



Assemblymember Rudy Salas, 32nd District
ASSEMBLY BILL 2369 – DOMESTIC VIOLENCE PREVENTION ACT
ATTORNEY’S FEES & COSTS
FACT SHEET

BACKGROUND

Most family law litigants represent themselves in court. (Stats. 2010, ch. 352 (A.B. 939), § 1, subd. (f).) This is especially true for petitioners for domestic violence restraining orders (DVRO), who are “largely unrepresented women and their minor children.” (*Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 423.) Having representation can make all the difference in any court case, especially for a survivor in a DVRO case, where they are expected to introduce evidence following complex rules, face the person who abused them in court, and testify in a public setting to very personal details of their lives—which can be traumatizing.

ISSUE

Financial abuse is prevalent among most abusive relationships so most petitioners (survivors) will not be able to afford an attorney, whereas respondents (abusers) are more likely to be able to do so. Indeed, about 90% of DVRO litigants are self-represented. (*Ross v. Figueroa* (2006) 139 Cal.App.4th 856, 861, fn. 3.) While DVROs are designed to protect survivors, a survivor’s DVRO request can be denied if they cannot advocate for themselves in court or navigate complex rules and laws. In fact, courts have discretion to deny a DVRO even if they find past abuse has occurred, so survivors can be ordered to pay for the respondent’s attorney’s fees even after being abused.

In addition, if a survivor is able to pay for an attorney, and wins a case, they could be less likely to get the court to order the respondent pay for their attorney’s fees because, given how the current law is written and interpreted, courts often make it harder for survivors who win to get their attorney’s fees, compared to abusers. As a result, many attorneys are reluctant to take survivors’ cases, and many survivors are discouraged from even filing their request in the first place: if they lose, they could be ordered to pay thousands or more for the respondent’s attorney’s fees, and if they win, the court could deny their attorney’s fees for almost any reason, as the matter is discretionary.

EXISTING LAW

Existing law allows courts to initially issue DVROs after a noticed hearing, enjoining a party from specified acts for up to five years, to prevent domestic and sexual abuse. (DVPA; Fam. Code, § 6200 et seq.) If a DVRO is issued, courts have discretion to order either party to pay the prevailing party’s attorney’s fees and costs. (Fam. Code, § 6344, subd. (a).) Moreover, courts are required to order the respondent pay the

prevailing petitioner’s attorney’s fees and costs, where the petitioner cannot afford to pay, as specified. (Fam. Code, § 6344, subd. (b).) Finally, when awarding attorney’s fees and costs under the Family Code, including in DVRO cases, the court must “first determine that the party has or is reasonably likely to have the ability to pay.” (Fam. Code, § 270.)

THIS BILL

AB 2369 would instead *require* the court, after issuing a DVRO, to order a restrained party to pay the prevailing petitioner’s attorney’s fees and costs, after determining ability to pay. This bill would also allow the court to order a protected party to pay the prevailing respondent’s attorney’s fees and costs, after determining ability to pay, only if the respondent can prove by a preponderance of the evidence that the petition or request is frivolous or solely intended to abuse, intimidate, or cause unnecessary delay. In this way, this bill mirrors similar remedial statutes like the Fair Employment and Housing Act (FEHA; Gov. Code, § 12965, subd. (b)), and the anti-SLAPP statute (Code Civ. Proc., § 425.16, subd. (c)(1)).

Like those, this bill encourages more survivors to bring their cases, with representation, without worrying they may have to pay for their own or the respondent’s attorney’s fees for the act of making the request; and encourages more attorneys to take low-income survivors’ cases. This bill vindicates every person’s “right to be safe and free from violence and abuse in [their] home and intimate relationships” (stats. 2014, ch. 635, § 1, subd. (a)), and promotes the Legislature’s goals of preventing abuse and not requiring survivors to fund their own abuse.

SUPPORT

Family Violence Appellate Project (sponsor)

FOR MORE INFORMATION

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