

Date of Hearing: June 8, 2021

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
SB 374 (Min and Rubio) – As Amended April 20, 2021

SENATE VOTE: 37-0

SUBJECT: PROTECTIVE ORDERS: REPRODUCTIVE COERCION

KEY ISSUE: IN ORDER TO BETTER PROTECT SURVIVORS OF DOMESTIC VIOLENCE, SHOULD THE DEFINITION OF COERCIVE CONTROL, BE EXPANDED TO SPECIFICALLY INCLUDE REPRODUCTIVE COERCION?

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 necessities, and controlling their access to finances and 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. Last year, in SB 1141 (Rubio), Chap. 248, Stats. 2020, the Legislature specifically provided that disturbing the peace of another includes coercive control and provided a non-comprehensive list of examples of coercive control.

This bill would add another example of coercive control to the law: something known as reproductive coercion, which is defined as controlling the reproductive autonomy of another through force, threat of force, or intimidation, which may include excessively 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.

This bill is supported by California Partnership to End Domestic Violence, California Women's Law Center, NARAL Pro-Choice California, and University of California, Irvine School of Law Domestic Violence Clinic, and other advocacy groups. It has no known opposition.

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

- 1) Adds "reproductive coercion" as an additional example of coercive control which disturbs the peace of another and for which a restraining order may be granted 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.

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.)
- 4) 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. (Section 6203 (c)).

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

COMMENTS: The Domestic Violence Prevention Act (DVPA) 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 finances and 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. Last year, in SB 1141 (Rubio), Chap. 248, Stats. 2020, the Legislature specifically provided that disturbing the peace of another includes coercive control and provided a non-comprehensive list of examples of coercive control.

This bill would add another example of coercive control to the law known as reproductive coercion, which is defined as controlling the reproductive autonomy of another through force, threat of force, or intimidation, which may include excessively 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. The author of this bill writes in support:

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 will help survivors seeking justice and protection.

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 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 deteriorated strained relationships and kept victims confined with abusers. Many victims found it more difficult to report abuse to law enforcement, seek help, or escape to a safe location. An 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.*)

Background on existing domestic violence laws surrounding psychological abuse and coercive control. 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.)

Victims of domestic violence who need immediate protection may seek a temporary restraining order, which may be issued on an ex parte basis (without notice to the respondent) and generally must be issued or denied the same court day the petition is filed. (Sections 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 days if the court finds good cause), a temporary restraining order is no longer enforceable, unless a court grants a continuance. (Family Code Sections 242 and 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. (Section 243.) After a duly noticed hearing, the court may extend the original temporary restraining order for up to five years, which may then be renewed. (Sections 6302, 6340, 6345.)

"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, including threats, stalking, annoying phone calls, vandalism, and, most relevant to this bill, "disturbing the peace of the other party." (Section 6320.)

Last session, California recognized coercive control as a form of domestic violence in SB 1141 (Rubio), Chap. 248, Stats. 2020. Building on case law precedents in which the courts have concluded that "abuse" within the meaning of the DVPA includes certain forms of mental abuse that oftentimes lead to coercion (*see, e.g., 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 p. 1499 [accessing and disclosing a person's private emails]) SB 1141 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," 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." (Family Code Section 6320 (c).) That bill provided nonexhaustive examples of coercive behavior, including:

- 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; and
- 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.

Background on reproductive coercion. Reproductive and sexual coercion broadly encompasses behaviors aimed to maintain power and control related to reproductive health in a relationship by someone who is, was, or wishes to be involved in an intimate or dating relationship with an adult or adolescent. Most forms of behavior used to maintain power and control in a relationship impacting reproductive health disproportionately affect females. There are, however, some forms

of reproductive and sexual coercion that males experience as well. Two common types of reproductive coercion, include birth control sabotage and pregnancy pressure and coercion. Birth control sabotage is defined as active interference with a partner's contraceptive methods. Examples of birth control sabotage include: hiding, withholding, or destroying a partner's birth control pills; breaking or poking holes in a condom on purpose or removing it during sex in an explicit attempt to promote pregnancy; failure to withdraw when that was the agreed upon method of contraception; pulling out vaginal rings; and tearing off contraceptive patches. (Linda Chamberlin and Rebecca Levenson, *Addressing Intimate Partner Violence Reproductive and Sexual Coercion: A Guide for Obstetric, Gynecologic, Reproductive Health Care Settings* (2013), at pp. 6-7, available at <https://www.futureswithoutviolence.org/userfiles/file/HealthCare/Reproductive%20Health%20Guidelines.pdf>.)

Birth control sabotage has been well documented in multiple studies. Among teen mothers on public assistance who had experienced recent intimate partner violence (IPV), 66 percent reported birth control sabotage by a dating partner. (Jody Raphael, *Teens Having Babies: The Unexplored Role of Domestic Violence*, The Prevention Researcher (2005), available at <https://pubmed.ncbi.nlm.nih.gov/16736994/>.) Among women with abusive partners, 32 percent reported that they had been verbally threatened when they tried to negotiate condom use. (Gina Wingood and Ralph DiClemente, *The Effects of An Abusive Primary Partner on Condom Use and Sexual Negotiation Practices of African-American Women*, American Journal of Public Health (1997), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1380941/>.)

Further, women who have experienced IPV are more likely to report a lack of birth control use because of a partner's unwillingness to use birth control or desire for pregnancy. Abused women are also more likely to not use birth control due to affordability and are more likely to have used emergency contraception when compared to non-abused women. Similar to other forms of controlling behavior in abusive relationships, partners interfere with women's birth control use as a means to control them. (Rebekah Gee *et al.*, *Power Over Parity: Intimate Partner Violence and Issues of Fertility Control*, American Journal of Obstetrics & Gynecology (2009), available at <https://pubmed.ncbi.nlm.nih.gov/19564020/>.)

Recent research conducted by the Harvard School of Public Health, University of California at Davis School of Medicine, and Futures indicates that a significant portion of women and adolescent girls seeking reproductive health care services have experienced some form of IPV and/or reproductive and sexual coercion. In family planning clinics, 15 percent of female patients with a history of physical and/or sexual IPV reported birth control sabotage. (Elizabeth Miller *et al.*, *Pregnancy Coercion, Intimate Partner Violence, and Unintended Pregnancy*, Contraception (2010), available at <https://pubmed.ncbi.nlm.nih.gov/20227548/>.)

Another major form of reproductive coercion is pregnancy pressure. Pregnancy pressure involves behaviors that are intended to pressure a partner to become pregnant or terminate a pregnancy when they do not wish to do so. Pregnancy coercion involves coercive behaviors such as threats or acts of violence if the partner does not comply with their partner's wishes regarding the decision of whether to terminate or continue a pregnancy. Examples of pregnancy pressure and coercion include:

- Threatening to leave a partner if they do not become pregnant;
- Threatening to hurt a partner who does not agree to become pregnant;

- Forcing a partner to carry to term against their wishes through threats or acts of violence;
- Forcing a partner to terminate a pregnancy when they do not want to do so; and
- Injuring a partner in a way that they may have a miscarriage. (Chamberlin and Levenson, *Addressing Intimate Partner Violence Reproductive and Sexual Coercion: A Guide for Obstetric, Gynecologic, Reproductive Health Care Settings*, *supra*.)

Further, the Iowa Supreme Court recently held, with respect to control of pregnancy outcomes and a woman's right to choose:

Battered and abused women are often carefully monitored by their abuser. In order to maintain control, abusers check the mileage on the woman's car, nail doors and windows shut, and call the woman at home or at work multiple times during the day. Abusers often check insurance claims and credit card statements, so a victim of domestic violence may need to obtain cash to pay for the procedure. Abusers limit communications to family and friends, so a woman may not have access to people who can loan money or provide transportation. Victims of domestic violence also must keep the pregnancy and decision to terminate a secret from their abusers, so women must manage to overcome all of the above hurdles as quickly as possible, before the symptoms of pregnancy become visible. Managing to go to a doctor's appointment or clinic in secret, even for a single visit, therefore requires significant planning and resources. (*Planned Parenthood of the Heartland v. Reynolds ex re. State* (Iowa 2018) 915 N.W.2d 206, 220.)

This bill adds reproductive coercion as an example of coercive control. In its broadest sense, reproductive coercion involves abusive control over a person's reproductive healthcare decision making in order to exert power over them. Studies have shown a clear link between intimate partner violence and reproductive coercion. For instance, in a survey of 3,000 callers to the National Domestic Violence Hotline, 25 percent of the callers reported having experienced reproductive coercion: their partners would either prohibit them from using birth control or sabotage their birth control methods. (Nat'l Domestic Violence Hotline, *1 in 4 Callers to the National Domestic Violence Hotline Reported Birth Control Sabotage and Pregnancy Coercion* (Feb. 15, 2011), available at <https://www.thehotline.org/news/1-in-4-callers-to-the-national-domestic-violence-hotline-report-birth-control-sabotage-and-pregnancy-coercion/>.)

This bill affirms and builds upon existing law by expressly recognizing reproductive coercion in statute. Family law litigants are overwhelmingly self-represented, therefore providing clarity in the Family Code is especially important. By codifying reproductive coercion as a form of coercive control, the Legislature is clarifying that judges should broadly recognize instances of reproductive coercion as domestic violence that can be prevented through issuance of a protective order.

The bill then provides that reproductive coercion includes but is not limited to:

- Unreasonably pressuring the other party to become pregnant;
- Deliberately interfering with contraception use or access to reproductive health information; and
- Using coercive tactics to control, or attempt to control, pregnancy outcomes.

These examples should help courts recognize reproductive coercion when hearing these cases, but in no way limit what a court may consider as reproductive coercion.

ARGUMENTS IN SUPPORT: The UC Irvine School of Law, Domestic Violence Law Clinic and other advocacy groups write in support:

Reproductive coercion remains unnamed within our current definition of domestic abuse in the DVPA, yet is a central part of many survivors' experiences of abuse. According to a 2010 study, approximately 20% of women age 16-29 who sought care at five family planning clinics in Northern California and reported a history of domestic violence and abuse had also experienced pregnancy coercion, and 15% reported birth control sabotage. An August 2019 study of 550 sexually active high school women found that nearly one in eight had experienced reproductive coercion in the past three months.

Reproductive coercion has a wide array of consequences for victimized individuals.

Consequences include unintended pregnancies, increased sexually transmitted infections, interference with reproductive health decisions, and increased levels of depression, substance abuse, and suicidality.

SB 374 will ensure that judges—who have significant discretion in issuing Temporary and Permanent Domestic Violence Restraining Orders—recognize that the conduct survivors describe is legally defined as abuse.

REGISTERED SUPPORT / OPPOSITION:

Support

California Partnership to End Domestic Violence
 California Women's Law Center
 Family Violence Appellate Project
 Fem Dems of Sacramento
 Los Angeles County Bar Association - Family Law Section
 NARAL Pro-Choice California
 National Health Law Program
 Planned Parenthood Affiliates of California
 University of California, Irvine School of Law Domestic Violence Clinic
 Women's Transitional Living Center

Opposition

None on file

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