DOMESTIC VIOLENCE REPORT™

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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,

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Innovative Legal Remedies for Coercive Control

by J. 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

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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*

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criminalization.[4] Yet, despite such advocacy by prominent legal scholars, states have been slow to heed the clarion call for criminal reform. In contrast, the United Kingdom has been much more progressive. In the past few years, laws criminalizing coercive control were enacted in England, Wales, Scotland, and Ireland. A few American jurisdictions codified coercive control but followed a different approach: expanding existing civil remedies to make coercive control a basis for restraining orders.

The purpose of this article is to explore the range of available approaches and identify their strengths and shortcomings. Three primary law reform approaches are evident: (1) criminalization; (2) civil law reform expanding eligibility for restraining orders; and (3) personal injury lawsuits that seek compensatory and punitive damages. In exploring these approaches, our hope is to provide a lens through which policymakers might better consider law reform in their jurisdictions.

II. Criminalization in the U.K.

In 2015, England and Wales became the first nations in the world to criminalize coercive control in intimate relationships, making it punishable by a maximum of five years imprisonment, a fine, or both.[5] Dr. Stark's influence was cited in the government guidelines announcing the law.[6] Ireland and Scotland soon followed in 2019.[7]

Some differences are apparent in the different codifications. Dr. Stark refers to the Domestic Abuse (Scotland) Act[8] as the "gold standard" for several reasons. First, the Scottish law criminalizing "coercive and controlling behaviors" (encompassing psychological, financial or sexual abuse) recognizes the gendered pattern of this conduct (unlike the English and Welsh versions). In addition, it extends coverage to former partners and strengthens the sanctions by creating a single offense carrying a maximum 14-year sentence.[9]

Scotland also created a comprehensive national framework to address the systemic inequality that underpins violence against women and established community partnerships that emphasize prevention for victims and accountability for offenders.[10] The Scottish law provides for sentence enhancements to reflect the harm caused to children from witnessing this abuse.[11] The law refers to the offender's "reasonable" understanding that his behavior will frighten or otherwise harm his partner, rather than requiring proof of those effects by the victim

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

by Anne L. Perry

Introduction

As depublication of opinions becomes more widespread across federal and state courts, fewer cases are certified for publication. An unpublished opinion cannot be cited or relied upon by other courts and does not represent binding precedent. Published cases represent changes, modifications, or clarification to existing law, so these cases become part of the body of law used in future decisions. An unpublished opinion can become published, if the court so rules, typically after someone requests publication.

California has a broad network of domestic violence prevention and advocacy organizations, providing immediate assistance to victims, as well as seeking long-term legal, public policy, and criminal justice solutions. Some of these agencies (such as the Family Violence Appellate Project) represent survivors in appeals for free and identify and request publication of unpublished cases. All California Supreme Court decisions are published, while fewer than 10% of Court of Appeal decisions meet the criteria for publication. In the first half of 2021, the appellate courts in California saw a number of victories for domestic violence survivors that were earmarked for publication. Because these cases are published, they represent legally binding precedent throughout California and can be used to secure greater protections for survivors.

First District Reverses Denial of Restraining Order, Setting Clear Mandates for Consideration of Evidence of Abuse

The Facts. Mother and Father married in 2002 and resided together with their six children, ages 3 to 13. In 2018, Mother filed a petition for dissolution of the parties' marriage, followed a few months later by a request for child and spousal support. At this time, she alleged that Father had abused her throughout their marriage. As the dissolution proceeded, the parties continued living together with the children. In 2019, Mother filed an application for a Domestic Violence Restraining Order (DVRO), claiming four separate instances of verbal and physical abuse, as well as threats. According to Mother's declaration, she had suffered no physical injuries from these incidents, but had been beaten by Father in the past.

The trial court ultimately concluded that Mother had not provided any corroborating evidence and that there was insufficient evidence to grant a DVRO. The trial court advised the parties that they "need to stay away from each other."

The trial court issued a Temporary Restraining Order (TRO) against Father protecting Mother, but denied her requests to add the children as protected parties, to order Father to move out of their shared residence, and to prevent Father from traveling with the children. A series of hearings and continuances followed in late 2019, in which the trial court reissued the TRO, while opining that the source of conflict was the fact that the parties were still living together.

Even though Father had not filed a request for a DVRO, the trial court ordered Mother to move out of the parties' home. Mother could not find housing and lived in a hotel and later out of her car with the children. When Mother went to the marital home to retrieve belongings and pick up one of their daughters, Father beat and bruised Mother and was arrested.

At the next hearing, the trial court admonished Mother for going to the marital home. Mother again requested that Father be ordered to move out of the marital home, but the court did not respond to this request. At the final hearing on Mother's DVRO, the court pressed Mother for more sufficient evidence in support of her DVRO request, but declined to consider her testimony of Father's recent abuse and threats to her life.

The trial court ultimately concluded that Mother had not provided any corroborating evidence and that there was insufficient evidence to grant a DVRO. The trial court advised the parties that they "need to stay away from each other," but that did not necessitate a DVRO. The trial court thus denied her request for a DVRO, finding that Mother's allegations were "too general in nature and lack [the] specificity required to support the request." Mother appealed.

Appellate Analysis. The Court of Appeal of California for the First District first provided an overview of the Domestic Violence Prevention Act and the statutory procedure for issuance of a protective order. The court considered Mother's argument on appeal that the trial court erred in denying her request for a DVRO because the court refused to hear her testimony regarding acts of domestic violence that Father committed against Mother after she filed her DVRO application and received the TRO. She also faulted the trial court for failing to properly credit and consider her evidence, and for misapplying the law by determining that physical separation alone could substitute for the legal protections afforded by the DVPA.

Refusal to Consider Evidence of Post-filing Abuse Was Prejudicial Error. Mother argued that the trial

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court's repeated failure to consider her evidence of abuse by Father after she filed her DVRO request was in error. The court agreed that nothing in the language of the DVPA restricted courts from ruling on a DVRO to hearing only evidence of abuse that occurred before the request was filed. While the trial court should evaluate evidence relating to incidents set forth in the petition, "evidence of post-filing abuse is also relevant, particularly when that abuse occurs after a temporary restraining order has been issued, as was the case here." The court made it clear that "[p]ost-filing abuse is clearly relevant," especially in cases like this one where the trial court's final ruling was delayed by several months. The court held that the trial court's "categorical refusal to consider post-filing evidence of father's alleged abuse and violation of the TRO, based solely on the ground that the conduct had occurred after mother filed her DVRO application, was legal error and therefore constituted an abuse of the court's discretion."

Moreover, this error was clearly prejudicial to Mother, as this "evidence could have established abuse sufficient to support the issuance of a DVRO under the proper legal standard." The court reversed the order denying the DVRO and remanded the matter to the trial court for a new hearing. The court also addressed Mother's remaining arguments "to provide further guidance on remand."

Corroboration of Mother's Evidence of Abuse Not Required. Mother contended that the trial court did not properly consider and credit her evidence of abuse by finding that her testimony lacked specificity and corroboration. Again, the court agreed with Mother that "the DVPA does not impose a heightened standard for specificity, nor does it contain any corroboration requirement." Rather, the DVPA expressly provides that a trial court may issue a DVRO based "solely" on the affidavit or testimony of the person requesting the restraining order. Here, Mother's application referenced four specific dates and testified that Father had beaten, demeaned, and threatened her, all of which are actionable forms of abuse under the DVPA. Accordingly, the court directed the trial court on remand to "weigh this evidence without a corroboration or heightened specificity requirement."

Physical Separation Is Not a Substitute for the Protections of a Restraining Order. Finally, Mother argued that the trial court erred in relying on the fact that she no longer lived with Father as a basis for denying her DVRO. The court sided with Mother on this argument as well, as the DVPA specifies that relief shall not be denied "because the petitioner has vacated the household to avoid abuse." The court highlighted as error the trial court's repeated assertions that Mother's protection from abuse could be accomplished simply be having her and the parties' six children move out of the household. The court found that the "trial court's use of residential separation as a substitute for a DVRO was inappropriate given that the parties still have to coparent" their six children, so further interactions are unavoidable. The court stated that on remand, "the trial court may not deny mother's petition for a restraining order on the basis that she no longer lives in the same residence with father." The trial court order was therefore reversed and remanded for a new hearing consistent with this opinion. **In re Marriage of F.M. and M.M.**, 279 Cal. Rptr. 3d 522 (Cal. Ct. App. 2021).

Editors' Note: California Rule of Court 8.1105 sets out the standards by which an appellate case merits publication. They include but are not limited to establishing a new rule of law; applying an existing rule of law to facts significantly different from those stated in other published opinions; modifying, explaining or criticizing an existing rule of law; addressing an apparent conflict in the law; and involving legal issues of continuing public interest. In this case, the court took the unusual step to order publication even after learning that Father had died after issuance of the tentative opinion in favor of Mother. The court's published decision states, "Despite this development, we have exercised our discretion to resolve this matter and order publication of the opinion in light of the important public matters raised in this appeal. The court recognized domestic violence as an issue "of great public interest" and properly used its "inherent discretion to resolve the matter despite events which may render the matter moot."

Third District Rules That Trial Court Has Authority to Renew Restraining Order While Original Order Is Appealed

The Facts. In the midst of marriage dissolution proceedings in April 2015, Carol Carlisle filed a request for a Domestic Violence Restraining Order (DVRO) against her then-husband William Carlisle. The trial court granted a two-year DVRO protecting Carol and the parties' minor daughter, and William appealed. The DVRO expired by its terms in April 2017.

While that appeal remained pending, in March 2017, Carol filed a request to renew the DVRO on a permanent basis. In her declaration is support of her request, Carol stated that William was arrested for assault of a process server in April 2015 after being served with Carol's original request for a DVRO and was ordered to participate in an anger management program. She further stated that after William had violated the DVRO "numerous" times, she sought to amend the DVRO to restrict him from a particular location. However, because William's appeal from the issuance of the DVRO remained pending at that time, the trial court determined that it lacked jurisdiction to modify the DVRO. The parties ultimately modified the DVRO by stipulation. Carol alleged that William continued to violate the original order by traveling on the remote road leading to Carol's house, and possibly tracking her location or stalking her. The parties, both attorneys, also encountered each other in the local court, resulting in instances in which Carol accused William of glaring at her, harassing her, misrepresenting his legal services, and harming her professional reputation. Carol stated that she was fearful for her safety and that without a permanent restraining order, William would never leave her alone. William denied any intentional harassment of Carol and countered that there was never any physical violence, only Carol's subjective and unfounded fear. The trial court granted Carol's request and renewed the DVRO for a period of five years and William appealed. Thereafter, in September 2017, the Court of Appeals affirmed the issuance of the original DVRO in an unpublished opinion.

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(as in England and Wales).[12] Finally, as part of implementation of the new law, the Scottish government partnered with criminal justice stakeholders to conduct significant education and training on the signs and evidence of coercive control.[13]

Why was the United Kingdom more receptive to the law reform movement than the United States? Dr. Stark's influence on English and Welsh policymakers stemmed from several factors. For many years, he lectured and conducted trainings about coercive control throughout the U.K. He also spread the word during his distinguished appointments at the University of Essex, the University of Bristol, and the University of Edinburgh.[14]

Additional factors fostered the law reform movement in England: (1) reform efforts garnered the support of Home Secretary Theresa May who made domestic violence one of her signature issues; (2) the government wanted to make a feminist statement to offset nationwide frustration with cuts in basic services for women and families (such as funding for domestic violence shelters); and (3) the law-and-order focus of the new law, with its placement within a larger "law and order" crime bill, attracted broad popular appeal.[15] Finally, British criminal law scholars (such as criminal behavior analyst Laura Richards) helped lobby for the new law.[16]

The Serious Crime Act, in effect in England and Wales since 2015, creates a new offense of "controlling or coercive behavior in intimate or familial relationships" (Section 76). While the law itself does not explicitly define these terms, the statutory guidance provided by the Home Office sheds light on the types of prohibited behavior: the conduct consists of a purposeful pattern of behavior that takes place over a period of time ("repeatedly or continuously") that is controlling or coercive; the victim and perpetrator must be "personally connected" (meaning in an "intimate" or "family relationship") at the time of the conduct; the behavior must have had a "serious effect" on the victim (meaning it must have caused the victim to fear that violence will be used on "at least two occasions," *or* it must have had a "substantial adverse effect on the victim's day-to-day activities"). Finally, the perpetrator must know or should have known that the behavior will have a serious effect on the victim.[17]

The two components of the offense (also explained in the guidance rather than explicit in the statute) include (1) "controlling behavior" defined as a range of acts designed to make a person subordinate and/or dependent by isolating the person from sources of support, exploiting his or her resources and capacities for personal gain, depriving the person of the means needed for independence, resistance and escape and regulating the individual's everyday behavior; and (2) "coercive behavior" defined as a continuing act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim."[18]

The Serious Crime Act, in effect in England and Wales since 2015, creates a new offense of "controlling or coercive behavior in intimate or familial relationships" (Section 76).

The statutory guidance explains that the behavior may or may not otherwise constitute a criminal offense. A list of designated examples (not intended to be exhaustive) include: isolation from friends and family; deprivation of basic needs; monitoring time; monitoring via online communication tools or spyware; taking control over aspects of victims' everyday life, such as where they can go, who they can see, what they can wear, and when they can sleep; deprivation of access to support services, such as specialist support or medical services; repeatedly putting them down, such as telling them they are worthless; enforcing rules and activity which humiliate, degrade or dehumanize; forcing the victim to take part in criminal activity such as shoplifting, neglect or abuse of children to encourage self-blame and prevent disclosure to authorities; financial abuse including control of finances, such as only allowing a person a punitive allowance; threats to hurt or kill; threats to a child; threats to reveal or publish private information (*e.g.*, threatening to "out" someone); assault; criminal damage (such as destruction of household goods); rape; and preventing access to transport or work.[19]

How effective is the new law in England and Wales? After a slow start, arrests and prosecutions increased dramatically. The number of coercive control offenses that were reported to the police increased from 4,246 in 2016-2017 to 24,856 in 2019-2020. In 2019, 1,112 defendants were prosecuted for coercive control offenses, an increase of 18% from the previous year. The average length of custodial sentences for crimes of coercive control has consistently been longer than those for assaults and stalking.[20]According to a Home Office Report, "These increases demonstrate that the [coercive control] offence is being used across the [criminal justice system], indicating that the legislation has provided an improved legal framework to tackle [coercive control] and that, where the evidence is strong enough to prosecute and convict, the courts are recognising the severity of the abuse.[21]"

Since passage of the law, several high-profile prosecutions have occurred that helped generate increased public awareness of the law.[22] Further, the law provides for widespread public education: since September 2020, education about coercive control is compulsory in English schools.[23]

The impact of the new coercive control law in England and Wales was far-reaching. As mentioned above, Scotland and Ireland soon followed suit. Currently, various Australian jurisdictions are considering enacting legislation on coercive control. After lobbying by women's groups, Queensland and Victoria are considering new laws.[24] In June 2021, a governmental committee unanimously recommended enactment of a new law in New South Wales.[25] Finally, the Australian government is considering law reform for the country as a whole.[26]

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III. Criminalization in the U.S.

Few American jurisdictions heeded the call for criminal law reform to incorporate coercive control along the lines of the U.K. model. One noteworthy exception is Hawaii. Hawaii was the first — and to date the only — state to criminalize coercive control.

In April 2021, the Hawaii legislature passed House Bill 566, adding "coercive control" to the statutory definition of domestic abuse. Hawaii Revised Statutes § 709-906 make it 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 … over a family or household member*" (emphasis added). Haw. Rev. Stat. §586-1 further defines "coercive control" as:

> [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.

Interest in criminalizing coercive control in Hawaii stemmed from a spike in allegations of domestic abuse during the pandemic when lockdowns forced people to stay at home and high unemployment caused significant stress for family members. The number of calls to the domestic violence helpline nearly tripled in one year, and the total number of client contacts increased 77% over that same period.[27]

The Hawaii criminal law was enacted during the second stage of law reform there. During the first stage, the law enabled survivors to seek temporary restraining orders based on evidence of coercive control.[28] The civil law was modeled after a similar bill passed in 2009 in Scotland (the civil predecessor of the Scottish criminal coercive control law).[29]

IV. Criminalization: Pros and Cons

Scholars and practitioners have long voiced concerns about criminalization of coercive control. Critics point to constitutional and evidentiary problems evoked by punishment for conduct that is subjective, a "course of conduct," and focuses on the effects on a victim. Possible constitutional challenges include vagueness, overbreadth, and the First Amendment.[30] For example, some commentators point to vagueness and overbreadth in conduct that causes "serious alarm or distress" [to an intimate partner] that has a "substantial effect" on a victim's "day-to-day activities." In addition, abusers' verbal attacks (ridiculing or demeaning) might be protected as freedom of expression the First Amendment.

It is important to mention that some constitutional criticisms predate the current law reform movement, stemming from a period when policymakers puzzled over how to operationalize Dr. Stark's sociological concepts of "oppressive behavior," "liberty crime," "subordination," "disruption of daily activities," and "gender-based privilege." Since then, however, significant law reform on the international arena has added considerable precision to definitions of coercive and controlling behavior.

Some recent criticisms are directed at the English and Welsh law. Yet, that law is set forth only briefly and in broad general terms although it is clarified subsequently by statutory guidance with precise examples. United States laws are not structured in this manner: definitions of terms are explicit in the law. As one commentator concedes, "precise statutory language . . . might remove some of the constitutionally problematic ambiguity."[31] Further, similar constitutional challenges about vagueness and overbreadth have been raised against stalking laws (specifically in terms of language of "course of conduct" and "effect") and have largely been unsuccessful.

Other criticisms focus on problems of proof. Psychological abuse, like coercive control, can be difficult to prove to law because of the absence of documented physical injury. With coercive control, proof necessitates a focus on the micro-regulation of daily activities that are associated with pervasive gender-based expectations inherent in women's traditional roles as homemakers, mothers, and sexual partners (*e.g.*, male control of finances; men preventing access to employment; male demands about women's dress, shopping, or cooking). Alternatively, proof might be difficult because law enforcement and factfinders might view controlling conduct as an expression of romantic attachment (*e.g.*, demands of isolation from family and friends, monitoring an intimate partner's time). As one commentator notes:

> Given the persistence of such gender-role expectations, it may be difficult to distinguish coercion and control from romantic love. Research has suggested that jealous and possessive behaviours, such as restricting what the victim wears, who she sees and where she goes may be interpreted as signs of the abuser's love and so not recognised as abusive – at least at first.[32]

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To surmount problems of proof, criminal justice professionals must shift their focus from violent incident-based conduct to a pattern of behavior that is rarely visible to third parties. Each case requires "individualized and nuanced factual analysis."[33] Similar to proof of stalking, proof of coercive and controlling behaviors depends on the victim's understanding because the abusive conduct is contextual and specifically designed to exploit a particular victim's fears and vulnerabilities. To outsiders, the conduct may look benign.

The U.K. has tackled problems of proof by producing precise guidance by the Crown Prosecution Service (the principal public agency for conducting criminal prosecutions in England and Wales) on the sources of evidence to establish the new offense. These include victims' diaries, text messages and emails, and testimony from friends, family members, and others.[34] Further, successful prosecutions depend on extensive training of law enforcement and legal practitioners. Within a few years after enactment of the law in England and Wales, increased police training on controlling and coercive behavior led to a significant increase in arrests and convictions.[35]

On the other hand, criminalization has considerable advantages.[36] It reaches a form of serious abuse that heretofore has escaped liability. It more accurately reflects survivors' lived experiences which encompass a spectrum of non-physical abusive behavior characterized by tactics of intimidation, isolation, degradation, and humiliation. Because coercive controlling behaviors can precede, motivate, or increase the likelihood of violence in intimate relationships, criminalization offers the possibility of preventing intimate partner homicides by holding offenders accountable before lethal outcomes. By giving criminal justice professionals a new legal tool, criminalization enhances the likelihood that professionals might be able to identify and charge chronic abusive partners with a broader range of offenses. Holding abusers accountable via penalties and/or fines serves both the punitive and deterrent functions of the criminal law.

Criminalization recognizes the devastating impact of coercive control on survivors and their children and thereby can prevent many adverse mental health outcomes. This recognition enables survivors to feel validated by the legal system, facilitates their strategic help-seeking behavior, and expands the perceived legitimacy of legal remedies. At the same time, it sends a message to abusers that their abusive tactics will not be tolerated by society. Finally, criminalization can serve as an opportunity to educate the public and provide an impetus for the transformation of cultural attitudes about the dynamics and harm of domestic violence.

V. Civil Law Expansion

Some American jurisdictions adopted a different approach than the U.K. by expanding existing civil remedies by specifically establishing coercive control as a ground for a restraining order. Civil restraining orders are a widely used intervention in response to domestic violence. They are currently available in all 50 states, though the scope of relief they provide varies widely among the different states.

Depending on the jurisdiction, protection orders can prohibit a person from threatening or harming the petitioner; entering the petitioner's home; coming within a certain distance of the petitioner and/or her children; coming to the petitioner's home, work, school; contacting the petitioner directly or indirectly in person, by phone, email, texting, mail or through a third party; and purchasing or owning firearms. They can also grant temporary child custody and award temporary child or spousal support. Many protection order statutes exist within a jurisdiction's family code, alongside matters of parentage, divorce, custody, support, and property division.

Law reform incorporating coercive control into state civil codes increased dramatically in the past few years. In 2020 and 2021, three states (California, Connecticut, and Hawaii) enacted civil law reforms, and several additional states are considering legislation, as explained below.

A. California

On September 29, 2020, Governor Gavin Newsom signed Senate Bill 1141 into law, incorporating coercive control as a form of abuse under California's Domestic Violence Prevention Act. Specifically, the new law amends Section 6320 of the California Family Code by incorporating coercive control under the rubric of "disturbing the peace" so that the latter conduct constitutes a ground for a restraining order.

Section 6320 defines coercive control "a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty." The statute then sets forth illustrations of coercive control, including: (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; and (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.

Coercive control was first deemed a ground for a restraining order in **McCord v. Smith**, 264 Cal. Rptr. 3d 270 (Cal. Ct. App. 2020). In that case, Ms. Smith obtained a restraining order after claiming that Mr. McCord had disturbed her peace by repeatedly visiting her uninvited, texting her, emailing her, and sending her

Criminalization recognizes the devastating impact of coercive control on survivors and their children and thereby can prevent many adverse mental health outcomes.

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harassing and threatening photos. On appeal, the Court of Appeal upheld the restraining order explaining that courts should consider the totality of the circumstances when deciding whether to issue a restraining order. The court regarded McCord's conduct as part of the totality of the circumstances illustrating his exercise of dominion and control that threatened his wife's peace of mind, and thereby supported the issuance of the restraining order. New legislation quickly followed, providing an expanded definition of coercive control as well as examples.

California's new legislation has an impact *beyond* restraining orders. California is one of many states that erect presumptions against custody for abusers (Cal. Fam. Code § 3044) in certain cases. In California, those circumstances include a finding of domestic violence or a criminal conviction for domestic violence. Under California's new coercive control law, the issuance of a restraining order based on coercive control serves as evidence to support the imposition of a custodial presumption against an abuser. In addition, the family code definition of abuse, including coercive control, has an influence on the state's criminal law because the evidence code relies on both the family code definition of domestic violence as well as penal code definition (for example, by allowing the admission of prior acts of domestic violence) (Cal. Evid. Code §1109).

B. Connecticut

Connecticut law similarly expanded its civil law definition of domestic violence to include coercive control. "Jennifer's Law" (S.B. 1091) amends Conn. Gen. Stat. 46b-1 to allow judges to grant restraining orders based on this form of abuse without the need to prove physical assault.

The title of the law honors two victims of domestic violence homicides, Jennifer Dulos and Jennifer Magnano. Dulos was in the midst of divorce and custody proceedings involving allegations of domestic violence when she disappeared. She had filed for a restraining order, but the judge denied her petition because she had never been physically attacked by her former husband. Her estranged husband, while facing charges for her murder, died by suicide in 2020.

Magnano was also in the midst of a divorce and custody dispute when she died. Her husband was subject to a restraining order requiring him to stay away from the home. In fear for her life, Magnano fled with their three children from Connecticut to California, but the court required her to return to Connecticut to litigate custody. There, her husband murdered her in front of their children before killing himself. Her now-adult children advocated for law reform. After additional lobbying by advocacy organizations and survivors (including actress Evan Rachel Wood), the bill was signed into law on June 28, 2021.

The Connecticut law defines coercive control of a family or household member as "a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty." It includes, but is not limited to, "unreasonably" engaging in any of the following acts: (1) isolating the family or household member from friends, relatives or other sources of support; (2) depriving the family or household member of basic necessities; (3) controlling, regulating or monitoring the family or household member's movements, communications, daily behavior, finances, economic resources or access to services; (4) compelling the family or household member by force, threat or intimidation, including, but not limited to, threats based on actual or suspected immigration status, to (i) engage in conduct from which such family or household member has a right to abstain, or (ii) abstain from conduct that such family or household member has a right to pursue; (5) committing or threatening to commit cruelty to animals that intimidates the family or household member; or (6) forced sex acts, or threats of a sexual nature, including, but not limited to, threatened acts of sexual conduct, threats based on a person's sexuality or threats to release sexual images.

The law provides additional protections in family relations matters. Specifically, it establishes a program to provide legal representation for indigent survivors who file for restraining orders and allows them to email marshals with the forms needed to serve their abusers rather than requiring hand delivery. Victims will also be allowed to testify remotely in restraining order proceedings and proceedings for criminal protection orders. This landmark legislation also amends the definition of family violence crimes to include violations of family violence-related court orders and requires consideration of the heightened risk posed to victims when determining bond for violations of court orders.

Another provision of the new law prioritizes child safety as a factor in child custody cases by making domestic violence the first factor to consider. (This reform is discussed in the accompanying article by Danielle Pollack and Joan Meier in this issue of **DVR**.)

C. Hawaii

Hawaii is another state that currently allows victims seeking temporary restraining orders to rely on evidence of coercive control. The law was intended to remedy the problem that many victims who experience nonphysical abuse often believe that they cannot seek legal protection if they do not have proof of physical abuse or bodily injury. It amends the definition of "domestic abuse" under restraining order statutes and also amends insurance laws to include "coercive control" between family or household members." This law was the first stage of law reform in this state and was soon followed by criminalization.

D. Other State Reforms

Several additional states (*i.e.,* Illinois, Maryland, New York, and South Carolina) are currently considering laws on coercive control.[37] Pending bills in New York and South Carolina would criminalize coercive control, making it a felony. Other state bills adopt civil law reform: Illinois and Maryland would establish coercive control as a ground for a restraining order.

As can be seen, civil law reform is currently underway in a handful of states. Reform of the grounds for injunctive relief has significant potential to expand legal protections for victims of intimate partner violence. With this reform, many survivors can benefit immediately from broadening

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the grounds for injunctive relief. In addition, because many petitioners for restraining orders are self-represented, this reform facilitates survivors' ability to obtain relief. Finally, this civil law reform has significant potential for identifying psychological abuse before it escalates into lethal violence.

VI. Tort Innovation

An innovative remedy for coercive control is a tort suit for damages for personal injury. A lawsuit filed in May 2021 in Los Angeles by Renée Izambard against her former husband, operatic popstar Sébastien Izambard (of the group Il Divo), tests this new legal theory.[38]

Renée was a music publicist in Australia when she met Sébastien in 2005. She was quickly drawn into an intense relationship with him. She soon moved to France at his request. They married in 2008. For the next 10 years, coercive control was pervasive in their marriage. Sébastien would call her over 20 times per day and fly into rages if she did not answer immediately. He relentlessly pressured her for sex, even while she was unwell, asleep, soon after she gave birth, and while she was heavily medicated. If she refused, he deprived her of sleep. On several occasions, he insisted that she watch him engage in sex with prostitutes and continued to pressure her, despite her refusal, to involve third parties in their sexual relationship. He insisted she perform sexual acts to "earn her money." He regularly urinated and ejaculated on her, against her will. He constantly criticized her appearance (her weight, stomach, feet, and breast size).

Sébastien denied Renée access to money and financial accounts despite their considerable wealth. He isolated her, refusing to let her contact family members and friends. He jealously monitored and controlled her movements, watching her on the home's closed-circuit television system and tracking her vehicle. He disseminated her medical information to the media. When she suffered an emotional breakdown in 2017, he denied her access to medical care.

When Renée finally filed for divorce in 2018, Sébastien deprived her and their three children of money for their basic needs (clothes, food, transportation, education, health and car insurance, medical care, and housing). He refused to pay child support. He terminated their homeowner insurance, leaving Renée and the children homeless.

After California enacted the new civil law on coercive control, Renée resorted to a tort suit to recover financial compensation for psychological harm. Her complaint alleges violations of the civil tort of domestic violence, sexual battery, assault, and intentional infliction of emotional distress. The complaint is grounded in her ex-husband's coercive and controlling behavior. If Renée prevails, her pioneering lawsuit will not only send a deterrent message to other abusers who exercise coercive control but also open the door to additional use of this innovative remedy.

Personal injury lawsuits constitute another important form of relief for victims of coercive control. Admittedly, this remedy has limited potential because it is available only in cases of abusers with substantial resources and in compelling cases. In addition, relief will be available only to survivors with access to attorneys who are willing to take their cases on a contingency fee basis and to litigate against well-heeled defendants.

The above criminal and civil law reforms are not meant to be exhaustive remedies. It is hoped that these reforms will lead to further elaboration of remedies, such as the use of coercive control as a defense or mitigation to murder and as an enhancement to existing crimes (such as false imprisonment and children's witnessing domestic violence).[39] Finally, in some states, these law reforms prompted a comprehensive review of these states' domestic violence laws and resulted in enactment of additional legal protections for survivors. Law reform may proceed in stages with civil relief as the first stage before criminalization follows (as in Scotland and Hawaii).

Conclusion

Until recently, state legislatures largely ignored coercive control. Prompted by law reform in the international arena, momentum is now building across the United States to codify this pervasive pattern of abuse. Three approaches to law reform currently exist: criminalization, civil law reform (expansion of grounds for restraining orders), and tort reform. A comprehensive approach that encompasses all three approaches is advisable to hold abusers accountable and protect survivors. Recognition of coercive control by the legal system is long overdue. It is time for the legal system to recognize the role of coercive control in the formerly invisible dynamics of intimate partner abuse with its devastating consequences for survivors' well-being.

End Notes

1. See generally Stark, Evan (2007). *Coercive control: How men entrap women in personal life.* New York, NY: Oxford Univ. Press; Stark, Evan Stark (1995). Re-presenting woman battering: From battered woman syndrome to coercive control. *Albany L. Rev. 58(4)*, 973, 986; Stark, Evan (1992). Framing and reframing battered women. In E. Buzawa & C.G. Buzawa (Eds.) *Domestic violence: The criminal justice response.* New York, NY: Basic Books. Dr. Stark is a Professor Emeritus, Rutgers University, School of Public Affairs and Administration.

2. New York State Office for the Prevention of Domestic Violence, Information for Professionals, Q & A with Evan Stark. Available at *https://opdv.ny.gov/professionals/abusers/coercivecontrol.html*.

3. Id. More recently, Professor Stark explained his view that coercive control is "a comprehensive framework for approaching partner abuse, not as a specific offense." Stark, Evan (2020). The "coercive control framework": Making law work for women. In M. McMahon & P. McGorrery, P. (Eds.), *Criminalising coercive control: Family violence and the criminal law and autonomy crimes* (pp. 33–40). Springer Singapore.

4. See, e.g., Burke, Alafair S. (2007). Domestic violence as a crime of pattern and intent: An alternate reconceptualization. *Geo. Wash. L. Rev. 75(Spring)*, 552; Tuerkheimer, Deborah (2010). A new approach to criminalizing domestic violence. *Fam & Intimate Partner Violence Q. 3(1)*, 75–81; Tuerkheimer, Deborah (2004). Recognizing and remedying the harm of battering: A call to criminalize domestic violence. *J. Crim. L. & Criminology, 94(4)*, 959–1032.

5. Nugent, Ciara (June 21, 2019). "Abuse is a pattern": Why these nations took the lead in criminalizing controlling behavior in relationships. *Time Magazine*. Available at *https://time.com/5610016/coercive-control-domestic-violence/*.

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See also Serious Crime Act 2015, c. 9, § 76 (UK) (applicable to England & Wales) (creating new offense of controlling or coercive behavior in intimate or familial relationships).

6. Home Office (December 2015). Controlling or coercive behaviour in an intimate or family relationship, statutory guidance framework. Available at *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/482528/Controlling_or_coercive_behaviour_-_statutory_guidance.pdf.*

7. Nugent, supra note 5. See also section 39 of the Domestic Violence Act (Ireland).

8. Stark, Evan & Hester, Marianne (2019). Coercive control: Update & review. *Violence Against Women, 25(1),* 91–104. Available at *https://journals.sagepub.com/doi/full/10.1177/1077801218816191.*

9. Stark, E., Coercive Control Framework, supra note 3, at 33-34. See also Walklate, Sandra & Fitz-Gibbon, Kate (2019). The criminalisation of coercive control: The power of law? *Int'l J. for Crime, Just. & Soc. Democracy 8(4),* 94–108. Available at *https://doi.org/10.5204/ijcjsd.v8i4.1205.* See also *file:///C:/Users/Kelly/AppData/Local/Temp/1205-Article%20Text-4729-2-10-20191211.pdf.* See also Domestic Abuse (Scotland) Act, 2018.

10. BBC News (Scotland) (Aug. 17, 2019). New domestic abuse laws: More than 400 crimes recorded. Available at *https://www.bbc.com/news/uk-scotland-49374667.*

11. Scottish Government Press Release (April 25, 2018). Equally safe: Scotland's strategy to eradicate violence against women. Available at *https://www.gov.scot/publications/equally-safe-scotlands-strategy-prevent-eradicate-violence-against-women-girls/pages/6/.*

12. Scottish Government Press Release (April 1, 2019). Domestic Abuse Act in force, April 1, 2019. Available at *https://www.gov.scot/news/domestic-abuse-act-in-force/.* See also Domestic Abuse (Scotland) Act 2019, *https://www.legislation.gov.uk/asp/2018/5/contents/enacted.*

13. Stark & Hester, supra note 8. After enactment of the law, the Scottish government provided £825,000 to Police Scotland for more than 14,000 police officers and support staff to receive training. In addition, Police Scotland developed online training available to all 22,000 staff. Scottish Government Press Release, Domestic Abuse Act in Force, supra note 12.

14. Stark, Evan (Dec./Jan. 2016). From domestic violence to coercive control in the United Kingdom. *Domestic Violence Report 21(3),* 19.

15. Id. at 20.

16. Nugent, supra note 5.

17. Serious Crime Act, supra note 5.

18. Home Office Guidance, supra note 6, at 3.

19. Id. at 4.

20. Home Office, Review of the Controlling or Coercive Behaviour Offence (Mar. 2021), at 5. Available at *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/982825/review-of-the-controlling-or-coercive-behaviour-offence.pdf.*

21. Id.

22. Coercive control was successfully used to establish a defense to murder in the case of Sally Challen who successfully appealed her 2011 conviction for the murder of her husband (by beating him to death with a hummer) after she suffered decades of his coercive control. Nugent, supra note 5.

23. Cited in Swanick, Michael. The Domestic Abuse Act 2021: How the law is adapting to tackle domestic abuse (description of new law). Available at *https://www.shoosmiths.co.uk/insights/articles/the-domestic-abuse-act-2021-how-the-law-is-adapting-to-tackle-domestic-abuse.*

24. Heaney, Chelsea (Feb. 11, 2021). New domestic violence law may criminalise coercive control in the northern territory. Available *at https://www.abc.net.au/news/2021-02-12/coercive-control-criminalise-nt-domestic-violence-laws/13096102*; Criminalising coercive control in Queensland. *Whiteribbon.org.* Available at *https://www.whiteribbon.org.au/About-Us/News/Criminalising-Coercive-Control-in-Queensland.* Tasmania earlier enacted a law criminalizing psychological abuse.

25. New South Wales (June 2021). Joint Select Committee on Coercive Control, Coercive Control in Domestic Relationships [hereinafter New South Wales, Committee Recommendations]. Available at *https://www.parliament.nsw.gov.au/ladocs/inquiries/2626/Report%20-%20coercive%20control%20in%20domestic%20relationships.pdf.*

26. See Haydar, Nour (December 4, 2020). Experts from Scotland who led push to criminalise coercive control give evidence to Australian committee. Available at *https://www.abc.net.au/news/2020-12-05/scottish-group-coercive-control-australian-parliament-inquiry/12950288.*

27. Hofschneider, Anita (May 3, 2021). Measure criminalizing "coercive control" faces opposition from law enforcement. *Civil Beat.* Available at *https://www.civilbeat.org/2021/05/measure-criminalizing-coercive-control-faces-opposition-from-law-enforcement/.*

28. HB 2425, 2020 30th Leg. (Haw. 2020) (amending Haw. Rev. Stat. §§ 531, 532 & 586).

29. Americas Conference to End Coercive Control (ACECC) (November 13, 2020). Hawaii and California lead the way signing the first coercive control bills in the Americas. *ACECC J.* Available at *https://www.theacecc.com/post/hawaii-and-california-lead-the-way-signing-the-first-coercive-control-bills-in-the-americas.*

30. Sheley, Erin (2021). Criminalizing coercive control within the limits of due process. *Duke L.J. 70(6),* 1338–1343; Hess, Olivia A. (2020). Note, Ready to bridge the disconnect: Implementing England and Wales' coercive control model for criminalizing domestic abuse in the United States, *Ind. Int'l & Comp. L. Rev. 30(3),* 383–448.

31. Sheley, supra note 30 at 1357.

32. Bishop, Charlotte (October 31, 2016). Why it's so hard to prosecute cases of coercive or controlling behaviour. *The Conversation.* Available at *https://theconversation.com/why-its-so-hard-to-prosecute-cases-of-coercive-or-controlling-behaviour-66108.*

33. Tolmie, Julia R. (2018). Coercive control: To criminalize or not to criminalize? *Criminology & Crim. Justice, Vol. 18,* pp. 50–66. Available at *https://doi.org/10.117/174889581774612.*

34. Cited in Bishop, supra note 32.

35. Cited in Wiener, Cassandra (2017). Seeing what is "invisible in plain sight": Policing coercive control, *Howard (UK) J. 56,* 500, 501 (2017). See also Press Release, University of Portsmouth, Research highlights importance of training police to recognise coercive control and domestic abuse (revealing that training was associated with a 41% increase in arrests for controlling or coercive behavior based on analysis of 13,000 arrests from 33 police forces). Available at *https://www.port.ac.uk/news-events-and-blogs/news/research-highlights-importance-of-training-police-to-recognise-coercive-control—and-domestic-abuse.*

36. For a discussion of these and other benefits, see New South Wales Committee Recommendations, supra note 25, at 79–80 (Chapter Five, "Benefits of Creating a Coercive Control Offence") (discussing the advantages of codification in the criminal law).

37. H.R. 1808, 2021, 102nd 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).

38. Complaint, **Izambard v. Izambard**, No. 21STCV17406 (LA County Central District, May 10, 2021).

39. See, e.g., Ortiz, Alexandra M. (2018). Note, Invisible bars: Adapting the crime of false imprisonment to better address coercive control and domestic violence in Tennessee. *Vanderbilt L. Rev. 71(2),* 681–714 (proposing Tennessee law adapt its crime of false imprisonment to create "the first comprehensive" law on criminal coercive control).

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including child murders, experienced by those litigating custody and visitation. Custody courts often refuse to take abuse and risk concerns seriously and sometimes even respond punitively to the messenger.[1] A growing number of children have been murdered[2] after a family court granted unsupervised access to a parent reported to be dangerous by the other parent. Many other children are subjected to childhoods of ongoing abuse as the result of court ordered custody reversals which minimize family abuse claims, remove children from a safe parent, and award custody to an abusing parent.[3]

Protective parents who have been through these harrowing experiences have been marching on the Capitol, the Department of Justice, and Congress for more than a decade.[4] They have desperately sought change in their states and at the federal level through legislative reform and media attention. Recently the movement has begun to gain real traction, thanks to the voices of a growing number of protective parents, advocates, and surviving children who are organizing and calling on lawmakers for reform, along with professionals enlisted to this cause. Survivors and advocates are encouraged by watching successes unfold in neighboring states.[5] Advocates' and victims' voices are being amplified by growing media attention.[6] Mainstream media as well as policymakers are responding both to the multiplying reports of family-court-involved child murders, as well as new research[7] which makes clear that these troubling cases are part of a systemic trend nationwide.

As a result of the growing momentum for change, statutory reforms are advancing at both the federal and state level.

Federal Statutory Developments

After years of fragmented but persistent grassroots efforts to educate the federal government about the situation in family courts, federal legislation addressing the failures of family courts was adopted for the first time in 2018. Non-binding House Concurrent Resolution (H. Con. Res.) 72 ("Expressing the Sense of Congress that Child Safety Is the First Priority of Custody and Visitation Adjudications"), articulates principles to guide states and family courts, urging state courts to resolve safety risks and claims of family violence first, as a fundamental consideration, before assessing other best interest factors.[8] The Resolution also urges states to restrict unscientific theories to deny abuse, and to ensure that expert testimony in abuse cases is provided only by those with genuine expertise in abuse. The Resolution was adopted by a unanimous, bipartisan U.S. House of Representatives.

In 2021, Representative Brian Fitzpatrick (R-PA), in response to a horrific child murder in his state, and building on a state custody reform bill which was advancing in the child's name, added a provision on child safety in family courts to the House version of the proposed Violence against Women Act (VAWA). It passed in the U.S. House earlier this year. The Keeping Children Safe From Family Violence Act (Kayden's Law)[9] provides a funding incentive for states to adopt laws which implement some of the recommendations in H. Con. Res.72, including prioritizing the safety of children in private custody proceedings. The incentive provision is modeled after the Rape Survivor Child Custody Act,[10] which was adopted by 49 states in five years, and it uses the same funding set-aside.

> ***In 2021, Representative Brian Fitzpatrick (R-PA), added a provision on child safety in family courts to the House version of the proposed Violence against Women Act (VAWA).***

Assuming VAWA passes in the U.S. Senate with this provision, states applying for this funding would need to demonstrate that state law ensures several things: First, that in private custody cases where abuse is alleged, experts providing testimony possess demonstrated expertise and clinical — not solely forensic — experience in working with victims of domestic violence or child abuse. Second, evidence of past sexual or physical abuse committed by a party must be considered in determining the truth of any allegations of family violence. Third, states must require courts to examine potential reasons for a child's estrangement from one parent before blaming the other parent. And finally, states must implement a training program for judges and court personnel which relies on evidence-based and peer-reviewed research in child sexual abuse, physical and emotional abuse, coercive control, implicit and explicit bias, trauma, the long and short-term impacts of domestic violence and child abuse on children, and victim and perpetrator behaviors.

Positive State Laws

Even before the VAWA child safety provision was proposed, new research, grassroots pressure, the federal Resolution, and the growing number of reports of children abused and killed by a parent after a court refused to protect them, has propelled numerous state lawmakers and advocates to seek to strengthen custody statutes. A concerted reform effort began in Pennsylvania in 2017; this effort has inspired other states to follow suit.

Pennsylvania

In the 2020-21 session, Kayden's Law SB78, led by Senators Lisa Baker and Steve Santarsiero, passed the Pennsylvania Senate in a bipartisan 46-4 vote. Among other things, this bill creates a rebuttable presumption for professionally supervised contact if any child contact with an adjudicated abuser is granted; limits how the "friendly parent" factor can be applied; restricts responses to a child's estrangement from a parent; provides *de novo* review of child welfare agency findings of physical or sexual abuse; and recommends a training program for court personnel

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similar to that proposed in the federal VAWA provision.

Pennsylvania's reforms began in 2017 when the preliminary findings[11] from Meier and team's empirical study of family court outcomes in cases involving abuse and alienation provided the empirical research needed to support critical policy changes. Pulling together a small group of experts including the second author, litigator Richard Ducote, and Legal Director of the Barbara Hart Justice Center, Jodi Lewis, the first author led a process of drafting proposed legislation to ensure courts' prioritization of children's safety in cases involving abuse allegations. In 2018, this proposal, HB2058, was introduced by Representative Mark Rozzi.

This proposal was propelled forward by the brutal killing of seven year old Kayden Mancuso by her biological father during a court-ordered unsupervised visit in August 2018.[12] The Pennsylvania court had ignored not only the mother's reports of the father's violent, erratic, and criminal history, but also an expert opinion urging that the father needed mental health treatment before having unsupervised access. Soon after the murder, Kayden's mother testified at a Policy Committee Hearing before a panel of lawmakers and the public.[13] In that hearing, advocates shared Meier's research and called on state lawmakers to advance the custody reform bill introduced by Rozzi.[14] The Pennsylvania legislative bureau then analyzed both Rozzi's bill and another proposal (a set of principles denominated the "Safe Child Act"), determining that only the first passed constitutional muster. The Rozzi bill was expanded in 2019 and reintroduced as Kayden's Law SB868 by Senator Santarsiero, representing the district where Kayden had lived. For the following session, Santarsiero (D) joined with his Judiciary counterpart, Chair Baker (R), to successfully lead it through the Senate as SB78 in June 2021.[15] At the time of this writing, it is under House consideration.

Connecticut

After three years of organizing efforts by a Connecticut protective parents group[16] and advocates' and lawmakers' consultation with these authors and coercive control expert Evan Stark, in 2021 Governor Lamont signed Jennifers' Law SB1091, championed by Senator Alex Kasser. The law adds coercive control to the definition of domestic violence in the state's custody and protection order laws, building on Hawaii's[17] and California's[18] statutes in this regard. It allows abuse victims who have been issued protection orders on their or their child's behalf to elect to appear in court remotely, and also appropriates funding for representation of low-income petitioners seeking protection orders. Jennifers' Law memorializes not one but two different "Jennifers" killed by abusive partners while seeking to keep their children safe in custody litigation — Jennifer Dulos and Jennifer Magnano.

New research, grassroots pressure, the federal Resolution, and the growing number of reports of children abused and killed by a parent after a court refused to protect them, have propelled numerous state lawmakers and advocates to seek to strengthen custody statutes.

Colorado

Following advocacy led by Violence Free Colorado and a state-based grassroots group "Moms Fight Back," in 2021 Governor Polis signed Julie's Law HB1228, championed by Representative Meg Froelich (D) and Senator Jim Smallwood (R). Julie's Law, named after a child who was court-ordered to live out her childhood with her sexually abusive father, requires 12 hours of initial training for custody evaluators on the facts of domestic violence (including coercive control), child abuse (including sexual abuse), and trauma. Four subsequent hours of training on this subject matter are required every two years.

The need for this law was crystallized by a 2020 analysis which showed that Colorado custody courts were adopting evaluator recommendations about parenting time into their final orders over 80% of the time, but evaluators lacked standardized training on domestic violence or child abuse.[19] In addition, the new law integrates language and factual findings from U.S. House Concurrent Resolution 72 into the state custody statute.

New York

In the 2020-21 session, New York saw a custody evaluator training bill A2375A (Dinowitz) pass the Assembly. It requires that court-ordered forensic evaluations be done by a licensed psychologist, social worker or psychiatrist who has completed a training program from domestic violence experts.[20] It is part of a package of three custody reform bills, including the pending "Kyra's Law"[21] and another bill on improving accessibility to forensic reports, which will be reintroduced next session.

Maryland

In 2019, a Maryland Workgroup to Study Child Custody Proceedings Involving Child Abuse or Domestic Violence Allegations was formed by the Secretary of State, in response to multiple child murders, including four young children murdered by their two fathers during court-ordered visitation.[22] In both of these cases the mothers had begged the court not to send their children unsupervised into the care of fathers who they knew to be dangerous, but the courts, encouraged by misguided custody evaluators, ignored the mothers' entreaties.

Workgroup members met for nearly two years and heard from experts all over the country, including author Meier. They issued safety-oriented recommendations to the legislature which then became a package of three reform bills introduced in the 2020-21 session: SB675 (judicial and guardian

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ad litem (GAL) training), SB775 (custody statute reform for abuse cases), and SB774 (child's voice and preference), all led by Senator Lee. None passed this session. All will be reintroduced in the upcoming session.

Note: One or both authors have been involved in all of the above legislative efforts, in most cases providing consultation and proposed drafting at early stages of the process, as well as providing written and/or oral testimony in legislative hearings. This work is integral to The National Family Violence Law Center (NFVLC) through its Legislative Clearinghouse.

Issues Raised by Child Protective Custody Reforms

In the course of working with lawmakers and advocates on these policy initiatives, we have encountered a number of concerns about custody reforms. Below we describe four issues which we suspect will continue to arise and require continued attention and discussion in future reform efforts.

1. Objections Will Arise

As an over-arching matter, reforms aimed at better protecting children in private custody are often seen as creating significant shifts in the status quo, for not only judges but for GALs, child welfare professionals, and lawyers. It is critical not to underestimate the number and variety of stakeholders who may be invested in elements of the status quo, and therefore inclined to fight reforms. It is therefore imperative to vet proposals with a broad range of stakeholders early in the process in order to understand and respond to objections to the extent it is possible without sacrificing the goal of improving child safety in custody litigation.

2. Equity for Underrepresented Groups

For some, concerns about requiring family courts to focus on protecting children have stemmed from the belief that family courts will simply import the same racially and economically unequal practices that still plague the child welfare system. These concerns are understandable given the widely acknowledged disproportionate impact of child welfare interventions on underrepresented groups, especially Black and brown women and children, as well as these agencies' history of holding abused women accountable for "failing to protect" their children from abusers.[23]

There are at least two answers to these concerns, offered by advocates, survivors, and the NFVLC. First, it is critical that any custody reforms are developed in collaboration with diverse stakeholders to ensure diverse voices are heard, and especially that concerns about racial equity are addressed. Poverty, racial, and cultural differences are often labeled "neglect" in the child welfare system, fueling its discriminatory impact on Black, brown, and impoverished women. Legislative custody reforms should include protections against these systemic biases. One means of doing so is to restrict or exclude custody courts' reliance on agency "neglect" (as opposed to physical/sexual abuse), as was done in PA SB78.

Second, while discrimination is problematic, the courts' failure to protect Black and brown children is at least as problematic, in the eyes of many advocates and protective parents from such populations. For instance, Angela, a survivor, advocate, and protective parent with a custody case pending spoke to this at a stakeholder meeting organized by the NFVLC at George Washington University and their Georgia partners working on state custody reform, saying: "You can't imagine what it's like to watch your child cry and suffer and you know it and you're being forced to watch it and send her to the abuser. And if you don't, you're arrested. I'm being forced not to protect my child. And to this day I'm still fighting and she's still dealing with trauma."

Rosa Perriera, a nurse who founded Black Femicide US, a database tracking murders of Black women and girls and the co-organizer of the Black Women's March 2021, stated in a conversation with the first author, "I really want these [custody reform] laws enacted because of the high rate of violence against Black women and children in particular. The custody courts are very lax. They do not listen to the mothers. They do not listen to their cries for help when they say, 'hey this person is abusive.' If the mom or child is killed, we can see many times she had been demanding safety from the courts. In almost in every instance of the murders, child welfare had been involved first, so the courts know — or they should."

Any custody reforms must be developed in collaboration with diverse stakeholders to ensure diverse voices are heard, and especially that concerns about racial equity are addressed.

3. The Interface of Child Welfare and Private Custody

One reason family courts are frequently non-protective is that private custody courts and child welfare agencies too often mistakenly defer to each other. While family courts often deem child abuse allegations to belong only in state child protection agencies, agencies often assume that custody courts will resolve any child safety concerns. The net effect can be that children in these cases are systematically *unprotected by both systems,* as Meier and Sankaran have described.[24] The reforms described above aim to require private custody courts to address all credible abuse allegations, whether or not they have been addressed by the State.

Some stakeholders have expressed fear that child welfare findings of abuse will be uncritically accepted by family courts and have opposed reforms that seek to close this gap. This concern arose and was addressed in Pennsylvania, where the custody law already requires litigants to report child welfare involvement and "indicated" status. Reformers added a requirement

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of *de novo* review for cases where the agency has issued an "indicated" status for physical or sexual abuse of a child; this was written to exclude neglect findings, precisely because neglect is the rubric under which poor women and women of color are especially targeted. This reform in Kayden's Law SB78 adds a layer of due process not currently afforded to litigants, while still ensuring that custody courts hear (at a minimum) about physical and sexual abuse which child welfare has confirmed. The net effect is that before a family court accepts an abuse finding from an agency, four to five individuals would have separately validated that abuse — the CPS caseworker, administrator, and solicitor, often the CPS supervisor from the agency — and then, importantly, the custody judge, after a required full and fair hearing.

4. The Challenge of Incorporating Court-Related Trainings into Legislation

Those who have handled such cases know the challenges of persuading courts that domestic violence or child maltreatment raised in custody litigation is true and warrants child protection. As H. Con. Res.72 recognizes, courts often rely on custody evaluators or other "experts" who lack expertise in the type of abuse at issue in the case. In our experience and conversations with other professionals, judges rarely receive more than *pro forma* domestic violence trainings and little, if any, training on child sexual abuse. Substantial evidence-based training for court personnel on domestic abuse dynamics, trauma, and child abuse is essential for child safety in child custody cases. Incorporation of such requirements or recommendations into legislation can, however, engender disagreements.

First is the question of who does the trainings: Some stakeholders may be invested in being the trainers, due not only to their own special expertise, but potentially also due to the compensation, the status, or other institutional concerns. However, because the trainings advocated by these reforms — including child abuse, sexual abuse, counter-intuitive aspects of family abuse, and the dangers of pseudoscience — are often new to family courts, trainers upon whom courts have previously relied are not always best situated for addressing these topics. Some longstanding trainers come from a perspective that is affirmatively harmful to the goal of child protection, such as a belief system that treats abuse allegations as evidence of parental alienation. To ensure that training does not become captured by unhelpful or affirmatively destructive approaches, proponents of training reforms must align, to the extent possible, with courts and lawmakers who will have the power to select appropriate trainers. In addition, some grassroots activists are critical of the idea of trainings at all, arguing they are ineffective and/or little more than a "gravy train" for organizations which have not been sufficiently helpful to the needs of protective parents and their children. It can be important to address these concerns as well.

Another source of resistance to judicial training derives from the belief that legislatures should not "interfere" with courts and court policy. Such advocates will sometimes urge that only non-judicial neutrals, such as Guardians ad Litem (GALs) or Minors' Counsel and custody evaluators, should be subject to new training requirements, and courts should determine their own training.

We at the NFVLC believe that all neutrals, including judges, need to be trained on these subjects. Leaving the choice of topic and curricula entirely to courts themselves cannot suffice because judges, like many "adult learners," may not "know what they don't know."[25] And while some courts acknowledge that they need help, others may be reluctant to accept the idea that their work could be improved — particularly in abuse cases. This attitude was addressed by one judge speaking at a recent event held to honor Kayden Mancuso, the Pennsylvania child murdered by her father during his court-ordered access. Judge Lori A. Dumas, a member of the Philadelphia and Pennsylvania Bar Associations as well as the National Council of Juvenile and Family Court Judges, while supporting reforms, commented: "[S]hame on us in Pennsylvania for having to go to the Legislature to tell us [in Judiciary] that the best interest of the child should be first and foremost in these courts. We as judges have an obligation to every single child that comes in front of us for those of us in family court."

Proponents of judicial trainings must overcome resistance to requiring improved judicial training along with other protective reforms.

Proponents of judicial trainings must enlist supportive judges, survivors' stories, empirical research, and professionals' testimony and expertise to overcome resistance to requiring improved judicial training along with other protective reforms.

Finally, some state constitutions, such as Pennsylvania's, prohibit legislatures from requiring judicial trainings on separation of powers grounds. However, we have found no such prohibition in the other states we have researched, and several states (*i.e.*, California, Connecticut, and New Hampshire) have already legislated on the topic. But regardless of the state constitution, since court administrators will need to implement any judicial training — proponents will benefit from preliminary dialogue with such personnel to address any concerns and obtain their buy-in.

Conclusion

The movement to protect children's safety in the custody litigation context is gaining momentum thanks to the intersection of in-depth scholarly research and the persistent efforts by advocates, the voices of parent and child survivors of harmful custody rulings, a growing cadre of dedicated

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and informed lawmakers, and increasing press attention. To overcome predictable objections to strong protective reforms for children, advocates must expand their coalitions and give careful thought to opposing concerns. The momentum that has begun is sure to help ensure that courts adjudicating children's future parenting take concerns about children's safety seriously. The National Family Violence Law Center stands ready to continue this work with lawmakers, stakeholders, and advocates who share this mission.

End Notes

1. Meier, Joan (in press). Denial of family violence in court: An empirical analysis and path forward for family law, *Georgetown L. J. 110(in press)*. Available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3805955*.

2. Center for Judicial Excellence (as of July 31, 2021). U.S. Divorce Murder Data. Available at *https://centerforjudicialexcellence.org/cje-projects-initiatives/child-murder-data/*.

3. Silberg, Joyanna & Dallam, Stephanie (2019). Abusers gaining custody in family courts: A case series of over turned decisions. *J. Child Custody, 16(2),* 140. DOI 10.1080/15379418.2019.1613204.

4. California Protective Parents organized many such actions including the Mothers of Lost Children March on D.C. (2010). See *https://caprotectiveparents.org/past-events*.

5. The Court Said USA, one of six country coalitions of the same name (The Court Said + country name) with a membership of 500,000 individuals, available at *https://www.facebook.com/thecourtsaidusa/*; One Mom's Battle, *https://www.facebook.com/onemomsbattle*, last visited Aug 1, 2021; Murdock, Zach (March 24, 2021). Survivors of domestic violence urge Connecticut lawmakers to pass reforms named for Jennifer Farber Dulos, Jennifer Magnano. See *https://www.courant.com/politics/hc-pol-jennifers-law-domestic-violence-20210324-x36vmtaz55d7dh2wuznxtvxdrq-story.html*; Murphy, Mary (June 10, 2021). Mother of 3 year old who was burned to death demands change in Family Court law. Pix 11 News. Available at *https://pix11.com/news/local-news/queens/mother-of-3-year-old-who-was-burned-to-death-demands-change-in-family-court-law/?fbclid=IwAR0YvSCBPH7gQofI-90LgaWdzFOoevWHqsEZ0M9mtJ1TTIldWertheMpb4s*.

6. NBC Nightly News reported on the case of Kayden Mancuso and Kayden's Law, at both the state and federal level, in a two-part series. NBC Nightly News with Lester Holt (May 13 & 14, 2021). Parents say Family Courts too often ignore allegations of violence in custody disputes. Available at *https://www.youtube.com/watch?v=jfb4bBMnGyM*. Local media are also beginning to connect the dots: Just since May 2021 at least six child murders by an abusive parent with family court involvement were reported: in Florida (Greyson, aged 4); Pennsylvania (Zachary, aged 10 and Madison, aged 13); New Jersey (Corey, aged 6); and Nebraska (Theodore, aged 3 and Emily, aged 5).

7. Meier, Joan, Dickson, Sean, O'Sullivan, Chris, Rosen, Leora & Hayes, Jeffrey (September 2019). Child custody outcomes in cases involving parental alienation and abuse allegations: Final report to National Institute of Justice. Available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3448062*.

8. H. Con. Res. 72. The text was drafted and advocated by Meier, the California Protective Parents Association and the Center for Judicial Excellence, and the Congressional effort was led by a strong *pro bono* team at Pillsbury LLP. Available *at https://www.congress.gov/bill/115th-congress/house-concurrent-resolution/72/text*.

9. H.R. 1620, 117th Cong. (2021-2022). Available at *https://www.congress.gov/bill/117th-congress/house-bill/1620/text#H6EDA4A7B37F649DDA76160A44E61B3BF*.

10. 34 U.S.C. §2130. Available at *https://www.congress.gov/bill/114th-congress/house-bill/1257/text*.

11. Meier, Joan & Dickson, Sean (2017). Mapping gender: Shedding empirical light on Family Courts' treatment of cases involving abuse and alienation. *Law & Ineq. 35(2)*, 311. Available at *https://scholarship.law.umn.edu/lawineq/vol35/iss2/10*.

12. Shaw, J., Vella, V. & Bobrowsky, M. (Aug. 7, 2018). Months before Kayden Mancuso's death, mom reported girl "didn't feel safe" with her father. *The Philadelphia Inquirer*. Available at *https://www.inquirer.com/philly/news/crime/kayden-mancuso-jeff-mancuso-murder-suicide-manayunk-girl-murder-suicide-langhorne-20180807.html*.

13. Kathy Sherlock (Kayden's mother) has been an outspoken advocate for custody law reforms to help prevent other such child murders. Sherlock coined the expression *Protection is Not Alienation*, and Pennsylvania advocates began using the hashtag #ChildSafetyFirst to organize. Danielle Pollack produced a short documentary film, *Voices for Reform*, together with Kayden's mother and other protective parents to help educate lawmakers and the public about the issue. Retrieved from *https://www.daniellepollack.com/voices-for-reform-film*.

14. House Policy Committee Hearing: Child Custody Issues (Sept 17, 2018). Available at *https://www.pahouse.com/files/Documents/Testimony/2018-09-20_045021__hdpc091718.pdf*.

15. SB 78, Reg. Session 2021-2022. Available at *https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2021&sInd=0&body=S&type=B&bn=0078*.

16. Connecticut Protective Moms (August 1, 2021). Available at *https://www.connecticutprotectivemoms.org/*.

17. HB 2435, 30th Legis. (2020). Available at *https://www.capitol.hawaii.gov/session2020/bills/HB2435_.pdf*.

18. SB1141, Calif. Leg. (2019-2020). Available at *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB1141*.

19. Yolanda Arredondo, et al. (October 13, 2020). Colorado child custody evaluators professional background and practices on intimate partner violence. presented as a brown bag webinar for Violence Free Colorado at *https://www.youtube.com/watch?v=Pzx7N8gPs6s*.

20. A2375B, N.Y. Assembly, 2021-2022 Leg. Session. Available at *https://www.nysenate.gov/legislation/bills/2021/A2375*. (This bill passed the NYS Assembly, but not the Senate. The Senate website is an easier way to trace a bill so the Senate website address is provided here.)

21. A5398, N.Y. Senate, 2021-2022 Leg. Session. Available at *https://www.nysenate.gov/legislation/bills/2021/A5398*. (See note 20.)

22. Court Watch, Montgomery, Maryland child deaths related to intimate partner violence 2004-2016. Available at *https://courtwatchmontgomery.org/wp-content/uploads/2017/06/DV-related-child-deaths-in-MD.Oct_.20-2016-CWM-1.pdf*.

23. Carlton, R., Krane, J., LaPierre, S., Richardson, C. & S. Strega (2013). Failure to Protect (Fernwood Pub. Co.) Available through *https://fernwoodpublishing.ca/book/failure-to-protect*.

24. Meier, Joan & Sankaran, Vivek (in press). Breaking down the silos that harm children. *Va. J. of Soc. Pol. & Law*. Available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3895232*.

25. M. Knowles, et al. (1998). The adult learner: The definitive classic in adult education and human Resources. Available at *https://eric.ed.gov/?id=ED428293*.

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Appellate Analysis. The Court of Appeal for the Third District considered William's argument that the trial court lacked jurisdiction to renew the DVRO while the appeal from the granting of the original DVRO remained pending. William contended that because the issuance of the original DVRO remained pending on appeal, it could not be modified. The court noted that a DVRO is a type of injunction and that a restraining order is separately appealable as an order granting an injunction. The court found that William's arguments were not supported by citation to any legal authority and lacked merit.

Trial Court Maintained Jurisdiction to Renew DVRO While Appeal of Original DVRO was Pending. The court ruled that where, as here, an injunction of limited duration is appealed, the trial court has power to extend the injunction pending disposition of the appeal when needed. "Thus, the trial court had the authority to renew the DVRO pending disposition of the appeal from the granting of the original DVRO if doing so would serve the ends of justice." The trial court, having determined that Carol met her burden of proof, "necessarily concluded that renewing the DVRO" was proper. The court also dismissed William's argument that because the trial court had previously decided it could not *modify* the DVRO while the appeal remained pending, that had a preclusive effect, barring *renewal* of the DVRO. The court held that modification and renewal were two separate questions and that William cited no authority to support this contention. Accordingly, the court concluded that the trial court had jurisdiction to renew the DVRO and the order was affirmed. **In re Marriage of Carlisle**, 274 Cal. Rptr. 483 3rd (Cal. Ct. App. 2021).

Editors' Note: Technical holdings such as this one are important to clarify the proper operation of the Domestic Violence Prevention Act, and ensure that the persons the statute is designed to protect remain protected while an order is appealed. William was a practicing attorney but did not practice Family Law. His unfamiliarity with the DVPA revealed itself both at trial and on appeal, though this opinion highlights litigation abuse as William's "go to" technique for continuing his post-separation harassment of Carol. William chose to represent himself at trial and on appeal, and the opinion details many examples why that was a mistake on his part. ■

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