
THIRD READING

Bill No: SB 374
Author: Min (D) and Rubio (D), et al.
Amended: 4/20/21
Vote: 21

SENATE JUDICIARY COMMITTEE: 11-0, 3/23/21

AYES: Umberg, Borgeas, Caballero, Durazo, Gonzalez, Hertzberg, Jones, Laird, Stern, Wieckowski, Wiener

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Protective orders: reproductive coercion

SOURCE: Author

DIGEST: This bill provides that reproductive coercion is a form of domestic violence for which a restraining order may be granted under the Domestic Violence Protection Act.

Senate Floor Amendments of 4/20/21 replace “excessively” with “unreasonably” and add a co-author.

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, specific acts of abuse. (§§ 6218, 6300 et seq.)
- 2) Defines “abuse” to include physical injury, assault, and psychological abuse, including disturbing the peace of the other party, which is conduct that, based on the totality of the circumstances, destroys the mental or emotional calm of

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

the other party. (§§ 6203, 6320(a), (c).) Such conduct includes coercive control, which is a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty. (§ 6320(c).) Provides examples of coercive control, including isolating the person, depriving them of necessities, controlling, regulating or monitoring them, or using force, threats or intimidation, as specified. (*Id.*)

- 3) Incorporates the DVPA's definition of abuse for purposes of child custody and visitation determinations (§§ 3011(a)(2)(A), 3030(c)(2) & 3044(d)(1)), the statute of limitations for recovery of damages suffered as a result of domestic violence (Code Civ. Proc. § 340.15), the admissibility of expert testimony regarding intimate partner battering and its effects (Evid. Code § 1107(a), (c)), and the admissibility of evidence of a defendant's prior acts of domestic violence in a criminal action in which the defendant is accused of an offense involving domestic violence (Evid. Code § 1109(a), (d)(3)).
- 4) 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) Adds "reproductive coercion" as an additional example of coercive control for purposes of the definition "abuse" under the DVPA.
- 2) Defines reproductive coercion as controlling the reproductive autonomy of another through force, threat of force, or intimidation, which may include unreasonably pressuring the other party to become pregnant, deliberately interfering with contraception use or access to reproductive health information, or using coercive tactics to control, or attempt to control, pregnancy outcomes.

Background

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), and courts are required to construe it broadly in order to accomplish the statute's purpose (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1498 [*Nadkarni*]). 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.)

Victims of domestic violence who need immediate protection may seek a temporary restraining order, which may be decided *ex parte* (without notice to the respondent) and generally must be issued or denied the same court day the petition is filed. (*See* §§ 241, 6320 *et seq.*) Because the restrained party would not have had the opportunity to defend their interests, *ex parte* orders are short in duration. If a noticed hearing is not held within 21 days (or 25 if the court finds good cause), a temporary restraining order is no longer enforceable, unless a court grants a continuance. (§§ 242 & 245.) The respondent must be personally served with a copy of the petition, the temporary restraining order, if any, and the notice of the hearing on the petition, at least five days before the hearing. (§ 243.) After a duly noticed hearing, the court is authorized to extend the original temporary restraining order for up to five years, which may then be renewed. (§§ 6302, 6340, 6345.) Additionally, a protective order may be issued in a judgement entered in a proceeding for dissolution of marriage, nullity of marriage, legal separation of the parties, or in a parentage action. (§ 6360.)

The linchpin of this scheme is Section 6203’s definition of “abuse,” which encompasses assault, physical injury, and psychological abuse. Section 6203 incorporates section 6320, which enumerates several forms of abuse, including “stalking, threatening, ... harassing, telephoning, ... contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party.” (§ 6320(a).) Courts have construed this latter phrase broadly in protecting survivors from mental abuse. (*See McCord v. Smith* (2020) 51 Cal.App.5th 358 [showing up at victim’s house, interfering with her financial matters, sending her threatening text messages]; *Nadkarni, supra*, 173 Cal.App.4th at 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 [acts of isolation and control, threats].)

Such conduct generally can be categorized as a long-recognized form of domestic abuse known as “coercive control”—“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,”² the effect of which is to “strip away a sense of self, entrapping the victim in a world of confusion, contradiction, and fear.”³ This form of psychological abuse increases the trauma of physical and sexual abuse, and can independently cause long-term damage to a victim’s mental health, including “depression, post-traumatic stress disorder, suicidal ideation, low-self-esteem, and difficulty trusting others.”⁴ Additionally, “[s]ubtle psychological abuse is more harmful than either overt psychological abuse or direct aggression.”⁵

Last session, California expressly recognized coercive control as a form of domestic violence in SB 1141 (Rubio, Chapter 248, Statutes of 2020). Building on the precedents described above, the bill defined “disturbing the peace of the other party” to include “conduct that, based on the totality of the circumstances, destroys the mental or emotional calm of the other party,”⁶ which in turn includes coercive control, “a pattern of behavior that in purpose or effect unreasonably interferes with a person’s free will and personal liberty.” (§ 6320(c).)

This bill adds “reproductive coercion” as an additional example of coercive control for purposes of the definition “abuse” under the DVPA. This bill defines reproductive coercion as controlling the reproductive autonomy of another through force, threat of force, or intimidation, which may include unreasonably pressuring the other party to become pregnant, deliberately interfering with contraception use or access to reproductive health information, or using coercive tactics to control, or attempt to control, pregnancy outcomes.

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

SUPPORT: (Verified 4/20/21)

California Partnership to End Domestic Violence
California Women’s Law Center
Family Violence Appellate Project
Los Angeles County Bar Association—Family Law Section
NARAL Pro-Choice California

² Candel, Kristy, *Protecting the Invisible Victim: Incorporating Coercive Control in Domestic Violence Statutes* (Jan. 2016) Student Note, 54 Fam. Ct. Rev. 112, 114-115.

³ *Id.* at 115.

⁴ *Facts about Domestic Violence and Psychological Abuse*, National Coalition Against Domestic Violence, https://assets.speakcdn.com/assets/2497/domestic_violence_and_psychological_abuse_ncadv.pdf (as of Mar. 12, 2021).

⁵ *Id.*

⁶ “[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.)

Planned Parenthood Affiliates of California
University of California, Irvine School of Law Domestic Violence Clinic

OPPOSITION: (Verified 4/20/21)

None received

ARGUMENTS IN SUPPORT:

The author writes:

In the midst of the COVID-19 pandemic, reports of domestic violence in California have surged, highlighting the need for the law to remedy multiple forms of domestic violence. Now, more than ever, we must update our legal system so that it adequately addresses the real challenges experienced by domestic violence survivors. Despite changes in recent years to update our laws in California, our codes do not yet recognize the significant role that reproductive coercion plays in domestic violence, and how these types of abuse endanger the lives and freedom of survivors. SB 374 will provide critical clarity to the Domestic Violence Prevention Act (DVPA) by adding reproductive coercion. Although the term reproductive coercion may be unfamiliar to some, this abusive behavior is far more common than many realize. Research shows us that many survivors of abuse also experience reproductive coercion, which includes, but is not limited to, interference with contraception use and pregnancy outcomes. We also know that reproductive coercion has a wide array of consequences for victimized individuals. Consequences include unintended pregnancies, coerced or late-term abortions, increased sexually transmitted infections, and increased levels of depression, substance abuse, and suicidality. By recognizing these actions as abuse and stating clearly that control over your reproductive decisions are central to your autonomy, safety and security, SB 374 DVPA will help survivors seeking justice and protection.

The California Partnership to End Domestic Violence states:

Reproductive coercion is experienced by many domestic violence survivors. According to a 2010 study, approximately 20% of women age 16-29 seeking care at five family planning clinics in Northern California who had a history of domestic violence and abuse also experienced pregnancy coercion, and 15% reported birth control sabotage. An August 2019 study of 550 sexually active high school females found that nearly one in eight had experienced reproductive coercion in the past three months. Consequences of reproductive coercion include unintended pregnancies, increased sexually transmitted infections,

interference with reproductive health decisions, and increased levels of depression, substance abuse, and suicidality.

Prepared by: Josh Tosney / JUD. / (916) 651-4113
4/21/21 15:12:14

****** END ******