



COERCIVE CONTROL

Recognizing the Invisible Chains that Constitute Domestic Abuse



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By Alissa D. Hascup

“Domestic violence” is a term of art that is commonly used, yet often misunderstood.

The definition of domestic violence is a pattern of abusive behavior in a relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, psychological, or technological actions or threats of actions or other patterns of coercive behavior that influence another person within an intimate partner relationship. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.¹

At the core of most abusive relationships are two themes: power and control. The most commonly used tool to assist in explaining these themes to victims of domestic violence is the Power and Control Wheel.

The Power and Control Wheel (aka the “Duluth Model”) was created by the Domestic Abuse Intervention Project in Duluth, Minn.² In the 1980s, DAIP interviewed domestic violence survivors about their experiences. During the interviews, DAIP documented what the survivors indicated were the most used behaviors or tactics employed by abusers in domestic violence situations. The eight behaviors or tactics chosen for the Power and Control Wheel were the most universally experienced.

The Power and Control Wheel (a slightly modified version of which is used in New Jersey)³ is replete with references to coercion, intimidation, isolation, and control. However, until recently, New Jersey did not consider coercive control to be “domestic violence.”

That consideration changed in January 2024. According to Assembly Bill 1475, which has now been signed into law by Gov. Phil Murphy, New Jersey expanded the form of conduct to include coercive control that the Court may consider when deciding whether to enter a final restraining order (FRO). In particular, the court can now consider any “pattern of coercive control against a person that in purpose or effect unreasonably interferes with, threatens, or exploits a person’s liberty, freedom, bodily integrity, or human rights with the court specifically considering evidence of the need for protection from immediate danger or the prevention of further abuse.”⁴ Coercive control may include, but is not limited to:

- Isolating the person from friends, relatives, transportation, medical care, or other source of support;
- Depriving the person of basic necessities;



- Monitoring the person’s movements, communications, daily behavior, finances, economic resources or access to services;
- Compelling the person by force, threat or intimidation, including but not limited to, threats based on actual or suspected immigration status;
- Threatening to make or making baseless reports to the police, courts, the Division of Child Protection and Permanency (DCPP) within the Department of Children and Families, the Board of Social Services, Immigration and Customs Enforcement (ICE), or other parties;
- Threatening to harm or kill the person’s relative or pet;
- Threatening to deny or interfere with an individual’s custody or parenting time, other than through enforcement of a valid custody arrangement or court order pursuant to current law; and/or
- Any other factors or circumstances that the court deems relevant or material.⁵

Following Suit

New Jersey joined a select number of states that have passed coercive control laws in the last few years. Other states, as well as the District of Columbia, have laws which cover coercively controlling

behavior. These laws usually relate to protective orders and/or family law (including laws that exist in the context of a “best interest of the child” issue).

Since 2019, coercion has been an enumerated act that constitutes “domestic violence” in Nevada.⁶ Nevada also criminalizes coercion when there is “an intent to compel another to do or abstain from doing an act which the other person has a right to do or abstain from doing.”⁷

Also since 2019, New York has defined a “victim of domestic violence” as “any person over the age of sixteen, any married person or any parent accompanied by his or her minor child or children in situations in which such person or such person’s child is a victim of an act which would constitute a violation of the penal law, including, but not limited to acts constituting...coercion.”⁸ However, because coercive control has not yet been expanded to include non-physical tactics, it has a limited application in the context of domestic violence protective orders. New York has since introduced legislation to criminalize coercive control. It has yet to become law.

In September 2020, California Gov. Gavin Newsom signed Senate Bill 1141 into law, which took effect in January 2021. The law⁹ did not criminalize coercive control. Rather, it amended the Family Code to expand the definition of

“disturbing the peace” to include coercive control, which the law defined as “a pattern of behavior that unreasonably interferes with a person’s free will and personal liberty.”

Hawaii House Bill 2425 was also signed into law in September 2020.¹⁰ It amended the definition of “domestic abuse” in the context of restraining orders to include coercive control between family or household members.

Also in 2020, Mississippi passed a law¹¹ that expanded the definition of domestic violence to include “any pattern of behavior or control resulting in physical, emotional or psychological harm to a victim committed by a spouse or former spouse of the victim, a person with whom the victim lives or lived as a spouse, a person related as parent, child, grandparent, grandchild, or someone similarly situated to the victim, a person having a child in common with the victim, or a person with whom the victim has or had a dating relationship.”

In the 2021 legislative session, the Connecticut legislature passed a domestic violence-related law (PA 21-78) that established a general definition of domestic violence that includes coercive control as a form of domestic violence. The law¹², which was coined “Jennifer’s Law,” defines coercive control as “a pattern of behavior that unreasonably interferes with a person’s free will and personal liberty.” It allows victims that have been subjected to coercive control by a family or household member to apply for civil restraining orders. It also criminalizes violations of protective orders for certain “family violence” crimes.

Also in 2021, Washington expanded its laws pertaining to Civil Protection Orders to include “coercive control.” In Washington, coercive control is defined as “a pattern of behavior that is used to cause another to suffer physical, emotional, or psychological harm, and in purpose or effect unreasonably interferes with a person’s free will and personal liberty.”¹³

Practical Use

For practitioners that represent clients involved in “domestic violence” matters, the question now becomes, how will the expanded conduct which includes coercive control be used? *Silver v. Silver*¹⁴ sets forth the two-part analysis that courts must employ in the context of domestic violence hearings to determine whether the plaintiff has sustained their burden of proof to justify the entry of an FRO. In determining whether to issue an FRO, courts will consider, among other things, the following factors:

- The previous history of domestic violence between the plaintiff and the defendant, including threats, harassment, and physical abuse;
- The existence of immediate danger to person or property;
- The best interests of the plaintiff and any child; and
- The existence of a verifiable order of protection from another jurisdiction.

To that end, coercive control will now arise in the context of the prior history of domestic violence that is alleged by the plaintiff in support of the request for the issuance of a restraining order.

For practitioners, it is important to bear in mind that alleged acts of coercive control (i.e., the invisible / silent abuse that occurs behind closed doors) may be difficult to prove. Practitioners should prepare their clients to discuss—in detail—the alleged acts that may constitute coercive control and should investigate the existence of any corroborating evidence, including but not limited to text messages, emails, voicemails, and the like. In addition, practitioners should investigate whether there may be additional witnesses who can provide testimony to corroborate that of the victim. For example, if the victim is alleging that they were isolated from family members and friends, corroborating testimony from such family members

and/or friends could prove helpful. This may also be the case with threats involving a victim’s immigration status (such as threats to report a victim’s immigration status to ICE or the withholding of immigration documents).

In short, New Jersey’s decision to expand the forms of conduct that the court may consider when deciding to enter a final restraining order to include coercive control was critically important. It provides victims with an additional means through which to hold their abusers accountable for non-physical violence. It provides the courts with the ability to consider a broader spectrum of behaviors when determining whether “domestic violence” has occurred. And it sends a vital message to both victims and their abusers—controlling behavior should not and will not be tolerated. ■

Endnotes

1. United States Department of Justice, Office on Violence Against Women (justice.gov/ovw/domestic-violence)
2. theduluthmodel.org/
3. New Jersey’s most recent modifications to the Power and Control Wheel neutralized gender-specific language that was included in the “Duluth Model.” Notably, the New Jersey court system has been using some version of the Power and Control Wheel in domestic violence matters long before the enactment of the coercive control law.
4. N.J.S.A. 2C:25-19(3)(a)(20)
5. *Id.*
6. N.R.S. 33.018
7. N.R.S. 2017.190
8. N.Y. Soc. Serv. Law § 459-A
9. Cal. Fam. Code § 6320(c)
10. Haw. Rev. State. § 432D-27(e)
11. MS Code § 93-21-125
12. Conn. Gen. Stat. § 46b-1(b)
13. RCW 7.105.010(4)(a)
14. *Silver v. Silver*, 387 N.J. Super. 112 (App. Div. 2006)