

SENATE JUDICIARY COMMITTEE
Senator Hannah-Beth Jackson, Chair
2019-2020 Regular Session

SB 1141 (Rubio)
Version: May 6, 2020
Hearing Date: May 22, 2020
Fiscal: Yes
Urgency: No
JT

SUBJECT

Domestic violence: coercive control

DIGEST

This bill specifies that intimate partner “coercive control” is a form of domestic violence.

EXECUTIVE SUMMARY

The Domestic Violence Protection Act ([DVPA] Fam. Code § 6200 et seq.¹) 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 linchpin of this scheme is section 6203’s definition of “abuse,” which generally covers psychological harm and is a key criterion for judicial decisions on domestic violence restraining orders, child custody, and the admissibility of evidence pertaining to domestic violence in specified criminal proceedings.

This bill would elaborate on the scope of this scheme by including in the definition of abuse “coercive control,” a long-recognized form of psychological abuse. “Coercive control describes an ongoing and multipronged strategy, with tactics that include manipulation, humiliation, isolation, financial abuse, stalking, gaslighting and sometimes physical or sexual abuse.”² Under the bill, coercive control is defined as a pattern of intentional or reckless conduct that is unreasonable, interferes with the will of their intimate partner, and causes them severe emotional distress. The bill is sponsored by the Los Angeles City Attorney’s Office and supported by several organizations that assist survivors of domestic violence. The bill is opposed by the California Public Defenders Association and the Family Violence Appellate Project.

¹ All further statutory references are to the Family Code, unless otherwise specified.

² *With Coercive Control, the Abuse is Psychological* (July 11, 2016) New York Times, available at <https://well.blogs.nytimes.com/2016/07/11/with-coercive-control-the-abuse-is-psychological/> (as of May 16, 2020).

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the DVPA, which sets forth procedural and substantive requirements for the issuance of a protective order to enjoin, among other things, specified acts of abuse (§§ 6318; 6320).
- 2) Defines “domestic violence” as abuse perpetrated against a spouse, cohabitant, a person the abuser dates, a person who has a child with the abuser, a child, and immediate relatives. (§ 6211.)
- 3) Defines “abuse” as any of the following:
 - a. Intentionally or recklessly causing or attempting to cause bodily injury.
 - b. Sexual assault.
 - c. Placing a person in reasonable apprehension of imminent serious bodily injury to that person or to another.
 - d. Engaging in enumerated harmful behaviors, including disturbing the peace of the other party. (§§ 6203(a); 6320.)
- 4) Provides that “abuse” is not limited to the actual infliction of physical injury or assault. (§ 6203(b).)
- 5) Requires courts to consider a person’s history of inflicting abuse in making awards of child custody and visitation. (§§ 3011(a)(2)(A), 3030(c)(2) & 3044(d)(1).)
- 6) Provides, in a criminal action, for the admissibility of expert testimony regarding intimate partner battering and its effects, including the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions or behavior of victims of domestic violence, except as specified. (Evid. Code § 1107(a).) Incorporates the definitions of “abuse” and “domestic violence” from the Family Code. (*Id.* at (c).)
- 7) Provides, in a criminal action in which the defendant is accused of an offense involving domestic violence, for the admissibility of evidence of the defendant’s commission of other domestic violence, with specified exceptions. (Evid. Code § 1109(a).) Incorporates the definition of “domestic violence” from the Family Code. (*Id.* at (d)(3).)
- 8) Provides that an intentional violation of a domestic violence restraining order is a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. (Pen. Code § 273.6.)

This bill:

- 1) Finds and declares that:
 - a) Coercive control is a form of abuse rooted in societal inequality and replicated with devastating effects in intimate partner relationships when one partner's autonomy is subordinated to the will of the other partner.
 - b) Coercive control deprives victims of their personal liberty through a pattern of behavior that does not always include physical violence but that still causes lasting harm to a victim.
 - c) The bill is intended to provide redress for the harm of coercive control in intimate partner relationships by giving a name to the specific liberty deprivations inherent in coercively controlling behavior.
 - d) The bill is not intended to override the findings and declarations as stated in the DVPA.
 - e) In restricting the application of coercive control to a specified category of victims, this bill is not meant to limit or alter existing protections afforded by the DVPA.
- 2) Amends the definition of "abuse" under section 6203 to include "coercive control," thereby altering the operation of the existing statutes described in 5) through 8), above, governing the issuance of domestic violence restraining orders and punishment for the violation thereof, child custody and visitation orders, and the admissibility of certain evidence pertaining to domestic violence in specified criminal proceedings.
- 3) Provides that a person's conduct constitutes coercive control if the person intentionally, or with reckless disregard of the consequences, engages in a pattern of behavior that interferes with the will of the victim with the intent to cause the victim severe emotional distress or that a reasonable person would know would be likely to cause the victim severe emotional distress, the victim does suffer severe emotional distress, and the person's conduct is not reasonable under the circumstances.
- 4) Lists types of conduct that may constitute coercive control if 3), above, is satisfied.
- 5) Provides, via a cross-reference to Penal Code section 13700, that "coercive conduct" for these purposes only applies to a victim who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the perpetrator has had a child or is having or has had a dating or engagement relationship.
- 6) For purposes of existing section 3044's rebuttable presumption against an award of child custody to a perpetrator of domestic violence, expressly includes coercive control as an example of domestic violence.

COMMENTS

1. Intimate partner coercive control

According to Katie Ray-Jones, the National Domestic Violence Hotline’s Chief Executive, “[d]omestic violence is rooted in power and control.”³ When abusers lose control of their intimate partners, they resort to a variety of tactics to subjugate them. The Center for Disease Control states that intimate partner violence may consist of physical violence, sexual violence, and psychological aggression, which includes expressive aggression (insulting, name calling) and coercive control (behaviors that involve monitoring, controlling, or threatening the victim).⁴ A fact sheet by the National Coalition Against Domestic Violence states that psychological abuse increases the trauma of physical and sexual abuse, and cites to studies that have demonstrated that psychological abuse independently causes long-term damage to a victim’s mental health, which may include “depression, post-traumatic stress disorder, suicidal ideation, low-self-esteem, and difficulty trusting others.”⁵ Additionally, “[s]ubtle psychological abuse is more harmful than either overt psychological abuse or direct aggression.”

Coercive control is a pervasive form of abuse. Over 40 percent of people experience at least one form of coercive control in their lifetime.⁶ The bill’s sponsor, the Los Angeles City Attorney’s Office, states that coercive control “is a form of domestic violence where a partner in an intimate relationship engages in conduct that significantly curtails a victim’s liberty rights, such as the freedom of association, movement, and access to service.” The term “coercive control” was coined by Dr. Evan Stark, a leading expert on domestic violence, who defines it as “an ongoing strategy of isolation of the victim from friends, family and children; control of access to resources such as transportation, money and food; and control of access to employment and education.”⁷ The effect of coercive control is to “strip away a sense of self, entrapping the victim in a world of confusion, contradiction, and fear.”⁸ It may be inflicted concurrently with physical violence, but often is not.

³ Newberry, Laura & Santa Cruz, Nicole, *Domestic abuse victims in ‘worst-case scenario’ during outbreak, providers say* (March 24, 2020) Los Angeles Times, available at <https://www.latimes.com/california/story/2020-03-24/womens-shelters-brace-for-surge-in-domestic-violence-as-coronavirus-quarantines-isolate-survivors> (as of May 16, 2020).

⁴ *The National Intimate Partner and Sexual Violence Survey: 2010-2012 State Report* (April 2017), p. 14, available at <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf> (as of May 16, 2020).

⁵ *Facts about Domestic Violence and Psychological Abuse*, available at https://assets.speakcdn.com/assets/2497/domestic_violence_and_psychological_abuse_ncadv.pdf (as of May 16, 2020).

⁶ *Id.*

⁷ Candel, Kristy, *Protecting the Invisible Victim: Incorporating Coercive Control in Domestic Violence Statutes* (Jan. 2016) Student Note, 54 Fam. Ct. Rev. 112, 114-115.

⁸ *Id.* at 115.

The findings and declarations for the bill state that “[c]oercive control is a form of abuse rooted in societal inequality and replicated with devastating effects in intimate partner relationships when one partner’s autonomy is subordinated to the will of the other partner” and that “[c]oercive control deprives victims of their personal liberty through a pattern of behavior that does not always include physical violence but that still causes lasting harm to a victim.” The bill’s definition of coercive control specifically lists behaviors that may constitute coercive control if specified elements are met:

- Isolating the victim from friends, relatives, or other sources of support.
- Depriving the victim of basic necessities.
- Controlling, regulating, or monitoring the victim’s movements, communications, daily behavior, finances, economic resources, or access to services.
- Compelling the victim by force, threat of force, or intimidation to engage in conduct from which the victim has a right to abstain or to abstain from conduct in which the victim has a right to engage.

The author and supporters argue that such behaviors have long been recognized as domestic violence and that California law should be updated to clearly reflect this component of the spectrum of abuse. The author writes:

Coercive control refers to the pattern of harm used to isolate and dominate victims in intimate partner relationships. For decades, academics and advocates have included coercive control in their definitions of intimate partner violence, but laws on domestic violence have predominantly focused on discrete instances of physical assault to the exclusion of tactics of coercive control. Such tactics include deprivation of basic necessities, economic abuse, and control over daily activities that combine to reduce a victim’s autonomy, resulting in severe emotional distress. This bill improves California’s domestic violence laws by bringing a range of coercive behaviors under a single statutory framework situated in the Family Code, with associated benefits in criminal proceedings.

Coercive control has arguably become even more apparent due to changes to everyday life associated with the COVID-19 pandemic that have led to increased rates of domestic violence. Shelter-in-place orders, jobs losses, and school closures deteriorate strained relationships and keep victims confined with abusers. Many victims find it more difficult to report abuse to law enforcement, seek help, or escape to a safe location. A recent article in the *Los Angeles Times* described examples of pandemic-related coercive control: “One woman said her partner threatened to throw her out onto the street if she showed any symptoms of COVID-19. Another said her partner vowed to prevent her from seeking medical care if she became sick.”⁹

⁹ Newberry & Santa Cruz, *supra*, note 3.

2. Elaborates on existing domestic violence laws that apply to psychological 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." (*Caldwell v. Coppola* (1990) 219 Cal.App.3d 859, 863.) The DVPA must be broadly construed in order to accomplish the statute's purpose. (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1498 [*Nadikarni*].) The act enables a party to seek a "protective order," also known as a restraining order, which may be issued to protect a petitioner who presents "reasonable proof of a past act or acts of abuse." (§ 6300; see § 6218.)

"Abuse" for these purposes is broadly defined in terms of specified physical harms, but is not limited to actual infliction of emotional injury. (§ 6203(a) & (b).) "Abuse" also encompasses a broad range of enumerated harmful behaviors under section 6320, including threats, stalking, annoying phone calls, vandalism, and, most relevant to this bill, "disturbing the peace of the other party." (*Id.* at (a).) "[T]he plain meaning of the phrase 'disturbing the peace of the other party' in section 6320 may be properly understood as conduct that destroys the mental or emotional calm of the other party." (*N.T. v. H.T.* (2019) 34 Cal. App. 5th 595, 602.) Thus, courts have concluded that "abuse" within the meaning of the DVPA includes certain forms of mental abuse. (*Nadikarni, supra*, 173 Cal.App.4th at p. 1499 [accessing and disclosing a person's private emails]; *Burquet v. Brumbaugh* (2014) 223 Cal.App.4th 1140 [continuing to contact a person electronically and in person despite their request to stop]; *In re Marriage of Evilsizor & Sweeney* (2015) 237 Cal.App.4th 1416 [downloading and disseminating text messages].)

Rodriguez v. Menjivar (2015) 243 Cal. App. 4th 816 presents a stark example of the type of harmful conduct that would be covered by this bill. In addition to physically abusing the victim, Menjivar took actions to intimidate, isolate, and control her. He would call her throughout the day, enrolled in her college courses to monitor her, practiced martial arts in close proximity to her despite her requests to stop, wielded a knife in her face, threatened to beat her with a studded belt, took her phone away when she tried to call a relative, threatened to send her to jail, threatened to kill himself, and threatened her over social media, causing her to shut down her social media accounts and withdraw from her college classes. (*Id.* at 818-819.) The court, reviewing the precedents described above, concluded that, for purposes of section 6320, "[t]he acts of isolation, control, and threats were sufficient to demonstrate the destruction of Rodriguez's mental and emotional calm." (*Id.* at 822.)

Thus, the existing scheme governing domestic violence restraining orders already encompasses mental abuse, and judicial precedents have held that this includes conduct that amounts to coercive control. This bill would affirm and build upon these precedents by setting forth criteria for identifying coercive control.

3. Some stakeholders argue the bill is too narrow while others argue it is too broad

A protective order implicates fundamental liberty rights, as a violation of its provisions is a crime (Penal Code § 273.6), and it is a factor that is weighed in child custody and visitation determinations (see §§ 3011, 3030, 3044.). Indeed, this bill specifically amends section 3044, which establishes a rebuttable presumption against an award of child custody to a perpetrator of domestic violence, to expressly include coercive control as an example of domestic violence. Additionally, the Family Code definition of abuse informs the scope of admissible evidence in certain criminal proceedings, including expert testimony regarding the effects of intimate partner battering (Evid. Code § 1107(a), (c)), and evidence of a defendant's commission of a domestic violence crime (Evid. Code § 1109(a), (c)). Thus, while it is essential to constrain the full spectrum of abusive conduct, any expansion of the scope of these provisions must be done cautiously to limit the potential for unintended consequences.

Crucially, the bill establishes narrow parameters to limit the application of its provisions to clearly abusive behaviors. The bill provides that a person's conduct constitutes coercive control only if all of the following are satisfied:

- the person intentionally, or with reckless disregard of the consequences, engages in a pattern of behavior that interferes with the will of the victim;
- the person intends to cause the victim severe emotional distress, or a reasonable person would know that the conduct would be likely to cause the victim severe emotional distress;
- the victim does suffer severe emotional distress; and
- the person's conduct is not reasonable under the circumstances.¹⁰

These parameters – a mental state, objective unreasonableness, causation, foreseeable harm, actual harm – are the types of elements commonly used in torts, such as intentional infliction of emotional distress, and criminal provisions. These elements provide strong guardrails to help ensure that the bill will function as intended and not reach benign conduct that is ordinarily tolerated in relationships or that does not

¹⁰ Other countries and states have adopted legislation aimed at limiting or punishing coercive control. For instance, Michigan defines abuse as “any other specific act or conduct that imposes on or interferes with personal liberty or that causes a reasonable apprehension of violence.” (Mich. Comp. Laws § 600.2950(13).) Maine's definition of abuse includes “compelling a person by force, threat of force or intimidation to engage in conduct from which the person has a right or privilege to abstain or to abstain from conduct in which the person has a right to engage.” (Me. Rev. Stat. Ann. tit. 19-A § 4002.) Colorado defines abuse to include “financial control, document control, and other types of control that make a victim more likely to return to an abuser due to fear of retaliation or inability to meet basic needs.” (Colo. Rev. Stat. Ann. § 13-14-101.) Hawaii provides relief for “extreme psychological abuse,” which is defined as an “intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs consistently or continually bothers the individual and that serves no legitimate purpose; provided that such a course of conduct would cause a reasonable person to suffer extreme emotional distress.” (Haw. Rev. Stat. Ann. § 13-14-101.)

actually distress the person. Additionally, the requirement that the conduct be unreasonable under the circumstances helps to ensure that the bill will not be used against a victim who takes reasonable coercive actions to defend themselves against an abuser.

While the bill enjoys support from several organizations that assist survivors of domestic violence, the narrowness of the bill has elicited concerns from a few such organizations. Although generally supportive of the concept behind the bill, these organizations have argued that the bill should not be limited to intimate partners. Other family members who are generally covered under the DVPA, including children, siblings, and grandparents, may be subject to coercive control. Some organizations also argue that limiting the bill's application to unreasonable, intentional, or reckless conduct is insufficient to protect victims of coercive control.

On the other hand, the opposite concern has been expressed by the California Public Defenders Association, which argues the bill is overly broad. In exchanges with Judiciary Committee staff, they have argued that the bill should be narrowed to intentional conduct instead of including instances in which the person recklessly disregards the consequences of their behavior. But omitting from the bill's scope reckless conduct that is unreasonable and results in severe emotional distress could let abusers off the hook if they claim that they were not deliberately trying to harm the victim. This would only exacerbate the concerns of otherwise supportive organizations who argue that the bill should be more expansive.

Arguably, these opposing perspectives indicate that the bill's current scope is appropriate.

4. Clarifying amendments¹¹

As noted above, coercive control under this bill would only apply to people who are intimate partners. As currently written, the bill achieves this limitation through a cross-reference to Penal Code section 13700, which applies to "abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship." Because this cross-reference to a separate code does not make the scope of the bill clear on its face, the author has agreed to the following amendment:

¹¹ These amendments may additionally include technical, nonsubstantive changes recommended by the Office of Legislative Counsel. The amendments may also include the addition of coauthors to the bill.

Amendment 1

In section 4 of the bill, amend subdivision (d) of section 6204 as follows:

~~(d) Paragraph (5) of subdivision (a) of Section 6203 only applies to a victim as defined in Section 13700 of the Penal Code. This section applies only to a victim with whom the person has or has had a sexual, dating, or spousal relationship.~~¹²

Finally, the bill's findings and declarations state: "[i]n restricting the application of coercive control to a specified category of victims, this bill is not meant to limit or alter existing protections afforded by the Domestic Violence Prevention Act to victims..." However, some stakeholders have expressed concern that this bill could be construed to limit existing remedies otherwise available under the DVPA. Family law litigants are generally self-represented, so clarity in the Family Code is especially important. Because the author's intent is to expand and elaborate upon existing law, and to in no way limit protections available to individuals who may or may not fall under the ambit of the bill, the author has also agreed to codify this intent via the following amendment:

Amendment 2

In section 4 of the bill, add subdivision (e) to state that section 6204 does not limit any remedies available to a person under the DVPA or any other provision of law.

SUPPORT

Los Angeles City Attorney's Office (sponsor)
Crime Victims United of California
Elizabeth House
FreeFrom
Pathways for Victims of Domestic Violence
Peace Over Violence
StrengthUnited
YWCA of San Gabriel Valley

OPPOSITION

California Public Defenders Association
Family Violence Appellate Project

¹² This definition draws on section 6930(b)(1), which defines "intimate partner violence," for purposes of a provision authorizing a minor who is 12 years of age or older may seek medical treatment without parental consent, as "an intentional or reckless infliction of bodily harm that is perpetrated by a person with whom the minor has or has had a *sexual, dating, or spousal relationship*." (Emphasis added.)

RELATED LEGISLATION

Pending Legislation: None known

Prior Legislation:

SB 273 (Rubio, Ch. 546, Stats. 2019) would have required police officer training to include an assessment of “coercive control that may lead to lethal violence.” However, the bill was amended to exclude that provision.
