

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

SB 1192 (Rubio)
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Fiscal: Yes
Urgency: No
AWM

SUBJECT

Domestic violence: Reclaim Act

DIGEST

This bill establishes rights for a victim of domestic violence, as defined, and establishes a framework through which a victim of domestic violence can be protected from litigation abuse in civil, family, and small claims courts.

EXECUTIVE SUMMARY

A growing body of academic evidence discusses the tragic phenomenon of “abuse by litigation,” a form of coercive control through which 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 Domestic Violence Prevention Act (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 is intended to ensure that victims of domestic violence can safely access justice in the civil law system and to protect them from litigation abuse at the hands of their abusers. To that end, the bill contains two main provisions: a statement of rights, and a framework for preventing litigation abuse modeled after the existing framework for vexatious litigants. Under the framework, a victim of domestic abuse can obtain an order requiring their abuser to obtain permission from the court before filing litigation against, or seeking discovery from, the victim in civil, family, or small claims court; a

court may grant such permission only if the litigation or discovery is not abusive, is not frivolous, has merit, and is not intended to harass or delay the victim. This analysis sets forth amendments to the statement of rights the litigation abuse framework to clarify the provisions and to ensure that the bill does not unduly restrict litigants' rights.

This bill is sponsored by the California Partnership to End Domestic Violence, and is supported by the California Legislative Women's Caucus, the Domestic Violence & Homeless Services Coalition, Maitri, No Peace No Quiet, Plumas Rural Services, Shelter from the Storm, the Strong Hearted Native Women's Coalition, Inc., and the Survivor Justice Center. 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 DVPO under the DVPA after a noticed hearing at which the alleged abuser may appear. (Fam. Code, §§ 6340-6347.)
- 5) Provides that, in any proceeding under the DVPA, a support person shall be permitted to accompany either party to the proceeding to obtain a protective order; once a DVPO has issued, a support person shall be permitted to accompany a party protected by the order during any mediation orientation or mediation session, including separate mediation sessions, held in specified family court proceedings, and to accompany a party in court in a proceeding to obtain a protective order where there are allegations or threats of domestic violence. If the person is not represented by an attorney in the proceeding, the support person may sit with them at the counsel table. (Fam. Code, § 6303.)
- 6) Establishes Title 3a within Part 2 of the Code of Civil Procedure (Title 3a), which establishes the procedure for declaring a civil litigant a “vexatious litigant” and the consequences of such a declaration. (Code Civ. Proc., pt. 3, tit. 3a, §§ 391 et seq.)
- 7) 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.

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.

- 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).)
- 8) 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 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 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 7)(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 8)(b) 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.)
- 9) 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 8)(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.)

- 10) 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.)
- 11) 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.)
- 12) Defines "frivolous," within the context of frivolous actions for which a court may order a party to pay sanctions, as "totally and completely without merit or for the sole purpose of harassing an opposing party." (Code Civ. Proc., § 128.5.(b)(2).)

This bill:

- 1) Makes findings and declarations relating to the prevalence of domestic violence in California, the form of ongoing abuse known as "litigation abuse," and the bill's intent to protect survivors and children from litigation abuse while empowering survivors to reclaim and maintain their freedom.
- 2) Establishes a new title within Part 2 of the Code of Civil Procedure, Title 3b, which establishes a process declaring a perpetrator of domestic violence a vexatious litigant and restrictions on how such a vexatious litigant may pursue civil claims against their victim.
- 3) Defines the following terms:
 - a) "Abusive discovery" means the use of discovery processes by a perpetrator of domestic violence to 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 them 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) "Abusive litigation" means any litigation described in subparagraph (C) of paragraph (1) of subdivision (a) of Section 6309 of the Family Code (listed in item 2) of the "Existing Law" section of this analysis).
 - c) "Domestic violence" means domestic abuse as defined in Section 6211 of the Family Code.
 - d) "Enjoined party" means the person who has committed domestic violence against the victim of domestic violence and who is subject to a prefiling order under Title 3b.
 - e) "Frivolous" means frivolous as defined in Section 128.5 of the Code of Civil Procedure.

- f) "Perpetrator" means the person who committed domestic violence against the victim of domestic violence.
 - g) "Prefiling order" means the order issued pursuant to x).
 - h) "Victim of domestic violence" means any of the following:
 - i. A person who has been found by the 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 or protective order issued after a noticed hearing under the DVPA.
 - iv. A person who is or has been protected by a civil or criminal restraining order issued after a noticed hearing, where the conduct involves domestic violence, pursuant to any of the following: Code of Civil Procedure sections 527.6, 527.7, and 527.85; Welfare and Institutions Code sections 213.5 and 15657.03; Penal Code section 136.2; and Division 3.2 of Title 2 of Part 6 of the Penal Code.
 - v. A person who presents to the court an affidavit signed under penalty of perjury by a domestic violence counselor, as defined, attesting to a person being a victim of domestic violence.
- 4) Provides that, notwithstanding any other law, every victim of domestic violence has the following basic rights in every civil, family, and small claims court:
- a) To be treated with fairness and respect for their privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the process.
 - b) To be safe, secure, free from abuse, and reasonably protected.
 - c) 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.
 - d) To have the safety of the victim, the victim's family, and the general public before any court decision is made.
 - e) To be informed of the rights enumerated in 4)(a)-(d) as well as the rights and remedies available under Title 3b and the DVPA.
- 5) Provides that a victim, the attorney of a victim, or a lawful representative of the victim may enforce the rights enumerated in 3) in any trial or appellate court with jurisdiction over the case as a matter of right, and that the court shall act promptly on such a request; however, this provision 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 any of its political subdivisions, or any officer or employee of the court.

- 6) Provides that the rights of victims of crime under Marsy's Law apply to any civil, family, or small claims proceeding that involves the victim of a crime and the person accused, charged, prosecuted, or convicted of accusing or harming the victim.
- 7) Provides that 3)-5) are intended to, among other things, abrogate the decision in *Slaieh v. Superior Court* (2022) 77 Cal.App.5th 266.
- 8) Provides that the recognition or granting of rights to victims in 3)-5) shall not be construed to deny or disparage other rights possessed by victims of domestic violence.
- 9) Provides that the victim of domestic violence shall not be charged a filing or other fee for any document filed under Title 3b.
- 10) Requires the court to permit any filings under Title 3b to be filed electronically, without charge.
- 11) Provides that any party may have a support person pursuant to the terms of Section 6303 of the Family Code.
- 12) Provides that, notwithstanding any other law:
 - a) After a notice and a hearing, upon the request of a victim of domestic violence, the court shall issue a prefiling order under Title 3b against the perpetrator, if the court finds by a preponderance of the evidence that the perpetrator has filed, attempted to file, or is pursuing frivolous or abusive litigation against the victim of domestic violence, or has conducted or attempted to conduct or is conducting frivolous or abusive discovery against the victim of domestic violence.
 - b) A prefiling order granted under this title shall prohibit the enjoined party from filing litigation or conducting discovery against the victim of domestic violence or conducting discovery against the victim of domestic violence in any civil, family, or small claims case, unless and until the enjoined party receives permission from the court. The court shall not allow any litigation or discovery that is frivolous or abusive.
 - c) The court may permit the enjoined party to file litigation or conduct discovery against the victim of domestic violence only if the court finds, in writing or on the record, 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. If the court allows the enjoined party to file litigation or conduct discovery, the court may later find the litigation or discovery is frivolous or abusive, and if the court later finds the litigation or discovery is frivolous or abusive, the court shall order the litigation dismissed or the discovery quashed.
 - d) If a victim of domestic violence files a request for a prefiling order while the litigation or discovery request is pending, the litigation or discovery shall be

- stayed and the victim of domestic violence need not plead or respond. If the court finds in writing or on the record, by a preponderance of the evidence, that the pending litigation or discovery is frivolous or abusive, the court shall order the pending litigation dismissed or the discovery quashed. If the court finds, in writing or on the record, by a preponderance of the evidence, that the pending litigation is not frivolous or abusive, and that it has merit and that it has not been filed for the purpose of harassment or delay, the court shall issue an order allowing the victim a reasonable amount of time, not fewer than 10 days, to plead or respond to the discovery requests.
- e) The court may deny the request of the enjoined party to file litigation or conduct discovery on an ex parte basis. The court shall deny any request by the enjoined party that is frivolous or abusive, including on an ex parte basis if appropriate.
 - f) The enjoined party may request a noticed hearing on a request to file litigation or conduct discovery pursuant to the terms and procedures of Section 6309 of the Family Code. If the court holds a hearing on the motion, the court shall consider any evidence, written or oral, by witness or affidavit, that may be material to the motion.
 - g) Any civil, family, or small claims court may issue an order under Title 3b, and an order under Title 3b may be issued in any proceeding under the Family Code, including, but not limited to, the DVPA.
- 13) Requires a clerk of the court to provide the Judicial Council with a copy of any prefiling order issued under Title 3b. The Judicial Council shall maintain a record of enjoined parties subject to those prefiling orders and shall monthly disseminate a list of those persons to the clerks of the courts of this state.
- 14) Requires the Judicial Council to promulgate and modify court forms and rules of court to implement Title 3b.
- 15) Provides that, if the enjoined party attempts to serve, file a court paper, or seek discovery against the victim of domestic violence, or does so, without first obtaining court permission, the litigation and discovery are automatically stayed until further order of the court.
- 16) Provides that the court shall grant a request by the victim of domestic violence for sanctions, attorney's fees, and costs needed to respond or prepare to respond, and any lost wages and other reasonable expenses needed to prepare to respond, and to stay safe.
- 17) Provides that, before the court issues an award of sanctions or attorney's fees and costs under 16), the court shall first determine that the enjoined party has or is reasonably likely to have the ability to pay, as specified.

- 18) Provides that the rights and remedies in Title 3b are in addition to any other civil and criminal remedies that may be available to the victim of domestic violence.
- 19) Amends the findings and declarations in Section 6309 of the Family Code relating to litigation abuse to eliminate the reference to survivors who enter the family or civil court systems seeking protection, and to add to the list of types of litigation abuse perpetrated against survivors, the term “emotionally or financially harming them with unnecessarily, irrelevant, or intrusive discovery.”

COMMENTS

1. Author’s comment

According to the author:

“Too many survivors are retraumatized when the court system is used as a weapon against them. The Reclaim Act is about restoring dignity, safety, and freedom – and making sure the justice system protects survivors, not their abusers.” – Senator Rubio

SB 1192 will empower survivors of domestic violence and allow them to reclaim their freedom by limiting the ability of their abuser to use the courts to frivolously harass and control them. 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 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.

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

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,

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).

⁷ *Ibid.*

⁸ See Code Civ. Proc., § 391(b)(5).

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 Additionally, last year, this Committee amended and passed SB 738 (Rubio, 2025); the bill would have created a vexatious litigant framework for victims of litigation abuse that was similar, but not identical, to this bill. SB 738 died in the Senate Appropriations Committee.

3. Background on Marsy's Law

Marsy's Law is a constitutional amendment approved by the voters in 2008.¹⁰ The findings and declarations in Marsy's Law state that "[c]rime victims are entitled to justice and due process" and that Marsy's Law "is needed to remedy a justice system that fully recognize and adequately enforce the victims of crime."¹¹ Marsy's Law amended the existing "Victims' Bill of Rights" as well as specific rights for victims in parole proceedings.¹² One of the rights added to the Victims' Bill of Rights is the right "[t]o refuse an interview, deposition, or discovery request by 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 or confidential by law."¹³

In 2022, the Court of Appeal held that Marsy's Law's prohibition on discovery did not extend to civil cases pending between a victim and a criminal defendant.¹⁴ The case arose from a divorce proceeding in which the wife petitioned for divorce from her husband.¹⁵ While the divorce proceeding was pending, the husband was arrested on charges of stalking and making criminal threats against his wife.¹⁶ When the husband sought to take the wife's deposition in the divorce action, she objected and argued that, as a victim of a crime, Marsy's Law gave her the right to refuse to be deposed in the civil case.¹⁷ The husband petitioned for a writ of mandate; on review, the Court of Appeal examined the text and background of Marsy's Law and determined that, although the specific provision does not specifically refer to discovery in a criminal case, the overall context of Marsy's Law indicated an intent to apply in criminal cases only.¹⁸ The court concluded that "the principle that a party to a civil action has a right

⁹ See Fam. Code, § 6309.

¹⁰ Prop. 9, as approved by voters, Gen Elec. (Nov. 4, 2008).

¹¹ Ballot Pamp., Gen Elec. (Nov. 4, 2008) text of proposed law, p. 128.

¹² *Id.* at pp. 129-132.

¹³ Cal. Const., art. I, § 28(b)(5).

¹⁴ *Slaeih v. Superior Court of Riverside County* (2022) 77 Cal.App.5th 266, 270.

¹⁵ *Id.* at p. 270.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Id.* at pp. 273-275.

to depose any adverse party in the action is both fundamental to our legal system and long-standing, and we see no indication in Marsy's Law that the voters intended to alter it."¹⁹

4. This bill creates rights for victims of domestic violence in civil cases, including a framework for limiting litigation abuse.

This bill is intended to ensure that victims of domestic violence can safely access justice in the civil law system and to protect them from litigation abuse at the hands of their abusers. To that end, the bill contains two main provisions: a statement of rights, and a framework for preventing litigation abuse modeled after the existing framework for vexatious litigants.

For purposes of both section, a "victim of domestic violence" is a person who has experienced domestic violence as determined through a criminal conviction (e.g., where the person was a victim of a crime involving domestic violence); through a civil suit (e.g., where the person prevailed in a civil action arising from an incident constituting domestic violence); through a court-ordered protective order, including a DVPO; or via affidavit of a domestic violence counselor. The author has agreed to remove the "affidavit" prong, thereby ensuring that victim status is determined on the basis of a court determination.

a. Statement of rights

This bill provides that every victim of domestic violence has enumerated rights in every civil, family, and small claims court. The rights are adapted from Marsy's Law and apply in cases where the victim is involved in a civil suit that involves the victim of a crime and the person accused, charged, prosecuted, or convicted of abusing or harming the victim. A victim of domestic violence can enforce their rights at any point in any legal proceeding before the trial or appellate court.

There are two provisions within the statement of rights which appear to conflict with the needs of civil cases. Marsy's Law requires a court to consider the safety of the victim, the victim's family, and the public when fixing bail and setting release conditions;²⁰ this bill requires the court to consider the safety of the victim, the victim's family, and the public before making every decision. Second, the bill would apply, in civil cases, the Marsy's Law provision that limits discovery in a pending criminal case, thereby abrogating the Court of Appeal decision to the contrary. The author has agreed to remove these provisions to ensure that civil litigants' rights are not overly curtailed.

¹⁹ *Id.* at p. 275.

²⁰ Cal. Const., art. I, § 28(b)(3).

b. Preventing litigation abuse

Under current law, a victim of domestic abuse can obtain an order declaring their abuser a vexatious litigant only when (1) the abuser is restrained by a DVPO, and (2) the abuser, while the DVPO was in place, prosecuted at least one frivolous action against the victim that caused them to be harassed or intimidated.

This bill establishes a new framework for victims of domestic violence to protect against litigation abuse, which is a form of coercive control. Unlike the vexatious litigant statute, which addresses only the right to file a litigation, this bill provides protections to a victim of domestic violence against the filing of litigation and discovery requests that are intended to harass, abuse, and maintain control over the victim.

Under the framework established by the bill, a victim of domestic violence can file a motion in any civil, family, or small claims action against the perpetrator of domestic violence for an order enjoining the perpetrator from engaging in litigation abuse. If the court finds that the perpetrator filed an action, or propounded discovery requests, that is or are frivolous or abusive, the court must enter an order requiring the perpetrator to seek approval from the court before filing further lawsuits against, or seeking discovery from, the victim. Once such an order is entered, the court shall not grant motion by the perpetrator to file a lawsuit or seek discovery unless the court finds that the litigation or discovery is not abusive, not frivolous, has merit, and has not been filed for the purpose of harassment or delay. A perpetrator who violates an order can be sanctioned, including paying the victim's legal fees that they incurred defending against the perpetrator's wrongful conduct.

All of the court's findings must be made under the "preponderance of the evidence" standard, with the findings on the record or in writing.

The author has agreed to amendments to clarify and streamline the process set forth above.

5. Amendments

As discussed above, the author has agreed to a number of amendments to clarify the bill, streamline the litigation abuse process, and ensure that the bill protects victims without unduly restricting litigants' rights. The amendments modify, within Section 1 of the bill, the new Sections 391.91 through 391.95 that this bill is adding to the Code of Civil Procedure. The text of those provisions, as amended, are set forth in Appendix A to this analysis.

6. Arguments in support

According to the California Partnership to End Domestic Violence:

For decades, experts and advocates have recognized “coercive control” as a form of domestic violence, referring to the psychological and other kinds of abuse caused when abusers isolate and dominate survivors in domestic violence situations. However, “coercive control” was not legally recognized in California until the passage of your bill SB 1141 in 2020. Unfortunately, domestic violence often does not stop after separation or after either party has started a legal proceeding. Indeed, many abusers often 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. This is partly because the court process is sometimes one of the key ways an abuser can maintain contact or control over a survivor. This demonstrates the need for stronger protections to address how abusers use coercive control in court to manipulate and harm their victims.

The Reclaim Act will help close existing loopholes in the law by, among other things, creating a new type of prefilng order for domestic violence survivors – which is meant to complement the existing vexatious litigation laws. The Reclaim Act allows survivors to request that the court issue a prefilng order against their abuser, and requires the trial court to grant the request and issue the prefilng 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 prefilng 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 victim’s 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.

SUPPORT

California Partnership to End Domestic Violence (sponsor)

California Legislative Women’s Caucus

Domestic Violence & Homeless Services Coalition

Maitri

No Peace No Quiet

Plumas Rural Services

Shelter from the Storm

Strong Hearted Native Women’s Coalition, Inc.

Survivor Justice Center

OPPOSITION

None received

RELATED LEGISLATION

Pending legislation: None known.

Prior legislation:

SB 738 (Rubio, 2025) was somewhat similar to this bill, insofar as it created a vexatious litigant regime specifically for persons suffering from litigation abuse, and is discussed further in Part 2 of this analysis. SB 738 died in the Senate Appropriations Committee.

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.

APPENDIX A

The text of the new Code of Civil procedure sections 391.91 through 391.96, the author has agreed to amend it, is set forth below, subject to any nonsubstantive changes the Office of Legislative Counsel may make.

391.91. As used in this title, the following terms have the following meanings:

(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) "Abusive litigation" means any litigation as described in subparagraph (C) of paragraph (1) of subdivision (a) of Section 6309 of the Family Code.

(c) "Domestic violence" means domestic abuse as defined in the Domestic Violence Prevention Act.

(d) "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 title.

(e) "Frivolous" means frivolous as defined in paragraph (2) of subdivision (b) of Section 128.5.

(f) "Perpetrator" means the person who committed domestic violence against the victim of domestic violence.

(g) "Prefiling order" means an order issued pursuant to Section 391.94.

(h) "Victim of domestic violence" means any of the following:

(1) A person who has been found by any court to be a victim of conduct that is domestic violence.

(2) A person who has been found by any court to be a victim of a crime that includes conduct that is domestic violence.

(3) A person who is or has been protected by a civil or criminal restraining or protective order issued after a noticed hearing, pursuant to Division 10 (commencing with Section 6200) of the Family Code.

(4) A person who is or has been protected by a civil or criminal restraining or protective order issued after a noticed hearing, where the conduct involves domestic violence, pursuant to any of the following:

(i) Section 527.6.

(ii) Section 527.8.

(iii) Section 527.85.

(iv) Section 213.5 of the Welfare and Institutions Code.

(v) Section 15657.03 of the Welfare and Institutions Code.

(vi) Section 136.2 of the Penal Code.

(vii) Division 3.2 (commencing with Section 18100) of Title 2 of Part 6 of the Penal Code.

391.92. (a) Notwithstanding any other law, every victim of domestic violence has the following basic rights in every civil, family, and small claims court:

(1) 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.

(2) To be safe, secure, free from abuse, and reasonably protected.

(3) 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.

(5) To be informed of the rights enumerated in paragraphs (1) through (4) as well as the rights and remedies available under this title, Title 3A (commencing with Section 391), and Division 10 (commencing with Section 6200) of the Family Code.

(b) (1) A victim, the attorney of a victim, or a lawful representative of the victim may enforce the rights enumerated in subdivision (a) in any trial or appellate court with jurisdiction over the case as a matter of right. The court shall act promptly on such a request.

(2) This 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.

(c) The recognition or granting of these rights to victims shall not be construed to deny or disparage other rights possessed by victims of domestic violence.

391.93. (a) The victim of domestic violence shall be not charged a filing or other fee for any document filed under this title.

(b) The court shall permit any filings under this title to be filed electronically, without charge.

(c) Any party, attorney, support person, or witness may, at their discretion, appear remotely at any hearing under this title, without charge.

(d) Any party may have a support person pursuant to the terms of Section 6303 of the Family Code.

391.94. Notwithstanding any other law:

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

(2) The litigation and any pending discovery requests shall be stayed during the pendency of the motion. If the court grants the motion

(b) The court, after a noticed hearing, shall grant a motion filed pursuant to subdivision (a) if the court finds, by a preponderance of the evidence all 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 or attempted to conduct or is conducting frivolous or abusive discovery against the victim of domestic violence.

(c) A prefiling order granted under this title shall 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.

(d) (1) An enjoined party seeking to file litigation or conduct discovery against the victim of domestic violence in a civil, family, or small claims case must do one of the following:

(A) If the enjoined party seeks to file an entirely new case, the enjoined party must obtain permission from the presiding judge 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 must file a noticed motion seeking permission from the court presiding over the pending matter.

(2) A court that receives a request under paragraph (1) may permit an 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.

(3) A decision to grant a request under paragraph (1) shall be without prejudice to a future argument or finding that a litigation or discovery request does not satisfy the requirements of paragraph (2). .

(4) The court must make its findings granting or denying a request under paragraph (1) in writing or on the record.

(5) The court may deny a request under paragraph (1) on an ex parte basis.

(e) (1) Upon granting an order pursuant to (b), the court shall do both of the following:

(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 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. Any subsequent filings by the enjoined party shall be subject to subparagraph (A) of paragraph (1) of subdivision (d). .

(B) If there are pending discovery requests from the enjoined party against the victim of domestic violence, determine whether all pending requests are, by a preponderance of the evidence, not frivolous or abusive, that they have merit, and that they have not been propounded for the purpose of harassment or delay.

(2) The court's findings under paragraph (1) shall be in writing or on the record.

(g) Any civil, family, or small claims court may issue an order under this title.

391.95. (a) The clerk of the court shall provide the Judicial Council a copy of any prefiling orders under this title. The Judicial Council shall maintain a record of enjoined parties subject to those prefiling orders and the persons against whom they are enjoined from commencing a litigation without permission and shall monthly disseminate a list of those persons to the clerks of the courts of this state.

(b) The Judicial Council shall promulgate and modify court forms and rules of court to implement this title.

391.96. (a) If the enjoined party attempts to commence a litigation or seeks discovery against the victim of domestic violence without first obtaining court permission pursuant to subdivision (d) of Section 391.94, the litigation and discovery are automatically stayed until further order of the court.

(b) If the court determines that an enjoined party commenced a litigation or sought discovery without court permission, the court shall grant a request by the victim of domestic violence for sanctions, attorney fees and costs.

(c) Before the court issues an award of sanctions or attorney fees and costs under subdivision (b), the court shall first determine the enjoined party has or is reasonably likely to have the ability to pay pursuant to Section 270 of the Family Code.

(d) This section does not limit the ability of a court to remedy the enjoined party's actions in another way, including, but not limited to, contempt.