
UNFINISHED BUSINESS

Bill No: SB 1141
Author: Rubio (D), et al.
Amended: 8/6/20
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

SENATE FLOOR: 40-0, 6/25/20

AYES: Allen, Archuleta, Atkins, Bates, Beall, Borgeas, Bradford, Caballero,
Chang, Dahle, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Grove,
Hertzberg, Hill, Hueso, Hurtado, Jackson, Jones, Leyva, McGuire, Melendez,
Mitchell, Monning, Moorlach, Morrell, Nielsen, Pan, Portantino, Roth, Rubio,
Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

ASSEMBLY FLOOR: Not available

SUBJECT: Domestic violence: coercive control

SOURCE: Los Angeles City Attorney's Office

DIGEST: This bill codifies and elaborates on case law defining when a restraining order under the Domestic Violence Prevention Act ([DVPA] Fam. Code § 6200 et seq.¹) may be issued because a person was “disturbing the peace of the other party” (§ 6320), which includes coercive control.

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

Assembly Amendments eliminate opposition concerns by recasting and refining the bill to codify case law, provide detailed guidance to courts, and apply the bill's provisions to anyone covered under the DVPA

ANALYSIS:

Existing law:

- 1) Establishes the DVPA, 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).
- 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 any behavior that has been or could be enjoined pursuant to Section 6320, which provides that a court may issue an ex parte order enjoining a party from, among other abusive behaviors, “disturbing the peace of the other party.” (§§ 6203(a).)
- 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) Makes certain findings and declarations relating to the impact of COVID-19 on victims of domestic violence.
- 2) Drawing on relevant case law, defines the term "disturbing the peace of the other party" under Section 6320 as conduct that, based on the totality of the circumstances, destroys the mental or emotional calm of the other party.
- 3) Specifies that such conduct may be committed directly or indirectly, including through the use of a third party, and by any method or through any means including, but not limited to, telephone, online accounts, text messages, internet-connected devices, or other electronic technologies.
- 4) Specifies that such conduct includes, but is not limited to, coercive control, defined as a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty.
- 5) States that 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.
 - 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.

- 6) States that it does not limit any remedies available under any provision of law.

Comments

1) *Coercive control*

Coercive control is a pervasive form of abuse. Over 40 percent of people experience at least one form of coercive control in their lifetime.² This 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."³ The effect of coercive control is to "strip away a sense of self, entrapping the victim in a world of confusion, contradiction, and fear."⁴ It may be inflicted concurrently with physical violence but often is not.

2) *Psychological abuse under the DVPA*

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.)

² *Facts about Domestic Violence and Psychological Abuse*, available at https://assets.speakcdn.com/assets/2497/domestic_violence_and_psychological_abuse_ncadv.pdf (as of Aug. 30, 2020).

³ Candel, Kristy, *Protecting the Invisible Victim: Incorporating Coercive Control in Domestic Violence Statutes* (Jan. 2016) Student Note, 54 Fam. Ct. Rev. 112, 114-115.

⁴ *Id.* at 115.

“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, 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.) 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 [*McCord*].)

Thus, courts have concluded that “abuse” under the DVPA includes mental abuse that amounts to coercive control. (See *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].) Most recently, in *McCord*, 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 presents another 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 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.)

3) *Codifies case law and provides guidance to courts*

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, this 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.

This bill also provides that disturbing the peace of others includes, but is not limited to, coercive control, defined 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. This bill sets forth a non-exhaustive list of examples of coercive control that should help courts recognize coercive control when hearing these cases and in no way limit what a court may consider coercive control to just these instances. Finally, this bill specifically states that it does not limit any remedies available under the DVPA or any other provision of law. This provision ensures that this 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.

As it left the Senate, this bill was slightly narrower, prompting some stakeholders who supported this bill’s aims to argue that it could perversely result in a narrowing of the law. The *McCord* case, decided in June, reaffirmed the broad approach courts have adopted in determining whether a person’s actions disturb the peace of the victim. The author, stakeholders, and Assembly Judiciary Committee worked closely to resolve all significant concerns surrounding the bill by effectively codifying this line of cases and providing courts additional guidance on the types of circumstances that amount to

coercive control or otherwise destroy a person's mental or emotional calm.⁵
This elegant solution removed all opposition.

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

According to the Assembly Appropriations Committee, minor and absorbable costs to the trial courts.

SUPPORT: (Verified 8/29/20)

Los Angeles City Attorney's Office (source)
State Controller Betty T. Yee
California Family Justice Center Network
California Protective Parents Association
Center for the Pacific Asian Family
City of Los Angeles
Crime Victims United of California
Disability Rights California
Elizabeth House
Family Violence Appellate Project
Family Violence Law Center
FreeFrom
Get Jewish Divorce Justice
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
StrengthUnited
WEAVE
YWCA of San Gabriel Valley

OPPOSITION: (Verified 8/29/20)

None received

⁵ Additionally, the bill is no longer limited to intimate partners and now applies to any person covered under the DVPA, which may include children, siblings, cohabitants, and parents. This too does not change existing law, as the disturbing the peace standard under section 6320 is not limited to intimate partners.

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.

Prepared by: Josh Tosney / JUD. / (916) 651-4113
8/30/20 18:16:09

**** END ****