



NEW JERSEY STATE BAR ASSOCIATION

Statement on Domestic Violence Bills Before the Senate Judiciary Committee June 12, 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. We applaud the sponsors and the legislature for its work on these bills and, with one recommendation for amendments, we support the overall aim to strengthen domestic violence laws.

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

A1475 (Lopez)/S1908 (Ruiz) – Requires court to consider information regarding coercive control in domestic violence proceedings

The NJSBA has continued dialogue with the sponsors and stakeholders involved in the drafting and advocacy of this bill. While the Association understands the import of including reference to coercive control, it recommends amendments that would reflect a definition of coercive control that does not limit, rather creates a flexible description of behaviors that would fall into the definition of coercive control while at the same time narrow its applications to exclude domestic contemps.

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 Prevention of Domestic Violence Act (PDVA). The NJSBA 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 "monitoring the person's movements, communications, daily behavior." 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, economic resources, or access to services" 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.

The NJSBA also points out that criminal coercion (which elements incorporate the definition of coercive control in this bill)¹ 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 before the Assembly Judiciary Committee, Assembly Law and Public Safety Committee, and the Assembly Appropriations 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

¹ 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

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)/S1000 (Ruiz) – Requires domestic violence orders to be issued in other languages in addition to English under certain circumstances

The NJSBA supports the 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.

A3903 (Stanley)/S1516 (Greenstein) – Authorizes court to include in domestic violence restraining orders a provision making the order applicable to a victim’s child upon the 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 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 the bill.