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May 30, 2020

The Honorable Senator Susan Rubio
Member of the Senate, 22nd Senate District
State Capitol, Room 4052
Sacramento, CA 95814

Re: SB 1141 (Rubio) as Amended on May 29, 2020
Position: Oppose Unless Amended

Dear Senator Rubio,

On behalf of the California Association of Certified Family Law Specialists, a non-profit organization with 660 members who are certified as family law specialists by the State Bar of California, Board of Legal Specialization, I write to express opposition to Senate Bill 1141 (as amended), unless further amended.

The Domestic Violence Protection Act ([DVPA] Fam. Code § 6200 et seq.) seeks to prevent acts of domestic violence, abuse, and sexual abuse. A fundamental in implementing this important policy is Section 6203's definition of "abuse". This definition is the standard applied for judicial decisions on domestic violence restraining orders, child custody, and domestic violence in criminal proceedings.

This bill expands the scope of defined abuse by including coercive control as a form of abuse, which is described as manipulation, isolation, financial abuse, and other forms of conduct. ACFLS is concerned that, despite the bill's apparent effort to protect victims, the bill casts a wide net to encompass conduct in a personal relationship that could subjectively determined to be – or not be – abusive. This concern centers on the codification of specific conduct that can be non-harmful, and open to interpretation given the interpersonal dynamics of a particular relationship.

A person's conduct constitutes coercive control only if the conduct is intentional, or with reckless disregard of the consequences, it interferes with the will of the victim, and is known, or reasonably known, to likely cause the victim severe emotional distress. Additionally, the victim must actually suffer severe emotional distress. Finally, the conduct must not be reasonable under the circumstances. Determination of these factors may be unwieldy and problematic given that coercive control is a pattern of behavior over a period of time between parties already in a relationship, and not an event. The stated purpose of the bill is to focus on the motives of the perpetrator. However, the intentionality or recklessness prerequisites appear analogous to tort law in evaluating a particular act as opposed to the dynamics of a personal relationship over a period of time. This might have the effect of increasing the burden on a victim who must prove motive or purpose by the perpetrator.

What might be seen as tolerable conduct by some, might be seen as intolerable conduct by others. The reasonableness of some of proposed Family Code section 6204's listed conduct during a personal relationship is open to subjective interpretation. There may be a sufficient divergence of views within society that prevents an objective standard to be applied to some of the listed types of conduct. A victim may not receive protection because of a determination of reasonableness without an objective societal standard for reference. Also, a perpetrator may allege the same conduct by the victim to either 1) argue that in the context of their relationship the perpetrator's conduct was reasonable, or 2) that the victim should be restrained. Also, some conduct is common in a personal relationship and is subject to a later revisionist argument about motive to classify it as falling under the statute.

Even without this framing of a psychological construct (i.e., the perpetrator's motives), victims are already protected with the existing broad definition of abuse that has objective standards. "Abuse" is broadly defined in terms of specified physical harms but is not limited to actual infliction of emotional injury. (Fam. Code, § 6203(a) & (b).) "Abuse" also encompasses a broad range of harmful behaviors under Section 6320, including threats, stalking, annoying phone calls, vandalism, and "disturbing the peace of the other party." "[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." (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1497.)

Based on the foregoing concerns, ACFLS proposes the following amendments to Senate Bill 1141.

- Delete Section 1 (legislative findings).

- As to Family Code section 3044, subdivision (c), remove the insertion of “coercively controlling as described in Sections 6203 and 6204”, thereby leaving the section unamended.
- As to Family Code section 6203, subdivision (a)(5), replace the proposed language with: “To engage in a pattern of coercive control that is unreasonable under the totality of the circumstances after considering the reasons for the behavior.”
- Delete the addition of Family Code section 6204 to the Family Code.
- As to Family Code section 6320, subdivision (a), remove the insertion of “coercively controlling as described in Sections 6203 and 6204”, thereby leaving the section unamended.

Respectfully submitted,



AVI LEVY, CFLS
Legislative Director, ACFLS