



# COERCIVE CONTROL CODIFICATION

A Brief Guide for Advocates and Coalitions

NOVEMBER 2021



## A CRITICAL MOMENT

**There is an important conversation happening throughout the country. Advocates and survivors are actively debating whether and to what degree coercive control should be codified<sup>1</sup> in the criminal, protection order, or family laws of their state.**

A number of jurisdictions across the U.S. have already have already codified *coercive control*.<sup>2</sup> As the national resource center on legal responses to gender-based violence, BWJP is a thought leader on trends that impact survivors and systems. Coercive control is one of these current trends and BWJP is committed to offering legal analysis and support to further these conversations throughout the country. As advocates, we are used to collaborating with survivors navigating their complex relationships and choices, while centering the survivor's needs and safety. Our collective voice is needed on coercive control codification, as the implications of new laws may impact survivors' lives in profound ways.

For decades, criminal and civil legal systems have not adequately addressed the dynamics of coercive control to make abusers accountable and liberate survivors. Each day thousands of people are terrorizing their intimate partners. Some are flushing insulin vials and birth control pills down the toilet, while others are coercing their partners to have sex by threatening to contact ICE<sup>3</sup> and get their partner deported.<sup>4</sup> Most jurisdictions' criminal, civil protection, and family legal system responses fall short, especially when violence isn't physical and recent.

**For these reasons and more some survivors and advocates are calling for the criminal, protection order, and family laws to include (codify) coercive control. But how far should these laws go? There are real concerns about unintended consequences for survivors, especially survivors and communities that are marginalized.**

## Defining Coercive Control

**Guided by the experiences of survivors, feminist thinkers have worked to develop the concept of coercive control since the 1970s.<sup>5</sup> Evan Stark in his book *Coercive Control* (2006) defines it as “a pattern of threatening, humiliating, or intimidating actions.”<sup>6</sup>** One study showed that 60-80% of abused women experience coercive control beyond physical and emotional abuse.<sup>7</sup> Over the past few years states have begun to codify coercive control by including specific language in criminal, custody-related and domestic violence protection order (DVPO) statutes.<sup>8</sup>

Codification requires close attention to context. State statutes must allow for and promote nuanced assessments in intimate partner violence cases, especially those involving coercive control. The challenge of codifying coercive control is in describing a wide variety of coercive and controlling behaviors while—at the same time—excluding from codification conflict between couples which does not rise to intimate partner violence. Crucially, any statutory language must be crafted so that it is not overbroad, thereby harming the individuals the language is intended to protect and aid.

## Listening to All Survivors

**There are many perspectives around the conversation of codifying coercive control. Marginalized survivors continue to express concerns, supported by decades of criminological and sociological data, that legal systems fail to recognize them as survivors in need of support.** Furthermore, when reporting violence, marginalized survivors are frequently themselves incarcerated and their children taken away.<sup>9</sup> These same legal systems also incarcerate their abusive partners at disproportionate rates. It is imperative that a range of survivor voices are given weight in order to promote effective solutions. Advocates and state coalitions should ensure that policymakers hear from survivors who represent the full spectrum of identities and experiences when developing legislation and other solutions to coercive control and intimate partner violence.

## Different Legal Systems, Different Considerations

Coercive control codification adds to the complexity for survivors when interacting with the criminal, domestic violence protection order, and family legal systems.

**We must consider the impact of coercive control codification on these three systems, while prioritizing the impact that codification will have on survivors and their families.**

## Coercive Control Codification and the Criminal Legal System

- Criminalization involves the introduction of a new crime of *coercive control* to the criminal code. Recently, the U.K. criminalized coercive control, and Australia is giving it consideration.<sup>10</sup>
- Criminal responses in the U.S. focus on physical violence, with survivors typically left unable to have the system respond to intimate partner violence and coercive control in the absence of recent physical violence.
- While some survivors and advocates support criminalization for these and more reasons, other survivors and advocates are concerned with how criminalization of coercive control would exacerbate the class and racial disparities in the criminal legal system.
- These survivors are confident that criminalization will lead to the arrest and incarceration of survivors, particularly survivors of color and survivors from other historically marginalized and overpoliced groups.

## Coercive Control Codification and the Civil Protection Order System

- Coercive control behaviors pose dire safety risks to survivors and in some jurisdictions are already included as grounds for a DVPO.<sup>11</sup>
- Many survivors aim to introduce or strengthen coercive control language in DVPO statutes.
- On the other hand, some survivors and advocates are concerned that coercive control will prove to be a Trojan horse: that abusive partners will manipulate the system and claim coercive control as a basis for receiving orders against survivors. These challenges are only heightened by the fact that most survivors represent themselves in both civil protection order and custody proceedings.<sup>12</sup>

## Coercive Control Codification and the Family Legal System

- Survivors and advocates arguing for codification of coercive control in the statutes that guide custody considerations argue that patterned violence and other abusive and controlling behaviors are key to understanding intimate partner violence and its impacts on abused parents and children. Consequently, coercive control must be explicitly addressed by family courts and practitioners.
- Survivors and advocates resisting codification believe that coercive control language will be used against survivors, leading them to lose custody of their children at even greater rates than today.
- Others argue that coercive control codification introduces difficult factfinding dilemmas for judicial officers and related custody professionals who consistently struggle to recognize the complexities of intimate partner violence amongst the many other issues present in custody cases, and that even the most carefully crafted statutory language will fail to provide the needed clarity.

## Endnotes

1 As used here, codified means writing coercive control into state law.

2 These jurisdictions include: Arkansas, Ark. Code Ann. § 9-15-219; California, Cal. Fam. Code § 6220 and § 6320; Connecticut, Conn. Gen. Stat. § 46b-1; District of Columbia, D.C. Code §16-4015; Hawai'i, Haw. Rev. Stat. Ann. § 586-1; Nebraska, R.R.S. Neb. § 43-2922; Oklahoma, Okla. Stat. tit. 43, § 109; and Puerto Rico, 8 L.P.R.A. § 602.

3 U.S. Immigration and Customs Enforcement.

4 See, e.g., Reproductive and Sexual Coercion, The American College of Obstetricians and Gynecologists Women's Health Care Physicians, Committee on Health Care for Underserved Women, Committee Opinion (February 2013); How Domestic Violence Impacts Immigrant Victims, Grace Huang, Handbook of Interpersonal Violence and Abuse Across the Lifespan, pp. 1-25, Asian Pacific Institute on Gender-Based Violence (upcoming 2022); Few Immigrants Are Reporting Domestic Violence. Police Blame Fear of Deportation, New York Times, June 3, 2018.

5 Other scholars who have opined on this topic include, but are not limited to, Mimi Kim, Lewis Okun, Ellen Pence, Beth Richie, and Susan Schechter.

6 According to Stark, coercive control is 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. The coercive control is designed to make an individual dependent, isolating them from support, exploiting them, depriving them of independence, and regulating their everyday behavior.

7 New York State Office for the Prevention of Domestic Violence, OPDV Bulletin (Spring 2013).

8 See, e.g., Hawai'i Rev. Stat. Ann. § 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."

9 See, e.g., Beth Richie, *Compelled to Crime: the Gender Entrapment of Battered Black Women* (1996); Critical Resistance and Incite!, *Critical Resistance—Incite! Statement on Gender Violence and the Prison-Industrial Complex*, 30 Soc. Just 141 (2003); Leigh Goodmark, *A Troubled Marriage: Domestic Violence and the Legal System* (2011).

10 Section 76 of the United Kingdom Serious Crime Act 2015. See also: <https://www.cps.gov.uk/legal-guidance/controlling-or-coercive-behaviour-intimate-or-family-relationship>.

11 As used here, Domestic Violence Protection Orders refer to the injunctions issued by civil courts called restraining orders, (civil) protection orders, and other names across the U.S.

12 See, e.g., Knowlton et al., *Cases Without Counsel: Research on Experiences of Self-Representation in U.S. Family Court* (2016).

## Next Steps for BWJP in Coercive Control Codification

Currently, BWJP is developing policy position briefs and tools for advocates, coalitions, and systems professionals on the codification of coercive control. We are incorporating the voices of survivors, advocates and practitioners in this conversation to inform jurisdictions across the U.S. about what codification means in the civil protection, family, and criminal court systems. Next, we will release a 50-state coercive control codification matrix.

BWJP will be hosting listening sessions throughout Fall 2021 to achieve this goal and continue working on coercive control throughout 2022 and beyond.

**We invite survivors, advocates, and coalitions to partner with us in this mission.**

**To participate, please email [technicalassistance@bwjp.org](mailto:technicalassistance@bwjp.org).**



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