

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 374 (Min)
Version: March 15, 2021
Hearing Date: March 23, 2021
Fiscal: Yes
Urgency: No
JT

SUBJECT

Protective orders: reproductive coercion

DIGEST

This bill provides that reproductive coercion is a form of domestic violence for which a restraining order may be granted under the Domestic Violence Protection Act.

EXECUTIVE SUMMARY

“Domestic violence is rooted in power and control.”¹ 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). Coercive control encompasses a variety of behaviors aimed at overcoming a person’s free will and curtailing their personal liberty and sense of agency.

Last session, the Legislature expressly provided that coercive control is a form of domestic violence for which a restraining order may be issued. (SB 1141, Rubio, Ch. 248, Stats. 2020.) The bill defined coercive control as “a pattern of behavior that in purpose or effect unreasonably interferes with a person’s free will and personal liberty.” This bill would add “reproductive coercion” to the list of behaviors that may constitute coercive control for purposes of domestic violence restraining orders. The bill is supported by organizations that support domestic violence survivors and has no known opposition.

¹ Katie Ray-Jones, the National Domestic Violence Hotline’s Chief Executive, quoted in Newberry, Laura & Santa Cruz, Nicole, *Domestic abuse victims in ‘worst-case scenario’ during outbreak, providers say* (March 24, 2020) Los Angeles Times, <https://www.latimes.com/california/story/2020-03-24/womens-shelters-brace-for-surge-in-domestic-violence-as-coronavirus-quarantines-isolate-survivors> (as of Mar. 12, 2021).

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Domestic Violence Protection Act ([DVPA] Fam. Code § 6200 et seq.),² which sets forth procedural and substantive requirements for the issuance of a protective order to enjoin, among other things, specific acts of abuse. (§§ 6218, 6300 et seq.)
- 2) Defines “abuse” to include physical injury, assault, and psychological abuse, including disturbing the peace of the other party, which is conduct that, based on the totality of the circumstances, destroys the mental or emotional calm of the other party. (§§ 6203, 6320(a), (c).) Such conduct includes coercive control, which is a pattern of behavior that in purpose or effect unreasonably interferes with a person’s free will and personal liberty. (§ 6320(c).) Provides examples of coercive control, including isolating the person, depriving them of necessities, controlling, regulating or monitoring them, or using force, threats or intimidation, as specified. (*Id.*)
- 3) Incorporates the DVPA’s definition of abuse for purposes of child custody and visitation determinations (§§ 3011(a)(2)(A), 3030(c)(2) & 3044(d)(1)), the statute of limitations for recovery of damages suffered as a result of domestic violence (Code Civ. Proc. § 340.15), the admissibility of expert testimony regarding intimate partner battering and its effects (Evid. Code § 1107(a), (c)), and the admissibility of evidence of a defendant’s prior acts of domestic violence in a criminal action in which the defendant is accused of an offense involving domestic violence (Evid. Code § 1109(a), (d)(3)).
- 4) Provides that an intentional violation of a domestic violence restraining order is a misdemeanor punishable by a fine of not more than \$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 adds “reproductive coercion” as an additional example of coercive control for purposes of the definition “abuse” under the DVPA. The bill defines reproductive coercion as controlling the reproductive autonomy of another through force, threat of force, or intimidation, which may include excessively pressuring the other party to become pregnant, deliberately interfering with contraception use or access to reproductive health information, or using coercive tactics to control, or attempt to control, pregnancy outcomes.

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

COMMENTS

1. Domestic violence restraining orders and coercive control

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), and courts are required to construe it broadly in order to accomplish the statute's purpose (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1498 [*Nadkarni*]). 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.)

Victims of domestic violence who need immediate protection may seek a temporary restraining order, which may be decided ex parte (without notice to the respondent) and generally must be issued or denied the same court day the petition is filed. (See §§ 241, 6320 et seq.) Because the restrained party would not have had the opportunity to defend their interests, ex parte orders are short in duration. If a noticed hearing is not held within 21 days (or 25 if the court finds good cause), a temporary restraining order is no longer enforceable, unless a court grants a continuance. (§§ 242 & 245.) The respondent must be personally served with a copy of the petition, the temporary restraining order, if any, and the notice of the hearing on the petition, at least five days before the hearing. (§ 243.) After a duly noticed hearing, the court is authorized to extend the original temporary restraining order for up to five years, which may then be renewed. (§§ 6302, 6340, 6345.) Additionally, a protective order may be issued in a judgement entered in a proceeding for dissolution of marriage, nullity of marriage, legal separation of the parties, or in a parentage action. (§ 6360.)

The linchpin of this scheme is section 6203's definition of "abuse," which encompasses assault, physical injury, and psychological abuse. Section 6203 incorporates section 6320, which enumerates several forms of abuse, including "stalking, threatening, ... harassing, telephoning, ... contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party." (§ 6320(a).) Courts have construed this latter phrase broadly in protecting survivors from mental abuse. (See *McCord v. Smith* (2020) 51 Cal. App. 5th 358 [showing up at victim's house, interfering with her financial matters, sending her threatening text messages]; *Nadkarni, 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 [acts of isolation and control, threats].)

Such conduct generally can be categorized as a long-recognized form of domestic abuse known as “coercive control” – “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,”³ the effect of which is to “strip away a sense of self, entrapping the victim in a world of confusion, contradiction, and fear.”⁴ This form of psychological abuse increases the trauma of physical and sexual abuse, and can independently cause long-term damage to a victim’s mental health, including “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.”⁶

Last session, California expressly recognized coercive control as a form of domestic violence in SB 1141. Building on the precedents described above, the bill defined “disturbing the peace of the other party” to include “conduct that, based on the totality of the circumstances, destroys the mental or emotional calm of the other party,”⁷ which in turn includes coercive control, “a pattern of behavior that in purpose or effect unreasonably interferes with a person’s free will and personal liberty.” (§ 6320(c).)

2. Adds reproductive coercion as an example of coercive control

SB 1141 provided a non-exhaustive list of examples of behavior that may rise to the level of coercive control:

- (1) Isolating the other party from friends, relatives, or other sources of support.
- (2) Depriving the other party of basic necessities.
- (3) Controlling, regulating, or monitoring the other party’s movements, communications, daily behavior, finances, economic resources, or access to services.
- (4) Compelling the other party by force, threat of force, or intimidation, including threats based on actual or suspected immigration status, to engage in conduct from which the other party has a right to abstain or to abstain from conduct in which the other party has a right to engage.

³ Candel, Kristy, *Protecting the Invisible Victim: Incorporating Coercive Control in Domestic Violence Statutes* (Jan. 2016) Student Note, 54 Fam. Ct. Rev. 112, 114-115.

⁴ *Id.* at 115.

⁵ *Facts about Domestic Violence and Psychological Abuse*, National Coalition Against Domestic Violence, https://assets.speakcdn.com/assets/2497/domestic_violence_and_psychological_abuse_ncadv.pdf (as of Mar. 12, 2021).

⁶ *Id.*

⁷ “[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.)

(§ 6320(c).) If a court finds that behavior of this nature unreasonably interferes with a person's free will and personal liberty, the court may issue a domestic violence restraining order.

This bill would add another example of coercive control: reproductive coercion, defined as controlling the reproductive autonomy of another through force, threat of force, or intimidation, which may include excessively pressuring the other party to become pregnant, deliberately interfering with contraception use or access to reproductive health information, or using coercive tactics to control, or attempt to control, pregnancy outcomes. The author writes:

In the midst of the COVID-19 pandemic, reports of domestic violence in California have surged, highlighting the need for the law to remedy multiple forms of domestic violence. Now, more than ever, we must update our legal system so that it adequately addresses the real challenges experienced by domestic violence survivors. Despite changes in recent years to update our laws in California, our codes do not yet recognize the significant role that reproductive coercion plays in domestic violence, and how these types of abuse endanger the lives and freedom of survivors. SB 374 will provide critical clarity to the Domestic Violence Prevention Act (DVPA) by adding reproductive coercion. Although the term reproductive coercion may be unfamiliar to some, this abusive behavior is far more common than many realize. Research shows us that many survivors of abuse also experience reproductive coercion, which includes, but is not limited to, interference with contraception use and pregnancy outcomes. We also know that reproductive coercion has a wide array of consequences for victimized individuals. Consequences include unintended pregnancies, coerced or late-term abortions, increased sexually transmitted infections, and increased levels of depression, substance abuse, and suicidality. By recognizing these actions as abuse and stating clearly that control over your reproductive decisions are central to your autonomy, safety and security, SB 374 DVPA will help survivors seeking justice and protection.

Reproductive coercion has been widely recognized as a prevalent form of abuse in medical and academic circles and among organizations that assist survivors of domestic violence.⁸ Journalists have been shedding light on the issue; a recent *Washington Post* article, for instance, presents powerful interviews with victims along with a description

⁸ Saravi, Sahba Taslim, Comment, *Addressing Abusers' Attack on Women's Right to Reproductive Autonomy* (2020) 23 Rich. Pub. Int. L. Rev. 91, 94. In 2013, the American College of Obstetricians and Gynecologists issued definitions and screening guidance on reproductive coercion. (ACOG Committee on Health Care for Underserved Women, *Reproductive and Sexual Coercion*, <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2013/02/reproductive-and-sexual-coercion> [as of Mar. 14, 2021].)

of the growing body of research on reproductive coercion.⁹ However, reproductive coercion has not received the same degree of attention in the legal community or at the legislative level; it appears that if this bill is enacted, California would be the first state to expressly recognize reproductive coercion in statute. Writing in support, the California Partnership to End Domestic Violence states:

Reproductive coercion is experienced by many domestic violence survivors. According to a 2010 study, approximately 20% of women age 16-29 seeking care at five family planning clinics in Northern California who had a history of domestic violence and abuse also experienced pregnancy coercion, and 15% reported birth control sabotage. An August 2019 study of 550 sexually active high school females found that nearly one in eight had experienced reproductive coercion in the past three months. Consequences of reproductive coercion include unintended pregnancies, increased sexually transmitted infections, interference with reproductive health decisions, and increased levels of depression, substance abuse, and suicidality.¹⁰

In its broadest sense, reproductive coercion involves abusive control over a person's reproductive healthcare decisionmaking in order to exert power over them. While reproductive coercion is not limited to the context of heterosexual intimate partners or coercion against women,¹¹ legal commentary tends to focus on stereotypical situations. The Iowa Supreme Court wrote:

Reproductive coercion ... is a form of domestic violence that involves coercive behavior over a woman's reproductive health. Abusers understand a woman is less likely to leave the relationship if she has a child. Abusers may forcibly impregnate women, refuse to wear a condom, or manipulate contraception in order to further their control and dominance. Between 4% and 8% of all pregnant women report experiencing physical abuse during pregnancy. Significantly, women face an increased risk of homicide during pregnancy.

(*Planned Parenthood of the Heartland v. Reynolds ex re. State* (Iowa 2018) 915 N.W.2d 206, 220.)

⁹ Glicksman, Eve *Not what I consented to: When a partner tries to control the other's choice about pregnancy* (Mar. 14, 2021) *Washington Post* website, https://www.washingtonpost.com/health/pregnancy-pressure-domestic-abuse/2021/03/12/ff9d0b2e-7f7b-11eb-9ca6-54e187ee4939_story.html.

¹⁰ For an overview of research on reproductive coercion, see Grace, Karen & Anderson, Jocelyn *Reproductive Coercion: A Systematic Review* (2016) HHS Public Access, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5577387/> (as of Mar. 14, 2021).

¹¹ One study showed that from 2010 to 2012, male respondents indicated that they experienced reproductive coercion slightly more often than women (9.7 percent of men and 8.4 percent of women). (Basile, Kathleen & Smith, Sharon, *Prevalence of Intimate Partner Reproductive Coercion in the United States: Racial and Ethnic Differences* (2019) National Intimate Partner and Sexual Violence Survey https://www.researchgate.net/publication/337807488_Prevalence_of_Intimate_Partner_Reproductive_Coercion_in_the_United_States_Racial_and_Ethnic_Differences [as of Mar. 14, 2021].)

One commenter writes:

Reproductive coercion is defined as a “male partner[‘s] attempts to promote pregnancy in their female partners through verbal pressure and threats to become pregnant (pregnancy coercion), direct interference with contraception (birth control sabotage), and threats and coercion related to pregnancy continuation or termination (control of pregnancy outcomes).” Common characteristic behaviors of reproductive coercion include: attempts to impregnate a female partner against her wishes by methods of verbal threats to become pregnant, coercing a partner to have unprotected sex, sabotaging a partner’s attempts to use birth control, and controlling the outcomes of a pregnancy. There are three major periods when reproductive coercion takes place: (1) pre-intercourse, in the form of pregnancy coercion, where the male partner uses verbal demands, threats and physical violence to put pressure on his partner to become pregnant; (2) during intercourse, in the form of birth control sabotage, where the male partner uses direct acts to ensure a woman cannot use contraception or to render the contraception ineffective; and (3) post-intercourse, in the form of controlling pregnancy outcomes, where the male partner uses threats or acts of violence to ensure a woman complies with his wishes regarding the decision to continue or terminate a pregnancy.¹²

With respect to birth control sabotage, the article describes common narratives:

- He would throw away my birth control pills. I then, with help from my doctor, managed to secretly get an IUD which was fine for a while until he discovered it in which he then forcefully ripped it out of me. Once I fell pregnant, he then refused to let me have an abortion.
- I gave a friend of mine some condoms. Then the next night or something, I had her call me saying, “look, I’ve just found pin holes in the condoms.”
- Destroying (burning) my whole prescription for contraceptive pills and physically preventing me from seeing a doctor or chemist (or anyone).
- I tried the pill but when he found them, he got mad and put them down the sink. The time I put my foot down with condoms, he poked a needle through some and mixed them all up. Told me “good luck.”
- Then, there was another time I started/ using the Ring...and he pulled it out of me.¹³

¹² *Addressing Abusers’ Attack on Women’s Right to Reproductive Autonomy*, *supra*, fn. 8 at 94-95, quoting Sara A. McGirr et al., *An Examination of Domestic Violence Advocates’ Responses to Reproductive Coercion*, J. Interpersonal Violence 1, 2 (2017).

¹³ *Id.* at 93.

With respect to control of pregnancy outcomes and a woman's right to choose, the Iowa Supreme Court wrote:

Battered and abused women are often carefully monitored by their abuser. In order to maintain control, abusers check the mileage on the woman's car, nail doors and windows shut, and call the woman at home or at work multiple times during the day. Abusers often check insurance claims and credit card statements, so a victim of domestic violence may need to obtain cash to pay for the procedure. Abusers limit communications to family and friends, so a woman may not have access to people who can loan money or provide transportation. Victims of domestic violence also must keep the pregnancy and decision to terminate a secret from their abusers, so women must manage to overcome all of the above hurdles as quickly as possible, before the symptoms of pregnancy become visible. Managing to go to a doctor's appointment or clinic in secret, even for a single visit, therefore requires significant planning and resources.

(Planned Parenthood of the Heartland v. Reynolds ex re. State, supra, 915 N.W.2d at 220.)

Studies show the clear link between intimate partner violence and reproductive coercion. For instance, in a survey of 3,000 callers to the National Domestic Violence Hotline, 25 percent of the callers reported having experienced reproductive coercion: their partners would either prohibit them from using birth control or sabotage their birth control methods.¹⁴ The interconnectedness of psychological and physical harm is captured in the following harrowing account:

Almost two decades ago, when Dr. Liz Miller was working in a medical clinic in California, she encountered a young woman who came in and requested a pregnancy test. When the test came out negative, Dr. Miller asked the patient if she wanted to be pregnant, to which the patient responded, "no." Dr. Miller then asked the patient if she was using birth control; again, the answer was "no." She then asked the patient whether she felt safe in her relationship, to which the patient shrugged and replied "yeah." Dr. Miller handed the patient a brown bag full of condoms and encouraged the patient to return when she decided what birth control method would work best for her. Two weeks later, Dr. Miller encountered that patient again, but this time in her hospital's emergency room. The young woman had been rushed in with a severe head injury, having been pushed down the stairs by her boyfriend. Dr. Miller realized she had completely missed that this patient was in an abusive relationship, one in which the patient's boyfriend forced her to have sex, refused to wear a condom, and prevented her from taking birth control. Since that encounter, Dr. Miller has focused her work

¹⁴ Nat'l Domestic Violence Hotline, *1 in 4 Callers to the National Domestic Violence Hotline Reported Birth Control Sabotage and Pregnancy Coercion* (Feb. 15, 2011) <https://www.thehotline.org/news/1-in-4-callers-to-the-national-domestic-violence-hotline-report-birth-control-sabotage-and-pregnancy-coercion/> (as of Mar. 12, 2021).

on protecting victims of domestic violence from a very unrecognized, yet extremely harmful mode of abuse: reproductive coercion and birth control sabotage.¹⁵

Stories such as these provide a glimpse into the spectrum of domestic violence and the various tactics abusers use to control and subjugate their victims. This bill expressly recognizes reproductive coercion as yet another form of coercive control that may be enjoined through a domestic violence restraining order.

3. Supporters argue the law should expressly address the full extent of domestic violence

Supporters include organizations that provide services to domestic violence survivors. They contend that the bill continues California’s progress towards recognizing and remedying the full extent of domestic violence. While it has been pointed out that the conduct the bill covers is likely encompassed by existing law, the author and supporters emphasize the importance of expressly recognizing reproductive coercion in statute, in order to help spread awareness of the issue and name a pernicious and prevalent form of abuse. Indeed, Family law litigants are overwhelmingly self-represented, so clarity in the Family Code is especially important. The California Partnership to End Domestic Violence states:

California needs to take swift action to update the DVPA to be more accurate and cover more forms of abuse – originally passed over 20 years ago in 1993. Currently, the DVPA, while amended over time, does not go far enough to provide explicit clarity and coverage of reproductive coercion – a form of abuse that impacts many. California needs to continue to lead the nation in protecting domestic violence survivors by passing SB 374 to cover reproductive coercion in the DVPA.

The Judicial Council is in the process of updating certain forms, including the form used to petition for a domestic violence restraining order. Currently the form enables the petitioner to ask the court to order the person not to “disturb the peace” but does not define this term.¹⁶ As described above, the term has been judicially construed and legislatively defined to encompass a broad array of psychological abuse. Updating the form to elaborate on the meaning of this term consistent with case law and legislative developments could better assist survivors in obtaining the protection they need. At some point, however, there is a risk of over-legislating in this area before the judiciary has had a chance to interpret and implement recent changes to the DVPA.

¹⁵ *Addressing Abusers’ Attack on Women’s Right to Reproductive Autonomy*, *supra*, fn. 8 at 92-93

¹⁶ DV-100 Request for Domestic Violence Restraining Order, p. 2, Judicial Branch website, <https://www.courts.ca.gov/documents/dv100.pdf> (as of Mar. 3, 2021).

SUPPORT

California Partnership to End Domestic Violence
California Women's Law Center
NARAL Pro-Choice California
University of California, Irvine School of Law Domestic Violence Clinic

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

SB 24 (Caballero, 2021) authorizes courts to include in domestic violence restraining orders provisions that expressly prohibit third parties from releasing the information of a minor protected under the order to the restrained party, and would require such third parties to implement protocols to implement these provisions. That bill passed this Committee by a vote of 11-0 and is now pending on the Senate floor.

SB 320 (Eggman, 2021) would alter judicial processes that apply to violations of the firearm relinquishment requirement in connection with the issuance of domestic violence restraining orders. The bill will be heard in this Committee in the same hearing as this bill.

SB 538 (Rubio, 2021) requires courts to receive domestic violence restraining order petitions or gun violence restraining order petitions electronically. The bill also permits parties and witnesses to appear remotely at a hearing on a petition for a gun violence restraining order or domestic violence restraining order. The bill is pending in this Committee.

AB 887 (Levine, 2021) requires courts to receive domestic violence restraining order petitions electronically. The bill is pending in the Assembly Judiciary Committee.

Prior Legislation: *See Comment 1.*
