

Cutting-Edge Trend in Law Reform: Coercive Control

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Law Reform: Coercive Control



Outline

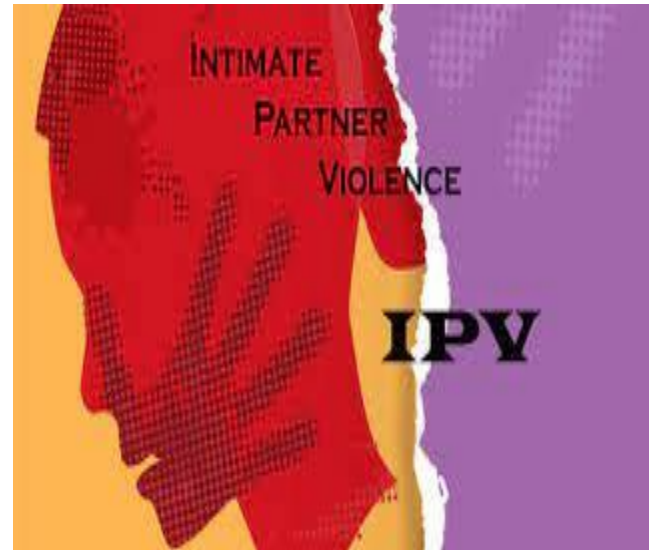
- I. DV Law Reform Movements
- II. Coercive Control: Law Reform
 - A. Background
 - B. U.K. Launchpad
 - C. U.S. Approaches
 - D. Policy Issues

DV LAW REFORM: Changing Definitions

Wife Beating



Intimate Partner Violence



Law Reform

Definitions of Abuse

Definitions of Parties

Availability of
Remedies

Prevalence: Psychological Abuse

Nearly half of all women and men in U.S. have experienced psychological aggression by an intimate partner in their lifetime

NISVS Summary Report (2010), p. 2

Prevalence Coercive Control

4 in 10 women have
experienced at least one
form of coercive control by
an intimate partner in their
lifetime

CDC, Intimate Partner
Violence in the United States,
2010, p. 19

Psychological Abuse: Harm

-
- *Although research suggests that psychological aggression may be even more harmful than physical violence by an intimate partner, there is little agreement about how to determine when psychologically aggressive behavior becomes abusive and can be classified as intimate partner violence.*

NISVS Summary Report (2010), pp. 9-10

Law's Traditional Approach to Mental Distress

- Law was slow to recognize it
- Early cases generally refused a remedy (Rest. Torts, 1934)
- Tort of intentional infliction of emotional distress (IIED) first recognized (Rest. Torts, 1948)
- Law required “extreme & outrageous conduct” causing “severe emotional distress” (Rest.2d 1965)
 - » Prosser & Keaton on Torts (5th ed.), pp. 54-64

Rationale for Reluctance to Recognize

Difficulties of proof

Injury too speculative & subtle to measure

Consequences too evanescent, intangible, & subject to individual variation

Opens door to fictitious claims, vexatious suits & litigation over “trivialities & mere bad manners”

Psychological Abuse in DV Contest

States Vary

Some *exclude* it explicitly

Some cover *indirectly* (harassment stalking)

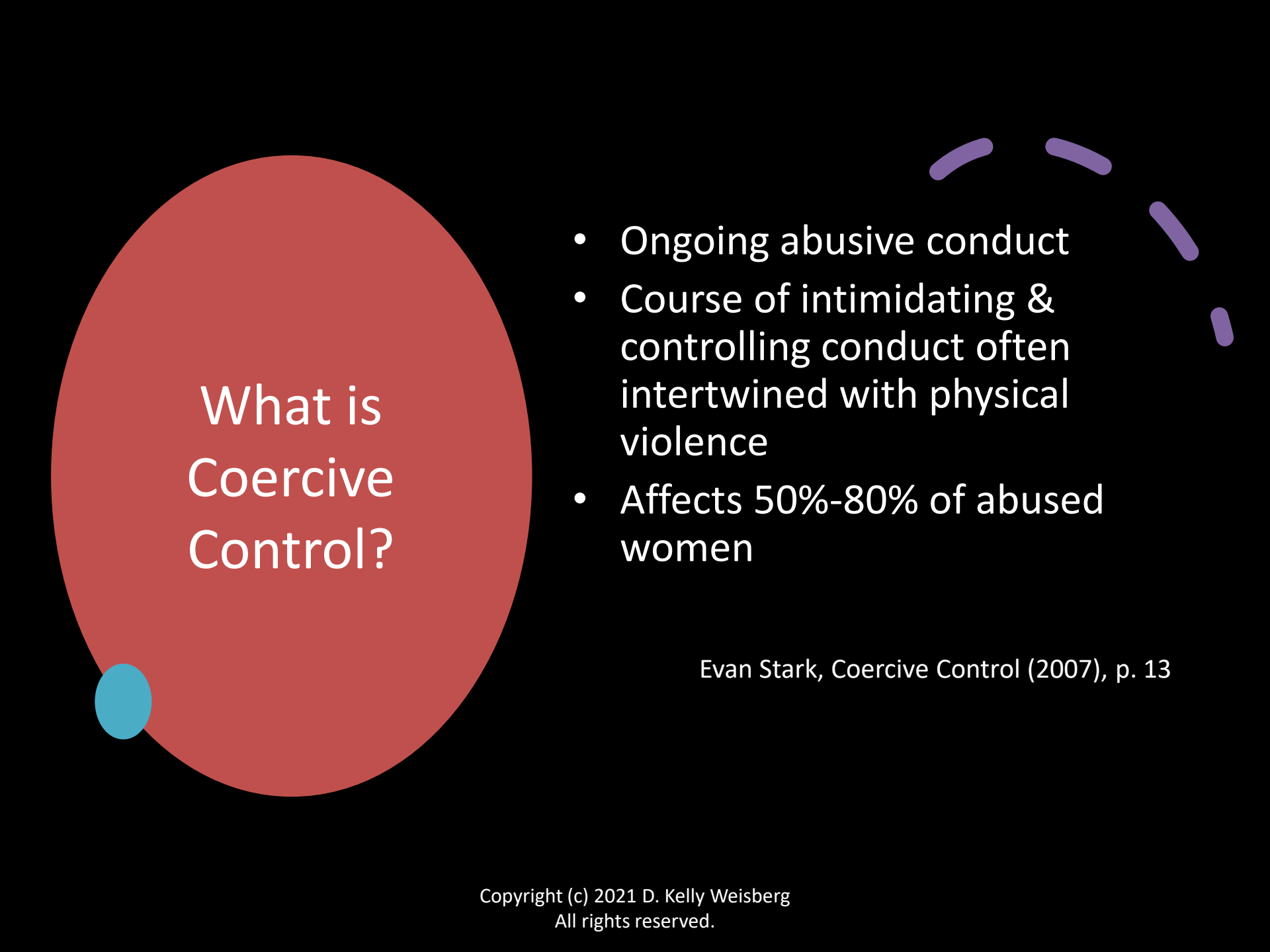
Most link it to physical abuse (“fear of imminent threat of serious physical harm”)

Very few states recognize it independently of physical abuse.

Few states remedy aspects in CPOs. Some require physical violence too.

No criminal offenses exist for psychological abuse

IIED= tort action for damages



What is Coercive Control?

- Ongoing abusive conduct
- Course of intimidating & controlling conduct often intertwined with physical violence
- Affects 50%-80% of abused women

Evan Stark, Coercive Control (2007), p. 13



Founder: Dr. Evan Stark

- Popularized & refined doctrine
- Highlights significance (lived experience)
- Proposed criminalization

Coercive Control Is *Not the Same as* Psychological Abuse



Abuser's Rationale

“You just need to choke them once & they’ll do anything you want them to. No need to go hitting your old lady.”

Coercive Control
versus
Psychological
Abuse

Scope: all-encompassing course
of conduct with spatial &
temporal dimensions

Aim: Strategic behavior to
punish, hurt, control,
deprivation of liberty

Impact: Victim fears
consequences of
noncompliance

Result: loss of autonomy/self

Tactics of Coercive Control

Intimidation

Degradation

Humiliation

Surveillance

Isolation

Intimidation

- Unreasonable demands
- Punishment or restraint
in case of disagreement
- Coercion to change/refrain
- Bullying conduct
- Indirect threats (driving
fast, displaying
weapons)
- Threats to leave
- Threats to die by suicide
- Swearing at her
- Stomping, slamming doors
- Taking away treasured
possessions
- Destruction property
- Deprive of pleasures
- Threats to her, kids + pets
- Threats to report her to
authorities (3rd parties)

Degradation

- Vicious name-calling
- Constant belittling in front of others
- Frequent criticism of her (cooking, looks, clothes, speech)
- Criticism of relatives/friends
- Treating her like a slave
- Throws things at her
- Spits on her
- False accusations to others
- Forcing her to participate in unwanted sex acts
- Forcing her to do illegal acts

Humiliation

- Constant put downs (private & public)
- Make her feel deficient
- Making her think she is crazy (gaslighting)
- Speaking for her
- Deprive food/money, etc
- Make her beg for things
- Forcing her to say he is right
- Forcing her to apologize

Surveillance

- Limits privacy
- Demands access to phone/media accounts
- Use of cameras & recordings
- Monitoring phone calls
- Monitoring time & activities
- Frequent calls, texts, emails
- Accompanies her everywhere
- Asks others to monitor her
- Stalking
- Many rules & consequences for violations
- Interfering with her daily routines
- Monitoring purchases
- Use of children to monitor

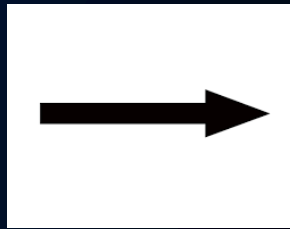
Isolation

- Relocation/moving away
- Objects to her relationships with others
- Sabotage/poisons other relationships
- Weaponizes children (turns them against her)
- Sabotage employment/school
- Changing passwords so she can't access them
- Taking away phone
- Taking credit cards
- Restricting access to car
- Restricting access to work/school
- Pseudo “caring” rationale

Tactics & Effects

TACTICS

- Intimidation
- Degradation
- Humiliation
- Surveillance
- Isolation



EFFECTS

- Fear
- Dependence
- Compliance
- Loyalty
- Shame

What is Coercive Control? Scottish Women's Aid video

<https://m.youtube.com/watch?v=36mQFefByIM>





UK Law Reform



Comparison

England & Wales

(Serious Crime Act 2015, c. 9
§76 (UK))

Scotland

(Domestic Abuse Act
2019 (Scot.))

UK Reforms



Different Approaches in U.S.

Criminalization

Civil Restraining Orders

Tort Suits

Criminalization: Hawaii

First – and only – state to
criminalize coercive control
(Haw. Rev. Stat. §709-906(6)) (2021)



Haw. Rev. Stat. § 709-906(6)

- (6) It shall be a petty misdemeanor for a person to intentionally or knowingly strike, shove, kick, or otherwise touch a family or household member in an offensive manner; subject the family member or household member to offensive physical contact; or exercise coercive control, as defined in section 586-1, over a family or household member and the person shall be sentenced as provided.....

Haw. Rev. Stat. § 586-1

- “Coercive control” means a pattern of threatening, humiliating, or intimidating actions, which may include assaults, or other abuse that is used to harm, punish, or frighten an individual. “Coercive control” includes a pattern of behavior that seeks to take away the individual's liberty or freedom and strip away the individual's sense of self, including bodily integrity and human rights, whereby the “coercive control” is designed to make an individual dependent by isolating them from support, exploiting them, depriving them of independence, and regulating their everyday behavior including:
 - (1) Isolating the individual from friends and family;
 - (2) Controlling how much money is accessible to the individual and how it is spent;
 - (3) Monitoring the individual's activities, communications, and movements;
 - (4) Name-calling, degradation, and demeaning the individual frequently;
 - (5) Threatening to harm or kill the individual or a child or relative of the individual;
 - (6) Threatening to publish information or make reports to the police or the authorities;
 - (7) Damaging property or household goods; and
 - (8) Forcing the individual to take part in criminal activity or child abuse.

Hawaii Penalty

- A petty misdemeanor is the least serious type of criminal offense in Hawaii, punishable by up to 30 days in jail and a fine of up to \$1,000.

Criminalization

- Pros
- Cons



Criminalization: Pros

Name
problem

Accuracy

Sanctions

Accountability

Deterrence



Criminalization: Cons



CONSTITUTIONAL ISSUES



EVIDENTIARY ISSUES:
PROOF

Cal. Fam. Code §6320

- The court may issue an ex parte order enjoining a party from . . . contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party....
- “[D]isturbing the peace of the other party” refers to conduct that, based on the totality of the circumstances, destroys the mental or emotional calm of the other party. This conduct may be committed directly or indirectly, including through the use of a third party, and by any method or through any means including, but not limited to, telephone, online accounts, text messages, internet-connected devices, or other electronic technologies. This conduct includes, but is not limited to, coercive control, which is a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty.

California Law

Cal. Fam. Code §6320

Examples of coercive control include, but are not limited to, unreasonably engaging in:

- (1) Isolating the other party from friends, relatives, or other sources of support.
- (2) Depriving the other party of basic necessities.
- (3) Controlling, regulating, or monitoring the other party's movements, communications, daily behavior, finances, economic resources, or access to services.
- (4) Compelling the other party by force, threat of force, or intimidation, including threats based on actual or suspected immigration status, to engage in conduct from which the other party has a right to abstain or to abstain from conduct in which the other party has a right to engage.
- (5) Engaging in reproductive coercion, which consists of control over the reproductive autonomy of another through force, threat of force, or intimidation, and may include, but is not limited to, unreasonably pressuring the other party to become pregnant, deliberately interfering with contraception use or access to reproductive health information, or using coercive tactics to control, or attempt to control, pregnancy outcomes.

California Law

Coercive Control

- Cal. Fam. Code §6320
- Existing law requires a family court to determine the best interests of a child in deciding child custody in specified proceedings and establishes a rebuttable presumption that an award of child custody to a person who has perpetrated domestic violence is detrimental to the best interests of the child.
- Existing law defines “perpetrated domestic violence” to mean, among other things, that the person engaged in behavior for which the court may issue an ex parte order to protect the child or the person seeking custody of the child.
- By adding coercive control to the bases for the ex parte orders described above, the bill would, for purposes of a family court determining child custody in those proceedings, create a rebuttable presumption that an award of child custody to a party who has engaged in coercive control is detrimental to the best interests of the child.

Civil Law Reforms: Evaluation



Advantages CPO: Coercive Control Reform

immediate
relief

easier to prove
than criminal
offense

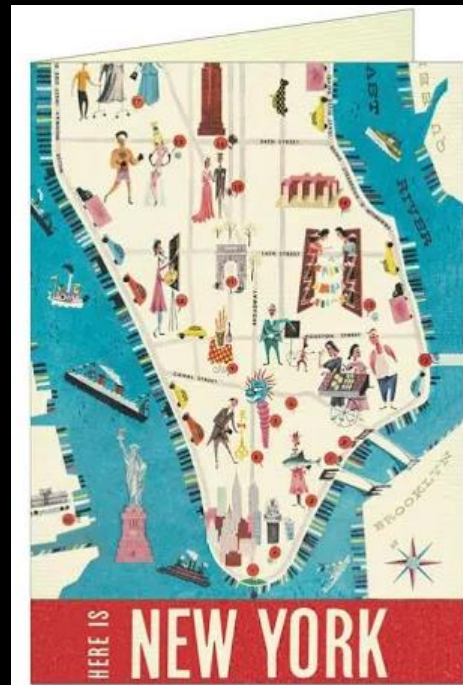
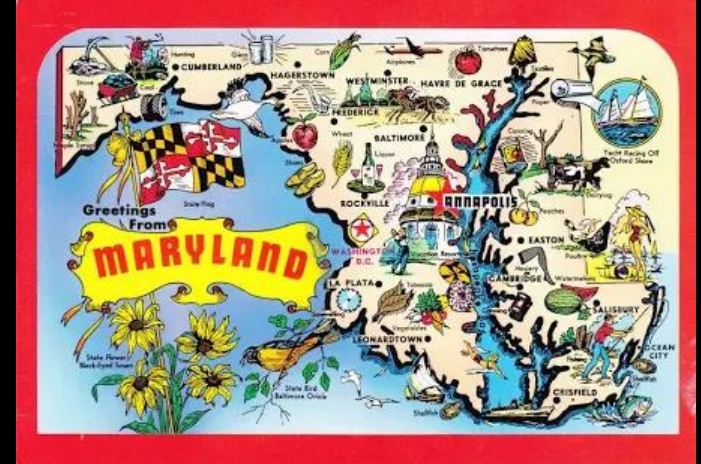
broad relief

accountability

empowering
for victims

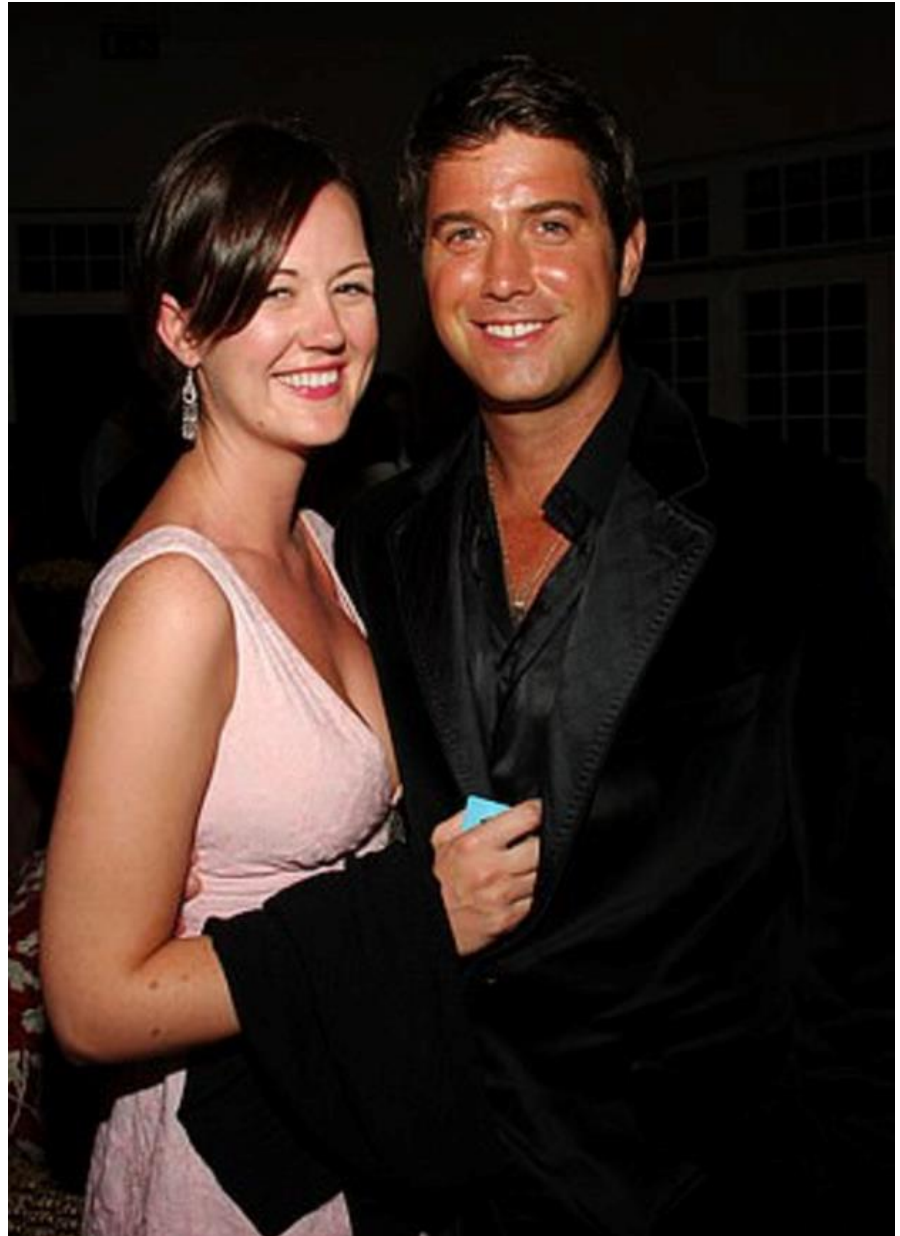
Pending Civil Law Reforms

H.R. 1808, 2021, 102d Gen. Assem. (Ill. 2021); H.R. 1352, 2020 (Md. 2020; N.Y.S. 5306, 2019 (N.Y. 2019); H.R. 5271, 2020 Leg., 123rd Sess. (S.C. 2020)



Innovative Tort Suits

Izambard v. Izambard
No. 21STCV17406
(L.A. Cty Central Dist.,
May 10, 2021)



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Suggestions for Reform



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Custody Laws Put Safety First

by Danielle Pollack & Joan Meier

Over the past five years there has been growing attention to the failure of child custody courts to protect children at risk from a dangerous parent. One response has been mounting pressure for stronger custody laws to better protect children in these cases. Armed with new research about disturbing family court outcomes, advocates, experts, and survivors of nightmarish experiences in family courts are slowly but deliberately advancing federal and state statutory reforms aimed at addressing the problem. These reforms seek to ensure that courts prioritize children's safety over parents' rights, close gaps between the private custody and child welfare systems for at-risk children and improve judicial and court personnel training standards.

This article briefly introduces the movement for family court change and describes a set of federal and state reforms that have recently been achieved or are in progress. It then discusses some key policy issues which have arisen in the development of these reforms, while offering the authors' perspectives and guidance to future policy advocates.

Movement for Family Court Reform

Over the past several decades a "protective parent" movement demanding child-safety reforms has been growing in the U.S. and internationally. It is fueled by patterns of disturbing outcomes,

See CUSTODY LAWS, page 11

Innovative Legal Remedies for Coercive Control

by D. Kelly Weisberg and Julie Saffren

I. Background

The doctrine of coercive control marks a radical transformation in our understanding of intimate partner violence. It has slowly revolutionized the field by enhancing our knowledge of the underlying dynamics of power and control. In the past few years, law reform efforts have culminated in the codification of coercive control in several foreign countries and a few American states. The codification movement stems from an awareness that new strategies are necessary to capture this pattern of abuse that the law heretofore failed to recognize.

Forensic social worker Evan Stark coined the phrase "coercive control" in articles in the 1990s and a landmark book in 2007.¹ Coercive control consists of an ongoing course of abusive psychological conduct that is sometimes interwoven with physical abuse. Its effects are cumulative rather than incident-based. This understanding contrasts with the traditional view of intimate partner violence as discrete incidents of physical assault in which severity is measured by the extent and seriousness of physical injury. Tactics of coercive control involve intimidation,

degradation, humiliation, surveillance, and isolation. This conduct is designed to establish a regime of domination of the victim in daily life that is intended to instill fear, dependence, compliance, loyalty, and shame.

This form of abuse is widespread; perhaps as many as 60% to 80% of abused women experience coercive control in addition to their experiences of physical and emotional abuse.² Coercive control can be just as damaging as, and sometimes more damaging than, physical violence. It can lead to severe depression, post-traumatic stress disorder, and sometimes suicide.

Dr. Stark conceptualizes the offense in criminal terms—not as a crime of assault but rather as a "liberty crime" focused on depriving victims of their rights to physical security, dignity, and respect. As he explains, "Emphasis shifts from what men do to women to what they keep women from doing."³ He has proposed criminalization as a means of recognizing the seriousness of the offense and as a legal remedy for abusive conduct that generally evades liability.

Several legal scholars have adopted Dr. Stark's formulation in advocating

See LEGAL REMEDIES, next page

About This Issue . . .

This issue of DVR focuses on cutting-edge developments in domestic violence policy: (1) law reform incorporating "coercive control" into law, and (2) law reform to prioritize children's safety over parents' rights in child custody decision making.

D. Kelly Weisberg, Editor, *Domestic Violence Report*

ALSO IN THIS ISSUE

California Court of Appeal Cases Mark Important Victories for Survivors and Advocates 3

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DOMESTIC VIOLENCE LAW

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This Hornbook is an authoritative, comprehensive overview of all aspects of state and federal law on domestic violence. Hallmark features include in-depth exploration of the following topics and more:

- The nature and extent of domestic violence
- The role of influential factors (age, sex, race, ethnicity, sexual orientation, disability, social class)
- The full range of physical, sexual, and psychological abuse
- Violence Against Women Act
- Criminal defenses (self-defense, duress, cultural defense, provocation)
- Evidentiary issues (Confrontation Clause, hearsay, forfeiture-by-wrongdoing)
- Family law issues (marriage, divorce, custody, and abduction)
- Orders of protection (both civil and criminal)
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- Up-to-date coverage of the Violence Against Women reauthorization bill before Congress, the recent U.S. Attorney General's decision reversing longstanding asylum protection for survivors, and the recent U.S. Preventive Services Task Force recommendation regarding health care screening for domestic violence.

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