
THIRD READING

Bill No: SB 1141
Author: Rubio (D), et al.
Amended: 5/29/20
Vote: 21

SENATE JUDICIARY COMMITTEE: 8-0, 5/22/20

AYES: Jackson, Durazo, Lena Gonzalez, Jones, Monning, Stern, Umberg,
Wieckowski

NO VOTE RECORDED: Borgeas

SENATE APPROPRIATIONS COMMITTEE: 7-0, 6/18/20

AYES: Portantino, Bates, Bradford, Hill, Jones, Leyva, Wieckowski

SUBJECT: Domestic violence: coercive control

SOURCE: Los Angeles City Attorney's Office

DIGEST: This bill specifies that intimate partner “coercive control” is a form of domestic violence for purposes of domestic violence restraining orders, the statutory presumption against child custody for perpetrators of domestic abuse, and the admissibility of evidence pertaining to domestic violence in specified criminal proceedings.

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, specified acts of abuse (§§ 6318; 6320).

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

- 2) Defines “domestic violence” as abuse perpetrated against a spouse, cohabitant, a person the abuser dates, a person who has a child with the abuser, a child, and immediate relatives. (§ 6211.)
- 3) Defines “abuse” as any of the following:
 - a) Intentionally or recklessly causing or attempting to cause bodily injury.
 - b) Sexual assault.
 - c) Placing a person in reasonable apprehension of imminent serious bodily injury to that person or to another.
 - d) Engaging in enumerated harmful behaviors, including disturbing the peace of the other party. (§§ 6203(a); 6320.)
- 4) Provides that “abuse” is not limited to the actual infliction of physical injury or assault. (§ 6203(b).)
- 5) Requires courts to consider a person’s history of inflicting abuse in making awards of child custody and visitation. (§§ 3011(a)(2)(A), 3030(c)(2) & 3044(d)(1).)
- 6) Provides, in a criminal action, for the admissibility of expert testimony regarding intimate partner battering and its effects, including the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions or behavior of victims of domestic violence, except as specified. (Evid. Code § 1107(a).) Incorporates the definitions of “abuse” and “domestic violence” from the Family Code. (*Id.* at (c).)
- 7) Provides, in a criminal action in which the defendant is accused of an offense involving domestic violence, for the admissibility of evidence of the defendant’s commission of other domestic violence, with specified exceptions. (Evid. Code § 1109(a).) Incorporates the definition of “domestic violence” from the Family Code. (*Id.* at (d)(3).)
- 8) 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) Finds and declares that:
 - a) Coercive control is a form of abuse rooted in societal inequality and replicated with devastating effects in intimate partner relationships when one partner's autonomy is subordinated to the will of the other partner.
 - b) Coercive control deprives victims of their personal liberty through a pattern of behavior that does not always include physical violence but that still causes lasting harm to a victim.
 - c) This bill is intended to provide redress for the harm of coercive control in intimate partner relationships by giving a name to the specific liberty deprivations inherent in coercively controlling behavior.
 - d) This bill is not intended to override the findings and declarations, as stated in the DVPA.
 - e) In restricting the application of coercive control to a specified category of victims, this bill is not meant to limit or alter existing protections afforded by the DVPA.
- 2) Amends the definition of "abuse" under Section 6203 to include "coercive control," thereby altering the operation of the existing statutes described in 5) through 8), above, governing the issuance of domestic violence restraining orders and punishment for the violation thereof, child custody and visitation orders, and the admissibility of certain evidence pertaining to domestic violence in specified criminal proceedings.
- 3) Provides 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.
- 4) Lists types of conduct that may constitute coercive control if 3), above, is satisfied.

- 5) Provides 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.
- 6) Limits “coercive control” to a victim with whom the person has or has had a sexual, dating, or spousal relationship.
- 7) Clarifies that it does not limit any remedy available to any person under the DVPA or any other provision of law.

Background

1) Elaborates on Existing Domestic Violence Laws that Apply to Psychological Abuse

The 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.” (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 physical injury or assault. (§ 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 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.)

Thus, the existing scheme governing domestic violence already encompasses mental abuse, and judicial precedents have held that this includes conduct that amounts to coercive control. This bill affirms and builds upon these precedents by setting forth criteria for identifying coercive control.

2) *Parameters to Limit this Bill’s Application to Clearly Abusive Behaviors*

A protective order implicates fundamental liberty rights, as a violation of its provisions is a crime (Penal Code § 273.6), and it is a factor that is weighed in child custody and visitation determinations (see §§ 3011, 3030, 3044.). Indeed, this bill specifically amends Section 3044, which establishes a rebuttable presumption against an award of child custody to a perpetrator of domestic violence, to expressly include coercive control as an example of domestic violence. Additionally, the Family Code definition of abuse informs the scope of admissible evidence in certain criminal proceedings, including expert testimony regarding the effects of intimate partner battering (Evid. Code § 1107(a), (c)), and evidence of a defendant’s commission of a domestic violence crime (Evid. Code § 1109(a), (c)). Thus, while it is essential to constrain the full spectrum of abusive conduct, any expansion of the scope of these provisions must be undertaken cautiously to limit the potential for unintended consequences.

Crucially, this bill establishes narrow parameters to limit the application of its provisions to clearly abusive behaviors. This bill provides that a person’s conduct constitutes coercive control only if all of the following are satisfied:

- The person intentionally, or with reckless disregard of the consequences, engages in a pattern of behavior that interferes with the will of the victim;

- The person intends to cause the victim severe emotional distress, or a reasonable person would know that the conduct 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.²

These parameters—a mental state, objective unreasonableness, causation, foreseeable harm, actual harm—are the types of elements commonly used in definitions governing torts, such as intentional infliction of emotional distress, and criminal provisions. These elements provide strong guardrails to help ensure that this bill will function as intended and not reach benign conduct that is ordinarily tolerated in relationships or that does not truly distress the person. Additionally, the requirement that the conduct be unreasonable under the circumstances helps to ensure that this bill will not be used against a victim who takes reasonable coercive actions to defend themselves against an abuser or to interfere with otherwise harmful behavior.

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

According to the Senate Appropriations Committee:

- 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*)

² Other countries and states have adopted legislation aimed at limiting or punishing coercive control. Michigan defines abuse as “any other specific act or conduct that imposes on or interferes with personal liberty or that causes a reasonable apprehension of violence.” (Mich. Comp. Laws § 600.2950(13).) Maine’s definition of abuse includes “compelling a person by force, threat of force or intimidation to engage in conduct from which the person has a right or privilege to abstain or to abstain from conduct in which the person has a right to engage.” (Me. Rev. Stat. Ann. tit. 19-A § 4002.) Colorado defines abuse to include “financial control, document control, and other types of control that make a victim more likely to return to an abuser due to fear of retaliation or inability to meet basic needs.” (Colo. Rev. Stat. Ann. § 13-14-101.) Hawaii provides relief for “extreme psychological abuse,” which is defined as an “intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs consistently or continually bothers the individual and that serves no legitimate purpose; provided that such a course of conduct would cause a reasonable person to suffer extreme emotional distress.” (Haw. Rev. Stat. Ann. § 13-14-101.)

- 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

SUPPORT: (Verified 6/19/20)

Los Angeles City Attorney's Office (source)
Crime Victims United of California
Elizabeth House
FreeFrom
Jenesse Center, Inc.
Pathways for Victims of Domestic Violence
Peace Over Violence
Project: PeaceMakers, Inc.
StrengthUnited
YWCA of San Gabriel Valley

OPPOSITION: (Verified 6/19/20)

California Association of Certified Family Law Specialists
California Public Defenders Association
Family Violence Appellate Project

ARGUMENTS IN SUPPORT: The author writes:

Coercive control refers to the pattern of harm used to isolate and dominate victims in intimate partner relationships. For decades, academics and advocates have included coercive control in their definitions of intimate partner violence, but laws on domestic violence have predominantly focused on discrete instances of physical assault to the exclusion of tactics of coercive control. Such tactics include deprivation of basic necessities, economic abuse, and control over daily activities that combine to reduce a victim's autonomy, resulting in severe emotional distress. This bill improves California's domestic violence laws by bringing a range of coercive behaviors under a single statutory framework situated in the Family Code, with associated benefits in criminal proceedings.

A coalition of organizations that work with survivors of domestic abuse writes:

For decades, academics and advocates have included coercive control in their definitions of intimate partner violence. However, California does not include a comprehensive definition of “coercive control” in any existing statute. Coercive control refers to the pattern of harm used to isolate and dominate victims in intimate partner relationships.

Empirical studies have shown psychological intimate partner violence is equally as damaging to women’s health as physical abuse. In 2015, the Center for Disease Control Violence Prevention Division found that partner control over the victim’s daily activities within intimate relationships could more than quintuple the odds of homicide.

The constant manipulation and surveillance, the gradual isolation away from family and friends, the limitations placed by the perpetrator on financial and economic resources, are all considered coercively controlling behaviors, making it nearly impossible for the survivors to escape abuse. The Center for Disease Control’s Division of Violence Prevention conducted a study in 2015 and found approximately 43.5 million women in the U.S. reported experiencing psychological aggression by an intimate partner during their lifetime.

ARGUMENTS IN OPPOSITION: This bill has elicited a range of concerns from stakeholders, with some arguing that it does not go far enough, others arguing that it could cause confusion or backfire, and still others arguing that it goes too far. To assuage some of these concerns, the author amended this bill in the Senate Judiciary Committee to clarify its scope and reiterate that this bill does not limit any remedy available to any person under the DVPA or any other provision of law.

Some organizations that assist survivors of domestic violence organizations and that are generally supportive of this bill’s concept have argued that this bill should not be limited to intimate partners. Some organizations also argue that limiting this bill’s application to unreasonable, intentional, or reckless conduct is insufficient to protect victims of coercive control. Family Violence Appellate Project, in opposition, argues that such provisions are not just insufficient, but could cause confusion or provoke a backlash from courts, resulting in diminished protections for victims. However, as noted above, this bill expressly clarifies that it does not limit remedies available under existing law.

The California Association of Certified Family Law Specialists opposes this bill based on concerns over its breadth and clarity, urging that it instead be amended simply to add to the definition of abuse in section 6203 the following: “To engage

in a pattern of coercive control that is unreasonable under the totality of the circumstances after considering the reasons for the behavior.” This approach is straightforward, but offers scant guidance to courts.

Finally, the California Public Defenders Association argues, in opposition, that this bill is overly broad and should be narrowed to intentional conduct instead of including instances in which the person recklessly disregards the consequences of their behavior.³ However, omitting from this bill’s scope reckless conduct that is unreasonable and results in severe emotional distress could let abusers off the hook if they claim that they were not deliberately trying to harm the victim. This would exacerbate the concerns of otherwise supportive organizations who argue that this bill should be more expansive.

Prepared by: Josh Tosney / JUD. / (916) 651-4113
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³ The existing definition of “abuse” under section 6203 provides that attempts to cause “bodily injury” are limited to those that are done “intentionally or recklessly.” That section, along with section 6320, does not apply a mental state requirement for the other enumerated forms of abuse, meaning that existing law generally operates by strict liability and looks only to the effect on the victim.