



## NEW JERSEY STATE BAR ASSOCIATION

### Statement to the Joint Meeting of the Assembly Judiciary Committee and the Assembly Law and Public Safety Committee Regarding Domestic Violence Bills

March 9, 2023

The New Jersey State Bar Association thanks you for this opportunity to discuss the issue of domestic violence as you consider these bills before you today. This is an important issue to us as practitioners, especially at the NJSBA which represents all aspects of domestic violence and family law, in which domestic violence appears regularly entangled. In NJSBA's review of bills that touch upon these areas of the law, and generally, the scope is on the practical impact of the proposed legislation in both practice areas without losing sight of the policy behind the issues. That is no different here today where we reviewed **A1475 (Lopez)** (coercive control); **A1704 (Speight)** (requiring domestic violence orders to be issued in other languages); **A2526 (Murphy)** (wireless telephone billing transfers to certain victims); **A2668 (Mosquera)** (alimony and domestic violence); **A2770 (Stanley)/S1517 (Greenstein)** (regarding restraining orders where domestic violence statutes do not apply); **A3903 (Stanley)** (restraining orders and pregnant victims); and **A3808 (Lopez)** (changing locks on residential units).<sup>1</sup>

In 1995, then-Judge Virginia Long authored the following in an opinion on an appeal of a final restraining order in a domestic violence matter:

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<sup>1</sup> This statement does not exclude any comments or concerns we have on the other bills on this agenda, however the NJSBA is still reviewing those other bills and will provide comments when that review is completed.

What occurred between these parties, whose relationship had ended and who were living apart, was a conflict over finances and possession of the marital premises. During an argument, tempers flared and defendant threatened drastic measures. He carried out his threat with the childish act of turning off the phone. While this was not conduct to be proud of, plaintiff was neither harmed (except in the most inconsequential way) nor was she subjected to potential injury. *As such, the invocation of domestic violence law trivialized the plight of true victims of domestic violence and misused the legislative vehicle which was developed to protect them.* It also had a secondary negative effect: the potential for unfair advantage to a matrimonial litigant.

Corrente v. Corrente, 281 N.J. Super. 243, 250 (1995) (emphasis added).

The opinion is an important one because of its analysis of domestic violence and domestic contretemps. In reciting the preamble of the PDVA in her opinion, she highlighted the purpose of the statute:

The way that the Legislature addressed these problems was to provide emergency and long term protection to domestic violence victims whose criminal complaints against their spouses had traditionally been treated cavalierly by law enforcement officers, solely because they arose in the domestic context. . . . In enacting the domestic violence law, the Legislature did not create a new class of offenses or interdict acts which otherwise were not addressed by criminal law, but ensured that spouses who were subjected to criminal conduct by their mates had full access to the protection of the legal system.

Id. at 247.

The NJSBA proffers that this area of the law is not easily legislated with specificity because the dynamics of these matters are as varied as the dynamics of relationships. As such, a review of these bills is taken with a careful view of balancing the rights of all involved and, in particular, the practical impact of the proposed legislation on those individuals who seek protections from domestic violence, those people who are alleged to have committed domestic violence, and the ability of the court to apply the law with the discretion necessary to impose justice in each case that comes before it.

The NJSBA offers the following comments on the bills up today:

## **A1475 (Lopez) – Requires court to consider information regarding coercive control in domestic violence proceedings**

The NJSBA respectfully submits that without our proposed amendments as provided herein, it has significant concerns of the breadth of the bill. Therefore the NJSBA opposes the proposed amendments. The NJSBA previously testified on this bill, urging caution before adopting a definition of coercive control that would enumerate a disjunctive list of elements resulting in a more expansive list of acts that would fall under the umbrella of domestic violence than this Legislature intended in its passage of the PDVA. The NSJBA proposes the following amendment to section 13(a)(7) to both address the acts for which a restraining order should issue and preserve the court's discretion to issue such order:

**Any pattern of coercive control against a person that in purpose or effect unreasonably interferes with a person's free will and personal liberty with the court specifically considering evidence of the need for protection from immediate danger and/or the prevention of further abuse. Hallmarks of a pattern of coercive control include actions that are unreasonable in nature and are intentionally designed to deliberately and/or improperly remove the plaintiff's liberty, freedom, bodily integrity, and/or human rights, and/or are actions designed to threaten and/or exploit the plaintiff. Coercive control also includes evidence of psychological, financial or economic abuse of the plaintiff.**

Family law practitioners see an unfortunate number of unintended consequences from the filing of restraining orders within the context of contentious divorces or custody battles. What was once a regular activity among families or between couples could be characterized as a number of things that would, under this proposed bill, be considered coercive control. Calendar-sharing applications that were once a regular part of a couple's livelihood become fodder for accusations of illicit tracking of another or, in this bill "controlling, regulating or monitoring the person's movements, communications." A seemingly innocuous budget that was once part of the

fabric in a couple's relationship could be construed as "depriving the person of basic necessities" or even controlling finances now that the couple is apart. To expand the definition to include these and other similar acts such that they would require a court to issue a final restraining order has much broader implications for determinations of custody, parenting time and possession of a marital residence. To be clear, there are instances where it is entirely appropriate to issue such an order and for the acts that led to such an order to be considered. But by expanding the definition to include the specific acts described in this proposed legislation would lead to the utilization of domestic violence applications as a sword and not a shield, and could truly "trivialize the plight of true victims of domestic violence and misuse the legislative vehicle which was developed to protect them."

To reiterate, criminal coercion (which elements incorporate the definition of coercive control in this bill)<sup>2</sup> is incorporated into the PDVA as a predicate act upon which a temporary restraining order should issue. It is incorporated into the pre-printed Temporary Restraining Order form that is completed by the court staff based upon an applicant's complaint for the judge to consider before issuing such an order. In our robust discussions with others who have testified

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<sup>2</sup> A person is guilty of criminal coercion, if, with purpose unlawfully to restrict another's freedom of action to engage or refrain from engaging in conduct, he threatens to:

- (1) Inflict bodily injury on anyone or commit any other offense;
- (2) Accuse anyone of an offense;
- (3) Expose any secret which would tend to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute;
- (4) Take or withhold action as an official, or cause an official to take or withhold action;
- (5) Bring about or continue a strike, boycott or other collective action, except that such a threat shall not be deemed coercive when the restriction is demanded in the course of negotiation for the benefit of the group in whose interest the actor acts;
- (6) Testify or provide information or withhold testimony or information with respect to another's claim or defense; or
- (7) Perform any other act which would not in itself substantially benefit the actor but which is calculated to substantially harm another person with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

N.J.S. 2C:13-5

before the Assembly Judiciary Committee, the NJSBA offered alternative language to consider that would more broadly define coercive control without offering a list of options from which to choose, which – in its disjunctive form in the current bill – could require a court to issue a restraining order on what is truly an act between people who are in the throes of a highly contested divorce or separation, when their intent was not to commit an act of domestic violence, but instead, an attempt to resolve an intra-family disagreement consistent with past family practices.

The NJSBA does not discount that even in these scenarios, it may be appropriate for restraining orders to be issued. Each case should be adjudicated on the specific facts presented before the court. We urge caution in defining what acts should be considered, as well as the actual intent behind those actions, when the court is faced with the decision to issue a final restraining order.

**A1704 (Speight) – Requires domestic violence orders to be issued in other languages in addition to English under certain circumstances**

The NJSBA supports this bill, which requires that domestic violence restraining orders and notices be issued in other languages that are spoken by the parties. It is our understanding that the bill will offer these forms in the top ten languages spoken, which is a step in the right direction. The NJSBA remains vigilant that should the need for additional languages become apparent, they be made available in those languages as well.

We urge the committee to vote “yes” to this bill.

**A2526 (Murphy) – Permits court to order transfer of billing responsibility for, and rights to, wireless telephone number to certain victims of domestic violence or stalking**

The NJSBA supports this bill as a strong measure to protect domestic violence victims.

The NJSBA offers a friendly suggestion to allow the victim to make a request for reimbursement of any fees that may be incurred for the transfer of the phone number upon entry of a final restraining order.

We urge the committee to vote “yes” to this bill.

**A2668 (Mosquera) – Prohibits awarding alimony to domestic violence offenders; permits termination of alimony based on conviction for crime or offense involving domestic violence**

The NJSBA opposes this bill because the alimony statute already gives discretion to judges to consider domestic violence in both awarding alimony or an outright prohibition of alimony.

New Jersey passed a comprehensive reform of its alimony statutes in 2014. The NJSBA participated in those discussions. The notion of prohibiting alimony payments to a person who has committed certain enumerated crimes has been addressed in N.J.S. 2A:34-23(i), which prohibits payments of alimony for persons who are convicted of murder, manslaughter, criminal homicide, aggravated assault in certain circumstances, or substantially similar offenses in another jurisdiction if the crime resulted in death or serious bodily injury to a family member of a divorcing party and the crime was committed after the marriage or civil union. In addition to these crimes, a court has discretion to consider a prohibition on alimony for persons convicted of an attempt or conspiracy to commit murder if the ostensible payor was the intended victim. Finally, the court may consider denying alimony “for other bad acts.” The courts have discretion to consider these factors on a case-by-case basis.

Furthermore, with regard to the alimony award, should it be ordered, N.J.S. 2A:34-23(b) sets forth the factors that the court “shall consider” which includes a 14th factor - that the court may consider “any other factors which the court may deem relevant.”

For these reasons, the NJSBA respectfully submits that the alimony statutes already contemplate bad acts, whether they involve convictions of predicate acts that lead to a restraining order under the PDVA or otherwise, in the award alimony or the outright prohibition of alimony.

**A2770 (Stanley)/S1517 (Greenstein) – Authorizes issuance of protective orders for certain victimized persons in situations for which domestic violence statutes do not apply due to lack of familial or dating relationship between victim and offending actor**

The NJSBA supports this bill as amended, which creates an avenue for a protective order for those situations that do not fall under the PDVA. The NJSBA thanks the sponsors for considerations of our earlier remarks and for the amendments to address those concerns. Those amendments alleviate our concerns raised in the bill’s prior iteration by including an opportunity for discovery by the defendant prior to the hearing and providing a standard for adjudication before a final restraining order is issued.

We urge the committee to vote “yes” to this bill.

**A3093 (Stanley) – Authorizes court to include in domestic violence restraining orders a provision making the order applicable to a pregnant victim’s child upon birth of the child**

The NJSBA supports this bill because it ensures the protection of a victim’s child upon birth, without the necessity of having the victim return to the court immediately after the birth of the child for an emergent hearing in order to add the newborn child to the restraining order. This is an incredibly important measure that ultimately eases the process of receiving protection for domestic violence victims and their immediate families. The NJSBA further supports the

amended language that would allow this at the request of the victim in order to give the victim the option to request such relief to further protect the safety of the victim and the newborn child.

We urge the committee to vote “yes” to this bill.

**A3808 (Lopez) – Allows tenant with temporary or permanent restraining order to change locks on residential rental unit**

The NJSBA supports this bill because of its importance to those victims of domestic violence who live in rental housing. This is an important measure that will ultimately help protect victims who may remain vulnerable to violence even after protective relief in the form of a restraining order has been provided by the court.

We urge the committee to vote “yes” to this bill.