

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

SB 738 (Rubio)
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Fiscal: Yes
Urgency: No
AWM

SUBJECT

The Reclaim Act

DIGEST

This bill expands when a person who has been restrained by an order after hearing under the Domestic Violence Prevention Act (DVPA) or committed a crime of domestic violence can be declared a vexatious litigant in an action against the protected person or victim, adds protections for discovery requests by such a vexatious litigant directed at the protected person, and permits a DVPA order to prohibit a person from engaging in litigation abuse, as defined.

EXECUTIVE SUMMARY

A growing body of academic evidence discusses the tragic phenomenon of “abuse by litigation,” wherein abusers perpetuate the abuse of their victims through the judicial system. Stakeholders report that this practice is rampant in proceedings to obtain a protective order under the DVPA: respondents engage in needless, extensive discovery as a way to prolong the process, delay the issuance of an order, and force contact with and wear down the victim. While there is no question that a respondent has a due process right to legitimate and necessary discovery, abusers should not be able to wield the discovery process to retraumatize their victims and impede the issuance of meritorious protective orders. In recent years, the Legislature has taken action to prevent litigation abuse by allowing a person restrained by a DVPA restraining order (DVPO) to be declared a vexatious litigant when certain conditions are met, and requiring a court to grant approval for any discovery sought in advance of a hearing under the DVPA.

This bill builds on those efforts in three ways. First, the bill expands the criteria for when an abuser may be declared a vexatious litigant, to include persons who have been convicted of domestic violence-related crimes, and also to include persons who were formerly restrained by a DVPA protective order, so long as the convicted or formerly

restrained person is also found by the court to have filed one or more litigation against the victim that was frivolous, abusive, or solely intended to maintain contact with the protected person. Second, the bill requires a person who is currently restrained by a DVPO, who has been declared a vexatious litigant due to the DVPO or a domestic violence-related conviction, and who is litigating against the victim to obtain court approval before seeking discovery that is protected by the DVPO. The court may grant the motion only if the vexatious litigant establishes good cause for the discovery. Finally, the bill provides that litigation abuse is an independent basis for the issuance of a temporary restraining order (TRO) or DVPO under the DVPA. The author has agreed to amendments to clarify the scope of the bill and ensure that legitimate access to the justice system is not improperly curtailed.

This bill is sponsored by the author and is supported by Crime Victims United. The Committee has not received timely opposition to this bill.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the DVPA, which sets forth procedural and substantive requirements for the issuance of a temporary restraining order or a protective order to, among other things, enjoin specific acts of abuse or prohibit the abuser from coming within a specified distance of the abused person. (Fam. Code, §§ 6200 et seq.)
 - a) "Domestic violence," for purposes of the DVPA, is defined as abuse perpetrated against a spouse or former spouse; a cohabitant or former cohabitant; a person with whom the respondent is having or has had a dating or engagement relationship; a person with whom the respondent has had a child, as specified; a child of a party or a child who is the subject of an action under the Uniform Parentage Act, as specified; or any other person related by consanguinity or affinity within the second degree. (Fam. Code, § 6211.)
- 2) States that the Legislature finds and declares within the DVPA:
 - a) Domestic violence survivors who enter the family or civil court systems seeking protection often face ongoing abuse in the form of litigation abuse.
 - b) Litigation abuse is 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.

- c) Studies show that litigation abuse causes severe consequences for survivors, including economic hardship and psychological harm, and foregoing legal relief in part or on whole.
 - d) Research also shows that judicial offices and court evaluators often misunderstand or overlook litigation abuse and its effects on survivors. (Fam. Code, § 6309(a)(1)(C).)
- 3) Authorizes a court to issue an ex parte temporary restraining order (TRO) under the DVPA without a noticed hearing. (Fam. Code, §§ 6320-6327.)
- 4) Authorizes a court to issue a personal conduct, stay-away, and/or residence exclusion order (DVPO) under the DVPA after a noticed hearing at which the alleged abuser may appear. (Fam. Code, §§ 6340-6347.)
- 5) 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 persona¹ at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to a trial or hearing.
 - b) After a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) 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 Civ. Proc., § 391(b).)

¹ A litigant appears in or maintains an action “in propria persona” — often shortened to “pro per” — when they are self-represented rather than represented by counsel.

- 6) Permits, 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. (Code Civ. Proc., § 391.1.)
 - a) The motion for an order requiring the plaintiff to furnish security must be based on the ground, 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 Civ. Proc., § 391.1(a).)
 - b) A motion for an order requiring the plaintiff to furnish security on the ground that the plaintiff is a vexatious litigant under 5)(e) can be brought only by the person who is protected by the DVPO. A person filing such a motion shall not be required to pay a filing fee.
 - c) The court may order the action dismissed if the plaintiff is the subject of a prefiling requirement pursuant to 3) and, after hearing evidence on the motion, the court determines that the litigation has no merit and has been filed for the purposes of harassment or delay. (Code Civ. Proc., § 391.3.)
- 7) Authorizes a court, on its own motion or the motion of any party, to enter a prefiling 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 proposed to be filed.
 - a) A litigant subjected to a prefiling order may file a new litigation only if the presiding justice or judge, or their designee, determines that the litigation has merit and has not been filed for the purposes of harassment or delay, and the filing may be conditioned upon the plaintiff furnishing a security for the benefit of the defendants.
 - b) A clerk may not file any litigation presented by a vexatious litigant subject to a prefiling order unless the vexatious litigant first obtains an order permitting the litigation to be filed pursuant to 4)(a). If the clerk mistakenly files the litigation without the order, any party may notify the court of the error; the filing automatically stays the action, and the action must be dismissed unless the plaintiff, within ten days, obtains the order permitting the litigation to be filed.
 - c) Disobedience of a prefiling order may be punished as a contempt of court. (Code Civ. Proc., § 391.7.)
- 8) Requires, where a security has been ordered to be furnished by a litigant and the security was not furnished as ordered, the litigation to be dismissed as to the defendant for whose benefit the security was ordered furnished. (Code Civ. Proc., § 391.4.)
- 9) Creates a procedure by which a vexatious litigant subject to a prefiling order may apply to vacate the prefiling order and remove their name from the Judicial Council

of California's list of vexatious litigants subject to prefiling orders. (Code Civ. Proc., § 391.8.)

This bill:

- 1) Makes the following Legislative findings and declarations:
 - a) Domestic violence is an urgent public safety and public health crisis. In California, more than one in three women and one in seven men experience intimate partner violence, intimate partner sexual violence, or intimate partner stalking in their lifetimes. Sexual and gender minorities, including queer, gender nonbinary, intersex, and transgender persons, experience domestic violence at rates as high or higher than cisgender and heterosexual persons. Domestic violence accounts for 15 percent of all violent crimes in California and more than 10 percent of all California homicides.
 - b) Domestic violence survivors often face ongoing abuse in the form of litigation abuse. Litigation abuse is the use of legal or bureaucratic procedures by an abusive person to continue to attack, harass, intimidate, coercively control, or maintain contact with their former partner 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 a final resolution of important issues, or dissuading them from pursuing legal protection. Studies show that litigation abuse causes severe consequences for a survivor, including economic hardship, psychological harm, and foregoing legal relief in part or in whole. Research also shows that judicial officers and court evaluators often misunderstand or overlook litigation abuse and its effects on survivors.
- 2) States that it is the intent of the Legislature to accomplish all of the following:
 - a) Promote the health and safety of domestic violence survivors and their children.
 - b) Prevent abusive litigation tactics that interfere with the Legislature's intent to protect domestic violence victims.
 - c) Empower domestic violence survivors and allow them to reclaim and maintain their freedom from their abusers who continue to engage in domestic abuse.
- 3) Removes the requirements, within the definition of "vexatious litigant," relating to when a person restrained by a DVPO may be declared a vexatious litigant, as follows:
 - a) The bill changes the requirement relating to the prior litigation filed against the protected person, requiring that it have been determined to be frivolous, abusive, or solely intended to maintain contact with the protected person.

- b) The bill removes the requirement that the DVPO be in effect at the time the person is declared a vexatious litigant, specifying that the DVPO may be in effect, expired, modified, or terminated.
- 4) Adds, to the definition of “vexatious litigant,” a person who, after having been convicted, including on a conviction following a plea of nolo contendere, of a crime, misdemeanor, or infraction that involves domestic violence, as defined in Family Code section 6211, commenced, prosecuted, or maintained one or more litigations against the victim of a crime that was determined to be frivolous, abusive, or solely intended to maintain contact with the victim of the crime.
 - 5) Provides that a motion to require a plaintiff furnish security or for an order dismissing the litigation on the ground that the plaintiff is a vexatious litigant under 4) may be brought only by a victim in the criminal proceeding in which the plaintiff was convicted, and that a person filing such a motion shall not be required to pay a filing fee.
 - 6) Provides that, if a plaintiff in a civil action has been deemed a vexatious litigant pursuant to 2) or 4) and the plaintiff is the subject of a restraining order protecting the defendant, the plaintiff shall not seek information from the defendant in a discovery that is protected by the restraining order without prior authorization from the court.
 - 7) Provides that a court may grant a motion for the disclosure of information protected by the restraining order pursuant to 6) only upon a showing of good cause for the discovery by the plaintiff.
 - 8) Provides that the court shall consider the following factors in determining whether good cause exists under 7);
 - a) The importance and relevance of, and need for, the information sought to be obtained.
 - b) The likelihood that the information may be acquired by another permitted discovery method, or may be acquired by other methods.
 - c) Any other factor that may affect the reasonableness and fairness of the request for discovery.
 - 9) Provides that a defendant who receives a discovery request in violation of 6) may disregard the request without filing a motion for a protective order, and the court shall not issue sanctions against a defendant who in good faith disregarded the request on the belief the information was protected by the restraining order and the plaintiff had not obtained the necessary motion, even if the court subsequently rules that the request does not seek information subject to the protective order.
 - 10) Adds, to the findings and declarations under the DVPA relating to domestic violence survivors who experience litigation abuse, the finding that litigation abuse

includes an abusive partner emotionally or financially harming their former partner with unnecessary, irrelevant, or intrusive discovery.

- 11) Adds, to the list of conduct that may be enjoined pursuant to the DVPA, engaging in litigation abuse against the other party, as the term “litigation abuse” is defined in Family Code section 6309(a)(1)(C).

COMMENTS

1. Author’s comment

According to the author:

As a survivor of domestic violence and as a legislator who has authored and championed many significant laws to help survivors of domestic violence, I am proud to author SB 738: The Reclaim Act. This important bill will empower survivors of domestic violence and allow them to reclaim their freedom from their abusers by narrowing the ability of domestic violence abusers to use the courts to frivolously harass and control their former victims.

For decades, experts and advocates have recognized “coercive control” as a form of domestic violence, referring to the psychological abuse caused when abusers isolate and dominate victims in intimate partner relationships. However, “coercive control” was not legally recognized in California until the passage of my Senate Bill 1141 in 2020. I have spoken with many domestic violence survivors who have shared that despite separating from their abusers, they continue to face ongoing abuse in the form of litigation abuse – which is the use of legal or bureaucratic procedures by a domestic violence abuser to continue to attack, harass, intimidate, coercively control, or maintain contact with their former partner through the litigation system. These abusers exert power over their former victims by forcing them to have contact, financially burdening them with excessive discovery and litigation, degrading and insulting them in legal papers, and unduly delaying the court process and final resolution of important issues. Studies show that litigation abuse causes severe consequences for a survivor, including economic hardship and psychological harm.

This litigation abuse demonstrates the need for stronger protections to address how abusers use coercive control to manipulate and harm their victims. SB 738 will close legal loopholes that allow domestic violence abusers to weaponize the courts to frivolously harass and control their former victims. The bill does this by expanding the definition of a “vexatious litigant” to include plaintiffs that have been convicted of domestic violence or who have had a domestic violence restraining order granted against them and who frivolously sue their former victims. The bill also clarifies that abusers cannot unjustifiably obtain personal

information about their former victim that would typically be protected under a restraining order. Taken together, the provisions of The Reclaim Act will ensure that domestic violence abusers can no longer exploit the court system to harass and control their former victims.

2. The DVPA and the problem of litigation abuse

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" and courts are required to construe it broadly in order to accomplish the statute's purpose.² The DVPA allows a victim of domestic violence to obtain a short-term TRO on an ex parte basis, and a DVPO after a noticed hearing.³ A DVPO can last for up to five years, and can be extended multiple times or indefinitely by the court so long as the risk of abuse remains.⁴ A TRO or a DVPO can enjoin a range of conduct, including attacking, threatening, harassing, telephoning, contacting, and coming within a specified distance of, the protected person.⁵

In recent years, there has been an increased awareness of the problem of litigation abuse. As one law review article explains:

"[Litigation abuse] – also referred to as paper or separation abuse, "legal bullying, court-related abuse and harassment, and judicial terrorism – occurs when a perpetrator files multiple frivolous lawsuits against a former romantic partner for the purpose of harassment or intimidation, to financially devastate the victim, or to force the victim to appear in court to face the perpetrator...[M]edia sources have referred to abusive litigation in the family law context as "stalking by way of the courts," which is a painfully accurate description of the abusive litigation process. As the result of an abuser's use of abusive litigation, the victim is repeatedly compelled to face the abuser in court, sometimes for years after escaping the relationship, and can be forced to incur thousands of dollars in attorney's fees and other costs associated with defending these claims.⁶

² *Caldwell v. Coppola* (1990) 219 Cal.App.3d 859, 863; *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1498.

³ Fam. Code, §§ 6320, 6340.

⁴ *Id.*, § 6345.

⁵ *Id.*, §§ 6320, 6340.

⁶ McLemore, *Stalking by Way of the Courts: Tennessee's Abusive Civil Action Law and Why All States Should Adopt a Similar Approach to Abusive Litigation in the Family Law Context* (Sum. 2021) 28 UCLA J. Gen. & L. 333, 342 (internal footnotes omitted).

Even when a DVPO has been entered against the abuser, litigation abuse can continue; in fact, it might ramp up when “the court system becomes the only remaining means of contact that the abuser has with the survivor.”⁷

The Legislature has enacted two measures in the last two sessions to help prevent litigation abuse. AB 2391 (Cunningham, Ch. 84, Stats. 2021) expanded the vexatious litigation statute to include persons engaging in litigation abuse, when an abuser is restrained by a DVPO and has filed at least one meritless litigation against the protected person that caused them to feel harassed or intimidated.⁸ And SB 741 (Min, Ch. 503, Stats. 2023) provided much-needed clarity in the law on when a party can conduct discovery in advance of a hearing on a DVPO; SB 741 permits a party to seek pre-hearing discovery only with the permission of the court, which must consider whether the information sought in the action is relevant and necessary and whether the discovery is intended to harass the other party.⁹

3. This bill establishes the Reclaim Act, which is intended to promote the health and safety of domestic violence survivors and prevent litigation abuse tactics

This bill builds on the frameworks put in place in AB 2391 and SB 741, and adds new protections under the DVPA, to better protect victims from litigation abuse. The author has agreed to amendments, which are discussed below and set forth in Comment 4 of this analysis.

First, the bill expands the circumstances under which an abuser can be declared a vexatious litigant in lawsuits filed against their former partner. The bill permits a person who was the subject of a protective order to be declared a vexatious litigant even if the protective order has expired or been terminated, and newly permits a person who has been convicted of a crime involving domestic violence to be declared a vexatious litigant, in suits filed against their victim. In both cases, the person can be declared a vexatious litigant only if the person has also filed one or more lawsuits against the victim that a court determines was or were frivolous, abusive, or solely intended to maintain contact with the protected person. The author has agreed to amendments to conform this language to existing law and ensure that persons are not punished for bringing meritorious suits.

Second, the bill imposes a discovery pre-approval procedure that applies when three conditions are met: (1) the person has been declared a vexatious litigant on domestic violence grounds; (2) the suit is filed against the person protected under the DVPO or the victim of the crime; and (3) there is a DVPO protecting the defendant currently in place. In such a case, the plaintiff cannot seek information that is protected by the protective order through discovery without prior authorization from the court. The

⁷ *Ibid.*

⁸ See Code Civ. Proc., § 391(b)(5).

⁹ See Fam. Code, § 6309.

court may grant the plaintiff's motion for discovery only if the plaintiff makes a showing of good cause for the discovery, and the court must consider whether the information is relevant and necessary, whether the discovery can be obtained through other means, and any other factor that may affect the reasonableness and fairness of the request. The bill also provides that the court may not issue sanctions against a defendant who, in good faith, fails to reply to a discovery request they believed sought information covered by the discovery order, even if the court subsequently rules that the defendant must provide the discovery.

Finally, the bill amends the DVPA to permit a court to enter a TRO or DVPO prohibiting the restrained person from engaging in litigation abuse, as defined. The author has agreed to amendments that distinguish between commencing litigation and ongoing litigation, to avoid a conflict between the DVPO and the rulings of the judge in the ongoing action. The amendments also permit a person who has obtained a DVPO, i.e., an order after hearing, to request an order from the court to prevent the subject of the order from seeking discovery in violation of Section 2019.020 of the Code of Civil Procedure; this section allows a court to prevent a party from seeking discovery that is unreasonably cumulative or duplicative, or obtainable from a more convenient or less expensive source, or unduly burdensome or expensive. The court may consider, as part of its determination, whether the discovery requests appear to be an attempt to circumvent the protective order.

4. Amendments

As discussed above, the author has agreed to amendments to clarify and more precisely tailor the bill. The amendments are set forth below, subject to any nonsubstantive changes the Office of Legislative Counsel may make.

Amendment 1

In Section 3 of the bill, replace "frivolous, abusive, or solely intended to maintain contact with the protected person" with "frivolous or solely intended to abuse, intimidate, or maintain contact with the protected person" where the phrase appears in paragraphs (5) and (6) of subdivision (b) of Section 391 of the Code of Civil Procedure.

Amendment 2

In Section 3 of the bill, delete "misdemeanor or infraction" where the phrase appears in paragraph (6) of subdivision (b) of Section 391 of the Code of Civil Procedure.

Amendment 3

In Section 7 of the bill, delete “engaging in litigation abuse, as that term is defined in subparagraph (C) of paragraph (1) of subdivision (a) of Section 6309” and replace it with “commencing litigation that is frivolous or solely intended to abuse, intimidate, or maintain contact with the other party” where the phrase appears in subdivision (a) of Section 6320 of the Family Code.

Amendment 4

Add a new subdivision (d) to Section 6340 of the Family Code, which reads:

(d) If, on or after the date the protective order is issued pursuant to subdivision (a), the respondent and the petitioner are engaged in a legal proceeding initiated by the respondent, the petitioner may request an order from the court to prevent the respondent from seeking discovery in violation of subdivision (a) of Section 2019.030 the Code of Civil Procedure. The court may consider, as part of its determination, the scope of the protective order and whether the information sought, or the selected method of discovery, appears intended to circumvent the protective order.

5. Arguments in support

According to Crime Victims United:

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

SB 738 will close legal loopholes that allow domestic violence abusers to weaponize the courts to frivolously harass and control their former victims. The bill will expand the definition of a “vexatious litigant” to include a domestic violence abuser who has been convicted of a domestic violence crime or had a domestic violence restraining order granted against them and has previously been found by a court to have filed one or more frivolous or abusive litigation actions against their former victims. The bill also establishes a process to protect a domestic violence abuser from accessing information about their former victim

through the discovery process that would otherwise be protected by a restraining order, unless a court has ruled there is good cause for the abuser to access this information. Taken together, the provisions of the Reclaim Act will ensure that domestic violence abusers can no longer exploit the court system to continue to harass and control their former victims.

SUPPORT

Crime Victims United

OPPOSITION

None received

RELATED LEGISLATION

Pending legislation: None known.

Prior legislation:

SB 741 (Min, Ch. 503, Stats. 2023) prohibits discovery pursuant to the Civil Discovery Act for purposes of the DVPA except when a court grants a discovery request upon a showing of good cause making the request, as specified.

AB 2391 (Cunningham, Ch. 84, Stats. 2021) expanded the vexatious litigant statute to allow a person protected by a domestic violence protective order to seek an order declaring the restrained person a vexatious litigant and imposing financial security requirements on that person when the restrained person has filed at least one meritless action against the protected person that harassed or intimidated the protected person.
