

Coercive control – the impact on family matters and its intersection with parental alienation: a United States (Virginia) perspective

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Introduction

Most states within the United States of America do not legally recognise the concept of coercive control. Even many laypersons may not be familiar with the term.

Albeit hard to define, legislation addressing coercive control may be an important first step for people to understand their own personal experiences and to provide victims of coercive control with options to protect themselves.¹

As noted by *Psychology Today* '[u]nlike physical abuse that leaves a bruise, coercive control depletes one's sense of self – many report a loss of personal identity. Knowing the behaviors and the felt impact helps to recognize coercive control'².

Many US states do not have legislation addressing the issue of coercive control; it is therefore important to educate the public in this regard.

Definitions

Coercive control is not defined in Virginia, nor is it defined federally. The *Cambridge Dictionary* defines coercive control as 'control of another person's behavior by using force or threats, or by causing fear'³. The *Cambridge Dictionary* further states '[t]he purpose of coercive control is to gain

power in the relationship, to assert dominance, or to change the behavior of others'⁴.

A Virginia attorney has attempted to define coercive control as 'a form of abuse which involves controlling behaviors to deprive victims of their rights and liberties and instill fear-based compliance and domination in the victim's life through acts of intimidation, degradation, and isolation'⁵.

Globally, Evan Stark has led the movement to define coercive control and have it recognised worldwide. As a starting point, Mr Stark explains '[t]he primary outcome of coercive control is a condition of entrapment that can be hostage-like in the harm it inflicts on dignity, liberty, autonomy and personhood as well as to physical and psychological integrity'⁶. Mr Stark argues that 'what men do to women is less important than what they prevent women from doing for themselves'⁷. Naturally, women can be perpetrators of coercive control against men, as can same-sex partners against one another.

Coercive control includes, inter alia, isolation, monitoring, restricting autonomy, gaslighting, name-calling, controlling money, reinforcing roles, manipulating children,

1 <https://www.psychologytoday.com/us/blog/mind-games/202112/coercive-control-becoming-criminalized>.

2 Id.

3 <https://dictionary.cambridge.org/us/dictionary/english/coercive-control>.

4 Id.

5 Rebekah Bunch, *Virginia Family Law Quarterly*, Spring 2022.

6 <https://coercivecontrolcollective.org/about-us>.

7 <https://adzlaw.com/victim-advocacy/2020/10/06/new-ca-bill-to-codify-what-victims-and-experts-know-coercive-control-is-domestic-violence>.

control of victim's body, jealousy, sexual coercion, making threats.⁸

States which officially recognise coercive control

Only three states within the United States have legislatively recognised the concept of coercive control: Hawaii, California and Connecticut.

Hawaii

Hawaii is the first state to criminalise coercive control.⁹ Hawaii 'defines coercive control as "a pattern of behavior that seeks to take away the individual's liberty or freedom and strip away the individual's sense of self, including bodily integrity and human rights." The pattern is "designed to make an individual dependent by isolating them from support, exploiting them, depriving them of independence, and regulating their everyday behavior."'¹⁰

California

In September 2020, California enacted legislation establishing coercive control as a form of abuse under California's Domestic Violence Prevention Act.¹¹ California defines coercive control as 'a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty'¹². In California, coercive control may be used as evidence in obtaining a domestic violence restraining order.¹³

Connecticut

In June 2021, Connecticut included coercive control as part of a broader definition of domestic violence. Like California, legislation references a 'pattern of behavior

that in purpose or effect unreasonably interferes with a person's free will and personal liberty'¹⁴.

Other states

As of early 2022, legislation addressing coercive control is pending in Maryland, New York and South Carolina.¹⁵

Impact of coercive control in the context of divorce, financial and children proceedings

The impact of coercive control in the context of divorce, financial considerations and children proceedings is, unfortunately, minimal. The vast majority of US states do not recognise coercive control in either their criminal or their family law statutes. As such, coercive control receives little recognition in court proceedings. Victims often feel they have little recourse to escape their situation and they are often financially dependent on the person exerting the coercive control.

Even if a court takes coercive control into consideration when deciding division of property and/or spousal support, coercive control can be very hard to prove given it is not defined, not widely recognised, and overall very poorly understood.

Coercive control has minimal (if any) impact on legal proceedings governing the dissolution of a marriage / children's proceedings (custody/visitation). It likewise has minimal impact with respect to challenging a premarital agreement and post-nuptial agreements which may have been entered on the basis of coercive controlling tactics.

The vast majority of states will recognise and enforce a premarital agreement, even

8 <https://www.healthline.com/health/coercive-control>.

9 <https://legiscan.com/HI/text/HS566/id/2255928>; and http://www.capitol.hawaii.gov/Archives/measure_indiv_Archives.aspx?billtype=HB&billnumber=566&year=2021.

10 <https://www.civilbeat.org/2021/05/measure-criminalizing-coercive-control-faces-opposition-from-law-enforcement>.

11 <https://adzlaw.com/victim-advocacy/2020/10/06/new-ca-bill-to-codify-what-victims-and-experts-know-coercive-control-is-domestic-violence>.

12 Id.

13 <https://www.civilbeat.org/2021/05/measure-criminalizing-coercive-control-faces-opposition-from-law-enforcement>.

14 <https://legiscan.com/CT/text/SB01091/2021>.

15 Rebekah Bunch, *Virginia Family Law Quarterly*, Spring 2022.

one that is grossly unfair to one of the parties. In Virginia, the only way to set aside the terms of a premarital or post-nuptial agreement is to show that the agreement was (1) not entered into voluntarily or (2) the agreement was unconscionable when executed and before execution of the agreement the person challenging the agreement was (i) not provided fair and reasonable disclosure of the property or financial obligations of the other party and (ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided.¹⁶

This is a very high bar. Unlike in many other countries, most US judges will not alter any provisions of a premarital or post-nuptial agreement, even if terms are grossly unfair and/or inequitable, unless the above elements are proved.

The clearest way to attempt to set aside a marriage agreement on the basis of coercive control would be to argue that the person seeking to set the agreement aside did not execute the agreement voluntarily. Some states have recognised the application of undue influence by one party against the other party as signifying that an agreement was not executed voluntarily. However, I am not aware of any states that have set aside a marital agreement specifically on the basis of coercive control.

Coercive control and the intersection with parental alienation

Similar to coercive control, it can be difficult to identify when parental alienation is truly occurring. Furthermore, there is a lack of formal recognition in state legislation to aid a family where parental alienation may be at play. In order to address alienation (with or without legislation), it must first be identified.

Two experts on the topic of parental alienation agree that warning signs include

the following: extreme behaviours, complaints that are out of proportion to the alleged wrongdoing; terms such as ‘never’ and ‘always’; inflexibility in the way the child views the rejected parent; words which mimic the words used by the favoured parent when describing the rejected parent (including calling the rejected parent by the name the favoured parent uses – eg ‘Tom’ instead of ‘dad’ or referring to dad as the ‘birth father’); comments from the child that indicate everything about the rejected parent is negative and everything about the favoured parent is positive; complaints which are often trivial and where the child’s reaction is overblown and disproportionate to the alleged misdeeds; ambiguous complaints lacking examples; and denials by the alienated child of any history of positive interaction with the rejected parent despite evidence to the contrary. In short, when children exhibit such extreme views of the rejected parent, this should serve as a warning sign that the child may be becoming alienated from that parent.¹⁷

Alienation cases typically involve three distinct players: (1) an attached parent who sees his/her job as protecting the child from the other parent, (2) a vulnerable child often with other emotional issues and (3) the rejected and often angry parent.¹⁸

The attached parent will often focus on the child’s perceived fear relating to the rejected parent, and often state that he/she wants the child to have a good relationship with, and contact with, the rejected parent (though statements of support are often not matched by actions when alienation is indeed occurring).¹⁹

The vulnerable child often exhibits a depressive quality or anxiety, which makes the child vulnerable. The divorce and ongoing parental conflict increases the level

¹⁶ Virginia Codes section 20–151 (Enforcement; void marriage) and Virginia Code section 20–155 (Marital agreements).

¹⁷ Edward Farber PhD, and Charles David Missar, PhD.

¹⁸ Edward Farber, PhD.

¹⁹ Charles David Missar, PhD.

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of anxiety and the rejected parent becomes the subject of anxiety and fear.²⁰

The rejected parent usually believes that the child and the favoured parent are fabricating allegations about them.²¹

This appears to be where parental alienation intersects most closely with coercive control: the person accused of coercive control may allege that the alleged victim of that coercive control is guilty of parental alienation. Furthermore, the person accused of coercive control may allege that the other parent is using those allegations to further alienate the child from the accused parent. Even if there is coercive control, the victim might not be trying to alienate the child from the other parent, but a vulnerable child, given the circumstances, may nevertheless reject the other parent.

What can litigators do?

In Northern Virginia, where I practice family law, it is not difficult to bring a matter before the court in a timely manner. Custody and visitation issues are generally given priority on the court's docket, and final trials may be expedited when appropriate (eg, scheduling the final hearing within a few months), and emergency matters can often be heard within days or weeks. This is because the state of Virginia has a *pendente lite*/temporary statute that applies in suits for divorce and/or custody, which provides the court interim authority to make orders pending the final custody and divorce action.²²

It is generally easier to provide remedial and/or protective measures for children in

family matters than for parents. For example, an adult victim of coercive control will have little (if any) remedies in most US states. However, if a child is suffering from coercive control by a parent, a motion for therapy could be filed with the court. Even if the court does not recognise coercive control *per se*, the court is likely to recognise that a child is in distress and attempt to address the situation.

In the few states that have legislation relating to coercive control, the most common remedy available to the victim of coercive control is an order for protection (as opposed to any sort of criminal prosecution).

If alienation is likely occurring, litigators might consider asking the court to order reunification therapy between the child and the rejected parent (anecdotally, some judges will order such therapy, others will not).

With respect to cases involving coercive control and/or parental alienation, and depending on which party I represent, I might recommend my client undergo a private mental health evaluation and/or parental fitness evaluation, or I might ask the court to require the other party to undergo such evaluation(s).

Given the lack of legislative recognition of both coercive control and parental alienation, there are no easy answers as to what litigators and/or parents should do in such situations. Continued education on these topics is key to achieving meaningful consideration and legislative change in the context of family matters within the court system.

20 Edward Farber, PhD.

21 Edward Farber, PhD.

22 Virginia Code Section 20-103.