

SENATE THIRD READING  
SB 374 (Min and Rubio)  
As Amended April 20, 2021  
Majority vote

## 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.

### Major Provisions

- 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.

## 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 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), Chapter 248, Statutes 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.

*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." (Family Code 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. (Family Code 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. (Family Code 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. (Family Code 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. (Family Code 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." (Family Code Section 6320.)

Last session, California recognized coercive control as a form of domestic violence in SB 1141 (Rubio), Chapter 248, Statutes of 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:

- 1) Isolating the other party from friends, relatives, or other sources of support;
- 2) Depriving the other party of basic necessities;
- 3) Controlling, regulating, or monitoring the other party's movements, communications, daily behavior, finances, economic resources, or access to services; and
- 4) 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% 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% 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/>.)

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.

*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. 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.

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

- 1) Unreasonably pressuring the other party to become pregnant;
- 2) Deliberately interfering with contraception use or access to reproductive health information; and
- 3) 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.

#### **According to the Author**

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.

### **Arguments in Support**

The University of California, 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.

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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.

### **Arguments in Opposition**

No opposition on file.

## **FISCAL COMMENTS**

According to the Assembly Appropriations analysis, minor and absorbable costs to the trial courts to consider whether to issue a domestic violence restraining order based on reproductive coercion. Existing law currently permits a court to issue a DVRO where there is evidence of coercive control based on other conduct that may include conduct defined as "reproductive coercion." This bill expands what constitutes coercive control.

**VOTES****SENATE FLOOR: 37-0-3**

**YES:** Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener, Wilk

**ABS, ABST OR NV:** Hertzberg, Limón, Stern

**ASM JUDICIARY: 9-1-1**

**YES:** Stone, Chau, Chiu, Davies, Lorena Gonzalez, Holden, Kalra, Maienschein, Reyes

**NO:** Smith

**ABS, ABST OR NV:** Kiley

**UPDATED**

VERSION: April 20, 2021

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FN: 0000940