1433's predecessor bill, SB 66 (Kuehl, Ch. 572, Stats. of 2001).

codified subdivision to 6306 stating the intent of the Legislature that “except with regard to a search whether the subject of a proposed order owns or possesses a firearm,” the other requirements of 6306 are subject to an appropriations by the Legislature or a Judicial Council determination that the court has adequate funds. Effectively, this change makes the firearm search mandatory while leaving the rest of Section 6306’s searches conditional.

-- END --