

Date of Hearing: August 12, 2020

ASSEMBLY COMMITTEE ON JUDICIARY  
Mark Stone, Chair  
SB 1141 (Susan Rubio) – As Amended August 6, 2020

PROPOSED CONSENT

**SENATE VOTE:** 40-0

**SUBJECT:** DOMESTIC VIOLENCE: DISTURBING THE PEACE AND COERCIVE CONTROL

**KEY ISSUE:** IN ORDER TO BETTER PROTECT SURVIVORS OF DOMESTIC VIOLENCE, SHOULD THE DEFINITION OF DISTURBING THE PEACE OF OTHERS, WHICH CAN BE PROHIBITED BY A PROTECTIVE ORDER UNDER THE DOMESTIC VIOLENCE PREVENTION ACT, BE CLARIFIED TO SPECIFICALLY INCLUDE, AMONG OTHER THINGS, COERCIVE CONTROL?

**SYNOPSIS**

*The Domestic Violence Prevention Act seeks to prevent acts of domestic violence and abuse and to provide for a separation of persons involved in domestic violence for a period sufficient to create safety. In addition to physical abuse, domestic abusers can subject their victims to psychological abuse and coercive control. These actions, which can include isolating the victims from friends and family, depriving them of basic necessities, or controlling their access to their finances and to services, can have just as devastating effects on these victims as physical assaults. Current law allows a court to issue a domestic violence protective order enjoining an abuser from disturbing the peace of the victim. Courts have held that disturbing the peace of the other party means, under the totality of the circumstances, destroying the other party's mental or emotional calm.*

*This bill seeks to better protect victims of domestic violence by, first, codifying language from case law on destroying the other party's mental or emotional calm. The bill also provides that disturbing the peace of another includes coercive control and provides a non-comprehensive list of examples of coercive control. Finally, the bill clarifies that disturbing the peace of the other party may be committed directly or indirectly. The author believes that these changes will improve California's domestic violence laws by better protecting victims from a range of harmful behaviors "used to isolate and dominate victims in intimate partner relationships."*

*The bill is sponsored by the Los Angeles City Attorney's Office and, as recently amended, supported by a broad range of organizations that assist survivors of domestic violence, including Family Violence Appellate Project, Disability Rights California, San Diego Domestic Violence Council, WEAVE, State Controller Betty Yee, and the Los Angeles District Attorney's Office. There is no known opposition to the bill as recently amended.*

**SUMMARY:** Expands the definition of disturbing the peace for which a court may issue a restraining order under the Domestic Violence Prevention Act (DVPA) to include, among other things, coercive control. Specifically, **this bill:**

- 1) States that the definition of “disturbing the peace of others,” for which a restraining order can be issued under the DVPA, refers to conduct that, based on the totality of the circumstances, destroys the other party’s mental or emotional calm. Provides that such conduct may be committed directly or indirectly, including through the use of a third party, by any method, or through any means including, but not limited to, telephone, online accounts, text messages, internet-connected devices, or other electronic technologies. Provides that such conduct includes, but is not limited to, coercive control, which is a pattern of behavior that in purpose or effect unreasonably interferes with a person’s free will and personal liberty. Examples of coercive control include, but are not limited to, unreasonably engaging in any of the following:
  - a) Isolating the other party from friends, relatives, or other sources of support;
  - b) Depriving the other party of basic necessities;
  - c) Controlling, regulating, or monitoring the other party’s movements, communications, daily behavior, finances, economic resources, or access to services; and
  - d) Compelling the other party by force, threat of force, or intimidation, including threats based on actual or suspected immigration status, to engage in conduct from which the other party has a right to abstain or to abstain from conduct in which the other party has a right to engage.
- 2) States that 1), above, does not limit any remedies available under the DVPA or any other provision of law.
- 3) Finds and declares that:
  - a) In times of natural disasters and crises, rates of interpersonal violence historically rise, especially among households experiencing significant financial strain.
  - b) The COVID-19 pandemic has proven this historical trend to be the reality for survivors of domestic violence as police chiefs nationwide reported increases in domestic violence assaults in the first two weeks after a national emergency was declared in March, also revealing more severe violence as compared with past years.
  - c) During the COVID-19 crisis, reports show this is a worst-case scenario for victims experiencing domestic violence, with the data showing the virus is being used as a scare tactic to keep victims isolated from their support systems, or even their children.
  - d) Shelter-in-place orders and other restrictions related to COVID-19 have also resulted in victims being isolated from family, friends, and their community.
  - e) While some jurisdictions have reported a drop in domestic violence calls, this does not necessarily equate to a reduction in domestic violence. Increased isolation of victims has created an environment where abuse, including coercive control, is more likely to go undetected and therefore unreported.

**EXISTING LAW:**

- 1) Authorizes a court, under the DVPA, to issue and enforce domestic violence restraining orders, including emergency protective orders (EPOs), temporary restraining orders (TROs) and longer-term or permanent restraining orders (also known as orders after hearing).

(Family Code Sections 6200 *et seq.* Unless stated otherwise, all further statutory references are to the Family Code.)

- 2) Permits a court to issue a domestic violence protective order, both as a temporary order and an order after hearing, enjoining a party from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, credibly impersonating, falsely personating, harassing, telephoning, destroying personal property, contacting, coming within a specified distance of, or disturbing the peace of the other party, and, in the discretion of the court, on a showing of good cause, of other named family or household members. (Section 6240 *et seq.*, Section 6320 *et seq.*, and Section 6340 *et seq.*)
- 3) Defines “abuse” under the DVPA 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) or engaging in enumerated harmful behaviors, including disturbing the peace of the other party. Specifically provides that “abuse” is not limited to the actual infliction of physical injury or assault. (Sections 6203, 6320.)

**FISCAL EFFECT:** As currently in print this bill is keyed fiscal.

**COMMENTS:** The Domestic Violence Prevention Act seeks to prevent acts of domestic violence and abuse and to provide for a separation of persons involved in domestic violence for a period sufficient to create safety. In addition to physical abuse, domestic abusers can subject their victims to psychological abuse and coercive control. These actions, which can include isolating the victims from friends and family, depriving them of basic necessities, or controlling their access to their finances and to services, can have just as devastating effects on these victims as physical assaults. Current law under the DVPA allows a court to issue a domestic violence protective order enjoining an abuser from disturbing the peace of the victim. Courts have held that disturbing the peace of the other party means, under the totality of the circumstances, destroying the other party’s mental or emotional calm.

This bill seeks to better protect victims of domestic violence by, first, codifying language from case law on destroying the other party’s mental or emotional calm. The bill also provides that disturbing the peace of another includes coercive control and provides a non-comprehensive list of examples of coercive control. Finally, the bill clarifies that disturbing the peace of the other party may be committed directly or indirectly.

In support of the bill, the author states:

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.

***Impacts of domestic violence are widespread.*** Domestic violence is a serious criminal justice

and public health problem most often perpetrated against women. (U.S. Department of Justice, *Nature and Consequences of Intimate Partner Violence: Findings from the National Violence against Women Survey* (2001).) According to the National Intimate Partner and Sexual Violence Survey, more than one in every three women and about one in every three men in the United States have experienced rape, physical violence, and/or stalking by an intimate partner in their lifetime. (Sharon Smith, *et al.*, *The National Intimate Partner and Sexual Violence Survey: 2015 Data Brief – Updated Release*, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, pp. 8-9 (Nov. 2018).) Over a third of all women in the U.S. have experienced some form of psychological aggression by an intimate partner during their lifetime, including 31 percent who experience some form of coercive control. (*Id.* at 21.) These abuses take various forms, but all of them exert a severe negative impact on the psychological and/or physical health of the victim.

***Coercive control and psychological abuse can be extremely dangerous to victims of domestic violence.*** According to Katie Ray-Jones, the National Domestic Violence Hotline’s Chief Executive, “[d]omestic violence is rooted in power and control.” (Laura Newberry & Nicole Santa Cruz, *Domestic abuse victims in ‘worst-case scenario’ during outbreak, providers say*, Los Angeles Times (March 24, 2020).) When abusers lose control of their intimate partners, they resort to a variety of tactics to subjugate them. The Center for Disease Control states that intimate partner violence may consist of physical violence, sexual violence, and psychological aggression, which includes expressive aggression (insulting, name calling) and coercive control (behaviors that involve monitoring, controlling, or threatening the victim). (*The National Intimate Partner and Sexual Violence Survey: 2010-2012 State Report* (April 2017), p. 14.) A fact sheet by the National Coalition Against Domestic Violence states that psychological abuse increases the trauma of physical and sexual abuse, and cites to studies that have demonstrated that psychological abuse independently causes long-term damage to a victim’s mental health, which may include “depression, post-traumatic stress disorder, suicidal ideation, low-self-esteem, and difficulty trusting others.” (National Coalition Against Domestic Violence, *Facts about Domestic Violence and Psychological Abuse*.) Additionally, “[s]ubtle psychological abuse is more harmful than either overt psychological abuse or direct aggression.” (*Ibid.*)

Coercive control is a pervasive form of abuse. Over 40 percent of people experience at least one form of coercive control in their lifetime. (*Ibid.*) The bill’s sponsor, the Los Angeles City Attorney’s Office, states that coercive control “is a form of domestic violence where a partner in an intimate relationship engages in conduct that significantly curtails a victim’s liberty rights, such as the freedom of association, movement, and access to service.” The term “coercive control” was coined by Dr. Evan Stark, a leading expert on domestic violence, who defines it as “an ongoing strategy of isolation of the victim from friends, family and children; control of access to resources such as transportation, money and food; and control of access to employment and education.” (Candel, Kristy, *Protecting the Invisible Victim: Incorporating Coercive Control in Domestic Violence Statutes* (Jan. 2016) Student Note, 54 Fam. Ct. Rev. 112, 114-115.) The effect of coercive control is to “strip away a sense of self, entrapping the victim in a world of confusion, contradiction, and fear.” (*Id.* at 115.) It may be inflicted concurrently with physical violence, but also can be afflicted alone.

Coercive control has arguably become even more apparent due to changes to everyday life associated with the COVID-19 pandemic that have led to some increased rates of domestic violence. Shelter-in-place orders, jobs losses, and school closures can deteriorate strained relationships and keep victims confined with abusers. Many victims find it more difficult to

report abuse to law enforcement, seek help, or escape to a safe location. A recent article in the *Los Angeles Times* described examples of pandemic-related coercive control: “One woman said her partner threatened to throw her out onto the street if she showed any symptoms of COVID-19. Another said her partner vowed to prevent her from seeking medical care if she became sick.” (Newberry & Santa Cruz, *Domestic abuse victims in ‘worst-case scenario’ during outbreak, providers say, supra.*)

***Existing domestic violence laws 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 [*Nadkarni*].) The DVPA enables a party to seek a protective or restraining order, which may be issued to protect a petitioner who presents “reasonable proof of a past act or acts of abuse.” (Section 6300.)

“Abuse” for purposes of the DVPA is broadly defined in terms of specified physical harms, but is not limited to actual infliction of physical injury or assault. (Section 6203.) “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.” (Section 6320.) “[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.) It is not necessary for there to be a single act that is sufficient to justify the issuance of a protective order. Rather the court must consider “whether the totality of the circumstances support the issuance” of the protective order. (*McCord v. Smith*, 2020 Cal.App.LEXIS 583, 13.)

Thus, courts have concluded that “abuse” within the meaning of the DVPA includes certain forms of mental abuse. (*Nadkarni, 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].) Most recently, in *McCord v. Smith, supra*, 2020 Cal.App.LEXIS 583, 13, just published in June, the court found that an overall series of actions, including repeatedly showing up at the petitioner’s house uninvited, staying involved in her unrelated financial matters, sending her text messages, and send her a copy of her nursing license with the comment “Is this yours?,” showed that the respondent intended to exercise dominion and control over the petitioner and threatened her peace of mind.

*Rodriguez v. Menjivar* (2015) 243 Cal.App.4th 816 also 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 817–818.) 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.)

***This bill clarifies the definition of "disturbing the peace of others."*** This bill affirms and builds upon case law by setting forth criteria for identifying disturbing the peace of others and coercive control. First, following the case law discussed above, the bill provides that the definition of "disturbing the peace of others" for which a restraining order can be issued under the DVPA, refers to conduct that, under the totality of the circumstances, destroys the other party's mental or emotional calm. This language is taken directly from recent cases. Second, the bill states broadly that such conduct may be committed in any fashion, including directly or indirectly, and by any method, or through any means. Those methods or means include, but are not limited to, use of online accounts, text messages, internet-connected devices, or other electronic technologies. While these provisions are consistent with existing case law, by codifying them, the Legislature is making clear that judges should broadly recognize instances of disturbing the peace of others as what it is – domestic violence that can be prevented through issuance of a protective order.

The bill then provides that disturbing the peace of others includes, but is not limited to, coercive control, and defines coercive control as a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty. Again, this is consistent with, and builds upon, existing case law. The bill sets forth a non-exhaustive list of examples of coercive control that include unreasonably engaging in any of the following:

- Isolating the other party from friends, relatives, or other sources of support.
- Depriving the other party of basic necessities.
- Controlling, regulating, or monitoring the other party's movements, communications, daily behavior, finances, economic resources, or access to services.
- Compelling the other party by force, threat of force, or intimidation, including threats based on actual or suspected immigration status, to engage in conduct from which the other party has a right to abstain or to abstain from conduct in which the other party has a right to engage.

These examples should help courts recognize coercive control when hearing these cases, but should in no way limit what a court may consider coercive control to just these instances.

Finally, the bill specifically states that it does not limit any remedies available under the DVPA or any other provision of law. This provision ensures that the bill builds on existing law and is not, in any way, meant to reduce the protections available under existing law to victims of domestic violence, which had been a concern to some advocates assisting domestic violence victims.

***ARGUMENTS IN SUPPORT:*** The bill's supporters write of the importance of the legislation:

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.

Adds WEAVE and other supporters:

Current approaches to domestic violence have failed to protect a substantial number of victims because they do not reflect how domestic violence is routinely perpetrated. Unique, lasting harms suffered by domestic violence victims are often the result of isolation and deprivation of liberty achieved through a pattern of power and control; abuse is not simply limited to discrete physical acts of violence.

The term "coercive control" encompasses a wide range of behaviors through which an abuser dominates and controls every aspect of a victim's life. . . .

Several states across the country have already recognized coercive control as a category of domestic abuse. These states include Alabama, Colorado, Delaware, Illinois, Maine, Missouri, Nevada, Washington, and most recently, New York. This trend shows the importance of aligning California law with the harm that coercive control inflicts on victims. Additionally, the impacts of the current COVID-19 pandemic make this legislation particularly timely as greater numbers of victims face additional barriers to safety caused by economic strain, shelter in place orders and limits on ways they can access community-based supportive services.

**Prior Legislation:** SB 273 (Rubio), Chap. 546, Stats. 2019, would have required police officer training to include an assessment of "coercive control that may lead to lethal violence," but was amended to exclude that provision.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Los Angeles City Attorney's Office (sponsor)  
 City of Los Angeles  
 Crime Victims United of California  
 California Family Justice Center Network  
 California Protective Parents Association  
 Center for the Pacific Asian Family  
 Disability Rights California  
 Elizabeth House  
 Family Violence Appellate Project  
 Family Violence Law Center  
 Get Jewish Divorce Justice (if amended)  
 FreeFrom

Jenesse Center, Inc.  
Los Angeles Center for Law and Justice  
Los Angeles District Attorney's Office  
Pathways for Victims of Domestic Violence  
Peace Over Violence  
Project: Peacemakers, Inc.  
San Diego Domestic Violence Council  
State Controller Betty T. Yee  
StrengthUnited  
WEAVE  
YWCA of San Gabriel Valley

**Opposition**

None on file

**Analysis Prepared by:** Leora Gershenzon / JUD. / (916) 319-2334