
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2019 - 2020 Regular Session

SB 1141 (Rubio) - Domestic violence: coercive control

Version: May 29, 2020

Urgency: No

Hearing Date: June 9, 2020

Policy Vote: JUD. 8 - 0

Mandate: Yes

Consultant: Shaun Naidu

Bill Summary: SB 1141 would include “coercive control,” as defined, as grounds for the issuance of an ex parte restraining order and as grounds to establish a rebuttable presumption related to conduct that is detrimental to the best interest of a child for child custody purposes.

Fiscal Impact:

- Courts: Unknown, potentially-significant workload cost pressures to the courts to adjudicate charges brought against defendants who are charged with contempt of court for violating restraining orders that were issued based on the grounds of coercive control. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to fund additional staff and resources. For example, the proposed 2020-21 budget would appropriate \$35.2 million from the General Fund to backfill continued reduction in fine and fee revenue for trial court operations. (General Fund*)
- Prosecution & incarceration: Unknown potential increase in non-reimbursable local enforcement and incarceration costs to prosecute and incarcerate those charged with and found guilty of violating a restraining order. Costs would be offset, to a degree, by fee and assessment revenue. (Local funds)

*Trial Court Trust Fund

Background: If the court finds that a party seeking custody of a child has perpetrated domestic violence within the last five years against the other party seeking custody, the child or the child’s siblings, or another specified person with whom the party has a relationship, existing law establishes a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is detrimental to the best interest of the child. “Perpetrated domestic violence” for this purpose is found by the court when a person intentionally or recklessly caused or attempted to cause bodily injury or sexual assault; placed a person in reasonable apprehension of imminent serious bodily injury to that person or to another; or engaged in behavior involving, but not limited to, threatening, striking, harassing, destroying personal property, or disturbing the peace of another such that a court could issue an ex parte order to protect the other party, the child, or the child’s siblings.

The court may issue an ex parte order ordering a party from molesting; attacking; striking; stalking; threatening; sexually assaulting; battering; credibly impersonating; falsely personating; harassing; telephoning, including, but not limited to, making annoying telephone calls as described; destroying personal property; contacting, either

directly or indirectly, by mail or otherwise; coming within a specified distance of; or disturbing the peace of the other party and, in the discretion of the court and on a showing of good cause, of other named family or household members. The court, on a showing of good cause, also may include a grant for the exclusive care, possession, and control of an animal and may order a person to stay away from the animal.

Disobedience of a court order may be prosecuted as misdemeanor criminal contempt of court, punishable by imprisonment in the county jail for up to six months and/or a base fine of up to \$1,000. Consequently, criminal contempt proceedings are conducted like any other misdemeanor offense, meaning that any action to punish a violation is brought by the prosecution and the defendant is “entitled to the full panoply of substantive and due process rights” (*People v. Kalnoki* (1992) 7 Cal.App.4thSupp. 8, 11.), including the right to a jury trial and no-cost representation if the person cannot afford a lawyer.

As stated in the analysis of this bill by the Senate Committee on Judiciary:

The Domestic Violence Protection Act ([DVPA] Fam. Code § 6200 et seq.¹) 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 linchpin of this scheme is section 6203’s definition of “abuse,” which generally covers psychological harm and is a key criterion for judicial decisions on domestic violence restraining orders, child custody, and the admissibility of evidence pertaining to domestic violence in specified criminal proceedings.

...

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.) The DVPA must be broadly construed in order to accomplish the statute’s purpose. (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1498 [*Nadikarni*].) 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.” (§ 6300; see § 6218.)

“Abuse” for these purposes is broadly defined in terms of specified physical harms, but is not limited to actual infliction of emotional injury. (§ 6203(a) & (b).) “Abuse” also encompasses a broad range of enumerated harmful behaviors under section 6320, including threats, stalking, annoying phone calls, vandalism, and, most relevant to this bill, “disturbing the peace of the other party.” (*Id.* at (a).) “[T]he plain meaning of the phrase ‘disturbing the peace of the other party’ in section 6320 may be properly understood as conduct that destroys the mental or emotional calm of the other party.” (*N.T. v. H.T.* (2019) 34 Cal. App. 5th 595, 602.) Thus, courts have concluded that “abuse” within the meaning of the DVPA

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

includes certain forms of mental abuse. (*Nadikarni, supra*, 173 Cal.App.4th at p. 1499 [accessing and disclosing a person's private emails]; *Burquet v. Brumbaugh* (2014) 223 Cal.App.4th 1140 [continuing to contact a person electronically and in person despite their request to stop]; *In re Marriage of Evilsizor & Sweeney* (2015) 237 Cal.App.4th 1416 [downloading and disseminating text messages].)

Rodriguez v. Menjivar (2015) 243 Cal. App. 4th 816 presents a stark example of the type of harmful conduct that would be covered by this bill. In addition to physically abusing the victim, Menjivar took actions to intimidate, isolate, and control her. He would call her throughout the day, enrolled in her college courses to monitor her, practiced martial arts in close proximity to her despite her requests to stop, wielded a knife in her face, threatened to beat her with a studded belt, took her phone away when she tried to call a relative, threatened to send her to jail, threatened to kill himself, and threatened her over social media, causing her to shut down her social media accounts and withdraw from her college classes. (*Id.* at 818–819.) The court, reviewing the precedents described above, concluded that, for purposes of section 6320, “[t]he acts of isolation, control, and threats were sufficient to demonstrate the destruction of Rodriguez’s mental and emotional calm.”(*Id.* at 822.)

Proposed Law: This bill would add “coercive control” to the definition of “abuse” under the Domestic Violence Protection Act. It would provide that a person’s conduct constitutes coercive control if the person intentionally, or with reckless disregard of the consequences, engages in a pattern of behavior that interferes with the will of the victim with the intent to cause the victim severe emotional distress or that a reasonable person would know would be likely to cause the victim severe emotional distress, the victim does suffer severe emotional distress, and the person’s conduct is not reasonable under the circumstances. It would further specify that coercive control may be committed directly, indirectly, or through the use of third parties, and by means of any instrumentality, including, but not limited to, electronic communication devices. Coercive control for the Domestic Violence Protection Act would apply only to a victim with whom the person has or has had a sexual, dating, or spousal relationship.

Additionally, SB 1141 would, for purposes of a family court determining child custody, provide that coercive control is evidence of perpetration of domestic violence. It also would permit a court to issue an ex parte order enjoining a party from coercively controlling another.

Related Legislation: SB 273 (Rubio, Stats. 2019, Ch. 546) would have required police officer training to include an assessment of “coercive control that may lead to lethal violence.” This provision was amended out in version 94 (July 2, 2019) of SB 273.

AB 1692 (Judiciary, Stats. 2017, Ch. 330) would have expand all types of civil restraining orders to include protection against credible impersonation and false personation, as those terms are defined. These provisions were amended out of AB 1692 by this Committee.

Staff Comments: The fiscal impact of this bill cannot be known with certainty, as the actual impact will be dependent on numerous factors, including, but not limited to, judicial and prosecutorial discretion, the criminal history of a defendant, and the factors unique to each case. By including coercive control as grounds for the issuance of a restraining order, SB 1141 would expand the universe of individuals who may be found in criminal contempt for violating a restraining order. As contempt of court is punishable as a misdemeanor with the potential for incarceration, certain rights to the defendants are attached to the proceedings, including the right to a jury trial and the right to counsel (at public expense if the defendants are unable to afford the costs of representation) which could lead to lengthier and more complex court proceedings. While it is not known how many charges ultimately would be filed resulting from this measure, it generally costs about \$7,896 (in FY 2019-2020) to operate a courtroom for one eight-hour day. Consequently, if alleged restraining order violations lead to the filing of cases that otherwise would not have been filed or resulted in a criminal action that, combined, take more than 50 hours of court involvement, the cost pressures of this measure to the courts would surpass the Suspense File threshold. As indicated above, while courts are not funded on a workload basis, an increase in workload could result in delayed services and would put pressure on the General Fund to fund additional staff and resources.

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