
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Jesse Arreguín, Chair

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Urgency: No

Fiscal: Yes

Consultant: AB

Subject: *Military protective orders*

HISTORY

Source: U.S. Department of Defense

Prior Legislation: SB 66 (Kuehl), Ch. 572, Stats. of 2001

Support: Unknown

Opposition: ACLU California Action (unless amended)

PURPOSE

The purpose of this bill is to require the court, before issuing a protective order under the Domestic Violence Prevention Act (DVPA), to determine if the subject of the proposed order has a current or prior military protective order (MPO) or prior violation of an MPO; to require a law enforcement officer to verify the existence of an MPO at the scene of a domestic violence incident, as specified; and, to authorize each county law enforcement agency to develop and adopt memoranda of understanding with specified military entities.

Existing federal law requires that an MPO issued by a military commander remain in effect until such time as the military commander terminates the order or issues a replacement order. (10 U.S.C., § 1567)

Existing federal law requires, in the event an MPO is issued against a member of the armed forces, that the commander of the unit to which the member is assigned notify the appropriate civilian authorities of the issuance of the order and the individuals involved in the order not later than seven days after the date of the issuance of the order. (10 U.S.C. § 1567a, subd. (a).)

Existing federal law requires that specified military commanders must also communicate with appropriate civilian authorities regarding the transfer of an individual against whom an MPO has been issued, and any changes to or termination of that MPO. (10 U.S.C. § 1567a, subds. (b), (c).)

Existing law authorizes a court, under the 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, or for purposes of this analysis, a DVRO). (Fam. Code, §§ 6200 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 prior criminal conviction, as specified, an outstanding warrant, is currently on parole or probation, or owns or possesses a registered firearm. (Fam. Code, § 6306, subd. (a).)

Existing law specifies that the search required above must be conducted of 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 (FBI) nationwide database; and
- Locally maintained criminal history records or databases. (Fam. Code, § 6306, subd. (a)(1)(A)-(F).)

Existing law requires the court to consider specified information obtained via the search of those records and databases before deciding whether to issue a protective order under the DVPA. (Fam. Code, § 6306, subd. (b)(1).)

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

Existing law requires the court, after issuing its ruling, to advise the parties that they may request information obtained during the search specified above upon which the court relied, as specified. (Fam. Code, § 6306, subd. (c).)

Existing law requires information obtained as a result of the search and relied upon by the court to be maintained in a confidential case file and prohibits it from becoming part of the public file in the proceeding or any other civil proceeding, as specified. (Fam. Code, § 6306, subd. (d).)

Existing law requires a protective order issued under the DVPA, whether a TRO, EPO, or an order issued after hearing pursuant to the DVPA, on request of the petitioner, to be served on the respondent by a law enforcement officer who is present at the scene of reported domestic violence involving the parties or who receives a request from the petitioner to provide service of the order. (Fam. Code, § 6383, subd. (a).)

Existing law requires a law enforcement officer, upon receiving information at the scene of a domestic violence incident that a protective order has been issued under the DVPA, or that a person who has been taken into custody is the respondent to that order, if the protected person cannot produce an endorsed copy of the order, to immediately inquire of the California Restraining and Protective Order System to verify the existence of the order. (Fam. Code, § 6383, subd. (d).)

Existing law specifies the order in which protective orders must be enforced by law enforcement if multiple protective orders have been issued, as specified. (Fam. Code, § 6383, subd. (h)(2).)

Existing law, the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act (hereinafter, “Interstate Enforcement Act”), generally allows individuals with valid out-of-state protection orders to seek enforcement of those orders in California courts without having to reapply for a protective order under California law. (Fam. Code, § 6400 et seq.)

This bill provides that before a hearing on the issuance or denial of a protective order under the DVPA, as part of the search of the respondent’s criminal history required under existing law, the court must determine whether the respondent has a current or prior MPO or prior violation of an MPO as entered into the National Crime Information Center (NCIC) systems.

This bill specifies that the databases to be searched includes all of the FBI’s nationwide databases, including, but not limited to, the NCIC.

This bill provides that MPOs are admissible evidence for an ex parte order and constitute a *prima facie* case for granting a TRO.

This bill defines “military protective order” as a protective order issued by a commanding officer in the Armed Forces of the United States, California National Guard, or the national guard of another state or territory against a person under the officer’s command.

This bill requires a law enforcement officer, upon receiving information at the scene of a domestic violence incident that an MPO has been issued, that a person who has been taken into custody is the respondent to that order, if the protected person cannot produce an endorsed copy of that order, to immediately inquire the NCIC to verify the existence of that MPO.

This bill requires a law enforcement officer who determines an MPO in the NCIC has been issued against a person who violates a provision of a protective order issued under the DVPA or the Interstate Enforcement Act, and who is a member of, or otherwise associated with, the Armed Forces of the United States, to notify the law enforcement agency that entered the MPO into NCIC that the law enforcement officer has probable cause to believe that the person has violated the MPO.

This bill provides that each county law enforcement agency may develop and adopt memoranda of understanding (MOU) with military law enforcement or other designated representatives of one or more military installations located in whole or in part within the borders of its jurisdiction that govern the investigation and actions related to domestic violence involving service members assigned to units on those installations.

This bill specifies that these memoranda of understanding may include, but are not limited to, all of the following:

- To whom, how, and when each party would report information about potential violations of military or civilian protective orders.
- Each party’s role and responsibilities when conducting an investigation and in providing domestic violence prevention or rehabilitative services to a family in response to the results of the investigations, consistent with state and federal law.
- Protocols describing what, if any, confidential information may be shared between the parties and for what purposes, in accordance with applicable state and federal law.

COMMENTS

1. Need for This Bill

According to the author:

Military protective orders (MPOs), analogous to domestic violence restraining orders, are a critical tool for addressing domestic abuse within the military, but their effectiveness is limited. While MPOs apply off base, civilian law enforcement cannot enforce them. This limitation is particularly concerning given the severe shortage of on-base housing. In my district, Camp Pendleton has a waiting list up to 16 months long for on-base housing, forcing many survivors to live off base and leaving them vulnerable to continued abuse.

SB 99 strengthens protections for survivors by bridging the gap between military and civilian systems. It allows an MPO to serve as *prima facie* evidence for a civilian court to grant a temporary restraining order and requires courts to consider whether an MPO exists when deciding whether to grant a domestic violence prevention order. SB 99 also improves accountability by requiring law enforcement officers who have probable cause to believe an MPO has been violated to notify military authorities so appropriate enforcement action can be taken. Finally, the bill authorizes formal information sharing agreements between civilian law enforcement and military police to promote coordinated and effective responses to domestic violence.

SB 99 ensures domestic violence survivors are not left unprotected simply because their abuse crosses jurisdictional lines. By strengthening coordination and enforcement, this bill closes critical gaps and helps ensure meaningful, continuous protection for military families.

2. The Domestic Violence Prevention Act and Background Check Requirement

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.¹ 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."² Victims of domestic violence who need immediate protection may seek a temporary restraining order (TRO), 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.³ Because the restrained party would not have had the opportunity to defend their interests, *ex parte* orders are short in duration.

¹ *Caldwell v. Coppola* (1990) 219 Cal.App.3d 859, 863; *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1498

² Fam. Code, §§ 6218, 6300.

³ Fam. Code, §§ 241, 6320 et seq.

If a noticed hearing is not held within 21 days (or 25 if the court finds good cause), a TRO is no longer enforceable, unless a court grants a continuance. The respondent must be personally served with a copy of the petition, the TRO, if any, and the notice of the hearing on the petition, at least five days before the hearing.⁴ After a duly noticed hearing, the court is authorized to extend the original TRO for up to five years, which may then be renewed.⁵ The DVPA also allows courts to include a protective order as part of judgments entered in various family law proceedings.⁶

In 2001, the Legislature passed SB 66, which enacted Family Code Section 6306, a requirement that a court, prior to a hearing on the issuance or denial of a protective order, to perform (or ensure the prior performance of) a search of specified records and databases to ascertain the respondent's criminal history, and to consider qualifying convictions and criminal statuses (e.g., probation or parole) in deciding whether to issue the protective order.⁷ This statute also requires the court to disregard and destroy any non-qualifying search results and ensure that this information is not included in the public file of any civil proceeding.

3. Military Protective Orders

A military protective order (MPO) is a lawful order issued by a commanding officer ordering the respondent, or restrained party, to avoid contact with the petitioner, or protected party. An MPO may be issued to protect a member of the U.S. military from an alleged non-military perpetrator, or to protect a non-military individual from a member of the military, though the order itself may only apply to a member of the Armed Forces. Generally, the non-military parties involved include dependents of a servicemember, such as a spouse, child or other family member who believe they are at risk of harm. MPOs can be issued verbally or in writing, and are indefinite in duration, only subject to modification or termination by the commander who issued the order.⁸

MPOs are not enforceable by civilian law enforcement authorities but federal law does require a commander that issues an MPO to notify the appropriate civilian authorities of the order and the individuals involved not later than 7 days after the issuance of the order.⁹ Further, in the event that the subject of an MPO is transferred to another unit, the commander of the unit from which the subject is transferred must notify the commander of the destination unit, who must also notify the appropriate civilian authorities pursuant to the above requirement. The commander of the unit to which the subject of an MPO is assigned must also notify the appropriate civilian authorities if any change is made to the MPO or if the MPO is terminated.¹⁰ Violations of MPOs can be charged as violations of orders under Article 90 of the Uniform Code of Military Justice.¹¹

⁴ Fam. Code, §§ 242, 243, 245.

⁵ Fam. Code, §§ 6302, 6340, 6345.

⁶ Fam. Code, § 6360.

⁷ Fam. Code, § 6306.

⁸ 10 U.S.C. § 1567.

⁹ 10 U.S.C., § 1567a, subd. (a).

¹⁰ 10 U.S.C., § 1567a, subds. (b), (c).

¹¹ Office of the Staff Judge Advocate Legal Assistance Office, *Military Protective Orders Fact Sheet* (Mar. 2025) <<https://www.benning.army.mil/MCoE/SJA/content/PDF/20250509%20%20MPO%20FACT%20SHEET.pdf>>

4. Effect of This Bill

This bill consists of two major components: a set of provisions incorporating MPOs into the background check and protective order issuance process in Family Code section 6306, and a set of provisions facilitating communication between California law enforcement officials who discover the existence of an MPO during the enforcement of protective orders issued under the DVPA and military law enforcement responsible for the subject of the MPO. Preliminary, it is important to note that the bill defines an MPO as “a protective order issued by a commanding officer in the Armed Forces of the United States, California National Guard, or the national guard of another state or territory against a person under the officer’s command.” As discussed above, existing California law requires that prior to a hearing on the issuance or denial of a protective order under the DVPA, a court must conduct a background check and consider specified relevant criminal history. This bill specifies that a pre-hearing search must also determine whether the subject of the proposed order has a current or prior MPO or a prior violation of an MPO as entered into the NCIC systems.¹² The bill also explicitly requires that courts query the NCIC as part of the pre-hearing criminal history search. Critically, the bill does not require that this MPO information be considered by the court in a manner similar to the other criminal history information gathered during the pre-hearing search. Rather, the bill specifies that MPOs are admissible evidence for an ex parte protective order and constitute a *prima facie* case for granting a temporary restraining order.

The second group of provisions in this bill seek to improve communications between local law enforcement agencies in the state and military law enforcement entities overseeing MPOs. Existing law provides that upon receiving information at the scene of a domestic violence incident that a protective order has been issued under the DVPA, or that a person who has been taken into custody is the respondent to that order, if the protected person cannot produce a copy of the order, the responding officer must query the California Restraining and Protective Order System to verify the existence of the order.¹³ This bill includes MPOs in that provision, requiring responding officers to verify the existence of an MPO in NCIC if they receive relevant information at the scene of a domestic violence incident regarding that order. Additionally, the bill provides that if the law enforcement officer does verify the existence of an MPO in NCIC, that officer must notify the law enforcement agency that entered the MPO into NCIC that the officer “has probable cause to believe that the person has violated the MPO.” Another provision of the bill authorizes each county law enforcement agency to develop and adopt MOUs with military law enforcement or other relevant military representatives involved in responding to domestic violence incidents. The bill specifies that these MOUs may include elements related to how each party would report information about potential violations of protective orders, respective roles in DV investigations, and protocols regarding confidential information.

Both major components of this bill raise various issues that the author and committee may wish to consider. Chiefly, given the general lack of process guardrails (i.e., reasonable notice and opportunity to be heard) involved in the issuance and extension/termination of MPOs, the bill’s provision deeming such orders admissible evidence for an ex parte order and *prima facie* evidence for granting a temporary restraining order raises due process concerns. By way of

¹² The NCIC is maintained by the FBI and is the U.S.’s central database for tracking crime-related information. It is available to federal, state, and local law enforcement and other criminal justice agencies and is operational 24 hours a day, 365 days a year. Generally, commanding officers are required to enter MPOs into NCIC. See <<https://www.marines.mil/News/Messages/Messages-Display/Article/2138712/u-s-marine-corps-requirement-to-enter-military-protective-orders-into-the-feder/>>.)

¹³ Fam. Code, § 6383, subd. (d).

background, federal law provides that any protective order issued by the court of a state, Indian tribe or territory and that meets specified criteria shall be accorded full faith and credit by the court of another state, and enforced by the court and law enforcement personnel of the other state tribe or territory as if it were issued by that state, tribe or territory.¹⁴ The central criterion that an order must satisfy in order to be accorded such full faith and credit is that “reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person’s right to due process.”¹⁵ Under this federal statute, the only protective orders that meet this requirement and are thus accorded full faith and credit are those issued by a civil or criminal court – MPOs are conspicuously absent from this statute’s definition of “protective order.”¹⁶ The author and committee may wish to consider whether it is appropriate to require California courts to ascribe such considerable evidentiary weight to MPOs given their lack of due process guardrails and that an NCIC search may not yield critical details involved in the decision to issue the MPO.

The bill’s provisions regarding communication between California law enforcement and military law enforcement entities also raises several questions. As described above, the bill requires a law enforcement officer who learns that an MPO has been issued against a person who violates a protective order issued under the DVPA to notify the law enforcement entity that entered the MPO into NCIC. However, it is unclear why a violation of a protective order issued under the DVPA should be a predicate to the notification of the military law enforcement entity overseeing the MPO. That is, if a law enforcement officer at the scene of a domestic violence incident learns of an MPO and is able to confirm the veracity of the MPO in NCIC, shouldn’t that be sufficient reason to notify the appropriate military authorities? In addition, what if it wasn’t a law enforcement agency that entered the MPO into NCIC but the commander who issued the MPO? The author may wish to consider generalizing the language to “the entity that entered the MPO into NCIC.” Finally, the bill states that the California law enforcement officer must notify the relevant authority that they “have probable cause to believe the person has violated the military protective order.” However, the officer’s observations on scene and their confirmation of the existence of an MPO in NCIC may not in fact meet the legal standard of “probable cause.” The author and committee may wish to consider removing the legal standard of probable cause from that provision and simply requiring officers to communicate a potential violation of the order.

5. Argument in Support

According to the U.S. Department of Defense, the bill’s sponsor:

This bill addresses critical gaps in the response to interpersonal violence in the military, enhancing the safety and readiness of our service members and their families.

...

Interpersonal violence, which includes a continuum of harm from harassment to domestic abuse, directly impacts military readiness. When these harmful behaviors involve military personnel, they often cross between military and civilian

¹⁴ 18 U.S.C § 2265, subd. (a).

¹⁵ 18 U.S.C. §2265, subd. (b)(2). The statute also provides that in the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by state, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent’s due process rights.

¹⁶ See 18 U.S.C. § 2266(5).

jurisdictions. Interpersonal violence extends well beyond an individual victim, as the effects of violence directly impact all our service members, their families, the units to which they are assigned, and our greater national security. Without coordinated communication between authorities, offenses can go unaddressed, leaving victims at risk and undermining a commander's ability to ensure the welfare of their unit. SB 99 provides two essential solutions to bridge this jurisdictional gap:

Allows Military Protective Orders (MPOs) as evidence: The bill enables state courts to consider a commander-issued MPO as evidence when a victim seeks a civilian restraining order. Currently, MPOs are not recognized or enforceable off a military installation. Explicitly allowing MPOs to be considered as evidence when a victim is seeking to obtain a civilian temporary restraining order will provide victims of interpersonal violence greater access to state protections, services, and victim advocacy efforts that would not have been available through a standard military protective order that applies only on military property. This change provides judges with a more complete picture of the threat, gives victims faster access to civil protections, and can prevent them from having to relive their trauma in a second proceeding.

Enhances Information-Sharing: The bill encourages reciprocal information-sharing between civilian and military law enforcement. While commanders are required to notify civilian authorities of MPOs, no reciprocal requirement exists for local agencies to notify the military of incidents or protective orders involving service members. SB 99 closes this communication gap, ensuring commanders can take appropriate action to stop abuse, support victims, and maintain unit accountability.

These provisions directly complement federal law and the Department's own efforts, including our Family Advocacy Program, to prevent and respond to domestic abuse. By strengthening the partnership between California and the military, this legislation will improve the well-being of our service members and their families, thereby enhancing the readiness of our force.

6. Argument in Opposition

The ACLU of California writes:

While we agree in the importance of protecting survivors of domestic violence, we are deeply concerned about the fact that military protective orders (MPOs) are issued without due process. As such, these orders should not be used as evidence in state judicial processes. To address these concerns, we ask that Section 1 and 2 of the bill be removed.

Military protective orders are issued with little to no due process for the subject of the order. The decision to impose an MPO is made by a Commanding Officer, not a judge. And this decision may be made without notice to the subject or any opportunity for the subject of the order to present evidence against the claims underlying the MPO. California should not compound the due process concerns with MPOs by allowing the orders to be used in state judicial proceedings.

The threat to due process is made more dire by the fact that SB 99 seeks to allow MPOs to serve as *prima facie* evidence for *ex parte* procedures. An *ex parte* order means the person subjected to the restraining order is not informed of the court proceeding and therefore has no opportunity to contest the allegations. In recognition of the constitutionally sensitive nature of *ex parte* hearings, the Domestic Violence Protection Act does not currently establish any evidence that may serve as *prima facie* evidence in an *ex parte* hearing. It is constitutionally suspect to now codify MPOs as *prima facie* evidence, despite their clear due process concerns.

We recognize the need to continue finding ways to address domestic violence, but we must do so in balance with protecting due process. ACLU California Action is willing to remove our opposition if Section 1 and 2 of the bill are removed.

-- END --