

Date of Hearing: June 23, 2026

ASSEMBLY COMMITTEE ON JUDICIARY

Ash Kalra, Chair

SB 1192 (Rubio) – As Amended June 17, 2026

As Proposed to be Amended

SENATE VOTE: 33-0

SUBJECT: DOMESTIC VIOLENCE: RECLAIM ACT

SYNOPSIS

The trauma inflicted on survivors by domestic violence cannot be overstated. Survivors already face the daunting task of healing physically and emotionally, often dealing with post-traumatic stress disorder symptoms and severe injuries. All too often, survivors endure additional trauma when dealing with civil litigation against their abuser, particularly when their abuser engages in litigation abuse intended to harass or control the survivor. While the litigation may be entirely frivolous, the survivor nevertheless must expend precious time and resources to respond. Existing law already provides an avenue for protected parties to a domestic violence restraining order (DVRO) to petition the court to declare the restrained party a “vexation litigant.” When a court grants this motion, the restrained party must get approval from the court prior to filing litigation against the protected party. This statute however, only applies to initial filings, and leaves the ability for an abuser to continue to harass the survivor via discovery requests. This bill aims to further shield survivors of domestic abuse from harassment via litigation abuse by authorizing a victim of domestic violence, as defined, to file a motion for a prefiling order against the other party in any litigation and requires the court to grant that motion if it finds that the responding party committed domestic violence against the victim and that they are pursuing frivolous or abusive litigation against the survivor. As currently drafted, the bill allows a survivor to file a request for a prefiling order in any litigation pending in the state, regardless of whether they themselves are a party to the proceeding. Typically to file a petition in a proceeding, a person must be a party. Additionally, the bill requires a court to grant a petition for a prefiling order if specified conditions are met. As currently in print the language seems to require the court to grant an order if the perpetrator has, at any point, filed abusive litigation or discovery against the victim, regardless of when such filings occurred. Finally, unlike the existing vexatious litigant framework, this bill does not provide a mechanism for an enjoined party to vacate the prefiling order. Recognizing that these elements in conjunction unintentionally impose overly austere and overbroad restrictions on litigants, the author is proposing a series of amendments. These amendments are incorporated into the SUMMARY and discussed in further detail in the COMMENTS. The author and sponsors contend that this protection closes loopholes in existing law that unjustifiably expose survivors to being retraumatized at the hands of their abusers.

This bill is sponsored by the California Partnership to End Domestic Violence (CPEDV) and enjoys support from legal services providers, local governments, women’s shelters, and the American Association of University Women California and San Jose chapters. There is no known opposition.

SUMMARY: Enacts the Reclaim Act (Act) to address abusive litigation by perpetrators against victims of domestic violence in civil proceedings. Specifically, **this bill:**

- 1) Makes findings and declarations on behalf of the Legislature regarding the threat of domestic violence and the risk of abusive litigation facing domestic violence survivors, including the following:
 - a) Establishes that it is the intent of the Legislature to promote the health and safety of domestic violence survivors and their children; prevent abusive litigation tactics that interfere with the Legislature's intent to protect domestic violence victims; and empower domestic violence survivors and allow them to reclaim and maintain their freedom from their abusers who engage in domestic abuse.
 - b) Notwithstanding any other law, every victim of domestic violence has the following basic rights in every civil, family, and small claims court:
 - i) To be treated with fairness and respect for their privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the court process.
 - ii) To be safe, secure, free from abuse, and reasonably protected.
 - iii) To prevent the disclosure of confidential information or records, which could be used to locate or harass the victim or the victim's family, or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law.
 - iv) To be informed of the rights enumerated above, as well as the rights and remedies available under the Domestic Violence Prevention Act.
 - v) Establishes that a victim, the attorney of a victim, or a lawful representative of the victim may enforce the rights enumerated above in any trial or appellate court with jurisdiction over the case as a matter of right, and requires the court to act promptly on such a request.
 - vi) Specifies that the section does not create any cause of action for compensation or damages against the State, any political subdivision of the State, any officer, employee, or agent of the State or of any of its political subdivisions, or any officer or employee of the court.
 - vii) Prohibits the recognition or granting of the rights to victims from being construed to deny or disparage other rights possessed by victims of domestic violence.
- 2) Defines various terms, including the following, for purposes of the Act:
 - a) "Abusive discovery" means the use of discovery processes by a perpetrator of domestic violence to attack, harass, intimidate, coercively control, or maintain contact with the victim of their domestic violence by exerting power over them, forcing them to have contact, financially burdening them with excessive discovery, degrading and insulting them in legal papers, unduly delaying the court process and final resolution of important issues, or dissuading them from pursuing legal protection.

- b) “Enjoined party” means the person who has committed domestic violence against the victim of domestic violence and who is subject to a prefiling order issued under this Act.
 - c) “Victim of domestic violence” means any of the following:
 - i) A person who has been found by any court to be a victim of conduct that is domestic violence;
 - ii) A person who has been found by any court to be a victim of a crime that includes conduct that is domestic violence;
 - iii) A person who is or has been protected by a civil or criminal restraining order or protective order issued after a noticed hearing, as specified;
 - iv) A person who is or has been protected by a civil or criminal restraining or protective order issued after a noticed hearing, where conduct involves domestic violence, pursuant to any of the specified sections.
 - d) “Perpetrator” means the person who committed domestic violence against the victim of domestic violence.
- 3) Prohibits a victim of domestic violence from being charged a filing or other fee for any document filed under the Act.
 - 4) Requires the court to permit any filings under the Act to be filed electronically, without charge.
 - 5) Authorizes any party, attorney, support person, or witness to appear remotely at any hearing under the Act, without charge.
 - 6) Authorizes any party to have a support person as specified.
 - 7) Authorizes a victim of domestic violence to file a motion for a prefiling order under the Act against another party in the action in any litigation pending in any court of this state to which the victim is a party, until a final judgment is entered. Stays the litigation and any pending discovery requests during the pendency of the motion.
 - 8) Requires the court to grant a motion for a prefiling order after a noticed hearing if the court finds, by a preponderance of evidence, both of the following:
 - a) That the party against whom the order is sought is a perpetrator;
 - b) That the perpetrator has filed frivolous or abusive litigation against the victim of domestic violence, or is conducting frivolous or abusive discovery against the victim of domestic violence.
 - 9) Requires that a prefiling order granted under the Act prohibit the enjoined party from filing litigation or conducting discovery against the victim of domestic violence in any civil, family, or small claims case, until and unless the enjoined party receives permission from the court.

- 10) Requires an enjoined party seeking to file litigation or conduct discovery against the victim of domestic violence in a civil, family, or small claims case to do one of the following, as applicable:
 - a) If the enjoined party seeks to file a new case, the enjoined party shall obtain permission from the presiding judge or a judge designated by the presiding judge to act on their behalf of the court where the litigation is proposed to be filed.
 - b) If the enjoined party seeks to assert a new claim in a pending matter or conduct discovery, the enjoined party shall file a noticed motion seeking permission from the court presiding over the pending matter.
- 11) Authorizes a court that receives a request from an enjoined party seeking to file litigation or conduct discovery to permit the enjoined party to file litigation or conduct discovery against the victim of domestic violence only if the court finds, by a preponderance of the evidence, that the litigation or discovery is not abusive, not frivolous, has merit, and has not been filed for the purpose of harassment or delay.
- 12) Requires a decision to grant a request for an enjoined party to file litigation or conduct discovery to be without prejudice to a future argument or finding that a litigation or discovery request does not satisfy the requirements necessary to grant the enjoined party's request.
- 13) Requires a court to do both of the following upon granting a prefilng order:
 - a) If the pending litigation was filed by the enjoined party, determine whether, by a preponderance of the evidence, the pending litigation is not abusive, is not frivolous, has merit, and has not been filed for the purpose of harassment or delay. If the court finds that the litigation does not meet all of these criteria, the court shall dismiss the litigation. The dismissal of the pending litigation shall be without prejudice unless the court finds that a dismissal with prejudice is warranted. Makes any subsequent filings by the enjoined party subject to the requirements outlined in 10) a).
 - b) If there are pending discovery requests from the enjoined party against the victim of domestic violence, determine whether all pending requests, by a preponderance of the evidence, are not abusive, are not frivolous, have merit, and have not been propounded for the purpose of harassment or delay. If the court finds that the pending discovery requests from the enjoined party do not meet those criteria, the court shall order the enjoined party to withdraw those pending discovery requests.
- 14) Requires the clerk of the court to provide the Judicial Council a copy of any prefilng orders under this title. Requires the Judicial Council to maintain a record of enjoined parties subject to those prefilng orders and the persons against whom they are enjoined from commencing litigation without permission and to monthly disseminate a list of those persons to the clerks of the courts of this state.
- 15) Requires the Judicial Council to promulgate and modify court forms and rules of court to implement the Act by January 1, 2028. Requires the forms to include a notification to a victim of domestic violence and the restrained party upon issuance of a domestic violence restraining order of the rights and obligations under the Act.

- 16) Automatically stays the litigation and discovery until further order of the court if the enjoined party commences a litigation or seeks discovery against the victim of domestic violence without first obtaining court permission as specified.
- 17) Requires the court to grant a request by the victim of domestic violence for sanctions and attorney's fees and costs if the court determines that an enjoined party commenced a litigation or sought discovery without court permission.
- 18) Requires the court to determine if the enjoined party has or is reasonably likely to have the ability to pay, as specified, before the court issues an award of sanctions or attorney's fees and costs. Specifies that these provisions do not limit the ability of a court to remedy the enjoined party's actions in another way, including, but not limited to, contempt.
- 19) Authorizes an enjoined party subject to a prefiling order to file an application to vacate the prefiling order and remove their name from the Judicial Council's list of enjoined litigants subject to prefiling orders. Requires the application to be filed in the court that entered the prefiling order, either in the action in which the prefiling order was entered or in conjunction with a request to the presiding justice or presiding judge to file new litigation. Requires the application to be made before the justice or judge who entered the order, if that justice or judge is available, or their designee.
- 20) Prohibits an enjoined party whose application to vacate the prefiling order was denied from filing another application on or before 18 months have elapsed after the date of the denial of the previous application.
- 21) Authorizes a court to vacate a prefiling order and order removal of an enjoined party's name from the Judicial Council's list of enjoined parties subject to prefiling orders upon a showing of a material change in the facts upon which the order was granted and that the ends of justice would be served by vacating the order.
- 22) Includes a savings clause.
- 23) Includes a severability clause

EXISTING LAW:

- 1) Establishes procedures for declaring someone a "vexatious litigant" in civil proceedings, and provides for consequences of such a declaration. (Code Civil Procedure Section 391 *et seq.*)
- 1) Establishes the Domestic Violence Prevention Act (DVPA) setting forth procedural and substantive requirements for the issuance of a "protective order," whether issued *ex parte*, after notice and hearing, or in a judgment, that enjoins specified acts of abuse, excluding a person from a dwelling, or enjoining other specified behavior. (Family Code Section 6200 *et seq.* All further statutory references are to the Family Code.)
- 2) States that the purpose of the DVPA is to prevent acts of domestic violence, abuse, and sexual abuse and to provide for a separation of the persons involved in the domestic violence for a period sufficient to enable these persons to seek a resolution of the causes of the violence. (Section 6220.)

- 3) Provides that a domestic violence restraining order (DVRO) may be issued to restrain a person, as specified, based on an affidavit or testimony and any additional information provided to the court that shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse. Specifies that a court may issue an order under this part based solely on the affidavit or testimony of the person requesting the restraining order. (Section 6300 (a).)
- 4) Describes litigation abuse as the use of legal or bureaucratic procedures by abusive partners to continue to attack, harass, intimidate, coercively control, or maintain contact with their former partners through the litigation system by exerting power over them, forcing them to have contact, financially burdening them with excessive discovery and litigation, degrading and insulting them in legal papers, unduly delaying the court process and final resolution of important issues, or dissuading them from pursuing legal protection. (Family Code Section 6309 (a)(1)(C).)
- 5) Defines “domestic violence” as abuse perpetrated against any of the following persons:
 - a) A spouse or former spouse;
 - b) A cohabitant or former cohabitant, as defined;
 - c) A person with whom the respondent is having or has had a dating or engagement relationship;
 - d) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent;
 - e) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected;
 - f) Any other person related by consanguinity or affinity within the second degree. (Section 6211.)
- 6) Requires a court to first determine that a party has or is reasonably likely to have the ability to pay, if a court orders a party to pay attorney’s fees and costs. (Family Code Section 270.)
- 24) Defines a “vexatious litigant,” for purposes of civil actions, as a person who does any of the following:
 - a) In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in small claims court that have been finally determined adversely to the person or unjustifiably permitted to remain pending at least two years without having been brought to a trial or hearing.
 - b) After litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined, or the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.

- c) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.
 - d) Has previously been declared to be a vexatious litigant by any state or federal court in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence.
 - e) After being restrained pursuant to a DVPO issued after a hearing, and while the restraining order is still in place, commenced, prosecuted, or maintained one or more litigations against the person protected by the restraining order that is, or are, determined to be meritless and caused the person protected by the order to be harassed or intimidated. (Code of Civil Procedure Section 391 (b).)
- 25) Authorizes, in any litigation pending in any court of this state, at any time until a final judgment is entered, a defendant to move the court, upon notice and hearing, for an order requiring the plaintiff to furnish security or for an order dismissing the litigation. Requires the motion for an order requiring the plaintiff to furnish security to be based on the grounds, and supported by a showing, that the plaintiff is a vexatious litigant and that there is no reasonable probability that they will prevail in the litigation against the moving defendant. (Code of Civil Procedure Section 391.1 (a).)
- 26) Requires that a motion for an order requiring the plaintiff to furnish security on the ground that the plaintiff is a vexatious litigant after being subject to a DVPO be brought only by the person who is protected by the DVPO. Prohibits a person filing such a motion from being required to pay a filing fee. (Code of Civil Procedure Section 391.1 (b).)
- 27) Requires a court to order the plaintiff to furnish, for the benefit of the moving defendant, security in an amount and within a time set by the court if, after hearing the evidence upon the motion, the court determines that the plaintiff is a vexatious litigant and that there is no reasonable probability that the plaintiff will prevail in the litigation against the moving defendant. (Code of Civil Procedure Section 391.3 (a).)
- 28) In litigation filed by a vexatious litigant subject to a pre-filing order stemming from a DVPO who was represented by counsel at the time the litigation was filed and who became in propria persona after the withdrawal of their attorney, requires a court that determines, after hearing evidence on the motion, that the litigation has no merit and has been filed for the purposes of harassment or delay, the court must order the litigation dismissed. (Code of Civil Procedure Section 391.3 (b).)
- 29) Authorizes a court, on its own motion or the motion of any party, to enter a pre-filing order that prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding justice or presiding judge of the court where the litigation is to be filed. (Code of Civil Procedure Section 391.7 (a).)
- 30) Authorizes the presiding justice or presiding judge to permit the filing of that litigation only if it appears that the litigation has merit and has not been filed for the purposes of harassment or delay, and may condition the filing of the litigation upon the furnishing of security for the benefit of the defendants as specified. (Code of Civil Procedure Section 391.7 (n).)

- 31) Prohibits a clerk from filing any litigation presented by a vexatious litigant subject to a prefiling order unless the vexatious litigant first obtains an order from the presiding justice or presiding judge permitting the filing. (Code of Civil Procedure Section 391.7 (c).)
- 32) Authorizes the presiding justice or presiding judge of a court to designate a justice or judge of the same court to act on his or her behalf in exercising the authority and responsibilities related to prefiling orders. (Code of Civil Procedure Section 391.7 (e).)
- 33) Authorizes a vexatious litigant subject to a prefiling order to file an application to vacate the prefiling order and remove their name from the Judicial Council's list of vexatious litigants subject to prefiling orders, as specified. (Code of Civil Procedure Section 391.8 (a).)

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

COMMENTS: Research has shown that domestic violence has far-reaching negative impacts on survivors. These impacts can be physical in nature, such as serious injury or death, and psychological. The Center for Disease Control reports that one in five homicide victims are killed by an intimate partner, and over half of female homicide victims are killed by a current or former male intimate partner. In many cases, incidents of domestic violence also lead to depression and post-traumatic stress disorder symptoms. (*About Intimate Partner Violence*, The Center for Disease Control (February 11, 2026) available at: <https://www.cdc.gov/intimate-partner-violence/about/index.html>.)

Already facing the threat of these severe health conditions stemming from domestic violence, survivors of domestic violence in civil court proceedings are too often revictimized by their abusers through frivolous litigation that, while lacking any legal merit, requires the survivor-defendant to respond in court, thereby expending precious time, money, and emotion. Existing law provides recourse for civil litigants facing repeated efforts of frivolous litigation, referred to as vexatious litigation. Additionally, a party that is protected by a domestic violence restraining order can utilize a more streamlined process to establish the other party as a vexatious litigant. However, the author and sponsors contend more must be done. According to the author:

For decades, experts and advocates have recognized “coercive control” as a form of domestic violence, referring to the psychological and other abuse caused when abusers isolate and dominate victims in intimate partner relationships. Although “coercive control” was recognized in case law for years, “coercive control” was not statutorily recognized in California until the passage of SB 1141 (Rubio, 2020). Despite data from the Centers for Disease Control and Prevention (CDC) showing over 61 million women and 53 million men have experienced psychological aggression, including coercive control, by an intimate partner, the legal protections have lagged. This demonstrates the need for stronger protections to address how abusers use coercive control to manipulate and harm their victims.

Furthermore, the current vexatious litigant statutory scheme (Sections 391-391.8 of the Code of Civil Procedure) can be difficult for domestic violence survivors to access and successfully use in preventing litigation abuse perpetrated by their abuser. This is why practitioners and researchers have recognized the need for additional legal protections to protect against litigation abuse.

Existing laws protecting against vexatious litigation. Despite anecdotal complaints that California's laws generate significant amount of “frivolous lawsuits,” in practice California

maintains a relatively strong set of laws to deter plaintiffs from repeatedly pursuing frivolous litigation. Under existing law, a party is deemed a vexatious litigant if they have lost, or failed to make significant progress in litigating, five claims or attempts to relitigate a final judgment against the same defendant over a seven year period. Once a party is deemed a vexatious litigant, they are required to post a security at the commencement of litigation that will cover all costs and damages incurred by a person sued by a vexatious litigant to ensure that if the litigant fails to prove their case the defendant is not harmed. Additionally, should the vexatious litigant fail to adhere to specific orders issued by the court, including orders dictating how the litigant may file cases, the litigant can face significant court sanctions. Code of Civil Procedure Section 391.7 also authorizes a court, on its own motion or the motion of any party, to enter a prefiling order prohibiting a vexatious litigant from filing any new litigation in any court in the state in propria persona, or self-represented, without first requesting permission from the court. The courts are required to provide a list of vexatious litigants subject to prefiling orders to the Judicial Council which maintains a statewide record and disseminates the record to the clerks of the courts.

In 2022, the Legislature acknowledged that victims of domestic violence are vulnerable to litigation abuse, or abuse through repeated meritless litigation filed by their abuser, and amended the vexatious litigation statute to allow a survivor a streamlined path to identifying their abuser as a vexatious litigant. Unlike other civil defendants which generally need to demonstrate at least five instances of meritless filings, someone subject to a DVRO can petition for the plaintiff-restrained party to be identified as a vexatious litigant if the plaintiff has filed at least one meritless suit against the protected party that caused the protected party to be harassed or intimidated. However, this provision is limited in that 1) the defendant must currently be protected by the DVRO and 2) the order only applies to initial filings. Theoretically, once an abuser is granted permission to continue with their filing, they may proceed to harass the victim through discovery.

Acknowledging the severe trauma that abusive litigation in the context of domestic violence can cause, *this bill* codifies a statement of rights for survivors of abuse and enacts a framework akin to the existing vexatious litigant statutes to allow survivors to seek protection from such abuse in any civil, family, or small claims action.

Statement of rights. In 2008, California voters approved Proposition 9, enshrining the Victims' Bill of Rights Act of 2008: Marsy's Law. Article I, Section 28(b) of the California Constitution now lays the rights owed to crime victims, including: the right to be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process; to be reasonably protected from the defendant and persons acting on behalf of the defendant; and to prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged by confidential law.

This bill draws inspiration from Marsy's Law and codifies findings and declarations on behalf of the Legislature that identify domestic violence as an urgent public safety and public health crisis. The bill further specifies that every victim of domestic violence has the following basic rights in every civil, family, and small claims court: to be treated with fairness and respect for their privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the court process; to be safe, secure, free from abuse, and reasonably protected; to prevent the

disclosure of confidential information or records, which could be used to locate or harass the victim or the victim's family, or which disclose confidential communications made in the course of medical counseling or treatment, or which are otherwise privileged or confidential by law, and to be informed of these rights, as well as the rights and remedies available under the Domestic Violence Prevention Act. The bill also grants victims, their attorney, or their lawful representative the authority to enforce those rights in any trial or appellate court with jurisdiction over the case as a matter of right, and requires the court to act promptly on such a request, but clarifies that none of the rights nor the authority to enforce those rights creates a cause of action for compensation or damages against the State, any political subdivision, officer, employee, or agent of the State, or officer or employee of the court.

The new vexatious litigant framework. Under existing law, a survivor of domestic violence can establish their abuser as a vexatious litigant when 1) there is a domestic violence restraining order in place against the abuser, and 2) the abuser brought at least one frivolous action against the victim that caused them to be harassed or intimidated while the DVRO was in effect. However, the restrictions available under the existing framework only extend to initial filings, and do not capture motions for discovery which, according to the author and sponsors, are also commonly used to continuously harass and intimidate the survivor. Under the new framework proposed by this bill, a litigant could also seek to establish someone as a vexatious litigant and restrict their ability to file discovery requests in addition to filing initial litigation if the motion or filing are intended to harass, abuse, and maintain control over the victim. If granted, the restriction would apply to any civil, family, or small claims case.

Once a request by a protected party is granted, the newly-established vexatious litigant would need to seek approval from a presiding judge or their designee before successfully filing any new litigation or making a motion for discovery. The judge may only grant the request if they find, by a preponderance of the evidence, that the litigation or discovery is not abusive, not frivolous, has merit, and has not been filed for the purpose of harassment or delay. The bill specifies that a judge's determination that a single request may proceed does not preclude future determinations that new litigation or motion for discovery should be prohibited because they are frivolous or harassing in nature.

Finally, if a party subject to a pre-filing order improperly initiates a claim or sought discovery, the matter is automatically stayed and the petitioning party is entitled to sanctions and attorneys fees upon request, subject to the defendant's ability to pay.

Author's amendments. As currently in print, SB 1192 authorizes a victim to file a motion for a pre-filing order "in any litigation pending in any court of this state." Under this language, a victim could seek a pre-filing order regardless of whether or not they are themselves a party to the proceeding. Generally in order to file a motion the moving party must actually be a party to the proceeding. It is not clear how, or if, a victim would be able to file a motion for a pre-filing order in a proceeding to which they are not a party. To clarify this provision, the author is amending the bill as follows:

391.94. Notwithstanding any other law:

(a) (1) In any litigation pending in any court of this state, until a final judgment is entered, a victim of domestic violence ***that is a party to the action*** may file a motion for a pre-filing order under this title against another party in the action.

Second, the bill currently requires a court to grant the prefiling motion if it finds, by a preponderance of the evidence that the party against whom the order is sought is a perpetrator, and that the perpetrator “has filed or is pursuing frivolous or abusive litigation against the victim of domestic violence, or has conducted, attempted to conduct, or is conducting frivolous or abusive discovery against the victim of domestic violence.” Currently, this language seems to *require* a judge to grant a motion for a prefiling order so long as the victim can demonstrate, by a preponderance of the evidence, that a perpetrator has *ever* filed or pursued abusive litigation or discovery. Acknowledging that abusers often engage in a pattern of abuse, this approach is understandable but perhaps overbroad in that the abusive tactics may have occurred years prior and the instant matter is not frivolous. To clarify this provision of the bill and ensure that a court must only grant a prefiling order when the initial filing or discovery request at issue is abusive, the author is amending the bill as follows:

(b) After a noticed hearing, the court shall grant a motion filed pursuant to subdivision (a) if the court finds, by a preponderance of evidence, both of the following:

(1) That the party against whom the order is sought is a perpetrator.

(2) That the perpetrator has filed ~~or is pursuing~~ frivolous or abusive litigation against the victim of domestic violence, or ~~has conducted, attempted to conduct, or is~~ conducting frivolous or abusive discovery against the victim of domestic violence.

Finally, unlike the existing vexatious litigant statutory scheme, this bill does not provide any mechanism by which a party subject to a prefiling order may request to have the order vacated. It may be the case that a litigant who has engaged in abusive litigation in the past is wont to do it in the future, however, it cannot be said that this is a hard and fast rule. To the extent individuals may grow and change their behaviors, or that a prefiling order may actually prove cumbersome for a survivor, such as in the case of obtaining custody or child support orders, it seems reasonable to provide some avenue by which an enjoined party can vacate the prefiling order. With this in mind, the author is amending the bill to add the following in subdivision (f):

(f) An enjoined party subject to a prefiling order under subdivision (b) may file an application to vacate the prefiling order and remove his or her name from the Judicial Council’s list of enjoined parties subject to prefiling orders. The application shall be filed in the court that entered the prefiling order, either in the action in which the prefiling order was entered or in conjunction with a request to the presiding justice or presiding judge to file new litigation under subdivision (b). The application shall be made before the justice or judge who entered the order, if that justice or judge is available. If that justice or judge who entered the order is not available, the application shall be made before the presiding justice or presiding judge, or his or her designee.

(g) An enjoined party whose application under subdivision (f) was denied shall not be permitted to file another application on or before 18 months has elapsed after the date of the denial of the previous application.

(c) A court may vacate a prefiling order and order removal of an enjoined party’s name from the Judicial Council’s list of enjoined parties subject to prefiling orders upon a showing of a material change in the facts upon which the order was granted and that the ends of justice would be served by vacating the order.

ARGUMENTS IN SUPPORT: This bill is sponsored by the California Partnership to End Domestic Violence (CPEDV) and enjoys support from legal services providers, local governments, women’s shelters, and the American Association of University Women California and San Jose chapters. In support of the bill, CPEDV states:

Unfortunately, domestic violence often does not stop after separation or after either party has started a legal proceeding. Indeed, many abusive partners continue their abuse through the legal system even after a survivor leaves a domestic violence situation, by, among other things, filing frivolous pleadings, making derogatory remarks, delaying proceedings, and seeking unnecessary discovery. These court proceedings can have significant impacts on survivors, requiring them to repeatedly appear in court and draining their financial resources, among other things.

The Reclaim Act will help close existing loopholes in the law by, among other things, creating a new type of prefiling order for domestic violence survivors—which is meant to complement the existing vexatious litigation laws. The Reclaim Act will allow survivors to request that the court issue a prefiling order against their abusive partner, and requires the trial court to grant the request and issue the prefiling order if it finds that a litigant has filed or attempted to file frivolous or abusive litigation against the victim, or has conducted or attempted to conduct frivolous or abusive discovery. If granted, the prefiling order would prohibit a litigant from continuing, or filing litigation, or conducting discovery against the victim in any civil or family law case unless they first obtain court permission. If the litigant tries to do so without court permission, the court must grant the survivor’ request for sanctions and attorney fees—if the litigant can pay—and any lost wages and other reasonable expenses needed to respond and stay safe.

The Reclaim Act is common-sense legislation to better protect survivors against litigation and discovery abuse perpetrated by their abusive partners. For these reasons, we believe this bill represents an important step forward for survivors and we are proud to cosponsor it.

REGISTERED SUPPORT / OPPOSITION:

Support

California Partnership to End Domestic Violence (sponsor)
American Association of University Women (AAUW) San Jose
American Association of University Women - California
California Legislative Women's Caucus
City of Glendale
Domestic Violence & Homeless Services Coalition
Family Violence Appellate Project
Hilde B Foundation
House of Ruth, INC.
League of California Cities
Maitri Bay Area
No Peace No Quiet, INC.
Plumas Rural Services
Shelter From the Storm, INC.
Strong Hearted Native Women's Coalition, INC.
Survivor Justice Center

Opposition

None on file

Analysis Prepared by: Manuela Boucher-de la Cadena / JUD. / (916) 319-2334