

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

AB 2517 (Gloria)
Version: June 8, 2020
Hearing Date: July 30, 2020
Fiscal: Yes
Urgency: No
JT

SUBJECT

Domestic violence: personal property and liens

DIGEST

This bill, beginning January 1, 2022, authorizes courts to make a finding in a domestic violence restraining order issued after notice and a hearing that specific debts were incurred as a result of domestic violence.

EXECUTIVE SUMMARY

A pervasive form of coercive control is financial abuse, which refers to “behavior that seeks to control a person’s ability to acquire, use, or maintain economic resources, and threatens their self-sufficiency and financial autonomy.”¹ Existing law provides that a court may issue a temporary restraining order determining the temporary use, possession, and control of real or personal property of the parties and the payment of liens or encumbrances coming due during the period the order is in effect.

This bill would, beginning January 1, 2022, provide that a court may also issue such an order in a permanent restraining order. The bill also provides that such an order may include a finding that specific debts were incurred as a result of domestic violence and without the consent of the party, including the crime of identity theft. The bill also requires the Judicial Council to adopt or modify forms as necessary to effectuate the bill’s provisions.

The bill is sponsored by the California Partnership to End Domestic Violence and supported by numerous organizations. It has no known opposition.

¹ National Network to End Domestic Violence, *Financial Abuse Fact Sheet*, available at https://nnedv.org/wp-content/uploads/2019/07/Library_EJ_Financial_Abuse_Fact_Sheet.pdf (as of July 16, 2020).

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides for the issuance of a “temporary restraining order” (TRO). (Fam. Code § 240 et seq.)²
 - a) Provides that, with specified exceptions, a TRO may be granted without notice to the respondent if it is alleged that irreparable injury would result to the petitioner before the matter can be heard on notice. (§ 241.)
 - b) If the TRO is granted without notice, requires a hearing to be held on the petition within 21 days of the date the TRO is granted, or 25 days if the court finds good cause. (§ 242(a).)
 - c) If the hearing is heard after that timeframe, provides that the TRO is unenforceable, unless the court grants a continuance for a reasonable period. (§§ 242(b) & 245.)
- 2) Establishes the Domestic Violence Protection Act ([DVPA] § 6200 et seq.), 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).
- 3) Defines “protective order,” for purposes of the DVPA and 1), above, as a restraining order, whether issued ex parte, after notice and hearing, or in a judgment, that is an order enjoining specified acts of abuse, excluding a person from a dwelling, or enjoining other specified behavior. (§ 6218.)
- 4) 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.)
- 5) 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.)
- 6) Provides that a court may issue an ex parte order determining the temporary use, possession, and control of real or personal property of the parties and the payment of liens or encumbrances coming due during the period the order is in effect. (§ 6324.)

² All further statutory references are to the Family Code, unless otherwise specified.

- 7) Makes it a crime, punishable by fine, imprisonment for up to a year, or both, for a person to willfully obtain personal identifying information of another person and use that information for any unlawful purpose, including obtaining, or attempting to obtain, credit, goods, services, real property, or medical information without the consent of that person. (Pen. Code § 530.5(a).)

This bill:

1. Provides that after notice and a hearing, a court may issue an order determining the use, possession, and control of real or personal property of the parties during the period the order is in effect and the payment of any liens or encumbrances coming due during that period.
2. Provides that such an order may include a finding that specific debts were incurred as a result of domestic violence and without the consent of the party, including identity theft. Provides that such a finding does not affect the priority of any lien or other security interest.
3. Requires the Judicial Council to adopt or modify forms as necessary to effectuate the bill's provisions.
4. Becomes operative January 1, 2022.

COMMENTS

1. Domestic violence restraining orders

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.) 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.)

Petitioners who need immediate protection may seek a TRO, which becomes effective upon receiving a judge's signature and being served on the respondent. TROs may be issued "ex parte" (Latin for "by or for one party") – that is, without formal notice to, or the presence of, the respondent. (*See* § 241.)³ Because a restrained party would not have

³ A TRO is distinct from an "emergency protective order," which is an order specifically requested by a law enforcement official and that a judicial officer finds necessary to prevent the occurrence or recurrence

had the opportunity to defend their interests, TROs are of necessity short in duration. If a noticed hearing is not held within 21 days (or 25 if the court finds good cause), the TRO is no longer enforceable, unless a court grants a continuance. (§§ 242 & 245.) After a duly noticed hearing, however, the court is authorized to extend the original TRO into a “permanent” protective order (also known as orders after hearing) that may last up to five years but are renewable. (§§ 6345, 6302.)

2. Domestic abuse, coercive control, and financial abuse

According to Katie Ray-Jones, the National Domestic Violence Hotline’s Chief Executive, “[d]omestic violence is rooted in power and control.”⁴ 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).⁵ Coercive control encompasses a variety of behaviors aimed at overcoming a person’s free will and curtailing their personal liberty and sense of agency.

A pervasive form of coercive control is financial abuse, which refers to “behavior that seeks to control a person’s ability to acquire, use, or maintain economic resources, and threatens their self-sufficiency and financial autonomy.”⁶ An estimated 99 percent of domestic violence cases involve financial abuse.⁷ Examples of financial abuse include: forcing a partner to miss, leave, or be late to work; harassing a partner at work; controlling how money is spent; withholding money or basic living resources; giving a partner an ‘allowance’; stealing money, credit, property, or identity from a partner; and forcing a partner to file fraudulent legal financial documents or overspend on credit cards.⁸ The effects can devastate the victim and make them more vulnerable to further domestic abuse.

of domestic violence, child abuse, child abduction, or abuse of an elder or dependent adult. (§§ 6250, 6250.3, 6251.) An emergency protective order is not subject to the provisions governing TROs. (*See* § 240.)

⁴ 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 July 16, 2020).

⁵ *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 July 16, 2020).

⁶ National Network to End Domestic Violence, *Financial Abuse Fact Sheet*, available at https://nnedv.org/wp-content/uploads/2019/07/Library_EJ_Financial_Abuse_Fact_Sheet.pdf (as of July 16, 2020).

⁷ *Id.*

⁸ *Id.*

The California Partnership to End Domestic Violence, the bill's sponsor, explains that financial abuse can include:

[S]tealing money, credit, property or identity from a partner; and/or forcing a partner to file fraudulent legal financial documents or overspend on credit cards. Abusive partners can incur debt without a survivor's consent or coerce a survivor into incurring the debt, including by threats of harm. This debt and the credit score impact can have long-term consequences for survivors and create barriers to educational, housing and employment opportunities. . . . Research shows that access to economic resources is the most likely predictor of whether a survivor will be able to permanently separate from their abusive partners. (Footnotes omitted.)

Meanwhile, changes to everyday life associated with the COVID-19 pandemic have led to increased rates of domestic violence.⁹ Shelter-in-place orders, job losses, and school closures deteriorate strained relationships and keep victims confined with abusers. Many victims find it more difficult to seek help, escape to a safe location, report abuse to law enforcement, or go to court to get a restraining order. The California Partnership to End Domestic Violence adds that the economic vulnerabilities due to the current COVID-19 national health emergency put "survivors at risk of ending up further in poverty or returning to their abusive partners. Every step we take to improve economic security of survivors will help keep them safe during this already tumultuous time."

3. Enables courts to declare specific debts were incurred as a result of domestic abuse

This bill provides an important tool for victims who are subjected to domestic violence in the form of financial abuse. Existing law provides that a court may issue a TRO determining the temporary use, possession, and control of real or personal property of the parties and the payment of liens or encumbrances coming due during the period the order is in effect. (§ 6324.) This bill would, beginning January 1, 2022, provide that a court may also issue such an order in a permanent restraining order. The bill also provides that such an order may include a finding that specific debts were incurred as a result of domestic violence and without the consent of the party, including the crime of identity theft under Penal Code section 530.5.¹⁰ This will empower courts to declare that a debt belongs to the abuser during the time the permanent restraining order is in effect.

⁹ 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 July 16, 2020).

¹⁰ That section makes it a crime for a person to willfully obtain personal identifying information of another person and use that information for any unlawful purpose, including obtaining, or attempting to obtain, credit, goods, services, real property, or medical information without the consent of that person.

The author writes: "AB 2517 will play a critical part in providing some protections judges can use in determining who is responsible for paying off the debt that happened. This bill is essential in helping survivors get back on track faster."

While a finding pursuant to this bill is binding as to the parties, the victim may need to take additional action to protect themselves against claims from creditors. Civil Code section 1798.93 provides that a victim of identity theft can bring an action against a claimant and is entitled to various forms of relief, including a declaration that the claim is void and unenforceable as against the victim. Section 1798.93 also provides for a civil penalty for up to \$30,000 if the victim establishes by clear and convincing evidence that the claimant continued to pursue their claim against the victim after being presented with facts that were later held to entitle the victim to a judgement under that section. A finding under this bill that a specific debt was incurred as a result of domestic violence would be probative, if not determinative, in a proceeding under section 1798.93.

Finally, the bill also provides that it does not affect the priority of any lien or other security interest. This amendment was taken to allay the concerns of the California Land Title Association, which, as a result, has taken a neutral position on the bill.

SUPPORT

California Partnership to End Domestic Violence (sponsor)

A Community for Peace

Alliance Against Family Violence and Sexual Assault

Asian Women's Shelter

California Low-Income Consumer Coalition

Casa de Esperanza

Catalyst Domestic Violence Services

City and County of San Francisco, Department on the Status of Women

Community Overcoming Relationship Abuse

Community Resource Center

Disability Rights California

EndTAB

Haven Women's Center of Stanislaus

House of Ruth

Interface Children & Family Services

Jewish Family Service of Los Angeles

Laura's House

Majarjee Mason Center

National Association of Social Workers, California Chapter

Peace Over Violence

Project: PeaceMakers, Inc.

Rainbow Services, Ltd.

StrengthUnited

Walnut Avenue Family & Women's Center
WEAVE

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

SB 1141 (Rubio, 2020) would provide that coercive control is a form of domestic abuse for purposes of the DVPA. This bill is pending consideration in the Assembly Judiciary Committee.

AB 1796 (Levine, 2020) would require courts to provide a drop box, during and after business hours, for the filing of petitions for domestic violence restraining orders. AB 1796 is being heard in this Committee on the same day as this bill.

Prior Legislation: None known

PRIOR VOTES:

Assembly Floor (Ayes 79, Noes 0)
Assembly Appropriations Committee (Ayes 18, Noes 0)
Assembly Judiciary Committee (Ayes 11, Noes 0)
