

**DOMESTIC VIOLENCE AS A FACTOR IN CHILD
CUSTODY DETERMINATIONS: CONSIDERING
COERCIVE CONTROL**

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INTRODUCTION

Many states¹ have begun formally to recognize coercive control² as a form of domestic violence in several contexts: criminal domestic violence cases,³ civil motions for protection from abuse,⁴ and child removal proceedings.⁵ This Essay argues, however, that while new laws recognizing coercive control may be noble and well-meaning, they are unlikely to increase support for mothers who have been victims of coercive control abuse and now seek custody of their children. In fact, this Essay argues, the codification of these laws may do more harm than good; by taking power away from men—and coercive control is practiced almost exclusively by men⁶—and giving it to women in the form of an additional tool in the fight-for-custody toolbox, men may retaliate against victims in even more threatening ways.

Given the tendency of the court system to lag behind social constructs and understandings, however, family courts are just beginning officially to consider coercive control as domestic violence in custody determinations.⁷ Although the perception is outdated, “domestic violence” to many laypeople equates to physical abuse. For at least three decades,⁸ however, experts have

1. Interestingly, without any announcement, the Trump administration changed the federal definition of domestic violence in April 2019 to include only “felony or misdemeanor crimes of violence.” *Domestic Violence*, U.S. DEP’T OF JUST., <https://www.justice.gov/ovw/domestic-violence> [<https://perma.cc/DB4X-DPLA>] (last visited Apr. 2, 2022). Under the Obama administration, domestic violence was defined as

a pattern of abusive behavior in any 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, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.

Domestic Violence, U.S. DEP’T OF JUST., <https://web.archive.org/web/20180409111243/https://www.justice.gov/ovw/domestic-violence>. As of January 2022, the Biden administration has not changed the definition established in 2019.

2. See generally EVAN STARK, *COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE* (2007).

3. See, e.g., *Rampony v. Rizzo*, No. B299147, 2020 WL 5105814, at *6 (Cal. Ct. App. Aug. 31, 2020); *People v. Byrd*, 51 A.D.3d 267, 271 (N.Y. App. Div. 2008).

4. See, e.g., *G.I. v. J.S.*, No. CK16-03072, 2017 WL 4792366, at *5 (Del. Fam. Ct. May 18, 2017) (“[Father] committed abuse because the evidence indicates [father] injured [mother] and engaged in course of alarming and distressing conduct that caused [mother] considerable emotional distress.”); *C.C. v. I.C.*, No. A-0771-19, 2021 WL 978521, at *6 (N.J. Super. Ct. App. Div. Mar. 16, 2021). *But cf. In re Marriage of L.R. & K.A.*, 281 Cal. Rptr. 3d 706, 725 (Ct. App. 2021) (noting statutory requirement for “objective unreasonableness” in the conduct alleged to be coercive control).

5. See, e.g., *In re Omar I.*, 231 A.3d 1196, 1203 (Conn. App. 2020); *In re Joseph L.*, 939 A.2d 16, 24 (Conn. App. Ct. 2008); *N.J. Div. of Youth & Fam. Servs. v. I.H.C.*, 2 A.3d 1138, 1157 (N.J. Super. Ct. App. Div. 2010).

6. See generally STARK, *supra* note 2.

7. See *infra* notes 48–58.

8. See, e.g., 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, 393 (2020).

understood that domestic violence takes many forms, including emotional,⁹ psychological,¹⁰ and financial abuse.¹¹ Coercive control, which encompasses all of these types of domestic violence, has been recognized as a concomitant form of abuse that usually accompanies the other, more concrete forms.¹²

For the purposes of this Symposium, the codification of coercive control is most relevant in the context of child custody disputes that often arise in high-conflict divorce situations. Factors that courts use to determine child custody arrangements differ from state to state; most states establish these factors through statutory schemes but leave the weighing of the factors to the discretion of family court judges. While in many states no one factor is dispositive, many state statutes establish a rebuttable presumption¹³ against awarding perpetrators of domestic violence¹⁴ custody of minor children. Others require a judge to consider domestic violence as a factor in deciding child custody disputes.¹⁵ That violence may be perpetrated by a parent against a parent or by a parent against a child; the underlying policy consideration is that, in considering the best interests of the child, safety and security are baseline and fundamental concerns.¹⁶

9. See, e.g., Michelle Bemiller, *When Battered Mothers Lose Custody: A Qualitative Study of Abuse at Home and in the Courts*, 5 J. CHILD CUSTODY 228, 229 (2008).

10. See, e.g., Michelle L. Toews & Autumn M. Bermea, “*I Was Naive in Thinking, ‘I Divorced This Man, He Is Out of My Life’*”: A Qualitative Exploration of Post-Separation Power and Control Tactics Experienced by Women, 32 J. INTERPERSONAL VIOLENCE 2166, 2169 (2017).

11. See, e.g., April M. Zeoli et al., *Post-Separation Abuse of Women and Their Children: Boundary-Setting and Family Court Utilization Among Victimized Mothers*, 28 J. FAM. VIOLENCE 547, 554 (2013).

12. See, e.g., Lesley Laing, *Secondary Victimization: Domestic Violence Survivors Navigating the Family Law System*, 23 VIOLENCE AGAINST WOMEN 1314, 1315 (2017).

13. See *infra* note 48.

14. This term is defined quite differently in different jurisdictions. For example, in Florida, a person is only a perpetrator of domestic violence if the person has been convicted of the crime. FLA. STAT. ANN. § 61.13(2)(c)(2) (West 2022) (“The court shall order that the parental responsibility for a minor child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child. The following evidence [inter alia] creates a rebuttable presumption of detriment to the child: A parent has been convicted of a misdemeanor of the first degree or higher involving domestic violence . . .”). Other states merely require proof of domestic violence by a preponderance of the evidence or clear and convincing evidence. See *infra* note 55 and accompanying text. Some states require that the victim prove a “pattern” of abuse. See, e.g., ARK. CODE ANN. § 9-13-101 (2022); TEX. FAM. CODE ANN. § 153.004 (West 2022); WIS. STAT. § 767.41 (2022). Idaho requires that the abuser be a “habitual perpetrator.” IDAHO CODE ANN. § 32-717B (West 2022).

15. See *infra* notes 48.

16. See, e.g., ARIZ. REV. STAT. ANN. § 25-403.03(B) (2022) (“The court shall consider the safety and well-being of the child and of the victim of the act of domestic violence to be of primary importance.”); ME. REV. STAT. ANN. tit. 19, § 1653(1)(B) (West 2022) (“[D]omestic abuse is a serious crime against the individual and society, producing an unhealthy and dangerous family environment, resulting in a pattern of escalating abuse, including violence . . .”); NEB. REV. STAT. ANN. § 43-2921 (West 2022) (“[T]he safety and welfare of the child is paramount in the resolution of those conflicts.”); 15 R.I. GEN. LAWS ANN. § 15-5-16(G)(2) (West 2022) (“[T]he court shall consider as primary the safety and well-being of the child and of the parent who is the victim of domestic or family violence.”).

Family courts, therefore, could play an important role in recognizing coercive control as a scientifically recognized form of domestic abuse and in taking steps to protect victims and their children through custody determinations. This Essay argues, however, that coercive control laws, while well-intentioned, progressive, and likely to serve an important expressive function,¹⁷ will almost certainly fail to help women who seek to obtain custody of their children, given the current political climate around accusations of domestic abuse. In fact, women who raise coercive control in custody cases may place themselves and their children in further jeopardy. At issue is how family courts might effectively recognize and analyze the coercive control behaviors of parents seeking custody in a way that is fair, objective, and grounded in social science. Given gender dynamics, the interplay between domestic violence and sustained litigation, and the heavy responsibility and complexity of the task of identifying coercive control, courts will undoubtedly encounter substantial difficulties in applying new domestic violence definitions to real families.

I. WHAT IS COERCIVE CONTROL?

Coercive control, sometimes called “psychological abuse” or “emotional abuse,” is universally recognized among experts in the field as a form of domestic violence.¹⁸ Evan Stark, the prevailing expert in the area of coercive control, explains, “Coercive control entails a malevolent course of conduct that subordinates women to an alien will by violating their physical integrity (domestic violence), denying them respect and autonomy (intimidation), depriving them of social connectedness (isolation), and appropriating or denying them access to the resources required for personhood and citizenship (control).”¹⁹ Indeed, because coercive control is “a factual description of conduct . . . not a term of art for which an objective legal definition exists,”²⁰ courts usually rely on experts to help them recognize coercive control behaviors and patterns. One anti-domestic violence organization has stated:

Coercive control entails power and control over the victim through actions such as isolation, humiliation, intimidation, and domination. It does not relate to a single incident but is a purposeful pattern of behavior that takes place over a period of time in order to make the victim dependent on the abuser. An abuser may exert coercive control by isolating the victim from family or friends, hiding family assets, restricting access to money or providing an “allowance”, damaging the victim’s property, or threatening

17. See Deborah Tuerkheimer, *Renewing the Call to Criminalize Domestic Violence: An Assessment Three Years Later*, 75 GEO. WASH. L. REV. 613, 621 (2007) (arguing that criminalizing domestic violence has an important expressive purpose); see also Alafair S. Burke, *Domestic Violence as a Crime of Pattern and Intent: An Alternative Reconceptualization*, 75 GEO. WASH. L. REV. 552, 598 (2007) (arguing that “specialized domestic violence statute[s] [possess] expressive importance [in communicating] . . . the message that domestic violence is a pattern of conduct defined by the intent to gain power and control”).

18. See, e.g., STARK, *supra* note 2, at 5–6; *Linn v. State*, 929 N.W.2d 717 (Iowa 2019).

19. STARK, *supra* note 2, at 15.

20. *In re Omar I.*, 231 A.3d 1196, 1244 (Conn. App. 2020).

to harm the victim's children or pets. These are all acts of coercive control that leave victims scared and trapped and are the very behaviors from which our laws must be designed to protect.²¹

Importantly, because coercive control is a pattern of behavior rising to the level of abuse, it is not just “nagging”;²² rather, as one court put it, “coercive control is based upon a ‘systematic, repetitive infliction of psychological trauma’ designed to ‘instill terror and helplessness.’”²³ Moreover, even though

many parts of a pattern of coercive control don't always arise to the level of arrestable offense, but could be part of terrorizing somebody, making them scared . . . a lack of recent arrests does not mean there is no coercive control. “It's a common mistake for people to assume that if there's no evident physical violence that somebody isn't able to . . . terrorize and control somebody.”²⁴

As one court quoted an expert, “[the domestic violence] isn't necessarily physical but may be more dangerous because it's emotional and much harder to detect.”²⁵

Complicating the application of any accepted definition of coercive control is the tendency of both abusers and their victims to minimize the toxic, abusive relationship dynamic. Perpetrators of coercive control typically argue that they are not abusers if they do not inflict physical harm;²⁶ moreover, because one component of coercive control is the intentional diminishing of self-worth, victims may not recognize themselves as victims absent physical abuse.²⁷

II. RECENT LEGAL RECOGNITION OF COERCIVE CONTROL

Although the perpetrators and victims may not recognize nonphysical abuse as a form of abuse, over the past decade, multiple countries—including

21. Press Release, Connecticut Coal. Against Domestic Violence, New Connecticut Restraining Order Law Goes into Effect 10/1 (Sept. 29, 2021), http://www.ctcadv.org/files/2116/3291/9013/RELEASE_PA21-78_ROeffective9.29.21.pdf [<https://perma.cc/4ZEL-VEFT>].

22. See generally Margaret E. Johnson, *Redefining Harm, Reimagining Remedies, and Reclaiming Domestic Violence Law*, 42 U.C. DAVIS L. REV. 1107 (2009).

23. *G.I. v. J.S.*, No. CK16-03072, 2017 WL 4792366, at *5 (Del. Fam. Ct. May 18, 2017).

24. *In re Joseph L.*, No. L15CP04007932A, 2006 WL 3008476, at *22 (Conn. Super. Ct. Sept. 15, 2006).

25. *G.I.*, 2017 WL 4792366, at *4 (alteration in original).

26. See, e.g., Floretta Boonzaier & Cheryl de la Rey, *Woman Abuse: The Construction of Gender in Women and Men's Narratives of Violence*, 34 S. AFR. J. PSYCHOLOGY 443, 449, 451 (2004); Emma Williamson, *Living in the World of the Domestic Violence Perpetrator: Negotiating the Unreality of Coercive Control*, 16 VIOLENCE AGAINST WOMEN 1412, 1418 (2010).

27. See, e.g., Williamson, *supra* note 26, at 1415; Bonnie S. Fisher et al., *Abuses Against Older Women: Prevalence and Health Effects*, 26 J. INTERPERSONAL VIOLENCE 254, 264 (2011).

Australia,²⁸ Canada,²⁹ France,³⁰ Ireland,³¹ Scotland,³² the United Kingdom,³³ and Wales³⁴—have paid attention to the experts and enacted laws expanding the definition of domestic violence to include coercive control. The United States has been slower to follow suit, but several states have recently joined the trend of legally recognizing nonphysical forms of abuse. Most recently, Arkansas,³⁵ California,³⁶ Connecticut,³⁷ Hawaii,³⁸ and Mississippi³⁹ have added coercive control to their statutory definitions of domestic violence, and Illinois,⁴⁰ Maryland,⁴¹ Massachusetts,⁴² Oklahoma,⁴³

28. See *Family Violence Act 2004* (Tas.) pt 2, s 9(1) (Austl.), <https://www.legislation.tas.gov.au/view/html/inforce/current/act-2004-067#GS9@EN> [<https://perma.cc/YJ43-5W9Y>] (Tasmania only).

29. Domestic Violence Protection Act, S.O. 2000, c 33 (Can. Ont.), <https://www.ontario.ca/laws/statute/s00033> [<https://perma.cc/CE42-UUE5>].

30. See Code pénal [C. pén.] [Penal Code] art. 222-33-2-1 (Fr.).

31. See Domestic Violence Act 2018 (Act No. 6/2018) (Ir.), <https://www.irishstatutebook.ie/eli/2018/act/6/section/39/enacted/en/html> [<https://perma.cc/G6J5-3E6S>].

32. See Domestic Abuse Act 2018, c. 5 (Scotland), <https://www.legislation.gov.uk/asp/2018/5/contents> [<https://perma.cc/G46X-U2AX>].

33. See Serious Crime Act 2015, c. 9, § 76 (UK), <https://www.legislation.gov.uk/ukpga/2015/9/part/5/crossheading/domestic-abuse#text%3D%22domestic%20abuse%22> [<https://perma.cc/Z6XH-8FSH>] (defining “domestic abuse”).

34. See Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015, c. 3 § 24(1) (UK), <https://www.legislation.gov.uk/anaw/2015/3/contents> [<https://perma.cc/5566-RC92>].

35. ARK. CODE ANN. § 9-15-219(b) (2022) (defining coercive control, called “course of control” in the final law, and adding such control to the reasons a court could grant a protection order *ex parte*).

36. CAL. FAM. CODE § 6320(a) (West 2022) (adding coercive control, defined as “disturbing the peace of the other party,” as evidence of domestic violence in family court).

37. CONN. GEN. STAT. ANN. § 46b-1(b) (West 2022) (adding coercive control to definition of domestic violence).

38. HAW. REV. STAT. ANN. § 586-1 (West 2022) (“‘Domestic abuse’ means: [p]hysical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault, extreme psychological abuse, coercive control, or malicious property damage between family or household members . . .”).

39. MISS. CODE ANN. § 93-21-125(1)(c) (2022) (“The term ‘domestic violence’ . . . includes any pattern of behavior or coercive control resulting in physical, emotional or psychological harm to a victim . . .”).

40. See H.B. 3292, 102d Gen. Assemb., Reg. Sess. (Ill. 2021) (proposing to add “coercive control” to meaning of abuse in domestic violence cases).

41. See S.B. 775, 102d Gen. Assemb. (Md. 2021) (proposing to create a rebuttable presumption that it is not in the best interests of the child for a court to give sole or joint legal or physical custody to a party who has committed abuse against certain people and defining “primary aggressor,” in part, as looking at the history of domestic violence between the parties and whether one party has exhibited coercive control toward the other party).

42. See MASS. GEN. LAWS ch. 12, § 33(7) (2022) (noting that district attorneys, police officers, and court personnel must be trained at least once biannually on domestic violence, including “the dynamics of coercive controlling behavior that increases dangerousness even when such patterns of behavior are not themselves violent”); H.B. 1643, 192d Gen. Ct. (Mass. 2021) (seeking to improve protections relative to domestic violence and adding coercive control to the definition); S.B. 1112, 192d Gen. Ct. (Mass. 2021).

43. See OKLA. STAT. ANN. tit. 43, § 109(I) (West 2022) (noting the rebuttable presumption that “sole custody, joint legal or physical custody, or any shared parenting plan with the perpetrator of domestic violence, harassing or stalking behavior is detrimental and not in the

Oregon,⁴⁴ South Carolina,⁴⁵ Tennessee,⁴⁶ and Washington⁴⁷ have attempted to do so.

III. WHY COERCIVE CONTROL LAWS MAY OR MAY NOT MAKE A DIFFERENCE IN CHILD CUSTODY DISPUTES

In the family law context, the national trend toward defining coercive control as a component of domestic violence is an important one because all fifty states and Washington, D.C., statutorily require family court judges to consider past or existing domestic violence in making child custody determinations. A minority of states create a rebuttable presumption that judges may not award joint custody in families in which domestic violence has occurred.⁴⁸ The majority of states, however, require judges to consider domestic violence as a factor in their custody determinations,⁴⁹ while a few

best interest of the child, and it is in the best interest of the child to reside with the parent who is not a perpetrator of domestic violence, harassing or stalking behavior”); *id.* § 109(I)(2)(a) (stating “domestic violence” means, [inter alia], . . . the intentional infliction of emotional distress . . . including coercive control by a parent involving physical, sexual, psychological, emotional, economic or financial abuse”).

44. H.B. 3186, 81st Leg. Assemb., Reg. Sess. (Or. 2021) (seeking to modify the Family Abuse Prevention Act to include coercive control, add definitions of “coercive control,” and add coercive control to meaning of abuse).

45. H.B. 5271, 123d Gen. Assemb., Reg. Sess. (S.C. 2020) (seeking to create an offense of coercive control under domestic violence crimes).

46. H.B. 1320, 107th Gen. Assemb., Reg. Sess. (Tenn. 2011) (seeking to modify the definition of “family violence” to include “sexual, economic or emotional abuse, stalking, or other forms of coercive control”); S.B. 1230, 107th Gen. Assemb., Reg. Sess. (Tenn. 2011).

47. H.B. 1320, 67th Leg., Reg. Sess. (Wash. 2021) (seeking to add coercive control to definition of domestic violence and into crimes included in harassment); S.B. 5297, 67th Leg., Reg. Sess. (Wash. 2021).

48. *See, e.g.*, ALA. CODE § 30-3-131 (2022) (“In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the court that domestic or family violence has occurred raises a rebuttable presumption by the court that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of domestic or family violence.”); CAL. FAM. CODE § 3044(a) (West 2022) (“[T]here is a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence [within the last five years] is detrimental to the best interest of the child”); IDAHO CODE ANN. § 32-717B(5) (West 2022) (“There shall be a presumption that joint custody is not in the best interests of a minor child if one (1) of the parents is found by the court to be a habitual perpetrator of domestic violence [requiring ‘physical injury, sexual abuse or forced imprisonment or threat thereof’ as per IDAHO CODE ANN. § 39-6303(1)]”). Many other states have similar statutory provisions.

49. One state uses “must” language in requiring family courts to consider domestic violence as a factor in child custody determinations. *See* N.Y. DOM. REL. LAW § 240(1)(a) (McKinney 2022) (“Where either party to an action concerning custody of or a right to visitation with a child alleges . . . that the other party has committed an act of domestic violence . . . the court must consider the effect of such domestic violence upon the best interests of the child”). Michigan’s statute states that “‘best interests of the child’ means the sum total of the following factors to be considered, evaluated, and determined by the court . . . [, including] [d]omestic violence, regardless of whether the violence was directed against or witnessed by the child.” MICH. COMP. LAWS ANN. § 722.23(3)(k) (West 2022). But this language has been interpreted in a long line of cases to mean that “[t]he trial court must consider and explicitly state its findings and conclusions with regard to each factor.” *Thompson v. Thompson*, 683 N.W.2d 250, 253 (Mich. Ct. App. 2004). All other mandatory

allow family court judges to exercise discretion in deciding whether to consider domestic violence as a factor.⁵⁰

Moreover, this trend toward a more complete understanding of domestic violence and our evolving willingness to credit women's accounts of nonphysical abuse⁵¹ is critical to a broader, more mainstream view of the harms of psychological abuse. As it has in many other areas of American life, the law can play an important role in changing attitudes and behaviors.⁵² First, legally prohibiting or requiring behaviors can eventually lead to substantial transformation in societal belief systems.⁵³ Second, changing the

states use "shall" language. *See, e.g.*, IND. CODE ANN. § 31-17-2-8(7) (West 2022) ("[T]he court shall consider all relevant factors, including . . . [e]vidence of a *pattern* of domestic or family violence by either parent." (emphasis added)); KAN. STAT. ANN. § 23-3203(a)(9)(A)–(B) (West 2022) ("In determining the issue of legal custody, residency and parenting time of a child, the court shall consider all relevant factors, including, but not limited to . . . evidence of domestic abuse, including, but not limited to . . . [a] pattern or history of physically or emotionally abusive behavior or threat thereof used by one person to gain or maintain domination and control over an intimate partner or household member; or . . . an act of domestic violence, stalking or sexual assault . . .").

50. A small minority of states grant discretion to family courts in deciding whether to consider domestic violence as a factor in child custody determinations. *See* CONN. GEN. STAT. § 46b-56(c)(15) (2022) (stating courts "may consider . . . the effect on the child of the actions of an abuser, if any domestic violence . . . has occurred between the parents or between a parent and another individual or the child"); GA. CODE ANN. § 19-9-3(a)(3)(P) (2022) (noting that judges "may consider any relevant factor including, but not limited to: . . . [a]ny evidence of family violence or sexual, mental, or physical child abuse or criminal history of either parent"). Confusingly, Montana seems to combine standards. *See, e.g.*, MONT. CODE ANN. § 40-4-212(1)(f) (2022) ("The court shall consider all relevant parenting factors, which may include but are not limited to . . . physical abuse or threat of physical abuse by one parent against the other parent or the child."). In July 2022, Washington State will change its parenting plan statute to state: "The permanent parenting plan shall not require mutual decision-making or designation of a dispute resolution process other than court action if it is found that a parent has engaged in . . . (c) a history of acts of domestic violence . . ." WASH. REV. CODE ANN. § 26.09.191(1) (West 2022) (effective July 1, 2022). The statute will further state that "[t]he parent's residential time with the child shall be limited if it is found that the parent has engaged in (iii) a history of acts of domestic violence . . ." *Id.* § 26.09.191(2)(a) (effective July 1, 2022). The new code will define domestic violence as, *inter alia*, "unlawful harassment," "stalking of one intimate partner by another intimate partner," or "stalking of one family or household member by another family or household member." *Id.* § 7.105.010(8)(a)–(b) (effective July 1, 2022). West Virginia recently amended its code to state that "[i]f either of the parents so requests, or upon receipt of credible information thereof, the court shall determine whether a parent who would otherwise be allocated responsibility under a parenting plan [*inter alia*] . . . [h]as committed domestic violence . . ." W. VA. CODE ANN. § 48-9-209(a) (West 2022). "If a parent is found to have engaged in any activity specified by subsection (a) of this section, the court shall impose limits that are reasonably calculated to protect the child or child's parent from harm." *Id.* § 48-9-209(b). "[T]he court may not allocate custodial responsibility or decision-making responsibility to that parent without making special written findings that the child and other parent can be adequately protected from harm . . ." *Id.* § 48-9-209(c).

51. Deborah Epstein & Lisa A. Goodman, *Discounting Women: Doubting Domestic Violence Survivors' Credibility and Dismissing Their Experiences*, 167 U. PA. L. REV. 399, 402 (2019) (describing how the #MeToo movement has spawned awareness).

52. *See, e.g.*, Elizabeth S. Anderson & Richard H. Pildes, *Expressive Theories of Law: A General Restatement*, 148 U. PA. L. REV. 1503, 1531 (2000).

53. *See, e.g.*, Richard H. McAdams, *An Attitudinal Theory of Expressive Law*, 79 OR. L. REV. 339, 370 (2000) (describing a possible expressive effect of anti-smoking ordinances);

legal definition of domestic abuse can arm women and advocates with a new tool in the custody toolbox, by allowing them to raise concerns that previously might have been classified as typical relationship conflict.⁵⁴

But as important a development as codifying coercive control may be, merely changing the definition of abuse does not make the standard easy for courts to apply. This difficulty is particularly true in child custody disputes, in which the bedrock principle is considering the best interests of the child but where courts continue to consider the parents' interests in raising their children.⁵⁵ The Connecticut Coalition Against Domestic Violence stated aspirationally in 2021: "By expanding the definition of family violence in Connecticut's restraining order statute to address coercive control, we'll be able to ensure court-ordered relief for the many non-physical tactics abusers use to gain and maintain control over their victims."⁵⁶ While well-intentioned, statements such as this one are unlikely to bear out as anticipated, either with the issuance of more civil protective orders or with more victims of coercive control winning custody of their children.⁵⁷ Indeed, even in jurisdictions where coercive control has been part of the definition of domestic violence for some time, very few convictions have resulted.⁵⁸

Maggie Wittlin, *Buckling Under Pressure: An Empirical Test of the Expressive Effects of Law*, 28 YALE J. ON REG. 419, 422 (2011) (describing the expressive effect of law requiring seatbelt use).

54. Erin Bajackson, *Best Interests of the Child—a Legislative Journey Still in Motion*, 25 J. AM. ACAD. MATRIM. L. 311, 336–37 (2013) (referring to "family squabbles"); L.M.F. v. J.A.F., Jr., 24 A.3d 849, 856 (N.J. Super. Ct. App. Div. 2011) (referring to "domestic contretemps").

55. To prove domestic violence in family court, almost all states require a showing by a preponderance of the evidence. *See, e.g.*, COLO. REV. STAT. ANN. § 14-10-124(4) (West 2022); N.Y. DOM. REL. LAW § 240(1)(a) (McKinney 2022). Nevada requires a showing by clear and convincing evidence. *See* NEV. REV. STAT. ANN. § 125C.0035(5) (West 2022). Because Florida requires a conviction, its standard is ipso facto beyond a reasonable doubt. FLA. STAT. ANN. § 61.13(a) (West 2022).

56. Connecticut Coal. Against Domestic Violence, *supra* note 21.

57. *See, e.g.*, Marie Solis, *Do 'Coercive Control' Laws Really Help Abuse Victims?*, THE CUT (Feb. 2, 2021), <https://www.thecut.com/2021/02/coercive-control-laws-domestic-abuse.html> [<https://perma.cc/947G-QAED>] (describing how coercive control law may merely "widen" the gaps in the system).

58. *See, e.g.*, Marilyn McMahon & Paul McGorrrery, *Criminalising Emotional Abuse, Intimidation and Economic Abuse in the Context of Family Violence: The Tasmanian Experience*, 35 UNIV. TAS. L. REV. 1, 11 (2016) (noting no convictions of emotional abuse over the decade since the law was enacted unless the offense was accompanied by another domestic violence offense and noting only eight convictions when an emotional abuse offense was accompanied by another domestic violence offense); *Review of the Controlling or Coercive Behaviour Offence*, U.K. HOME OFF. (May 10, 2021), <https://www.gov.uk/government/publications/review-of-the-controlling-or-coercive-behaviour-offence/review-of-the-controlling-or-coercive-behaviour-offence> [<https://perma.cc/ZM8B-HGV7>] (stating that statistics on the number of convictions for "controlling or coercive behaviour (CCB)" alone were not available but that almost all convictions including CCB were accompanied by convictions for other forms of domestic abuse).

IV. FAMILY COURTS ARE UNDERFUNDED AND CONSTANTLY IN FLUX

The disconnect between amending the definition of domestic violence and obtaining convictions for violations of the new laws may be attributed to a number of factors. First, a neutral explanation may be that, to some observers, what is and what is not domestic violence may seem difficult to discern, and a pattern of coercive control may present to the resistant or uneducated as typical relationship conflict.⁵⁹ Because family court judges do not necessarily have prior practice or judicial experience with domestic violence or even family law issues,⁶⁰ many are undereducated about domestic violence in general and coercive control in particular. This inexperience often derives from the fact that family courts are routinely underfunded. As a result, appointments to the family court bench are sometimes considered undesirable⁶¹ and education for family law judges is underfunded and underavailable.⁶² Attorneys and litigants have expressed dissatisfaction with temporarily assigned judges who tend to transfer to another court as soon as they have developed some family law expertise.⁶³ In other words, experience matters. As one court put it,

Custody cases occur at a time when battered women and children may be most acutely vulnerable to the coercive controls and violent manipulations of battering men. Unless the judiciary is carefully informed about the impact of domestic violence on children and the abused parent, it will inadvertently issue custody and visitation awards that further endanger the abused parent and the children, themselves, who are at risk of both abuse and severe emotional repercussions.⁶⁴

59. See, e.g., Bajackson, *supra* note 54, at 336–37.

60. See N.Y.C. BAR, THE FAMILY COURT JUDICIAL APPOINTMENT AND ASSIGNMENT PROCESS 5–6 (2020), <https://s3.amazonaws.com/documents.nycbar.org/files/2020790-FamilyCourtJudicialAppointmentProcess.pdf> [<https://perma.cc/Z3LZ-P92N>] (“Another negative impact on children, families and practitioners that lawyers consistently raised is when a newly appointed or assigned jurist lacks sufficient expertise and experience in family law and/or practice and/or the law and facts most relevant to the cases they must take over. One institutional provider described the resulting delays in the ability to obtain timely interim relief and the ultimate resolution of proceedings: ‘A judge’s lack of knowledge of relevant case law, statutes, and family court practice results in unnecessary delays, as attorneys ask for adjournments to brief issues, or run to the Appellate Division to seek a stay that will impact the course of a case. Such delays are unfair to litigants and subject children, who want their emotionally-challenging cases to end. In the child protective cases, this can also result in a delay in the achievement of permanency for children.’” (emphasis omitted)).

61. See, e.g., FOSTERING RESULTS, CHILD. & FAM. RSCH. CTR., VIEW FROM THE BENCH: OBSTACLES TO SAFETY & PERMANENCY FOR CHILDREN IN FOSTER CARE 5 (2004), https://www.pewtrusts.org/-/media/legacy/uploadedfiles/wwwpewtrustsorg/reports/foster_care_reform/fosteringresults070104pdf.pdf [<https://perma.cc/FBZ8-GFDY>].

62. See, e.g., *id.* at 4; Erika Burke, Family Court Judges’ Training, Background, and Child Development Knowledge: Associations with Child Custody Decision Making 3–4 (May 2005) (B.A. thesis, University of Connecticut), https://opencommons.uconn.edu/cgi/viewcontent.cgi?article=1008&context=srhonors_theses [<https://perma.cc/JD2H-CR6X>].

63. See Burke, *supra* note 62, at 9.

64. T.J.H. v. S.N.F., 960 So. 2d 669, 675 (Ala. Civ. App. 2006) (Bryan, J., concurring) (quoting *Kent v. Green*, 701 So. 2d 4, 7 (Ala. Civ. App. 1996)).

V. EXPERT TESTIMONY IS CRITICAL TO PROVING COERCIVE CONTROL
BUT IS LARGELY UNAVAILABLE TO ABUSE VICTIMS

Second, “[e]xpert testimony can . . . dispel misconceptions about the patterns of abuse and response [It] may also opine on the effect of abuse on women”⁶⁵ Because many judges may still be unfamiliar with the effects of psychological abuse, virtually all recorded cases in which courts have recognized and considered coercive control in custody determinations included expert testimony on at least one side, if not both.⁶⁶ The majority of family law litigants are self-represented, however, due mostly to financial reasons;⁶⁷ they are therefore very unlikely to have the knowledge or resources to hire experts to prepare and testify about coercive control. Without expert evaluation and testimony, custody hearings become a game of “he said, she said.”⁶⁸ “Domestic violence is a nebulous concept that is constantly evolving and can take many forms”⁶⁹ Without expert

65. Linn v. State, 929 N.W.2d 717, 744 (Iowa 2019).

66. See, e.g., Irwin v. Shelby, 210 A.3d 705, 720 (Del. 2019) (stating that the lower court “relied on [an expert’s] testimony and report that the mother was the victim of a pattern of coercive control by the father and the court’s earlier finding of abuse” and that “[t]herefore, the court’s finding of domestic abuse was supported by the record” when granting sole custody of the children to the victim mother); J.S. v. G.I., No. CK16-03072, 2018 WL 4688906, at *6 (Del. Fam. Ct. Apr. 16, 2018) (stating that “[the] Court . . . found considerable support in the testimony and report of [an expert] that Mother was the victim of a pattern of coercive control by Father” and thereby granted custody of the young children to the mother, even though she had engaged in two acts of situational abuse against the father); Jacquety v. Baptista, No. 19-CV-9642, 2021 WL 1885263, at *37 (S.D.N.Y. May 11, 2021) (denying a father’s motion to return his child to Morocco after relying on expert testimony that there was “‘clear and compelling evidence’ that [the child] suffer[ed] from PTSD resulting from domestic violence by [the father] toward [the mother]”). But see Engstrom v. McCarthy, 411 P.3d 653, 657 (Ariz. App. 2018) (“An expert’s characterization of what he or she believes constitutes domestic violence is not . . . legally binding.”).

67. See STATE JUST. INST., CASES WITHOUT COUNSEL 12 (2016), https://iaals.du.edu/sites/default/files/documents/publications/cases_without_counsel_research_report.pdf [<https://perma.cc/MGV7-RJD5>] (finding that “90% of all study participants indicat[ed] that financial issues were influential—if not determinative—in [the decision to self-represent]”); L.M.F. v. J.A.F., Jr., 24 A.3d 849, 858 (N.J. Super. Ct. App. Div. 2011) (“We understand that a great number of domestic violence cases are heard without the benefit of counsel guiding a witness’s testimony in a manner consistent with the rules of evidence.”).

68. See Charlotte Barlow et al., *Putting Coercive Control into Practice: Problems and Possibilities*, 60 BRIT. J. CRIMINOLOGY 160, 174 (2020) (“A recurring theme within coercive control investigations was victim disclosures being considered as ‘weak’ or with ‘non-verifiable’ forms of evidence ultimately amounting to ‘one word against another.’”); Deborah Tuerkheimer, *Incredible Women: Sexual Violence and the Credibility Discount*, 166 U.P.A.L. REV. 1, 3 (2017) (“In the paradigmatic case of ‘he said/she said,’ accuser and accused offer two opposing versions of events: one party is telling the truth; the other is not. To pick between competing accounts, the decider must judge credibility. Accusers—typically women—do not tend to fare well in these contests.”); see also *Don’t Confuse Domestic Violence with “He-Said-She-Said,”* STOP ABUSE CAMPAIGN, <https://stopabusecampaign.org/2021/01/07/he-said-she-said/> [<https://perma.cc/ZEV3-PPCG>] (last visited Apr. 2, 2022).

69. Engstrom v. McCarthy, 411 P.3d 653, 657–58 (Ariz. App. 2018).

testimony, judges may be forced to adopt a Potter Stewart–esque perspective of “I know it when I see it.”⁷⁰

VI. JUDGES MAY DOUBT THAT ABUSE HAS OCCURRED OR THAT COERCIVE CONTROL IS “REALLY ABUSE”

These two explanations for the discounting of female victims are attributable, then, to reasons other than bias. But other explanations are more sinister. As Professor Elizabeth Schneider describes, “Judges often do not recognize or acknowledge abuse or tend to minimize it. . . . [J]udges do not take claims of abuse seriously when they are presented, or even see them when they are subtle, and so they do not factor abuse into custody determinations.”⁷¹ Schneider goes on to explain that “[f]amily court judges are often hostile and disbelieving towards claims of domestic violence”⁷² in general, and so “there are critical problems in translating . . . broader perspectives on abuse to lawyers, judges, and other professionals who still tend to see a physical focus, minimize other aspects of abuse, and fail to see the more subtle aspects of power and control as abusive and connected with physical abuse.”⁷³

If family court judges are often reluctant to deny custody to abusers whose actions have led to injury,⁷⁴ arrests,⁷⁵ and convictions,⁷⁶ it seems likely that they will be even more reluctant to find that coercive control pervades a relationship. Any adult who has been in a romantic relationship has experienced some conflict; even a family court judge who believes in and understands the harm of physical abuse may therefore have difficulty understanding why coercive control is not merely normal relationship conflict but a form of domestic violence.

70. *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring) (“I shall not today attempt further to define the kinds of material I understand to be [obscenity]; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it . . .”).

71. Elizabeth M. Schneider, *Domestic Violence Law Reform in the Twenty-First Century: Looking Back and Looking Forward*, 42 *FAM. L.Q.* 353, 360 (2008).

72. *Id.* at 359.

73. *Id.* at 356.

74. *See, e.g., State ex rel. Thompson v. Spon*, 700 N.E.2d 1281, 1282 (Ohio 1998) (reviewing temporary grant of custody to a father, despite his conviction for domestic violence after causing physical injuries to the mother).

75. *See, e.g., Cox v. Cox*, 613 N.W.2d 516, 521 (N.D. 2000) (holding that father’s arrest and guilty plea to simple assault did not constitute a pattern of domestic violence).

76. *See, e.g., Moore v. Moore*, No. A-95-225, 1996 WL 45197, at *4 (Neb. Ct. App. Feb. 6, 1996) (affirming award of custody to father who had been convicted of assault three times for violence against mother); *Millard v. Clapper*, 254 A.D.2d 640, 641 (N.Y. 1998) (denying mother’s request for modification of custody order because father had been incarcerated for domestic violence); *Spon*, 700 N.E.2d at 1282; *A.H. v. R.M.*, 793 So. 2d 799, 800 (Ala. Civ. App. 2001) (holding that a father’s conviction for assault was too remote in time to trigger a statutory presumption against custody); *Wentland v. Rousseau*, 59 A.D.3d 821, 823 (N.Y. 2009) (awarding father custody even when father had been convicted of assaulting mother).

VII. TO ENGENDER JUDGES' BELIEF IN AND UNDERSTANDING OF
COERCIVE CONTROL, WE MUST EDUCATE ABOUT THE ROOT CAUSES OF
ABUSE AND UNDERSTAND THE COMPOSITION OF THE FAMILY COURT
SYSTEM

If we believe that judges minimize domestic violence and coercive control, we cannot fix that problem without asking why it exists. One explanation seems obvious: perhaps because men blame women for abuse that men commit.⁷⁷ Almost all perpetrators of coercive control are men, and the vast majority of state court judges are also men.⁷⁸ Add that to the fact that, according to the Federal Bureau of Investigation, only 12.5 percent of full-time law enforcement officers are female,⁷⁹ and the reason is clear: Men are in control. Male police officers respond to calls from women alleging coercive control.⁸⁰ Male judges decide whether male perpetrators have exerted too much control over women. Women, who over the course of history have had to submit to men,⁸¹ must trust men who are accustomed to holding relational and professional power over them to judge when that power and control rise to the level of abuse.

But that trust is not a two-way street. For example, judges may discount or disbelieve women who make domestic violence allegations. As one scholar has described it, “some judges have viewed battered women as untrustworthy, or as a group that exaggerates their claims in an effort to gain custody.”⁸² Therefore, “[c]ourts’ discounting of battered women’s claims that their children are at risk from the batterer is actually extraordinarily common.”⁸³ Although the majority of women’s reports of domestic violence

77. See, e.g., Nancy Berns, *Degendering the Problem and Gendering the Blame: Political Discourse on Women and Violence*, 15 GENDER & SOC’Y 262, 269 (2001); Sharon Aneta Bryant & Gale A. Spencer, *University Students’ Attitudes About Attributing Blame in Domestic Violence*, 18 J. FAM. VIOLENCE 369, 374–75 (2003); Niwako Yamawaki et al., *Perceptions of Domestic Violence: The Effects of Domestic Violence Myths, Victim’s Relationship with Her Abuser, and the Decision to Return to Her Abuser*, 27 J. INTERPERSONAL VIOLENCE 3195, 3207–08 (2012).

78. See 2022 U.S. State Court Women Judges, NAT’L ASS’N OF WOMEN JUDGES, <https://www.nawj.org/statistics/2022-us-state-court-women-judges> [<https://perma.cc/FKA5-H84M>] (last visited Apr. 2, 2022) (demonstrating that only 36 percent of judges in state limited and special jurisdiction courts are women and only 33 percent of judges in state general jurisdiction courts are women).

79. See 2017 Crime in the United States Table 74: Full-Time Law Enforcement Employees, FED. BUREAU OF INVESTIGATION, <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/tables/table-74> [<https://perma.cc/DEY8-UJG3>] (last visited Apr. 2, 2022).

80. One recent study demonstrated that police were “demeaning” and “disrespectful” when responding to domestic violence calls and that they frequently did not believe victims. See ACLU, RESPONSES FROM THE FIELD: SEXUAL ASSAULT, DOMESTIC VIOLENCE, AND POLICING 12 (2015), https://www.aclu.org/sites/default/files/field_document/2015.10.20_report_-_responses_from_the_field_0.pdf [<https://perma.cc/E9R2-CABR>].

81. See, e.g., Christopher R. Leslie, *Embracing Loving: Trait-Specific Marriage Laws and Heightened Scrutiny*, 99 CORNELL L. REV. 1077, 1082 (2014).

82. Bajackson, *supra* note 54, at 336–37.

83. Joan S. Meier, *Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions*, 11 AM. U. J. GENDER SOC. POL’Y & L. 657, 672 (2003).

are substantiated,⁸⁴ women who raise psychological abuse concerns in child custody cases are routinely disbelieved.⁸⁵

And that gender dynamic extends to the family courtroom and the custody matters that take place in it. Embedded in child custody disputes may be attitudinal bias toward “a psychological rhetoric that reduces mothers’ [but not fathers’] desires to have custody and control of their children to pathology.”⁸⁶ Women who seek sole or primary custody of their children are often viewed as “having ‘issue overlay’ . . . [and] may be characterized as clinging and overly dependent . . . [or] seen as greedy . . . [or as] vindictive mothers who use the children to get back at their ex-husbands.”⁸⁷ As the Massachusetts Supreme Judicial Court commented, “The very frequency of domestic violence in disputes about child custody may have the effect of inuring courts to it and thus minimizing its significance.”⁸⁸ Therefore, as Professors Deborah Epstein and Lisa Goodman note, “[S]urvivor-mothers often leave family court having been wrongly denied custody of their children A judicial willingness to discount their trustworthiness can have repercussions that will last throughout their own lives and those of their children.”⁸⁹

Men who abuse can be good at hiding it. In social situations and in court, they may be unusually charming and convincing⁹⁰ (after all, that is how they gaslight), putting women at even more of a disadvantage. In fact, female abuse victims may be so beaten down by the abuse that they have a difficult

84. See Janet R. Johnston et al., *Allegations and Substantiations of Abuse in Custody-Disputing Families*, 43 FAM. CT. REV. 283, 290–91 (2005) (discussing study that found that 55 percent of domestic abuse allegations against fathers were substantiated and noting that “there was no attempt to distinguish among ‘unsubstantiated’ allegations to conclude which were clearly false and which could not be determined due to lack of evidence”).

85. See, e.g., Epstein & Goodman, *supra* note 51, at 431 (“[M]others’ allegations of domestic violence are discounted or even fully discredited by family court judges.”).

86. Martha Fineman, *Dominant Discourse, Professional Language, and Legal Change in Child Custody Decisionmaking*, 101 HARV. L. REV. 727, 766 (1988).

87. *Id.*; see also Joan S. Meier & Sean Dickson, *Mapping Gender: Shedding Empirical Light on Family Courts’ Treatment of Cases Involving Abuse and Alienation*, 35 MINN. J.L. & INEQUALITY 311, 317 (2017) (describing the reluctance to believe a woman who tries to protect her children from the effects of domestic violence as “re-framing . . . [her] as a pathological or vengeful liar who is severely ‘emotionally abusing’ her children by falsely teaching them to hate and fear their father”).

88. Custody of Vaughn, 664 N.E.2d 434, 439–40 (Mass. 1996).

89. Epstein & Goodman, *supra* note 51, at 432.

90. See, e.g., Emmaline Campbell, *How Domestic Violence Batterers Use Custody Proceedings in Family Courts to Abuse Victims, and How Courts Can Put a Stop to It*, 24 UCLA WOMEN’S L.J. 41, 43 (2017) (“Batterers may present as ‘charming, charismatic, likeable, reasonable, generous, and even flexible.’”); Ashley Milspaw & Hilary Vesell, *Co-Parenting vs. Parallel Parenting: Outcomes in Custody Cases with a History of Domestic Violence*, PA. LAW., Jan./Feb. 2017, at 32, 38; Lundy Bancroft, *Understanding the Batterer in Custody and Visitation Disputes*, LUNDY BANCROFT (1998), <https://lundybancroft.com/articles/understanding-the-batterer-in-custody-and-visitation-disputes/> [https://perma.cc/DUD7-KBRK] (“An abuser focuses on being charming and persuasive during a custody dispute, with an effect that can be highly misleading to Guardians ad Litem, court mediators, judges, police officers, therapists, family members, and friends.”).

time effectively presenting their case in court, particularly when they are self-represented⁹¹ or hesitant to raise the issue in custody hearings for several reasons. As Professor Joan Meier has demonstrated, women who claim abuse stand a significant chance of actually *losing* custody rather than winning it.⁹² Furthermore, at least one study has shown that many women fear that reporting abuse will lead to repeated and more severe violence and so choose to stay silent,⁹³ and those fears may well be grounded; many men threaten to harm a woman who responds to violence by separating,⁹⁴ and they are very likely to carry out those threats.⁹⁵

Why does this matter in the child custody context? Because the effects on the children are paramount. Even family court judges who believe and understand the effects of domestic violence on the immediate victim—the

91. See, e.g., *State v. Hemenway*, 216 A.3d 118, 133 (N.J. 2019) (noting that “[b]ecause domestic violence victims are often unrepresented, under considerable stress, in fear of their alleged abusers, and may have language barriers, courts must be patient and take the time necessary to make a complete record”); see also Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 1059 (1993) (noting that an unrepresented “victim is terrified, unclear of her legal rights, and highly susceptible to the batterer’s influence and control”); Jessica K. Steinberg, *Demand Side Reform in the Poor People’s Court*, 47 CONN. L. REV. 741, 800 n.321 (2015) (noting that unrepresented victims of abuse “are both unable to get their evidence before the judge, and also unable to object to evidence improperly introduced by an opponent”); Margaret F. Brinig, Loretta M. Frederick & Leslie M. Drozd, *Perspectives on Joint Custody Presumptions as Applied to Domestic Violence Cases*, 52 FAM. CT. REV. 271, 277 (2014) (“Joint custody presumptions are particularly difficult for indigent and self-represented victim-parents to overcome, even in cases involving substantial violence and danger, because they can lack the resources to litigate and overcome such a presumption.”); Merle H. Weiner, *Domestic Violence and Custody: Importing the American Law Institute’s Principles of the Law of Family Dissolution into Oregon Law*, 35 WILLAMETTE L. REV. 643, 687 (1999) (“When a victim is represented, her attorney should call the court’s attention to any domestic violence. However, in pro se proceedings, the information may never come to the court’s attention because the victim may not understand its relevance.”).

92. See JOAN S. MEIER ET AL., *CHILD CUSTODY OUTCOMES IN CASES INVOLVING PARENTAL ALIENATION AND ABUSE ALLEGATIONS* 26 (2019).

93. R.E. Fleury et al., “*Why Don’t They Just Call the Cops?*”: *Reasons for Differential Police Contact Among Women with Abusive Partners*, 13 VIOLENCE & VICTIMS 333 (1998).

94. See, e.g., Deborah Epstein, Margret E. Bell & Lisa A. Goodman, *Transforming Aggressive Prosecution Policies: Prioritizing Victims’ Long-Term Safety in the Prosecution of Domestic Violence Cases*, 11 AM. U. J. GENDER SOC. POL’Y & L. 465, 476 (2003) (“Battered women are most likely to be killed while taking steps to end the relationship with the abuser or while seeking help from the legal system and at least 30% of all battered women who pursue legal action are reassaulted during the process of prosecution.”); Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results from a Multistate Case Control Study*, 93 AM. J. PUB. HEALTH 1089, 1090 (2003) (“The risk of intimate partner femicide was increased 9-fold by the combination of a highly controlling abuser and the couple’s separation after living together”); Leslye Orloff, *Lifesaving Welfare Safety Net Access for Battered Immigrant Women and Children: Accomplishments and Next Steps*, 7 WM. & MARY J. WOMEN & L. 597, 617 (2001) (“Women attempting to leave violent spouses are twice as likely to become victims of homicide than abused women who continue to cohabit with their abusers.”).

95. See, e.g., *Domestic Violence: Reasons Why Battered Victims Stay with the Batterers*, L.A. POLICE DEP’T, <https://www.lapdonline.org/domestic-violence/domestic-violence-reasons-why-battered-victims-stay-with-the-batterers/> [https://perma.cc/YZ7B-WJ5G] (last visited Apr. 2, 2022).

other parent—may not impute those effects to the children. This ignorance means that, even when a court finds that domestic violence has occurred, it may not matter in the custody analysis, particularly in jurisdictions where domestic violence is only one factor to be considered.⁹⁶

CONCLUSION

The law's recognition of coercive control as a form of domestic violence is an important step forward for the justice system and for victims who seek custody of their children. Without extensive changes to the justice and family court systems themselves, however, this development is unlikely to lead to better outcomes for women who are engaged in custody battles against coercive control perpetrators. In fact, by requiring women to raise allegations of abuse and judges to believe and act on them—both difficult hurdles to overcome—coercive control laws may effectively serve to place women and their children in heightened danger from their abusers. While activists and advocates for the victims of domestic violence should continue to fight for changes in the law, they should also recognize the obstacles presented by the current system and advise women accordingly.

96. Even in a rebuttable-presumption jurisdiction, some courts dismiss concerns. *See, e.g.*, *Thornton v. Ortiz Bosquez*, No. A18-0223, 2018 WL 6442311, at *5 (Minn. Ct. App. Dec. 10, 2018) (“The [sentence in the custody statute] which sets forth the presumption against joint custody in cases with a history of domestic abuse between the parties, does *not* state that the presumption operates for or against any particular party. Rather, that provision simply states that, if domestic abuse has occurred between the parties, there is ‘a rebuttable presumption that joint legal custody or joint physical custody is not in the best interests of the child.’ The presumption does not necessarily favor one party over the other party. The presumption simply expresses a preference for sole custody in one parent or the other parent, unless the presumption has been rebutted.” (citation omitted) (quoting MINN. STAT. § 518.17, subdiv. 1(b)(9) (2018))).