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AB-1143 Civil procedure: restraining orders. (2021-2022)

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Assembly Bill No. 1143

CHAPTER 156

An act to amend Section 527.6 of the Code of Civil Procedure, relating to civil procedure.

[Approved by Governor August 31, 2021. Filed with Secretary of State August 31, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1143, Berman. Civil procedure: restraining orders.

Existing law permits a person who has suffered harassment, as defined, to file a petition for a temporary restraining order and a restraining order after hearing prohibiting the harassment. Existing law requires the petitioner to personally serve the respondent with the petition for the temporary restraining order and restraining order, as applicable, and notice of the hearing.

This bill would provide that if the court determines at the hearing that, after a diligent effort, the petitioner has been unable to accomplish personal service, and that there is reason to believe that the respondent is evading service or cannot be located, then the court may specify another method of service that is reasonably calculated to give actual notice to the respondent and may prescribe the manner in which proof of service shall be made.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 527.6 of the Code of Civil Procedure is amended to read:

527.6. (a) (1) A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an order after hearing prohibiting harassment as provided in this section.

(2) A minor, under 12 years of age, accompanied by a duly appointed and acting guardian ad litem, shall be permitted to appear in court without counsel for the limited purpose of requesting or opposing a request for a temporary restraining order or order after hearing, or both, under this section as provided in Section 374.

(b) For purposes of this section, the following terms have the following meanings:

(1) "Course of conduct" is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, facsimile, or email. Constitutionally protected activity is not included within the meaning of "course of conduct."

(2) "Credible threat of violence" is a knowing and willful statement or course of conduct that would place a reasonable person in fear for the person's safety or the safety of the person's immediate family, and that serves no legitimate purpose.

(3) "Harassment" is unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner.

(4) "Petitioner" means the person to be protected by the temporary restraining order and order after hearing and, if the court grants the petition, the protected person.

(5) "Respondent" means the person against whom the temporary restraining order and order after hearing are sought and, if the petition is granted, the restrained person.

(6) "Temporary restraining order" and "order after hearing" mean orders that include any of the following restraining orders, whether issued ex parte or after notice and hearing:

(A) An order enjoining a party from harassing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, abusing, telephoning, including, but not limited to, making annoying telephone calls, as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, or coming within a specified distance of, or disturbing the peace of, the petitioner. On a showing of good cause, in an order issued pursuant to this subparagraph in connection with an animal owned, possessed, leased, kept, or held by the petitioner, or residing in the residence or household of the petitioner, the court may do either or both of the following:

(i) Grant the petitioner exclusive care, possession, or control of the animal.

(ii) Order the respondent to stay away from the animal and refrain from taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal.

(B) An order enjoining a party from specified behavior that the court determines is necessary to effectuate orders described in subparagraph (A).

(7) "Unlawful violence" is any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but does not include lawful acts of self-defense or defense of others.

(c) In the discretion of the court, on a showing of good cause, a temporary restraining order or order after hearing issued under this section may include other named family or household members.

(d) Upon filing a petition for orders under this section, the petitioner may obtain a temporary restraining order in accordance with Section 527, except to the extent this section provides an inconsistent rule. The temporary restraining order may include any of the restraining orders described in paragraph (6) of subdivision (b). A temporary restraining order may be issued with or without notice, based on a declaration that, to the satisfaction of the court, shows reasonable proof of harassment of the petitioner by the respondent, and that great or irreparable harm would result to the petitioner.

(e) A request for the issuance of a temporary restraining order without notice under this section shall be granted or denied on the same day that the petition is submitted to the court. If the petition is filed too late in the day to permit effective review, the order shall be granted or denied on the next day of judicial business in sufficient time for the order to be filed that day with the clerk of the court.

(f) A temporary restraining order issued under this section shall remain in effect, at the court's discretion, for a period not to exceed 21 days, or, if the court extends the time for hearing under subdivision (g), not to exceed 25 days, unless otherwise modified or terminated by the court.

(g) Within 21 days, or, if good cause appears to the court, 25 days from the date that a petition for a temporary order is granted or denied, a hearing shall be held on the petition. If a request for a temporary order is not made, the hearing shall be held within 21 days, or, if good cause appears to the court, 25 days, from the date that the petition is filed.

(h) The respondent may file a response that explains, excuses, justifies, or denies the alleged harassment, or may file a cross-petition under this section.

(i) At the hearing, the judge shall receive any testimony that is relevant, and may make an independent inquiry. If the judge finds by clear and convincing evidence that unlawful harassment exists, an order shall issue prohibiting the harassment.

(j) (1) In the discretion of the court, an order issued after notice and hearing under this section may have a duration of no more than five years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. The order may be renewed, upon the request of a party, for a duration of no more than five additional years, without a showing of any further harassment since the issuance of the original order, subject to termination or modification

by further order of the court either on written stipulation filed with the court or on the motion of a party. A request for renewal may be brought any time within the three months before the order expires.

(2) The failure to state the expiration date on the face of the form creates an order with a duration of three years from the date of issuance.

(3) If an action is filed for the purpose of terminating or modifying a protective order before the expiration date specified in the order by a party other than the protected party, the party who is protected by the order shall be given notice, pursuant to subdivision (b) of Section 1005, of the proceeding by personal service or, if the protected party has satisfied the requirements of Chapter 3.1 (commencing with Section 6205) of Division 7 of Title 1 of the Government Code, by service on the Secretary of State. If the party who is protected by the order cannot be notified before the hearing for modification or termination of the protective order, the court shall deny the motion to modify or terminate the order without prejudice or continue the hearing until the party who is protected can be properly noticed and may, upon a showing of good cause, specify another method for service of process that is reasonably designed to afford actual notice to the protected party. The protected party may waive the protected party's right to notice if the protected party is physically present in court and does not challenge the sufficiency of the notice.

(k) This section does not preclude either party from representation by private counsel or from appearing on the party's own behalf.

(l) In a proceeding under this section, if there are allegations of unlawful violence or credible threats of violence, a support person may accompany a party in court and, if the party is not represented by an attorney, may sit with the party at the table that is generally reserved for the party and the party's attorney. The support person is present to provide moral and emotional support for a person who alleges they are a victim of violence. The support person is not present as a legal adviser and may not provide legal advice. The support person may assist the person who alleges they are a victim of violence in feeling more confident that they will not be injured or threatened by the other party during the proceedings if the person who alleges the person is a victim of violence and the other party are required to be present in close proximity. This subdivision does not preclude the court from exercising its discretion to remove the support person from the courtroom if the court believes the support person is prompting, swaying, or influencing the party assisted by the support person.

(m) (1) Except as provided in paragraph (2), upon the filing of a petition under this section, the respondent shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The court may for good cause, on motion of the petitioner or on its own motion, shorten the time for service on the respondent.

(2) If the court determines at the hearing that, after a diligent effort, the petitioner has been unable to accomplish personal service, and that there is reason to believe that the respondent is evading service or cannot be located, then the court may specify another method of service that is reasonably calculated to give actual notice to the respondent and may prescribe the manner in which proof of service shall be made.

(n) A notice of hearing under this section shall notify the respondent that if the respondent does not attend the hearing, the court may make orders against the respondent that could last up to five years.

(o) The respondent shall be entitled, as a matter of course, to one continuance, for a reasonable period, to respond to the petition.

(p) (1) Either party may request a continuance of the hearing, which the court shall grant on a showing of good cause. The request may be made in writing before or at the hearing, or orally at the hearing. The court may also grant a continuance on its own motion.

(2) If the court grants a continuance, any temporary restraining order that has been granted shall remain in effect until the end of the continued hearing, unless otherwise ordered by the court. In granting a continuance, the court may modify or terminate a temporary restraining order.

(q) (1) If a respondent named in a restraining order issued after a hearing has not been served personally with the order but has received actual notice of the existence and substance of the order through personal appearance in court to hear the terms of the order from the court, additional proof of service is not required for enforcement of the order.

(2) If the respondent named in a temporary restraining order is personally served with the order and notice of hearing with respect to a restraining order or protective order based on the temporary restraining order, but the respondent does not appear at the hearing, either personally or by an attorney, and the terms and conditions of the restraining order or protective order issued at the hearing are identical to the temporary restraining order, except for the duration of the order, the restraining order

or protective order issued at the hearing may be served on the respondent by first-class mail sent to the respondent at the most current address for the respondent available to the court.

(3) The Judicial Council form for temporary orders issued pursuant to this subdivision shall contain a statement in substantially the following form:

"If you have been personally served with this temporary restraining order and notice of hearing, but you do not appear at the hearing either in person or by a lawyer, and a restraining order that is the same as this temporary restraining order except for the expiration date is issued at the hearing, a copy of the restraining order will be served on you by mail at the following address:

_____.

If that address is not correct or you wish to verify that the temporary restraining order was converted to a restraining order at the hearing without substantive change and to find out the duration of that order, contact the clerk of the court."

(4) If information about a minor has been made confidential pursuant to subdivision (v), the notice shall identify the information, specifically, that has been made confidential and shall include a statement that disclosure or misuse of that information is punishable as a contempt of court.

(r) (1) Information on a temporary restraining order or order after hearing relating to civil harassment issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with either paragraph (2) or (3).

(2) The court shall order the petitioner or the attorney for the petitioner to deliver a copy of an order issued under this section, or reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by the close of the business day on which the order, reissuance, extension, modification, or termination was made, to a law enforcement agency having jurisdiction over the residence of the petitioner and to any additional law enforcement agencies within the court's discretion as are requested by the petitioner.

(3) Alternatively, the court or its designee shall transmit, within one business day, to law enforcement personnel all information required under subdivision (b) of Section 6380 of the Family Code regarding any order issued under this section, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by either one of the following methods:

(A) Transmitting a physical copy of the order or proof of service to a local law enforcement agency authorized by the Department of Justice to enter orders into the California Law Enforcement Telecommunications System (CLETS).

(B) With the approval of the Department of Justice, entering the order or proof of service into CLETS directly.

(4) Each appropriate law enforcement agency shall make available information as to the existence and current status of orders issued under this section to law enforcement officers responding to the scene of reported harassment.

(5) An order issued under this section shall, on request of the petitioner, be served on the respondent, whether or not the respondent has been taken into custody, by any law enforcement officer who is present at the scene of reported harassment involving the parties to the proceeding. The petitioner shall provide the officer with an endorsed copy of the order and a proof of service that the officer shall complete and send to the issuing court.

(6) Upon receiving information at the scene of an incident of harassment that a protective order has been issued under this section, or that a person who has been taken into custody is the subject of an order, if the protected person cannot produce a certified copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

(7) If the law enforcement officer determines that a protective order has been issued but not served, the officer shall immediately notify the respondent of the terms of the order and shall at that time also enforce the order. Verbal notice of the terms of the order shall constitute service of the order and is sufficient notice for purposes of this section and for purposes of Section 29825 of the Penal Code. Verbal notice shall include the information required pursuant to paragraph (4) of subdivision (q).

(s) The prevailing party in an action brought pursuant to this section may be awarded court costs and attorney's fees, if any.

(t) Willful disobedience of a temporary restraining order or order after hearing granted pursuant to this section is punishable pursuant to Section 273.6 of the Penal Code.

(u) (1) A person subject to a protective order issued pursuant to this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm or ammunition while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued pursuant to this section to relinquish any firearms the person owns or possesses pursuant to Section 527.9.

(3) A person who owns, possesses, purchases, or receives, or attempts to purchase or receive, a firearm or ammunition while the protective order is in effect is punishable pursuant to Section 29825 of the Penal Code.

(v) (1) A minor or the minor's legal guardian may petition the court to have information regarding the minor that was obtained in connection with a request for a protective order pursuant to this section, including, but not limited to, the minor's name, address, and the circumstances surrounding the request for a protective order with respect to that minor, be kept confidential.

(2) The court may order the information specified in paragraph (1) be kept confidential if the court expressly finds all of the following:

(A) The minor's right to privacy overcomes the right of public access to the information.

(B) There is a substantial probability that the minor's interest will be prejudiced if the information is not kept confidential.

(C) The order to keep the information confidential is narrowly tailored.

(D) No less restrictive means exist to protect the minor's privacy.

(3) (A) If the request is granted, except as provided in paragraph (4), information regarding the minor shall be maintained in a confidential case file and shall not become part of the public file in the proceeding or any other civil proceeding involving the parties. Except as provided in subparagraph (B), if the court determines that disclosure of confidential information has been made without a court order, the court may impose a sanction of up to one thousand dollars (\$1,000). A minor who has alleged harassment, as defined in subdivision (b), shall not be sanctioned for disclosure of the confidential information. If the court imposes a sanction, the court shall first determine whether the person has or is reasonably likely to have the ability to pay.

(B) Confidential information may be disclosed without a court order only in the following circumstances:

(i) By the minor's legal guardian who petitioned to keep the information confidential pursuant to this subdivision or the protected party in an order pursuant to this division, provided that the disclosure is necessary to prevent harassment or is in the minor's best interest. A legal guardian or a protected party who makes a disclosure under this clause is subject to the sanction in subparagraph (A) only if the disclosure was malicious.

(ii) By a person to whom confidential information is disclosed, provided that the disclosure is necessary to prevent harassment 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 to authorize the disclosure of the information. A person who makes a disclosure pursuant to this clause is subject to the sanction in subparagraph (A) if the person discloses the information in a manner that recklessly or maliciously disregards these requirements.

(4) (A) Confidential information shall be made available to both of the following:

(i) Law enforcement pursuant to subdivision (r), to the extent necessary and only for the purpose of enforcing the order.

(ii) The respondent to allow the respondent to comply with the order for confidentiality and to allow the respondent to comply with and respond to the protective order. A notice shall be provided to the respondent that identifies the specific information that has been made confidential and shall include a statement that disclosure is punishable by a monetary fine.

(B) At any time, the court on its own may authorize a disclosure of any portion of the confidential information to certain individuals or entities as necessary to prevent harassment, as defined under subdivision (b), including implementation of the protective order, or if it is in the best interest of the minor.

(C) The court may authorize a disclosure of any portion of the confidential information to any person that files a petition if necessary to prevent harassment, as defined under subdivision (b), or if it is in the best interest of the minor. The party who petitioned the court to keep the information confidential pursuant to this subdivision shall be served personally or by first-class mail with a copy of the petition and afforded an opportunity to object to the disclosure.

(w) This section does not apply to any action or proceeding covered by Title 1.6C (commencing with Section 1788) of Part 4 of Division 3 of the Civil Code or by Division 10 (commencing with Section 6200) of the Family Code. This section does not preclude a petitioner from using other existing civil remedies.

(x) (1) The Judicial Council shall develop forms, instructions, and rules relating to matters governed by this section. The petition and response forms shall be simple and concise, and their use by parties in actions brought pursuant to this section is mandatory.

(2) A temporary restraining order or order after hearing relating to civil harassment issued by a court pursuant to this section shall be issued on forms adopted by the Judicial Council and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(y) There is no filing fee for a petition that alleges that a person has inflicted or threatened violence against the petitioner, stalked the petitioner, or acted or spoken in any other manner that has placed the petitioner in reasonable fear of violence, and that seeks a protective or restraining order restraining stalking, future violence, or threats of violence, in an action brought pursuant to this section. A fee shall not be paid for a subpoena filed in connection with a petition alleging these acts. A fee shall not be paid for filing a response to a petition alleging these acts.

(z) (1) Subject to paragraph (4) of subdivision (b) of Section 6103.2 of the Government Code, there shall not be a fee for the service of process by a sheriff or marshal of a protective or restraining order to be issued, if either of the following conditions apply:

(A) The protective or restraining order issued pursuant to this section is based upon stalking, as prohibited by Section 646.9 of the Penal Code.

(B) The protective or restraining order issued pursuant to this section is based upon unlawful violence or a credible threat of violence.

(2) The Judicial Council shall prepare and develop forms for persons who wish to avail themselves of the services described in this subdivision.