



1-1-2003

Civil / Chapter 842: Another Remedy for Victims of Gender-Related Violence - Is This Too Much of a Good Thing?

Bill Diedrich

Follow this and additional works at: <https://scholarlycommons.pacific.edu/mlr>

 Part of the [Legislation Commons](#)

Recommended Citation

Bill Diedrich, *Civil / Chapter 842: Another Remedy for Victims of Gender-Related Violence - Is This Too Much of a Good Thing?*, 34 *McGEORGE L. REV.* 333 (2003).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol34/iss2/7>

This Greensheet is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in McGeorge Law Review by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

Chapter 842: Another Remedy for Victims of Gender-Related Violence—Is This Too Much of a Good Thing?

Bill Diedrich

Code Section Affected

Civil Code § 52.4 (new).

AB 1928 (Jackson); 2002 STAT. Ch. 842.

I. INTRODUCTION

“You better not have any . . . diseases,” a Virginia Tech football player allegedly yelled at a woman after he and a friend allegedly raped her.¹ After the University found one alleged perpetrator guilty of “abusive language,”² and another not guilty,³ the victim decided to pursue her cause of action through the civil courts.⁴ She sued under the federal Violence Against Women Act,⁵ which provided her with civil remedies for her injuries.⁶ However, the Supreme Court declared the federal statute unconstitutional,⁷ leaving another victim of sexual abuse without civil redemption.

Incidents of gender-related crimes are reaching epidemic proportions in the United States.⁸ Approximately 1.9 million women are victims of sexual assault annually.⁹ Moreover, nearly “[six] million women are victims of domestic violence each year.”¹⁰ Experts have estimated that the United States spends between five and ten billion dollars each year on costs related to domestic violence,¹¹ including health care and criminal justice costs.¹² Perhaps the most

1. *United States v. Morrison*, 529 U.S. 598, 602 (2000).

2. *Id.* at 603.

3. *Id.*

4. *Id.* at 604.

5. See 42 U.S.C.A. § 13981(c) (West 1995) (stating:

A person (including a person who acts under color of any statute, ordinance, regulation, custom, or usage of any State) who commits a crime of violence motivated by gender and thus deprives another of the right declared in subsection (b) of this section shall be liable to the party injured, in an action for the recovery of compensatory and punitive damages, injunctive and declaratory relief, and such other relief as a court may deem appropriate.).

6. *Id.*

7. *Morrison*, 529 U.S. at 627 (stating, “If the allegations here are true, no civilized system of justice could fail to provide her a remedy for the conduct of respondent Morrison. But under our federal system that remedy must be provided by the Commonwealth of Virginia, and not by the United States.”).

8. ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1928, at 3 (Apr. 9, 2002).

9. *Id.* at 4

10. *Id.*

11. *Id.* at 3-4 (citing statistics from the FBI, the Department of Justice, and the American Medical Association).

staggering statistic indicates that fifty percent of women who have been sexually assaulted have lost their jobs due at least in part to the assault.¹³

In response to these statistics, Congress passed the Violence Against Women Act (VAWA),¹⁴ which declared gender violence a violation of the victim's civil rights¹⁵ and provided victims with additional federal remedies.¹⁶ However, in *United States v. Morrison* the U.S. Supreme Court declared the Act unconstitutional.¹⁷ It held that "[g]ender-motivated crimes of violence are not, in any sense of the phrase, economic activity,"¹⁸ thus making the statute unsupported by the Commerce Clause of the U.S. Constitution.¹⁹ Additionally, the Court held that, as the statute proscribed discrimination by private citizens and not state actors, the statute was unconstitutional under the Fourteenth Amendment of the Constitution.²⁰ The Court indicated that gender violence is not a federal matter when it stated, "If the allegations are true, no civilized system of justice could fail to provide her a remedy for the conduct of respondent Morrison. But under our federal system, that remedy must be provided by the Commonwealth of Virginia, and not by the United States."²¹

In response to this decision,²² Assemblymember Jackson authored Chapter 842,²³ which was modeled after the VAWA²⁴ and provides similar remedies.²⁵

12. *Id.*

13. *Id.* at 4.

14. See 42 U.S.C.A. § 13981(a) (West 1995) (indicating its purpose:

Pursuant to the affirmative power of Congress to enact this part under section 5 of the Fourteenth Amendment to the Constitution, as well as under section 8 of Article I of the Constitution, it is the purpose of this part to protect the civil rights of victims of gender motivated violence and to promote public safety, health, and activities affecting interstate commerce by establishing a Federal civil rights cause of action for victims of crimes of violence motivated by gender).

15. *Id.* § 13981.

16. *Id.* § 13981(c).

17. See 529 U.S. at 613 (stating that such a statute was for the individual states to create).

18. *Id.*

19. U.S. CONST. art I, § 8, c1. 3 (giving Congress the power "[t]o regulate Commerce with foreign nations, and among the several States, and with the Indian Tribes"); see also *United States v. Lopez*, 514 U.S. 549, 559 (1995) (establishing a "substantial effects" test for acts of Congress that fall within the Commerce Clause).

20. *Morrison*, 529 U.S. at 626.

21. *Id.* at 627.

22. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1928, at 2 (June 25, 2002).

23. CAL. CIV. CODE § 52.4 (enacted by Chapter 842).

24. 42 U.S.C.A. § 13981 (West 1995).

25. Compare CAL. CIV. CODE §§ 52.4(c) (enacted by Chapter 842) (establishing that [o]ne or more acts that would constitute a criminal offense under state law that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, committed at least in part based on the gender of the victim, whether or not those acts have resulted in criminal complaints, charges, prosecution, or conviction.), with 42 U.S.C.A. 13981(c) (West 1995) (stating that [a] person (including a person who acts under color of any statute, ordinance, regulation, custom, or usage of any State) who commits a crime of violence motivated by gender and thus

Although Chapter 842 has received widespread support,²⁶ it may create an unnecessary cause of action.

II. EXISTING LAW

Currently, the California Civil Code has a number of causes of action available to victims of gender-based violence.²⁷ There are established causes of action for sexual battery,²⁸ stalking,²⁹ sexual harassment involving a business,³⁰ sexual harassment in the work place,³¹ and housing and employment discrimination based on sex.³² With each of these statutes, victims are able to recover damages.³³ In addition to these specific statutes, Californians are protected by the Ralph Civil Rights Act, which provides an additional remedy.³⁴ It states:

All persons within the jurisdiction of this state have the right to be free from any violence, or intimidation or threat of violence, committed against their persons or property because of their race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, disability . . . or because another person perceives them to have one or more of those characteristics.³⁵

Additionally, a violation of the Ralph Civil Rights Act enables a victim to recover exemplary damages amounting to three times the actual damages,³⁶ in addition to attorney's fees, costs, and a twenty-five thousand dollar civil penalty.³⁷

deprives another of the right declared in subsection (b) of this section shall be liable to the party injured, in an action for the recovery of compensatory and punitive damages, injunctive and declaratory relief, and such other relief as a court may deem appropriate).

26. See SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1928, at 11-12 (June 25, 2002) (listing various supporters such as: American Association of University Women; American College of Gynecologists and Obstetricians, District IX; American Federation of Teachers; and California Alliance for Pride and Equality).

27. See ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1928, at 2-3 (April 9, 2002) (listing the various existing remedies).

28. CAL. CIV. CODE § 1708.5 (West 1998).

29. *Id.* § 1708.7 (West 1998).

30. *Id.* § 51.9 (West Supp. 2002).

31. CAL. GOV'T CODE § 12940(j) (West 1992).

32. *Id.* § 12921 (West 1992 & Supp. 2003).

33. CAL. CIV. CODE § 3281 (West 1997) ("Every person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation therefor in money, which is called damages.").

34. *Id.* § 51.7 (West 1982 & Supp. 2003).

35. *Id.*

36. *Id.* § 52(a) (West 1982).

37. *Id.*; see *id.* § 52(a)(2) (providing for the twenty-five-thousand-dollar limit).

III. CHAPTER 842

In response to the *Morrison* decision, the California Legislature passed Chapter 842.³⁸ This bill supplements current causes of action³⁹ by adding a new provision, section 52.4 of the California Civil Code, which relates to gender violence.⁴⁰ Chapter 842 defines “gender violence” as

a form of sex discrimination and means any of the following:

- (1) One or more acts that would constitute a criminal offense under state law that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, committed at least in part based on the gender of the victim, whether or not those acts have resulted in criminal complaints, charges, prosecution, or conviction.
- (2) A physical intrusion or physical invasion of a sexual nature under coercive conditions, whether or not those acts have resulted in criminal complaints, charges, prosecution, or conviction.⁴¹

Chapter 842 provides a victim of gender-related violence a civil remedy and enables them to recover “actual damages, compensatory damages, punitive damages, injunctive relief, or any combination of [remedies].”⁴² Additionally, it can provide the prevailing plaintiff with attorney’s fees and costs. Chapter 842 also extends the traditional one-year statute of limitations for similar offenses to three years.⁴³

IV. ANALYSIS

Chapter 842 is heralded to “provide women and men who have been the victims of gender-motivated violence with a powerful tool that will enable them to hold their attackers financially responsible for their crimes.”⁴⁴ Moreover, Chapter 842 is believed to serve two important purposes: (1) to “enhance civil remedies for [violence] against women,”⁴⁵ and (2) to expand on the Ralph Civil

38. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1928, at 2 (June 25, 2002).

39. See *supra* Part II (discussing the current causes of action).

40. CAL. CIV. CODE § 52.4 (enacted by Chapter 842).

41. *Id.* § 52.4(c) (enacted by Chapter 842).

42. *Id.* § 52.4(a) (enacted by Chapter 842).

43. *Id.* § 52.4(b) (enacted by Chapter 842).

44. See SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1928, at 4 (June 25, 2002).

45. *Id.* at 6-7.

Rights Act by creating a cause of action for acts “motivated ‘at least in part’ by gender,” rather than entirely “because of” gender.⁴⁶

However, Chapter 842 still raises some questions. Although the Supreme Court seemed to invite the passage of state statutes similar to the VAWA, perhaps this bill is not necessary in California.⁴⁷

A. Is Chapter 842 Too Similar to the Ralph Civil Rights Act?

The language and penalties of the Ralph Civil Rights Act seem very similar to Chapter 842, which provides for a remedy for acts based “at least in part . . . on gender.”⁴⁸

While Chapter 842’s “at least in part”⁴⁹ language tends to indicate that an act of violence does not need to be solely based on gender, the California Supreme Court has made the same interpretation of the Ralph Civil Rights Act’s language.⁵⁰ It stated that, “[b]y employing the phrase ‘because of’ in [the Penal Code], the Legislature has simply dictated that bias motivation must be a cause in fact of the offense, whether or not other causes actually exist.”⁵¹ Even if Chapter 842 did not duplicate the Ralph Civil Rights Act, it still may be unnecessary given the additional remedies available to Californians.

B. Is Chapter 842 Unnecessary in California Given Other Available Remedies?

The United States Supreme Court’s rejection of the VAWA left individual states to pass their own statutes.⁵² This was necessary in many situations because some states did not have adequate state remedies for gender violence.⁵³ Some states did not allow rape prosecution against “cohabitants” and “dating companions,” thus making it very difficult to pursue a state civil action.⁵⁴ Additionally, at least seven other states provided spouses accused of domestic violence with

46. *Id.* at 7.

47. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1928, at 5 (June 25, 2002) (explaining that the new state action may not be justified in adequate state remedies already exist).

48. Compare CAL. CIV. CODE § 51.7 (West 1982) (stating that “[a]ll persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of their . . . sex. . .”), with *id.* § 52.4(c) (enacted by Chapter 842) (stating:

[o]ne or more acts that would constitute a criminal offense under state law that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, committed at least in part based on the gender of the victim, whether or not those acts have resulted in criminal complaints, charges, prosecution, or conviction.).

49. CAL. CIV. CODE § 52.4(c) (enacted by Chapter 842).

50. See SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1928, at 7-8 (June 25, 2002) (citing *In re M.S.*, 10 Cal. 4th 698, 717, 63 Cal. Rptr. 2d 322, 325 (1995)).

51. *In re M.S.*, 10 Cal. 4th 698, 718, 63 Cal. Rptr. 2d 322, 325 (1995).

52. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1928, at 5 (June 25, 2002).

53. *Id.*

54. *Id.*

“interspousal tort immunity.”⁵⁵ However, California is not a state with limited remedies,⁵⁶ as it has several options available to victims of gender-based violence.

C. Does Chapter 842 Really Matter?

While Chapter 842 is arguably unnecessary, it likely will make very little difference. First, on a national basis, Congress deemed gender violence an important enough issue to pass the VAWA, despite that fact that it may have duplicated state statutes.⁵⁷ Moreover, at the state level, Chapter 842 received overwhelming support.⁵⁸ Finally, Chapter 842 passed both houses by a large margin.⁵⁹ These facts tend to show a lack of concern for Chapter 842’s potential duplicative aspects.

Compounding this argument, the Ralph Civil Rights Act, which has been on the books in California for twenty six years, also contains broad language that may be duplicative of other, more specific statutes.⁶⁰ Despite this, there have been no efforts to either amend or repeal the law to ameliorate the duplication problem.⁶¹ This lack of effort, compounded by a generalized public interest in eradicating gender violence, will likely render insignificant the duplicative nature of Chapter 842.

V. CONCLUSION

While in some states, a bill like this may be a welcomed change to decades of indifference to female victims, in California this statute is merely an addition to a number of existing remedies.⁶² While Chapter 842 may not be necessary, any statute providing victims of gender violence with greater protection is welcome in the eyes of many.

55. *Id.*; see also Stephen Kelson, *The Doctrine of Interspousal Tort Immunity in Utah: Does it Still Exist?*, 13 UTAH BAR J. 21, 22 (2000) (stating that, as of 1993, thirty-seven states had completely abolished interspousal tort immunity, and “only Hawaii and Louisiana retain [it] completely”).

56. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1928, at 5 (June 25, 2002).

57. 42 U.S.C.A. §13981(c) (West 1995); see also *supra* Part I (detailing the process by which the Act was declared unconstitutional).

58. See SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1928, at 11 (listing the groups in support of AB 1928).

59. See ASSEMBLY FLOOR ROLL CALL, AB 1928 (Aug. 23, 2002) (indicating that the bill passed, fifty to twenty); see also SENATE FLOOR ROLL CALL, AB 1928 (Aug. 21, 2002) (indicating that the bill passed, twenty-four to twelve).

60. See *supra* Part II (showing that the language of the Ralph Civil Rights Act would likely encompass all of the individual statutes already on the books).

61. See CAL. CIV. CODE § 51.7 (West 1982) (indicating that this law is still valid and has not been repealed).

62. See *supra* Part IV.B (describing the need for bills like Chapter 842 in other states).