

RECOGNIZING COERCIVE CONTROL: A LEGISLATIVE
MODEL FOR OVERCOMING THE CHALLENGES OF FIGHTING
INVISIBLE DOMESTIC ABUSE

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ABSTRACT

This Note advocates for amending civil codes addressing domestic abuse to incorporate coercive control as a recognized form of violence. Coercive control is an emotional domestic abuse that is not always visible or physical but was realized on a larger scale after victims were forced into confinement with abusers during COVID-19 lockdowns. The United States legal system, in comparison to its international peers, has very rarely engaged in legislative discussion on coercive control. Much of the debate regarding domestic abuse in the form of coercive control has been purely academic and without implementation in a meaningful number of jurisdictions. This Note identifies the needs of state legislators to respond to the non-recognition of coercive control in domestic abuse laws by pursuing legal reform accompanied by comprehensive, illustrative definitions that establish clear behavioral markers, and further suggests the development of guidance materials for lawmakers and judiciaries to facilitate the implementation of a model statute. Further, state legislators provided with guidance from international predecessors to navigate the obstacles to implementation that are in place when the legal concept of abuse is expanded to recognize coercive control by either codification or criminalization.

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INTRODUCTION

Far from being the gold standard for clarity and ease, the United States possesses a complicated, multi-jurisdictional system of laws. As if state legislation needed additional complexity, challenges related to the COVID-19 pandemic have revealed a gap in domestic violence legislation, creating urgency for state legislatures to take a deeper look at current regimes.¹ Forced isolation not only contributed to a spike in domestic violence reports nationally,² it also uncovered a pattern of non-violent abusive behavior called coercive control.³ Described as “an ongoing and multipronged strategy, with tactics that include manipulation, humiliation, isolation, financial abuse, stalking, gaslighting and sometimes physical or sexual abuse,”⁴ coercive control is relatively unfamiliar to those outside of certain academic communities. While unfamiliar, coercive control is not a new concept. In fact, it has been a prominent idea in the psychology of intimate partner violence for decades, gaining popularity in the public sphere around 2007.⁵ Moreover, it has been the focus of legislation related to domestic violence in the international community for years.⁶ Unfortunately, due to the lack of objectivity in defining coercive control⁷, creating a legal definition of coercive control presents various challenges for legislatures seeking to carve out recognition for the pervasive force this form of abuse

1. See *infra* Part I. C. ii. Formal Legislative Recognition.

2. The Council on Criminal Justice reported that “based on a review of 12 U.S. studies...domestic violence incidents increased 8.1% after jurisdictions imposed pandemic-related lockdown orders.” *Impact Report: COVID-19 and Domestic Violence Trends*, Council on Criminal Justice COUNCIL ON CRIMINAL JUSTICE (Feb. 23, 2021), <https://counciloncj.org/impact-report-covid-19-and-domestic-violence-trends/>.

3. See *infra* Part I.0. ii. Formal Legislative Recognition.

4. Abby Ellin, *With Coercive Control, the Abuse Is Psychological*, N.Y. TIMES: WELL (July 7, 2016), <https://well.blogs.nytimes.com/2016/07/11/with-coercive-control-the-abuse-is-psychological/?searchResultPosition=1>; Coercive control is qualified more heavily by the degree of the behaviors. *Id.* Dr. Fontes, a scholar in coercive control, referenced an example of coercive control between spouses where the husband did not want his wife to sleep on her back, expected her to fill shopping carts to his standards, and even implemented a specific sequence for washing herself in the shower. *Id.*

5. MELENA RYZIK & KATIE BENNER, “WHAT DEFINES DOMESTIC ABUSE? SURVIVORS SAY IT’S MORE THAN ASSAULT,” N.Y. TIMES, (OCT. 1, 2021), [HTTPS://WWW.NYTIMES.COM/2021/01/22/US/CORIBUSH-FKA-TWIGS-COERCIVE-CONTROL.HTML](https://www.nytimes.com/2021/01/22/us/coribush-fka-twigs-coercive-control.html).

6. See *infra* Part I.0. Legislating Coercive Control Abroad.

7. See Ellin, *supra* note 4 (definition of “coercive control”); See generally, *infra* Part I.0 for discussions regarding implementation concerns and challenges, obstacles in defining coercive control, and guidance materials for implementation.

has in intimate relationships. However, the obstacles to implementation do not negate the very real gap in legal protection for victims of coercive control.⁸

This Note sketches the big picture of coercive control legislation in the United States at this moment in time. There is a marked difference in the way the U.S. has responded to the presence of coercive control as compared to the rest of the world; notably, it took a global pandemic locking citizens up with their abusers for lawmakers to recognize that violence does not have to be physical to necessitate legal intervention. Elsewhere, members of the international community codified coercive control provisions years prior to COVID-19's takeover. This Note proposes a set of legislative guidelines for state legislatures pursuing coercive control provisions that seeks to overcome resource and implementation concerns associated with such a law. This proposal recommends amending existing civil codes pertaining to domestic abuse to include coercive control as a recognized form of violence along with inclusive, illustrative definitions that set forth clear behavioral identifiers. The proposal also recommends that legislatures create guidance materials for law enforcement and relevant judiciaries to ease the implementation of the suggested legal reform.

This Note will follow with three main parts. Part I will address the origins and history of coercive control as an emerging legal concept. Part II will analyze the existing landscape of coercive control legislation, weighing civil and criminal law approaches, various definitions of coercive control, and the implementation concerns accompanying coercive control legislation. Part III will propose a blueprint guideline for legislatures considering coercive control legislation that seeks to minimize implementation challenges and resource concerns.

Part I outlines the historical context for coercive control as a legal concept. While coercive control takes root in psychology, Part I will first address coercive control's initial move into domestic violence law which occurred overseas in the United Kingdom and Ireland. Next, it takes account of various instances of informal recognition of coercive control in American courts. Part I then details examples of recently enacted state legislation for coercive control as well as pending legislation in various jurisdictions

8. "American law still does not address coercive control; it deals only with episodes of assault, and mainly protects women who have been subjected to physical attacks" despite several domestic violence cases with an absence of bodily harm. *See* Ellin, *supra* note 4.

throughout the U.S. Moreover, it summarizes resulting caselaw from the coercive control provisions. Finally, Part I highlights several scholarly proposals for addressing coercive control in the U.S. and explains various resource and implementation concerns related to pursuing coercive control legislation.

Part II analyzes the various costs and benefits associated with the different approaches seen abroad and at home. It will compare the implications of pursuing a civil coercive control provision as opposed to a criminal offense as well as the costs of creating new laws or amending current schemes to recognize coercive control. Additionally, Part II will assess the importance of tailoring the language of coercive control legislation to provide definitions that are narrow and concrete enough to aid enforcement while remaining broad enough to address the presence of coercive control and avoid under-inclusivity.

Part III outlines a proposal for amending existing laws pertaining to domestic violence to recognize coercive control as a form of abuse. Part III focuses on civil recognition of coercive control rather than criminal; due to the lack of objectivity in defining coercive control, the risk of due process violations would likely accompany a criminal coercive control law. It will also suggest guidelines for defining coercive control for legislatures seeking to incorporate coercive control into their statutory schemes, regardless of the choice of civil or criminal. Finally, Part III provides recommendations for guidance materials for law enforcement and courts to ease implementation concerns.

I. HISTORY

A. Defining Coercive Control

Coercive control is a broadly discussed concept in psychology, particularly as it appears in intimate relationships.⁹ At its most basic level, coercive control refers to “strategic, rational, ongoing behavior in which an

9. See generally Christina Policastro & Mary A. Finn, *Coercive Control in Intimate Relationships: Differences Across Age and Sex*, 36 J. INTERPERSONAL VIOLENCE 1520 (2021) for an interesting discussion regarding the effects sex and age have on coercive control patterns in intimate relationships as well as the relationship between health impairments and coercive control; see also, Ellin, *supra* note 4 (“an ongoing and multipronged strategy, with tactics that include manipulation, humiliation, isolation, financial abuse, stalking, gaslighting and sometimes physical or sexual abuse”).

intimate partner uses tactics such as intimidation, degradation, isolation, and control to dominate the other partner.”¹⁰ Coercive control can exist without instances of physical or sexual violence.¹¹ The atypical nature of this form of violence has posed many challenges for legislators, law enforcement, and adjudicators alike attempting to establish legal recognition of coercive control.¹²

B. Legislating Coercive Control Abroad

Fortunately for advocates of domestic violence reform in the U.S., there are many international examples of coercive control legislation that can serve as blueprints for legislative options and the obstacles that accompany such legislation. This Note will focus on the United Kingdom and Ireland.¹³

i. United Kingdom

Taking effect in December of 2015, the United Kingdom made coercive control a specific criminal offense under Section 76 of its Serious Crime Act.¹⁴ The offense of coercive control has four elements: (1) repeated or continuous behavior which is controlling or coercive; (2) personal connection between the aggressor and victim; (3) a serious effect on the victim; and (4) the aggressor knew or ought to have known that the behavior would have serious effects.¹⁵ Each of the first three elements carry additional sub-elements or qualifications¹⁶ and the fourth element provides

10. Policastro & Finn, *supra* note 9, at 1523.

11. *Id.*

12. See *infra* Parts I.0, I.0, and I.0.

13. See Olivia A. Hess, *Ready to Bridge the Disconnect: Implementing England and Wales' Coercive Control Model for Criminalizing Domestic Abuse in the United States*, 30 IND. INT'L & COMP. L. REV. 383 (2020); see also Anthea Yeung, *It's Time for the United States to Step Up: Comparing Domestic Violence Laws in United States and Republic of Ireland*, 43 SUFFOLK TRANSNAT'L L. REV. 359 (2020); Canada recognizes coercive control as a form of “family violence” and in March 2021 amended its Divorce Act to require that family violence be considered in divorce proceedings when making best interest determinations for children. See generally Glenda Lux & Sandy Gill, *Identifying Coercive Control in Canadian Family Law: A Required Analysis in Determining the Best Interests of the Child*, 59 FAM. CT. REV. 810 (2021); other countries with domestic violence laws against coercive control include Scotland and France. Erin Sheley, *Criminalizing Coercive Control Within the Limits of Due Process*, 70 DUKE L.J. 1321, 1326 (2021).

14. Hess, *supra* note 13, at 403.

15. *Id.*

16. Hess elaborates that the first element has two sub-elements; first, the aggressor must engage

the *mens rea* for the criminal offense.¹⁷ Due to the complex nature of coercive control, Parliament anticipated there would be many challenges and confusion associated with implementation and subsequent enforcement. In light of these concerns, Parliament published guidance resources for law enforcement, prosecutors, and the courts alongside enactment of the criminal offense.¹⁸ The prominence of coercive control in the UK was evidenced soon after enactment by a significant volume of recorded offenses and 235 successful convictions in the first three years following implementation.¹⁹ Furthermore, the criminalization of coercive control as part of the United Kingdom's long term efforts to reform domestic violence laws is credited for contributing to the overall reduction of domestic abuse from 8.9% in March 2005 to 5.9% in March 2017.²⁰

ii. Ireland

With the passage of the Domestic Violence Act 2018 (DVA), Ireland expanded its legal conception of violence to include coercive control and created criminal penalties for the offense.²¹ Coercive control under the DVA occurs when “a person commits an offense where he or she knowingly²² and

in the behaviors “continuously or repeatedly” (meaning one occurrence is insufficient) and second, the behavior must be coercive or controlling (for example, isolation, monitoring, “rule-making”, or degrading behavior). Further, the second element is satisfied by the parties either being in an intimate personal relationship (regardless of cohabiting), or they lived together and had either previously been in an intimate relationship or are in the same family. Finally, the third element is established when the behavior either “causes the victim to fear, on at least two occasions, that violence will be used against him or her” or “causes the victim ‘serious alarm or distress which has a substantial adverse effect on [the victim's] usual day-to-day activities.’” *Id.* at 404-408.

17. The *mens rea* employed for this offense is further described as “quasi-objective *mens rea*” since it uses a reasonable person standard which strays from the subjective standards for intent utilized elsewhere for assault offenses in Section 76. *Id.* at 408-409.

18. *Id.* at 403-404.

19. 4,246 coercive control offenses were recorded in 2016 through March 2017 and nearly doubled in the following year for a total of 9,052 recorded offenses recorded. *Id.* at 409.

20. *Id.* at 447.

21. Yeung, *supra* note 13, at 398.

22. It is worth noting that within the “Interpretation” section of the DVA, which contains several definitions for terms used throughout the Act, “knowingly” is not defined. In fact, “knowingly” only appears once in the 2018 Act and it is in the provision for coercive control. *See generally*, Domestic Violence Act, 2018 (Act No. 6/2018) (Ir.); for guidance on how a courts in Ireland may analyze “knowingly,” comparisons may be drawn between the wording of the provisions for coercive control and rape. In a 2016 case before the Supreme Court of Ireland, the court answered the question: “Within the definition of rape, is there a requirement in law for a man to ascertain prior to sexual intercourse that: the woman is a) capable of consenting to the sexual intercourse; and b) that as a matter of fact she does

persistently engages in behavior” that satisfies three elements: (1) controlling or coercive behavior which (2) has a serious effect on the victim, and (3) a reasonable person would consider likely to have a serious effect on the victim.²³ Legal interest groups in Ireland like Women’s Aid Ireland quickly expressed concerns about the efficacy of the policy change following the DVA’s expansion.²⁴ Leaders within the organization called for proper training and resources for emergency call operators, law enforcement, and the courts and emphasized the importance of maintaining adequate resources due to the legislation’s requirement for “ongoing enforcement”.²⁵

C. Coercive Control in the United States

i. Informal Judicial Recognition

There is significant judicial recognition of coercive control nationwide despite only a few states having any formal statutory recognition of coercive control. For example, Minnesota does not recognize coercive control in its statutory definition of domestic abuse; yet in 2019, the Minnesota Supreme Court recognized coercive control in *Thornton v. Bosquez*.²⁶ In *Thornton*, the Court was tasked with determining the presence, or lack thereof, of domestic abuse between parents in a custody dispute.²⁷ The Court ultimately found the presence of abuse by Bosquez after considering testimony from each party, reports from the child’s guardian ad litem, and a psychology expert.²⁸ However, the Court affirmed the lower court’s specific recognition of coercive control following this determination stating that “Bosquez’s abusive conduct was precipitated by, or occurred along with, ‘coercive control and manipulation’ by Thornton of Bosquez.”²⁹ The Court further affirmed the lower court’s findings that while Thornton himself was

so consent.” Much of the analysis boiled down to determining whether the accused possessed a “honestly held belief” that the victim was consenting, and that the belief was reasonable. *The People v. C O’R*, [2016] IESC 64 (Ir.).

23. Yeung, *supra* note 13, at 398 n.106.

24. *Id.* at 398 n.108.

25. *Id.*

26. *Thornton v. Bosquez*, 933 N.W.2d 781 (Minn. 2019).

27. *See id.* at 781.

28. *Id.* at 794.

29. *Id.*

a victim of domestic abuse, he maintained superior control and power within the relationship and Bosquez's actions were in response to the feelings of powerlessness she experienced.³⁰ Furthermore, in a footnote providing further explanation for affirming the lower court's findings, the Court explained that Minnesota's statutory definition of "domestic abuse"³¹ is broad in scope and encompasses behavior ranging in frequency and severity including "long term coercive controlling violence."³² Similar occurrences of judicial recognition of coercive control have occurred in Connecticut and New Jersey, among other jurisdictions, despite an absence of formal legislative recognition.³³

ii. Formal Legislative Recognition³⁴

With the emergence of COVID-19 and the dramatic societal changes that accompanied the virus, increased isolation and forced proximity in

30. *Id.*

31.

"Domestic abuse" means the following, if committed against a family or household member by a family or household member: (1) physical harm, bodily injury, or assault; (2) the infliction of fear of imminent physical harm, bodily injury, or assault; or (3) terroristic threats, within the meaning of section 609.713, subdivision 1; criminal sexual conduct, within the meaning of section 609.342, 609.343, 609.344, 609.345, or 609.3451; sexual extortion within the meaning of section 609.3458; or interference with an emergency call within the meaning of section 609.78, subdivision 2.

MINN. STAT. ANN. § 518B.01 (West 2021).

32. *Thornton*, 933 N.W.2d at 794 n.9.

33. *In re Omar I.*, 197 Conn. App. 499, 231 A.3d 1196, *cert. denied*, 335 Conn. 924 (2020), and *cert. denied sub nom. Ammar I. v. Connecticut*, 141 S. Ct. 956 (2020) (rejecting an argument from respondent that the court misconstrued the meaning of "coercive control" because coercive control is a "factual description of conduct; it is not a term of art for which an objective legal definition exists"); *New Jersey Div. of Youth & Fam. Servs. v. I.H.C.*, 2 A.3d 1138 (App. Div. 2010) (after hearing testimony from a psychologist identifying one of the party's behavior as coercive control in a hearing for protective custody and supervision, the court determined that exposure of children to coercive control in a relationship does not by itself prove abuse or neglect).

34. For reference, the National Conference of State Legislatures created a compilation of each state's statutory definition of domestic violence which may prove helpful. See *Domestic Violence/Domestic Abuse Definitions and Relationships*, NAT'L CONF. OF STATE LEG., (June 13, 2019), <https://www.ncsl.org/research/human-services/domestic-violence-domestic-abuse-definitions-and-relationships.aspx>.

intimate relationships caused several state legislatures to take a critical look at domestic violence legislation. Two states have successfully passed legislation recognizing coercive control as it relates to domestic violence: California and Hawaii.³⁵ States with pending legislation pertaining to coercive control include New York, Maryland, and South Carolina.³⁶ Additionally, Oklahoma includes coercive control as a form of domestic violence within its family code; however, it is intended for use in determining the best interests of a child in proceedings for custodial rights rather than recognizing coercive control as an independent offense.³⁷

a. California

The California legislature found a nationwide increase of domestic violence and an increase in severity of violence following the start of the COVID-19 pandemic.³⁸ Furthermore, they found that the virus was being used by abusers as a scare tactic to keep victims isolated from their support systems.³⁹ Legislators identified this behavior as coercive control and amended Section 6320 of their Family Code to include coercive control as a form of domestic violence.⁴⁰ Subdivision (c) of Section 6320 further clarifies the meaning of “disturbing the peace of the other party” as used in subdivision (a) as a recognized ground for remedy between domestic parties.⁴¹ The amendment changed subdivision (c) to include coercive control as a form of “disturbing the peace of the other party.”⁴² Additionally, the amendment statutorily defines coercive control as “a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will

35. See CAL. FAM. CODE § 6320 (West 2023); see also HAW. REV. STAT. ANN. § 586-1 (West 2023).

36. *Coercive Control Bill Tracker*, AMERICA’S CONF. TO END COERCIVE CONTROL, (Oct. 22, 2021), <https://www.theacecc.com/billtracker> [hereinafter *Bill Tracker*].

37. See OKLA. STAT. ANN. tit. 43, § 109 (West 2023) (“‘domestic violence’ means the threat of the infliction of physical injury, any act of physical harm or the creation of a reasonable fear thereof, or the intentional infliction of emotional distress by a parent or a present or former member of the household of the child, against the child or another member of the household, including coercive control by a parent involving physical, sexual, psychological, emotional, economic or financial abuse”).

38. S.B. 1141, 2019-2020 Reg. Sess. (Cal. 2019).

39. *Id.*

40. *Id.*

41. See CAL. FAM. CODE § 6320 (West 2023).

42. *Id.*

and personal liberty”⁴³ and provides a list of identifiable examples of coercive control.⁴⁴ Following their initial recognition of coercive control, the California legislature filed an additional amendment with the Secretary of State in July 2021 amending the listed examples of coercive control to include behaviors amounting to reproductive coercion which consists of control over the reproductive autonomy of another person.⁴⁵

b. Hawaii

Following an intense spike in domestic abuse allegations during the COVID-19 pandemic, Hawaii amended its statutory definition of domestic abuse under its insurance laws and domestic abuse protective order laws to include coercive control between family or household members.⁴⁶ For purposes of domestic abuse protective orders, Hawaii’s statutory definition of “domestic abuse” specifically names coercive control as a basis for granting a protective order.⁴⁷ It 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.”⁴⁸ Following the statutory definition of coercive control, the legislature provided a list of identifiable examples of coercive control like

43. *Id.*

44. “Examples of coercive control include, but are not limited to” the following behaviors: isolating the relevant individual from friends and family, controlling access to money and how it is used, monitoring communications and activities, deprivation of necessities, 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. *Id.*

45. The statute specifies reproductive control over another by “force, threat of force, or intimidation, and may include, but is not limited to, unreasonably pressuring the other party to become pregnant, deliberately interfering with contraception use or access to reproductive health information, or using coercive tactics to control, or attempt to control, pregnancy outcomes.”

2021 CAL. LEGIS. SERV. Ch. 135 S.B. 374 (Cal. 2021).

46. H.B. 2425, 30th Leg., 2020 Sess. (Haw. 2020); *See generally* Anita Hofschneider, *Measure Criminalizing Coercive Control Faces Opposition From Law Enforcement*, HONOLULU CIVIL BEAT, (May 3, 2021), <https://www.civilbeat.org/2021/05/measure-criminalizing-coercive-control-faces-opposition-from-law-enforcement/>.

47. *See* Haw. Rev. Stat. Ann. § 586-1 (West 2023).

48. Additionally, “‘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.” *Id.*

isolating the individual from friends and family, controlling access to money and how it is spent, and monitoring the individual's communications, activities, and movements.⁴⁹

c. Pending Legislation

New York legislators proposed a bill in 2019 to establish the crime of coercive control which would make it a Class E Felony in the state's criminal code pending enactment.⁵⁰ If amended, a new section will be added to the penal code for the criminal offense of coercive control which would make a defendant guilty of coercive control if he or she "engages in a course of conduct against a member of his or her same family or household, as defined in section 530.11 of the criminal procedure law" without the victim's consent and results in limiting or restricting to some extent the victim's behaviors.⁵¹

In 2020, a bill was introduced in the Maryland House that adds coercive control to the definition of abuse as a grounds for which a peace order or protective order may be granted.⁵² Maryland's amendment would statutorily define coercive control as "continuous behavior toward an adult individual that: (1) is controlling or coercive; (2) has a serious effect on the other individual; and (3) the individual who engages in the behavior knows or reasonably should know that the behavior will have a serious effect on the other individual."⁵³

South Carolina's legislature introduced a bill in February 2020 to

49. Other examples of coercive behavior included in the amendment were "name-calling, degradation, and demeaning the individual frequently; threatening to harm or kill the individual or a child or relative of the individual; threatening to publish information or make reports to the police or the authorities; damaging property or household goods; and forcing the individual to take part in criminal activity or child abuse." *Id.*; Additionally, it is worth noting California and Hawaii used similar sets of examples of coercive control within their respective statutes. *Compare* CAL. FAM. CODE § 6320 (West 2023) with HAW. REV. STAT. ANN. § 586-1 (West 2023).

50. *See Bill Tracker, supra* note 36; *See also* S.B. 5306, 242nd Legis. Sess. (N.Y. 2019).

51. S.B. 5306, 242nd Legis. Sess. (N.Y. 2019); *see* N.Y. CRIM. PROC. LAW § 530.11 (McKinney 2023) for the statutorily defined course of conduct referenced in the proposed amendment's text. Some examples of conduct outlined in Section 530.11 include disorderly conduct, unlawful dissemination or publication of an intimate image, harassment, sexual misconduct, forcible touching, sexual abuse, and stalking.

52. *Bill Tracker, supra* note 36; *See also* H.B. 1352, 441st Sess. Of Gen. Assemb. (Md. 2020).

53. H.B. 1352, 441st Sess. Of Gen. Assemb. (Md. 2020). Additionally, the language in Maryland's proposed amendment closely resembles international definitions previously discussed *See* Hess, *supra* note 13, at 403; Yeung, *supra* note 13, at 398 n.106.

amend the 1976 Domestic Violence Bill to create the offense of coercive control.⁵⁴

iii. Coercive Control Caselaw Post-Enactment

Given that only two states formally recognize coercive control and considering that the earlier of the two statutes was enacted as recently as 2019, there is limited caselaw and practical evidence for the efficacy of the two statutes. *In re Marriage of L.R. & K.A.* was decided in California and provides one of the few occurrences of judicial analysis regarding what qualifies as coercive control.⁵⁵ *In re Marriage of L.R. & K.A.* provides an example of behavior that does not rise to the level of “disturbing the peace of another” within the meaning of Section 6320 of the California Family Code.⁵⁶ On appeal, the court accepted many of the findings from the trial court concerning the mother’s conduct toward the father. The court affirmed findings that the mother acted obsessively, and was aggressive and controlling during an incident occurring during the mother’s scheduled parenting time; the court further found that her behavior had an escalating effect on the situation.⁵⁷ Moreover, the court found that the mother violated the terms of the child custody orders and had shown a “persistent disregard for court [child custody] orders” and that her patterns of behavior likely caused the father and child “needless distress in an already emotionally fraught custody dispute.”⁵⁸ However, the court was adamant that this behavior does not establish domestic abuse within the meaning of its statutory definition.⁵⁹

54. *Bill Tracker supra* note 36.

55. On subsequent appeal, this case was ordered not to be published. *In re Marriage of L.R. & K.A.*, 66 Cal. App. 5th 1130 (Ct. App. 2021) *depublished by* 281 Cal. Rptr. 3d 706 (Ct. App. 2021); note that this case was decided within days of the filed amendment discussed earlier which added reproductive coercion to the list of examples of coercive control included in California’s statutory definition. *See* S.B. 374, Ch. 135 (Cal. 2021); *In re Marriage of L.R. & K.A.* does not deal with reproductive coercion issues so the addition would likely not have impacted the outcome. Additionally, nothing was deleted from the statute so any weight given to the statutory definition by the court would not be implicated by the amendment.

56. “The issuance of a Domestic Violence Restraining Order [DVRO] on the facts of this case was improper because Mother’s conduct was insufficient to support a finding that she ‘destroyed’ Father’s mental or emotional calm.” *In re Marriage of L.R. & K.A.*, 281 Cal. Rptr. 3d at 723.

57. *Id.*

58. *Id.*

59. *Id.*

The appellate court reached this conclusion by evaluating the mother's conduct in light of previous cases that dealt with coercive control behaviors prior to their formal recognition. The court recognized a stark difference between the mother's conduct and the conduct in *Rodriguez v. Menjivar*; there, Menjivar was found to have engaged in a pattern of behavior that "intimidated, isolated, and controlled" Rodriguez which included calling her multiple times a day, monitoring her daily activities, playing with a knife near her person, threatening physical harm and legal consequences, preventing her from contacting help, and endangering her in a vehicle.⁶⁰ The court also compared the mother's conduct in *L.R. & K.A.* to that found in *Burquet v. Brumbaugh* where the court affirmed a domestic violence restraining order (DVRO) against an ex-boyfriend that had engaged in unwelcome contact toward his ex-girlfriend for eight months in addition to showing up to her house without invitation and refusing to leave and found that her behavior did not rise to the same level.⁶¹ Nor did the court find that her conduct was as severe as that found in *N.T. v. H.T.* wherein the husband refused to return the parties' child during a custody exchange unless the wife would speak to him about extraneous issues, requested physical intimacy, followed her after the exchange, and violated terms of his parental visitation among other terms set out in the temporary restraining order.⁶² Further, the court did not find that the mother's behavior invaded the father's privacy unlike threats to release private communications and diary entries which occurred in *In re Marriage of Nadkarni*.⁶³

D. Alternative Proposals

Many scholars have proposed various approaches to legislative regulation of coercive control; some advocate for incorporating provisions

60. Furthermore, *Rodriguez v. Menjivar*, 243 Cal. App. 4th 816, 196 Cal. Rptr. 3d 816 (2015) is a prime example of what the legislature intended to qualify as coercive control according to the legislative history of the amendment; "In fact, the legislative history of the amendment to section 6320 refers to *Menjivar* as 'a stark example of the type of harmful conduct that would be covered' by the amendment to section 6320." *In re Marriage of L.R. & K.A.*, 281 Cal. Rptr. 3d at 723.

61. *In re Marriage of L.R. & K.A.*, 281 Cal. Rptr. 3d at 723-24; *See generally Burquet v. Brumbaugh*, 167 Cal. Rptr. 3d 664 (Cal. 2014).

62. *In re Marriage of L.R. & K.A.*, 281 Cal. Rptr. 3d at 724; *See generally N.T. v. H.T.*, 246 Cal. Rptr. 3d 362 (Cal. 2019), *as modified* (Apr. 22, 2019).

63. *In re Marriage of L.R. & K.A.*, 281 Cal. Rptr. 3d at 724; *See generally In re Marriage of Nadkarni*, 93 Cal. Rptr. 3d 723 (Cal. 2009).

for coercive control into existing domestic violence laws while others have more specific and unique approaches to mitigating coercive control. One approach comes from Jeffrey R. Baker, a law professor and scholar with a focus in domestic violence, who suggests legislators work within existing civil protection regimes to make civil protection orders precautionary in nature rather than responsive only to symptomatic violence.⁶⁴ Baker highlights the fixation that current regimes have on tangible violence which, is already criminalized in many cases. He suggests the system is oriented toward evidence of physical violence or potential physical violence but concludes that this approach does not address the reality of domestic abuse.⁶⁵ Baker proposes that legislators amend civil protection statutes to define abuse in a way that encompasses coercion or coercive control to enable victims to obtain legal protection prior to more extreme forms of violence and provide better relief for domestic violence as it occurs in reality.⁶⁶

Another proposal for addressing coercive control seeks to create a guardianship remedy. Ruth Jones argues that conventional mechanisms for domestic violence intervention cannot properly assist victims of coercive control.⁶⁷ Certain prevailing social theories about domestic abuse, particularly the “empowerment model,” assert that women have a keen understanding of their domestic relationships which enable them to know

64. See Jeffrey R. Baker, *Enjoining Coercion: Squaring Civil Protection Orders with the Reality of Domestic Abuse*, 11 J. L. & FAM. STUD. 35, 35-36 (2008); Additionally, for an interesting discussion on reforming civil protection order statutes to account for coercive control based on recommended language from National Council of Juvenile and Family Court Judges, see Kristy Candela, *Protecting the Invisible Victim: Incorporating Coercive Control in Domestic Violence Statutes*, 54 FAM. CT. REV. 112 (2016).

65.

Every state requires evidence of physical violence or potential violence. This focus on violence is understandable because oppressive coercion or other non-violent abuse is difficult to quantify and prove. Violence is tangible and is already criminalized, with evidence and elements familiar to courts, lawyers, and police. In order to intercept and prevent abusive coercion, however, these regimes must shed the fixation of physical violence.

Baker, *supra* note 64, at 58-59.

66. “By providing a cause of action for abuse victims who have not yet, or not recently, been victims of physical violence, these victims might break the cycle of escalating violence and seek liberation before a coercive, abusive relationship becomes inevitably violent.” *Id.*

67. Ruth Jones, *Guardianship for Coercively Battered Women: Breaking the Control of the Abuser*, 88 GEO. L.J. 605, 612 (2000).

how to survive and escape abusive relationships.⁶⁸ Jones distinguishes women that are victims of coercive control from women that fall under the empowerment model: “coercively controlled battered women are so profoundly controlled by their abusers and suffer from such a range of psychological impediments engendered by the abuse, their needs cannot be served by such empowerment-based remedies” because they are not positioned to utilize legal resources by their own volition.⁶⁹ Jones proposes the use of guardianships for victims of coercive control because this remedy can overcome many obstacles that stand between victims and seeking out legal remedies.⁷⁰ Guardianship can also force separation between the abuser and the victim giving the victim the space necessary to empower herself outside of the coercive environment.⁷¹

A more unique approach to mitigating coercive control targets demographics that are more likely to suffer from coercive control or be a perpetrator of coercive control. Carla Spivack focuses on the prevalence of domestic abuse specifically as it occurs between spouses and proposes a bar to inheritance for spouses that coercively controlled their decedent spouses.⁷² Broadly, Spivack argues that if a spouse is a victim of coercive control by their spouse, there ought to be a rebuttable presumption of invalidity for transfers to the surviving spouse by will or intestacy.⁷³

68. *Id.* at 621. Furthermore, “The empowerment model is also predicated on an assumption that a woman presented with the economic and legal resources she needs to flee her abuser will do so.” *Id.* at 622.

69. *Id.* at 622.

70.

The appeal of state intervention through guardianship is that concerned friends and family, rather than the battered woman, can initiate the proceedings. Family members can then use their status as guardians to enforce a coercively controlled battered woman's rights, including obtaining protective orders and public benefits on her behalf. Guardians can also advocate for more effective institutional responses to the individual battered woman and her need.

Id. at 642.

71. “Without such physical separation, it is unimaginable that a coercively controlled battered woman, under constant monitoring and in physical terror of her abuser can empower herself, even with every available resource.” *Id.*

72. *See generally*, Carla Spivack, *Let's Get Serious: Spousal Abuse Should Bar Inheritance*, 90 OR. L. REV. 247 (2011). Additionally, for a better understanding of this proposal, Spivack extensively discusses issues with enforcing this type of bar to inheritance such as producing evidence of coercive control of a decedent and standing to enforce.

73. *Id.* at 252.

Spivack's argument is based in the law of duress. She argues that coercive control most easily conforms with the legal treatment of duress and the occurrence of coercive control functionally evidences duress in will making.⁷⁴ Functionally, such a law would create a systemic intervention to the transfer of resources from a spouse who is a victim of coercive control to the abusing spouse.⁷⁵ Codifying the idea that coercive control raises a presumption of duress under existing will-making doctrine, Spivack argues, has the expressive effect of acknowledging "the profoundly coercive nature of abuse and intervenes in the debate about battered women's intent and responsibility."⁷⁶

State-specific alternatives have also been suggested like Alexandra Michelle Ortiz's proposal for Tennessee to adapt existing false imprisonment laws to address coercive control.⁷⁷ Aspects of coercive control crop up in various statutory definitions of domestic abuse or civil protection laws across the U.S., yet criminal domestic violence laws are typically limited to physical violence.⁷⁸ Ortiz argues that this creates a false narrative regarding the scope of abuse and effectively limits the legal remedies available to victims who do not know to identify their experiences as abuse.⁷⁹ Ortiz argues that coercive control, much like false imprisonment, serves as a restraint on the victim's liberty.⁸⁰ Furthermore, Ortiz explains that using a preexisting crime rather than creating an entirely new criminal law serves three key benefits: (1) it provides clarity for law enforcement and prosecutorial ease, (2) it expresses condemnation for coercive control, and (3) it creates associations between false imprisonment and domestic abuse that pave the way for coercive control's inclusion.⁸¹

74. Spivack also addresses why other grounds for contesting a will like capacity, fraud, undue influence, and insane delusion, are not adequate to encompass coercive control. *Id.* at 261-264.

75. *Id.* at 260.

76. Spivack states that this type of law would be a "a clear condemnation of such behavior and would teach a lesson that the law 'respects and privileges' a woman's right to live free of the domestic terrorism that is coercive control." *Id.* at 260.

77. Alexandra Michelle Ortiz, *Invisible Bars: Adapting the Crime of False Imprisonment to Better Address Coercive Control and Domestic Violence in Tennessee*, 71 VAND. L. REV. 681 (2018)

78. *Id.* at 683.

79. *Id.*

80. *Id.* at 703

81.

First, adapting rather than recreating allows law enforcement and prosecutors to work with laws they should already be familiar with. Effectively analogizing to a preexisting crime establishes a better understanding of a concept that can

Similar to Ortiz, Erin Sheley proposes that criminal laws should cover coercive control, but takes a much broader approach and proposes an entirely new model criminal statute for coercive control.⁸² Sheley seeks to follow and improve upon the UK's treatment of coercive control by drawing on pre-existing American structures for criminal conspiracy and fraud.⁸³ Sheley's resulting proposal for a uniform coercive control offense includes three elements:

- a) Continuously engage in a coercive pattern of behavior over a substantial period of time with the intent to deprive another person of their autonomy to make decisions and engage in conduct to which they otherwise have the right; and
- b) The two parties are spouses, intimate partners, or family members; and
- c) The pattern of behavior causes or creates a risk of nontrivial economic, physical, mental, or emotional harm to the coerced party.⁸⁴

While this would require creating an entirely new criminal offense, Sheley argues that this approach is in harmony with long-standing legal doctrines due to her reliance on pre-existing crimes.⁸⁵

otherwise be complicated. Second, it immediately frames the newly prohibited behavior as being *worthy* of being a crime given its similarities to preexisting crimes, sending an important signal to both law enforcement and society that it is equally intolerable. Third, some states already associate false imprisonment with domestic violence in their domestic abuse statutes, so, like stalking and harassment, its connection to domestic violence is not far-fetched.

Id. at 704.

82. Sheley, *supra* note 13, at 1327-28.

83. *Id.* at 1386.

84. *Id.* at 1387.

85. *Id.* at 1395.

E. Implementation and Policy Concerns

The international community can provide evidence for potential challenges with implementing coercive control legislation in the U.S. Other countries encountered several obstacles in their efforts to enact and enforce their respective laws governing coercive control. For example, law enforcement struggles to understand how to approach policing coercive control even with extensive training.⁸⁶ Furthermore, there is vocal opposition to pursuing coercive control measures in the U.S. due to resource constraints. Many opponents of coercive control legislation argue that if the U.S. pursues that particular option for domestic violence reform, the costs of implementation and enforcement could drain resources from more pressing needs and more effective policy choices.⁸⁷ Challenges with implementation and enforcement can impede the underlying purpose of coercive control legislation by reducing public awareness of this form of abuse.⁸⁸ Due to the complexities associated with enforcing coercive control measures, justice systems may be poorly equipped to respond to the volume of cases that may result; if only the most extreme cases of abuse are addressed, specifically those involving physical violence, the public may be inclined to believe coercive control is a rare occurrence.⁸⁹ A dramatic shift in law enforcement practices will likely be necessary in order to effectively police coercive control because the “characteristic pattern of violence in coercive control involves frequent, even routine, low-level assaults” that escape police attention and the “intimidation, isolation, degradation, and control that comprise the infrastructure of coercive control remain largely invisible to law and criminal justice.”⁹⁰ Law enforcement may need adjustments on all levels “from the underlying principles guiding police and legal intervention, including arrest, to how suspects are questioned, evidence is gathered, resources are rationed, to how Protect Orders are crafted and enforced.”⁹¹ In the United Kingdom, coercive control is in direct conflict with normative approaches to policing domestic abuse; “typical,

86. See RYZIK & BENNER, *supra* NOTE 5.

87. *Id.*

88. Sheley, *supra* note 13, at 1346.

89. *Id.*

90. Evan Stark, *Looking Beyond Domestic Violence: Policing Coercive Control*, 12 J. POLICE CRISIS NEGOT. 199, 213-14 (2012).

91. *Id.*

normal policing” uses a straightforward approach to domestic abuse that draws clear lines between the existence or nonexistence of physical violence⁹² which is not compatible with the sometimes invisible elements of coercive control.⁹³

At the most basic level, the legislative process of codifying coercive control in any capacity will be very demanding; it will be imperative for legislators to critically analyze the nuances and contextual elements of domestic violence.⁹⁴ Drafters will likely struggle with formulating definitions that are sufficiently broad, but not so broad as to adequately address the targeted coercive behavior.⁹⁵ Additionally, scholars are concerned with several possible unintended consequences related to coercive control legislation. Specifically, regarding criminalizing coercive control, there is concern for how such a law would interact with preexisting

92. Cassandra Wiener, *Seeing What Is Invisible in Plain Sight: Policing Coercive Control*, 56 *HOW. J. CRIME & JUST.* 500, 503 (2017). As part of her study, Wiener interviewed various police officers about their experiences with enforcing coercive control laws. Explaining the more “traditional” approach to policing domestic violence, one of the officers said,

Violence is never acceptable in a relationship. Actually, we need to be taking formal action every time we become aware of it - and it is a fairly obvious line. And that kind of works neatly. And for more serious violence - you've got injuries, you've got bruises, you've got broken bones and things.

Id.
93.

Coercive control is complicated. It is made up of interlinking behaviours, with which police may, or may not, be familiar; behaviours that are organised around an abuser's strategic, controlling intent. It is not possible to locate that strategic intent in time and space in the same way that you might locate, for instance, a domestic assault.

Id. at 505-06.

94. Baker, *supra* note 64, at 59.

95

“While seeking to extend civil protection relief to victims who suffer coercive abuse but not violence, drafters must guard against expanding the definition so far as to interfere with ordinary conflicts in non-abusive relationships. Quantified elements of coercive control might be so broad as to be indistinguishable from common arguments between aggrieved spouses, and they might dilute the promise of civil protection orders for those in legitimate need of relief.”

Id. at 59.

affirmative defenses, such as provocation.⁹⁶ Recognizing coercive control as a source of “provocation” could be a beneficial change but at the risk of potentially encouraging “violent self-help.”⁹⁷ Another concerning consequence that could result is abuse of coercive control remedies. The need for language that is broad enough to encompass the outer limits of coercive control carries with it the danger that “a party to a failing or otherwise acrimonious relationship could take advantage of the apparent expansiveness of the coercive control offense to use the criminal law as a weapon against their partner.”⁹⁸ This fear applies to parties to civil litigation as well: an overly litigious or spiteful party could prolong divorce proceedings, for example, with motions for protective orders under the guise of coercive control.⁹⁹ Furthermore, criminal treatment of coercive control is acutely vulnerable to problems with potential due process violations. Due process requires statutes to have sufficient clarity and notice for individuals to reasonably conform with the law; a concept as fluid and complex as coercive control presents challenges for structuring laws in a way to overcome vagueness challenges.¹⁰⁰

Criminal statutes also pose a number of prosecutorial challenges, some of which may be a challenge for litigants in a civil scheme as well. As previously discussed, there may be problems related to law enforcement being able to identify coercive control which creates a significant obstacle for collecting evidence sufficient to then prosecute the offender.¹⁰¹

96. Sheley, *supra* note 13, at 1394 (contemplating whether coercive control would qualify as a source of “extreme mental or emotional disturbance for which there is reasonable explanation or excuse” for purposes of the provocation affirmative defense).

97. *Id.*

98. *Id.* at 1347.

99.

“A major concern about expanding the legal recognition of domestic abuse to include coercive control is that it may make the nagging of one’s partner actionable. Because CPOs [civil protection orders] can be used as proof in divorce, custody, and visitation cases, there’s a concern that abusers may use unmerited CPOs as a tactical advantage to further control their spouses.”

Candela, *supra* note 64, at 120.

100. Sheley, *supra* note 13, at 1338-40; Sheley also discusses other potential constitutional challenges to coercive control criminal statutes that will not be discussed in this note. Sheley recognizes a concern for such laws becoming overbroad, and on a more theoretical level, being challenged as a “thought crime.” Sheley, *supra* note 13, at 1341-45.

101. *Id.* at 1345.

Similarly, in a non-criminal coercive control law, an individual victim seeking a civil protection order may struggle with providing sufficient evidence for their request due to inability to recognize certain behaviors. Coercive control generally takes the form of emotional, psychological, and/or economic abuse which does not “leave scars and bruises or a paper trail of hospital records and police reports as physical abuse often does” which makes it more challenging to document.¹⁰² Prosecutors will likely struggle with victim credibility issues as is common in prosecuting similar crimes like sexual assault and existing domestic violence crimes.¹⁰³ The psychological impacts of abuse and trauma often cause victims to experience dissociation which frequently negatively effects memory and ability to recall events in a cohesive manner which creates very real challenges for prosecutors.¹⁰⁴

II. ANALYSIS

The extensive history covered in Part I reveals the key areas of concern for mapping a strategy that legislatures can turn to for drafting coercive control laws. Part II will begin with an analysis of civil and criminal provisions for coercive control. While domestic violence is criminalized in several jurisdictions, the current treatment of domestic violence relies on an understanding of physical violence.¹⁰⁵ Because of the amorphous nature of coercive control and the challenges of objectively defining the concept, criminal penalties could risk due process violations.¹⁰⁶ Part II will then assess the current language used to define coercive control in various jurisdictions. Different provisions have components that are narrow in scope, limiting application by relationships or residency¹⁰⁷ while others are broad and inclusive in nature.¹⁰⁸ These distinctions are important for determining the intended reach of a coercive control statute. Finally, Part II

102. Candela, *supra* note 64, at 120.

103. Sheley, *supra* note 13, at 1345.

104. *Id.* at 1345-46.

105. Ellin, *supra* note 4.

106. *See generally* Sheley, *supra* note 13.

107. *See* Hess, *supra* note 13, at 404-08; H.B. 1352, 441st Sess. of Gen. Assemb. (Md. 2020); HAW. REV. STAT. ANN. § 586-1 (West 2020).

108. CAL. FAM. CODE § 6320 (West 2022); HAW. REV. STAT. ANN. § 586-1 (West 2020).

will address the various resource and implementation concerns related to enacting coercive control laws.

A. Civil or Criminal?

There are multiple examples of both civil and criminal laws covering coercive control. One problem for legislators in the U.S. seeking guidance for criminal statutes is that the criminal laws belong to foreign jurisdictions. Both Ireland and the United Kingdom enacted criminal laws related to coercive control whereas the legislation in California and Hawaii concerning coercive control amended existing civil laws concerning domestic abuse within each state's family codes.¹⁰⁹ The significance of the lack of American examples of criminal coercive control laws presents a challenging due process concern for lawmakers.¹¹⁰ As discussed in the previous section,¹¹¹ due process requires statutes to have sufficient clarity and notice for individuals to reasonably conform with the law. Providing that clarity for coercive control legislation is perplexing even for the "experts," and courts have grappled with what should and should not qualify as coercive behavior even where it has been defined by statute.¹¹²

Coercive control is a very fluid and complex concept and structuring a legal definition for a criminal offense will require care to overcome vagueness challenges. Of course, this concern could be argued away by relying on existing laws – that is to say, depending upon the definition of coercive control, it may be comprised of behaviors that are already criminalized so the new coercive control offense would describe a pattern of criminal behavior that already has concrete recognition in the law rather than some abstract idea in psychology.¹¹³ However, because coercive control is not a clearly defined behavior, to avoid vagueness, whatever terms used to describe the pattern of abuse ("continuous," for example) would

109. CAL. FAM. CODE § 6320 (West 2022); HAW. REV. STAT. ANN. § 586-1 (West 2020).

110. Hess, *supra* note 13, at 433 ("One major obstacle in implementing legislation similar to Section 76 in the United States would be potential challenges to the statute for being unconstitutionally vague"); Sheley, *supra* note 13, at 1338 (noting that the biggest problem with § 76 of the Serious Crimes Act (United Kingdom) is that it likely violates the Due Process Clause of the Fifth and Fourteenth Amendments).

111. See *supra* Part I.0.

112. Ellin, *supra* note 4; Ryzik & Benner, *supra* note 5.

113. Ortiz, *supra* note 77, at 704; Sheley, *supra* note 13, at 1386.

need statutory clarity. Otherwise, implementation would likely be marked with vagueness challenges until the terms gained sufficient judicial development.¹¹⁴ Furthermore, the uncertainty surrounding creating a new criminal offense could potentially be mitigated by modeling the offense after pre-existing crimes with similar elements or components.¹¹⁵ But, this approach would not address concerns related to the terminology describing the coercive pattern unless the state by chance already has a law describing similar patterned behavior. In short, Sheley's idea of modeling coercive control after existing crimes relies on favorable circumstances that may not work in every state.¹¹⁶

Moreover, it is suggested that various steps could be taken to overcome due process concerns related to a criminal statute. For example, lawmakers could adapt the clear language utilized in existing statutes or model statutory language after academia so that the expansive body of research covering coercive control could serve as a guide for law enforcement, courts, and prosecutors.¹¹⁷ Additionally, law makers could provide extra clarity by providing statutory definitions for terms used within the definition of coercive control that are likely to cause confusion¹¹⁸ – recall “knowingly.”¹¹⁹ However, if a given legislature seeks to avoid these problems all together, amending civil laws governing protective orders and domestic relations may be a better avenue for closing the gap in domestic violence laws. For example, amending laws pertaining to protective orders would be a proactive way to combat coercive control and, more broadly, domestic violence. Criminal laws are reactionary – we cannot prosecute

114. Hess, *supra* note 13, at 433-35.

115. Sheley, *supra* note 13, at 1386-92 (discussing the parallels between coercive control and conspiracy to commit fraud and the viability of conspiracy to commit fraud as a blueprint for coercive control elements that will also avoid breadth and vagueness concerns).

116. Sheley's theory for creating a successful coercive control criminal offense rests on the idea that a given jurisdiction has a long-standing law that is conceptually similar to coercive control with a history of successful enforcement. *Id.* It may not be the case that every jurisdiction has something like this to draw upon.

117. Hess, *supra* note 13, at 434 (discussing Scotland's use of an academic definition within their statute).

118. *Id.* at 435 (“Drafters can further avoid vagueness challenges by providing within the statute further clarifications or definitions as to certain language in the offense. Terms...could be left to development through case law and judicial interpretation. However, by providing clarification within the statute, not only will successful challenges as to vagueness be further avoided, but it will also provide law enforcement with necessary additional guidance in implementing a new offense, which is admittedly conceptually confusing upon first encounter”).

119. See *supra* text accompanying note 22.

someone for a crime until it has been committed, but by amending protective order regimes to account for coercive control, as Baker suggests, the escalation of violence could be stopped in its tracks by creating recognition for less tangible abuse.¹²⁰ Additionally, California and Hawaii have already pursued this method of enacting coercive control laws and could offer guidance to subsequent lawmakers. Alternatively, suggestions like Spivack's that target highly specific categories of people, namely offenders poised to inherit from a decedent spouse,¹²¹ may lack the force needed to combat coercive control in a meaningful way. Under-enforcement due to victims not pursuing civil litigation to enforce coercive control laws is certainly a point in favor of a criminal law but a better solution could be the careful selection of a law to amend.¹²² Another benefit of creating civil causes of action for coercive control would be the potential for civil remedy. Proposals for remedies like Jones' victim guardianships¹²³ may not be practicable in all jurisdictions, but creating potential for placing victims in their rightful position is a benefit that is not captured by applying criminal penalties to an offender.

B. Defining Coercive Control

Deciding between civil and criminal provisions is a surface level consideration of enacting coercive control legislation. Determining the substance of the law and assigning a legal definition to coercive control requires an attempt to give objectivity to the abstract. Goals need to be clear ahead of time regarding the scope and reach of a potential law. The language needs precision and clarity.

As previously discussed, both California and Hawaii amended pre-existing laws pertaining to domestic violence within their respective family codes.¹²⁴ For Hawaii, the amendment functionally added coercive control to the definition of domestic abuse, while in California, the amendment added

120. See *supra* text accompanying note 65.

121. See generally, Spivack, *supra* note 72.

122. Ortiz, *supra* note 77, at 704 (benefits of amending pre-existing laws); Baker, *supra* note 64, at 35-36 (proposing amending existing laws for protection orders to be more responsive to coercive control).

123. Jones, *supra* note 67, at 612 (proposal for guardianship remedy for victims).

124. See generally CAL. FAM. CODE § 6320 (West 2022); and HAW. REV. STAT. ANN. § 586-1 (West 2020).

coercive control as a means by which to show domestic violence is occurring.¹²⁵ An important feature of both statutes is their use of *inclusive* language: while each definition lists specific behaviors, it is not to the exclusion of other behaviors.¹²⁶ This provides flexibility in the scope of each state's recognition of coercive control which is important as it develops as a legal concept. Furthermore, it ensures that victims with a meritorious claim will not be impeded by something in their case not being explicitly listed.

The legislative intent for the law's scope of coverage is of great significance. The practical effect of certain terms can lead to under-inclusivity threatening the success of a coercive control provision. For instance, Maryland's proposed coercive control law only includes behavior towards an adult.¹²⁷ If Maryland is only concerned about adult intimate relationships, the choice to use "adult" is of no consequence; however, if Maryland wanted to recognize coercive control across different relationships, like parent and child, then this choice will hinder its goals. Moreover, the United Kingdom limits coercive control to occurring between persons that are "personally connected" *at the time of the behavior* which is satisfied by either being in an intimate personal relationship (regardless of cohabitation) or living together as either family members or former partners of an intimate relationship.¹²⁸ If the United Kingdom is not concerned with mitigating coercive control as it may occur between people no longer in an intimate relationship and not tied together by habitation, or coercive control as it may occur between non-intimate roommates, then this achieves that end. However, as it stands, the law excludes those potential victims. These are very significant determinations lawmakers must consider prior to drafting a definition of coercive control.

Any definition of coercive control faces an uphill battle in attempting to create a concrete understanding of such an amorphous concept. Clarity in application is just as important as clarity in meaning. California and Hawaii

125. See generally CAL. FAM. CODE § 6320 (West 2022); and HAW. REV. STAT. ANN. § 586-1 (West 2020).

126. CAL. FAM. CODE § 6320 (West 2021) ("Examples of coercive control include, but are not limited to..."); HAW. REV. STAT. ANN. § 586-1 (West 2020) (use of the term "including" prior to example behaviors).

127. H.B. 1352, 441st Sess. Of Gen. Assemb. (Md. 2020) (Coercive control would be defined as "repeated or continuous behavior toward an adult individual...").

128. Hess, *supra* note 13, at 406-07.

both provide good examples of illustrative definitions. Each provide a comprehensive definition of coercive control and then follow with example behaviors that qualify under the statute as coercive control.¹²⁹

Beyond providing illustrations of what coercive control is, definitions need clarity in the terminology used. Ireland's use of "knowingly" in its coercive control statute is a prime example of this challenge. Coercive control is the only offense in the DVA that uses the word and the interpretation section failed to define knowingly.¹³⁰ Meaning eventually develops over time through decisional law, but legislatures can avoid challenges in the interim by building statutory definitions for key terms into the definition of coercive control.¹³¹

C. Implementation Costs

Formulating a law for coercive control is only the first obstacle; eventually implementing such a law poses a very significant challenge for lawmakers, law enforcement, and courts alike.¹³² It is not unreasonable to anticipate an adjustment period when enacting a new law or amendment regardless of the level of complexity; however, codifying coercive control, an abstract concept rooted in psychology, is certain to carry more than the ordinary "growing pains" if any weight is to be given to the experiences in the United Kingdom and Ireland.¹³³ The international community not only provides an example of what could go wrong, it also provides an example for how to *overcome* implementation challenges. Notably, in the United Kingdom, in anticipation of said challenges, Parliament also published guidance materials for law enforcement, prosecutors, and courts alongside the new coercive control law.¹³⁴ State legislatures could replicate this when enacting their own laws to mitigate the lack of understanding of coercive control. Furthermore, now that there are two states with coercive control

129. See *supra* text accompanying notes 44 – 45, 48 – 49.

130. See *supra* text accompanying note 22.

131. Hess, *supra* note 13, at 435.

132. See *supra* Part I.0 for a discussion of various implementation concerns.

133. Yeung, *supra* note 13, at 398 n.106 (discussing concerns regarding implementation); Wiener, *supra* note 92, at 503 (discussing challenges experienced by law enforcement in policing coercive control); Ryzik & Benner, *supra* note 5 (discussing challenges in other countries with implementing coercive control laws).

134. Hess, *supra* note 13, at 403-404.

laws of their own, other states may look to the challenges experienced in California and Hawaii not only when crafting their own laws but also when developing instructive resources for law enforcement and courts in the hopes of avoiding some of the same consequences. Careful and thorough planning is vital to ensure the goals of enacting coercive control laws may actually be achieved and are not thwarted by poor construction.¹³⁵

In addition to providing some instructive resources to aid implementation, concerns for confusion at implementation can be minimized by being strategic about how the laws are created. As previously discussed, there is a difference between amending an existing law and creating an entirely new provision. Beyond the obvious efficiency and time saving benefits of not starting from scratch, amending an established law to recognize coercive control can promote ease for those trying to enforce such laws as well as communicate disapproval of coercive control by placing it at the same level as existing offenses.¹³⁶ Furthermore, this idea is also confirmed in proposals for creating new laws based on long-standing legal doctrines in more familiar crimes or instances of abuse.¹³⁷

Additionally, the content of the law itself can also serve as an instructive guide to ease implementation concerns. California and Hawaii both use this strategy by utilizing a variety of illustrative examples of coercive control within the statutory definition of coercive control.¹³⁸ In addition to providing examples of coercive behavior, legislatures can provide interpretive definitions for terms within the definition of coercive control to guide courts trying to navigate the new laws; otherwise, courts will be left to develop judicial interpretations over time through decisional law.¹³⁹ Not only would this prevent obstacles related to interpreting a new law upon a court's first encounter, it would also provide additional assurance that the legislative purpose will be accomplished.

135. See *supra* Part I.0.

136. Ortiz, *supra* note 77, at 704; See *supra* text accompanying note 81.

137. Sheley, *supra* note 13, at 1395.

138. See generally CAL. FAM. CODE § 6320 (West 2021); see also HAW. REV. STAT. ANN. § 586-1 (West 2020).

139. Hess, *supra* note 13, at 435.

III. PROPOSAL

In consideration of the preceding account of international and domestic coercive control laws, case law in American courts concerning coercive control, and the analysis of the various aspects of enacting coercive control laws, this Note proposes a model strategy for legislatures to follow when enacting their own coercive control provisions. This Note recommends amending existing civil laws which address domestic abuse to also recognize coercive control as a form of abuse. Furthermore, this Note advocates for the use of inclusive, illustrative statutory definitions of coercive control that provide clear behavioral examples. Additionally, it suggests that legislatures create instructive materials for law enforcement and courts trying to identify coercive control.

First, this Note proposes the choice of integrating coercive control into existing civil schemes just as the legislatures in California and Hawaii have done. This could easily be done with provisions for civil protection orders; the addition of coercive control could close the gap in recognition of domestic violence resulting from the present emphasis placed on evidence of tangible violence.¹⁴⁰ Additionally, placing coercive control on par with established forms of domestic abuse within existing schemes adds an expressional effect communicating that coercive control is a significant problem in interpersonal relationships.¹⁴¹ Most importantly, adopting civil recognition of coercive control will avoid due process challenges which are a significant concern related to enacting a criminal coercive control provision.¹⁴² Next, this Note suggests achieving recognition of coercive control by amendment rather than structuring new laws; specifically, by amending current definitions of domestic abuse to include coercive control as California and Hawaii have done. In addition to communicating the idea that coercive control is a serious form of abuse, this will hopefully cut down on the costs associated with developing new law. Moreover, if a jurisdiction has an existing law with similar elements to coercive control, legislatures

140. Baker, *supra* note 64, at 35-36; *see also supra* text accompanying note 65.

141. Ortiz, *supra* note 77, at 704.

142. Hess, *supra* note 13, at 433 (“One major obstacle in implementing legislation similar to Section 76 in the United States would be potential challenges to the statute for being unconstitutionally vague”); Sheley, *supra* note 13, at 1338 (noting that the biggest problem with § 76 of the Serious Crimes Act (United Kingdom) is that it likely violates the Due Process Clause of the Fifth and Fourteenth Amendments).

could draw on the strategy proposed by Sheley to further cut down enactment costs and ensure harmony with long-standing law.¹⁴³ Relatedly, this Note advocates for closely following the examples set forth by California and Hawaii in selecting language to define coercive control. Both states use a broader, conceptual definition of coercive control and then supply a non-exhaustive list of example behaviors which provide guidance on identifying coercive control.¹⁴⁴ States must be careful that the scope of their definition is not under inclusive so as to exclude people vulnerable to coercive control,¹⁴⁵ while also being narrow enough to be administrable.¹⁴⁶ Finally, this Note proposes that in addition to using illustrative definitions as previously discussed, legislatures develop instructive materials to distribute alongside enactment as well as provide statutory definitions for terms used within the definition of coercive control. Guidance materials for law enforcement¹⁴⁷ responding to domestic violence reports can help overcome confusion in the courts and aid the success of coercive control provisions. To illustrate, if officers know what to include in their reports to indicate the occurrence of coercive control, civilians pursuing civil protection orders will have better evidence to support a claim. Additionally, challenges associated with interpreting coercive control definitions could be mitigated by providing statutory definitions of ambiguous terms within the amended statutes rather than waiting for the decisional law to solidify operative terms.¹⁴⁸

By accounting for the most common concerns and challenges associated with legislating coercive control, this Note provides a baseline strategy for legislatures to follow when pursuing their own domestic abuse reform. The priority needs to be on promoting clarity and efficiency in implementation. There is a real gap in legal response to “non-violent” abuse and failure to carefully define coercive control could thwart efforts to diminish its presence.

143. Sheley, *supra* note 13, at 1386-92.

144. See generally CAL. FAM. CODE § 6320 (West 2021); see also HAW. REV. STAT. ANN. § 586-1 (West 2020).

145. Maryland’s use of “adult” in limiting the scope of coercive control as an example. H.B. 1352, 441st Sess. of Gen. Assemb. (Md. 2020) (Coercive control would be defined as “repeated or continuous behavior toward an adult individual...”).

146. Baker, *supra* note 64, at 59; see also *supra* text accompanying note 95.

147. Hess, *supra* note 13, at 403-404 (discussing the Parliament’s decision to create guidance materials in the United Kingdom).

148. *Id.* at 435.

CONCLUSION

In a system oriented toward tangible evidence of physical harm, a global pandemic necessitating forced proximity and isolation between victims and their abusers is what finally uncovered the idea that domestic abuse is not always visible or physical. In fact, the lack of foresight that such a mandate could foster the type of environment where emotional abuse could flourish is indicative of a system that ignores non-physical abuse. While some have already done so, states need to pursue legal reform concerning domestic abuse by amending existing civil laws to redefine domestic abuse as being inclusive of coercive control. Additionally, states need to create clear, illustrative definitions of coercive control. It would also be beneficial to provide further statutory definitions of any ambiguous terms as they are used within coercive control's definition. Furthermore, legislatures should also consider developing instructive materials to distribute alongside enactment of any coercive control amendments.

Creating legislation concerning coercive control requires lawmakers to make careful decisions from the outset concerning the goals and scope of the intended law. While other countries have criminalized coercive control, lawmakers will need to consider the potential for due process violations before following in the steps of the international community. For this reason, integrating coercive control into civil domestic violence laws by amendment – for example, redefining statutes regulating civil protection orders – could be the path of least resistance for creating recognition of coercive control. Regardless of the choice to criminalize coercive control or not, a commonality across both international and domestic definitions of coercive control is the use of illustrative examples of coercive behaviors within the definition. Adapting an academic concept like coercive control is challenging; psychology and law enforcement may intersect from time to time but they are not one and the same. Providing examples for those tasked with fighting coercive control will aid identification and make implementation smoother. Finally, lawmakers can also follow the example set by the United Kingdom and create specific educational materials to accompany the enactment of coercive control laws.

Coercive control has long been recognized in an academic capacity and while it is not widespread, legal recognition of coercive control is not new; it has had international recognition for years and has had repeated, informal

recognition in various American courts in the past decade. Moreover, two states formally recognize coercive control as a form of domestic abuse. While the legal history of coercive control also provides evidence of various challenges associated with legislating such an abstract concept of abuse, the experiences of predecessor countries and legislatures provide meaningful guidance on how to avoid the same obstacles while overcoming the gap in current domestic violence regulation.