

**AN INTRODUCTORY
GUIDE TO COERCIVE
CONTROL FOR THE
DVSJA ATTORNEY:
*COERCIVE CONTROL
IS DOMESTIC VIOLENCE***

PREPARED FOR AND DISTRIBUTED BY:
DVSJA STATEWIDE DEFENDER
TASK FORCE

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Preface

Purpose of this guide

This guide was written for criminal defense attorneys representing survivors at DVSJA sentencing and resentencing hearings. Many criminal defense attorneys have only a passing familiarity with domestic violence, trauma, and the dynamics of domestic violence. Generally, we have even less of an understanding of a form of domestic violence known as coercive control.

The purpose of this guide is to introduce defense lawyers to coercive control. What is it? How to identify coercive control? How does it affect victims of such abuse? How does it help explain a survivor's behavior? How does coercive control relate to the DVSJA?

The Domestic Violence Survivors Justice Act (DVSJA) is made up of two statutes – Penal Law § 60.12 and CPL § 440.47. Penal Law § 60.12 requires a survivor prove that she was “a victim of domestic violence subjected to substantial physical, sexual or psychological abuse” and that “such abuse was a significant contributing factor to the defendant’s criminal behavior.” An understanding of coercive control can help you prove both prongs of the DVSJA.

The key to a successful DVSJA hearing is your ability to convince the judge that coercive control is substantial abuse and explain how this insistent and threatening control was a significant contributing factor to the survivor's criminal behavior, whether the criminal conduct was in direct reaction to the abuser or resulted in a criminal act against a third party to placate the abuser. Understanding coercive control will enable you to explain to the judge why your client stayed in the relationship with her abuser, and why she engaged in criminal conduct in reaction to her abuser, to appease him, or as a consequence of the abuse.

Use of gendered language

For purposes of this guide, discussions about people who have been victims of domestic violence will use “she/her” pronouns, and discussions about people who engage in domestic abuse will use “he/him” pronouns. Victims of domestic violence, and specifically of coercive control, are overwhelmingly female while perpetrators are overwhelmingly male. However, “overwhelmingly” is not entirely. In heterosexual relationships, females are capable of inflicting abuse on male partners. Additionally, the male/female gender binary language does not include individuals who do not identify with either gender and who face abuse in their relationships. Further, focusing on male as perpetrator and female as victim language places the focus of this research on heterosexual couples. This guide is in no way intended to diminish the experiences of those facing abuse in homosexual relationships. Any person of any gender identity in any type of relationship can be subject to domestic abuse.

Since coercive control most frequently occurs between a male abuser and female victim, those are the gendered languages that underpin this guide. This gendered perspective does not aim to represent the entirety of abuse, nor does this gendered language aim to erase other experiences of coercive control outside the male abuser-female victim context.

Person-centric writing

The words used to describe a person's experiences help shape a narrative, and shape how a person is viewed by themselves or others. Traditionally, people who have experienced domestic violence have been labeled "victims." Especially in the legal field, criminal statutes and parlance use the term "victim." "Victim" can simply mean someone who has suffered harm because of criminal conduct, which has important meaning within the criminal legal process.¹ The DVSJA uses the term "victim" to describe people eligible to use the statute for sentencing and resentencing.² However, the term "victim" carries a negative connotation to some individuals. It has been associated with weakness, lack of agency, and helplessness. These negative connotations may result in a client not wanting to be associated with the label "victim." Additionally, the term "victim" implies that a person has been the target of criminal behavior. Since some clients may not recognize the extent to which they have been abused, they may be averse to being labeled a "victim" because they have not yet fully processed the abusive situation they have been through.

An alternative to the "victim" descriptor is the term "survivor." There are benefits to describing a person who has experienced domestic violence as a "survivor." For example, a client may associate a higher level of agency, ability, and strength with the term "survivor" as opposed to the term "victim." The term "survivor" also better encompasses the severity of an abusive situation by literally acknowledging the abused person had to *survive* the situation, not just be victim to it. When someone is considered a "survivor," there is an implicit understanding that the person must have done things that were necessary to survive. There is, in theory, a greater understanding and appreciation for actions an abused person took to placate their partner or to escape an abusive situation. However, because "survivor" connotes someone who actively *survived*, it may place too much agency on a harmed person and invite skeptical questions, like why a harmed person *chose* to stay, why she did not *choose* to leave sooner, and other dubious inquiries that imply the choice of leaving the abusive situation was available and accessible to the harmed person.³ In some ways, the term "victim" implies helplessness and strips the harmed person of all agency, whereas "survivor" may expect too heightened a standard of action from a harmed person.

Use of the word "survivor" or "victim" may reflect the context in which the term is used. "Survivor" can be used to describe a person who has *experienced* abuse, while "victim" can refer to someone who is *experiencing* abuse. While "victim" connotes someone who is experiencing harm at the hands of someone else, "survivor" connotes someone who has *survived* harm at the hands of someone else and is now healing from that experience.⁴ Domestic abuse can lead to the

¹ *Human Trafficking Task Force e-Guide, Victim-Centered Approach*. OFF. JUST. PROGRAMS, OFF. FOR VICTIMS OF CRIME TRAINING AND TECHNICAL ASSISTANCE CTR. <https://www.ovcttac.gov/taskforceguide/eguide/1-understanding-human-trafficking/13-victim-centered-approach/> (last visited Nov. 10, 2022).

² N.Y. PENAL LAW §60.12

³ Leigh Goodmark, *When Is a Battered Woman Not a Battered Woman? When She Fights Back*, 20 YALE J.L. & FEMINISM 75, 101 (2008).

⁴ *Key Terms and Phrases*. RAINN. <https://www.rainn.org/articles/key-terms-and-phrases> (last visited July 31, 2022).

death of a victim, so the term “survivor” may indicate someone has literally survived an abusive situation and is here now to tell their story. The Rape, Abuse & Incest National Network (RAINN) prefers this separation of “victim” and “survivor.” RAINN uses the term “victim” to refer to someone who has recently been affected by sexual violence, when discussing a particular crime, or when referencing the criminal justice system.⁵ RAINN uses “survivor” to reference someone who has gone through the recovery process after experiencing abuse, or when discussing short- and long-term effects of sexual violence.⁶

There is no consensus on the singular best terminology to use when describing people who have experienced domestic violence. Advocates and advocacy groups have differing opinions about what terminology, and in what context, is preferable. For example, RAINN alternates between “victim” and “survivor” depending on the given context.⁷ There is some concern that both “victim” and “survivor” are too restrictive, because both terms do not center on the person, but rather the abuse they experienced. The primary concern with both “survivor” and “victim”, as Leigh Goodmark notes, is that “the stories of battered women are too complex to be shunted into overarching [the] categories...”.⁸ Partners for Prevention, a UNDP, UNFPA, UN Women and UNV regional joint program for the prevention of violence against women and girls in Asia and the Pacific, uses “person/man/woman who has experienced violence” and “person/man/woman who has perpetrated violence” to promote person-centric language.⁹ However, “victim” and “survivor” still remain the two most predominantly used terms to describe individuals who have been harmed by domestic violence.

For purposes of this guide, we will alternate between using the terms “victim” and “survivor.” These terms were chosen for several reasons. First, to ensure that different types of terminology is kept to the forefront of the reader’s mind throughout this guide. Second, the DVSJA uses the term “victim,” so understanding coercive control within the context of Penal Law § 60.12 and CPL § 440.47 may be helpful. However, limiting our terminology to the term “victim” would not accomplish the goal of conveying to the reader the strength required of each client to relive their trauma and ask for assistance in shaping their narrative for a legal scenario.

We appreciate the importance of person centric language and do not want to reduce the identify of anyone to the abuse they experienced. However, for the purpose of this guide, and to be concise, we have chosen to use the terms “survivor” and “victim” but ask the reader to understand our meaning to be a “person who has survived domestic violence” or a “person who has experienced domestic violence.”

The term “survivor” can play an important role in a DVSJA sentencing or resentencing case because of the change it connotes between the client *now* versus when their decisions and

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Goodmark, *supra* note 3, at 85.

⁹ PARTNERS FOR PREVENTION, REPLICATING THE UN MULTI-COUNTRY STUDY ON MEN AND VIOLENCE: UNDERSTANDING WHY SOME MEN USE VIOLENCE AGAINST WOMEN AND HOW WE CAN PREVENT IT – PREFERRED TERMINOLOGY, https://www.partners4prevention.org/sites/default/files/preferred_terminology_final.pdf.

behavior were affected by the domestic abuse they suffered. The term “survivor” could help convey to the judge that a client has undergone a transformation since the abuse ended and has progressed to a point where they will not reoffend if their sentence is ameliorated, resulting in their immediate or earlier release.

Ultimately, the language we use should be based on what each person experiencing domestic violence prefers. People who have experienced domestic abuse are not a monolithic group, and our language must reflect that. Each person is entitled to their own preferences about how they are described in a legal setting. Great deference should be given to the person who experienced domestic abuse about how they would like to be referenced.

What Is Coercive Control?

Overview – Stark’s coercive control

Evan Stark coined the term “coercive control” to explain a form of domestic abuse where a perpetrator deprives a victim of her liberties in her personal life.¹⁰ Coercive control is an ongoing pattern of controlling tactics inflicted by a perpetrator to exert dominance over a victim and deprive a victim of her autonomy.¹¹ It can be an act or a pattern of acts of assault, threats, humiliation, intimidation or other abuse that is used to harm, punish, or frighten. Coercive control is a form of domestic violence through which controlling behavior is designed to make a person dependent by isolating them from support, exploiting them, depriving them of independence, and regulating their every activity.¹² Coercive control often occurs when there is a power imbalance between intimate partners. This power imbalance allows the abusive partner to restrict the other intimate partner’s liberty, equality, and independence and subordinate her.¹³ The damage of coercive control lies in the long-lasting impact on a victim, depriving her of her sense of autonomy and self-worth. As a perpetrator inflicts more coercive techniques to assert his complete dominance, the victim is coerced into compliance and submission.

Coercive control is an ongoing pattern of controlling tactics inflicted by a perpetrator to exert dominance over a victim and deprive a victim of her autonomy. – EVAN STARK, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE 16 (2007).

Control is exercised through use of targeted acts over time, resulting in the micro-regulation of a partner’s behavior and the deprivation of her autonomy and sense of self.¹⁴ A key factor about coercive control is that the tactics a perpetrator chooses are specific to the victim;

¹⁰ EVAN STARK, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE 16 (2007).

¹¹ *Id.*

¹² *What is coercive control?*, WOMEN’S AID, <https://www.womensaid.org.uk/information-support/what-is-domestic-abuse/coercive-control/> (last visited Nov. 10, 2022).

¹³ Heith Copes et al., *Sex, drugs, and coercive control: Gendered narratives of methamphetamine use, relationships, and violence*, 60 CRIMINOLOGY 187, 191 (2021).

¹⁴ STARK, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE, *supra* note 10, at 229.

the perpetrator learns the victim's vulnerabilities and exploits them to make his control more effective. For this reason, coercive control is impossible to narrowly define, because the tools used to exert control can differ in each situation. Coercion involves a perpetrator using threats or force to induce a particular response from his partner.¹⁵ Coercive control creates a framework that entraps a victim under the unreciprocated authority of her partner.¹⁶

Victims of coercive control, overwhelmingly women, are trapped in their personal lives. The effect of constant controlling techniques coercing women into compliance makes victims prisoners to their intimate partner.¹⁷ Consequences of coercive control include feelings of entrapment and the victim's vulnerability to future harm.¹⁸ Survivors of coercive control experience similar psychological and physical effects suffered by victims of other kinds of assault.¹⁹ Crucially, coercive control can exist without the use of physical violence. While violence can be a tactic used by a perpetrator to uphold his dominance over his partner, physical violence is not a necessary feature of the coercive control framework. Notably, physical violence does not even have to be a significant factor in a perpetrator's exertion of coercive control – the key to understanding the effectiveness of coercive control is understanding the way it deprives a victim of her liberty and freedom.²⁰

Stark describes coercive control as, until recently, “invisible in plain sight.”²¹ Since coercive control is primarily between a male perpetrator and female victim, it is rooted in sexist and patriarchal norms. It is impossible to fully grasp all the harmful pieces that make up the coercive control framework without acknowledging the underlying sexist and gendered norms that lay the groundwork for this form of abuse to go unnoticed. These norms allow certain coercive tactics like micro-regulation, manipulation, and isolation of a victim to the domestic sphere to go unnoticed because they fit within accepted gender roles. For example, traditionally, women were associated with domestic work. Although society may be progressing, this association still exists, consciously and subconsciously. When a woman in a relationship starts to spend more time in the household doing chores or other domestic work, this can easily be overlooked as normal and the forced isolation and micro-regulation by a controlling partner goes unnoticed. As a victim experiences coercive tactics over a significant period and believes she is experiencing her abuse alone, the coercive control becomes an entrapment. As Stark notes, “...the cage remains invisible as long as we omit the strategic intelligence into the pattern of oppression that gives them political meaning.”²²

¹⁵ *Id.* at 228.

¹⁶ *Id.* at 229.

¹⁷ *Id.* at 12.

¹⁸ Evan Stark, *Looking Beyond Domestic Violence: Policing Coercive Control*, 12 J. POLICE CRISIS NEGOT. 199, 203 (2012).

¹⁹ *Id.*

²⁰ Mary Ann Dutton & Lisa A. Goodman, *Coercion in Intimate Partner Violence: Toward a New Conceptualization*, 52 SEX ROLES 743, 743 (2005).

²¹ Stark, *Looking Beyond Domestic Violence: Policing Coercive Control*, *supra* note 18, at 203.

²² STARK, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE, *supra* note 10, at 198.

The power coercive control exerts over survivors is the deprivation of free choice. The survivor may have a “choice,” but she believes that she will face negative consequences for choosing anything other than what the perpetrator desires her to choose.²³ A perpetrator will exploit a partner’s vulnerabilities to inflict effective negative consequences if she does not comply with his wishes. For example, if a perpetrator knows his victim is anxious about being perceived as a good mother, he may tell her if she does not do as he asks, her child will see her as a terrible mother, or he may threaten to call child protective services to remove the child from the mother. The coercive “choice” is between complying to placate the perpetrator, or not complying and then facing negative consequences at the hands of her partner.

Coercive control is used to cause the victim to be submissive and compliant. “Central to the notion of coercive control is the idea of compliance with demands or expectations.”²⁴ Although the form of coercive control varies based on relationships and settings, the general aim of such control is to limit a partner’s ability to make decisions, which pressure them to remain in the relationship and engage in behavior they would not otherwise undertake, including criminal acts.²⁵ The major outcome of coercive control is a hostage-like condition of entrapment that suppresses the victim’s autonomy.²⁶ Coercive control helps explain why a victim remains in an abusive relationship and why they cannot say no to their abuser’s demands or expectations.

To date, coercive control has infrequently been addressed in New York case law. A useful explanation of coercive control is provided by Justice Barrett, developed as a result of expert testimony at a *Frye* hearing addressing the admissibility of expert testimony regarding the psychological theories of coercive control and trauma bonding.²⁷

Historical development

Coercive control existed long before it was termed “coercive control.” In the 1970s and 1980s, cognitive psychologists initially tried to associate this type of abuse with brainwashing and other techniques commonly used on hostages.²⁸ Brainwashing involves pressuring someone into accepting drastically different beliefs, often by using forcible or systematic means.²⁹ While equating brainwashing with coercive control was mostly ignored by academic researchers, this comparison influenced how various practitioners approached this form of abuse.³⁰ In 1984, the Domestic Abuse Intervention Project (DAIP) in Duluth, Minnesota developed the Power and Control Wheel designed to describe the experiences of victims and the wide range of tactics

²³ Dutton & Goodman, *supra* note 20, at 745.

²⁴ *Id.* at 749.

²⁵ Copes et al., *supra* note 13, at 191.

²⁶ Evan Stark, *Re-presenting Battered Women: Coercive Control and the Defense of Liberty*, Prepared for Violence Against Women: Complex Realities and New Issues in a Changing World, Les Presses de l’Universite du Quebec 1, 5 (2012)

²⁷ *People v. Abdur-Razzaq*, 60 Misc.3d 631, 636-637 (Sup Ct, Bronx County 2018).

²⁸ STARK, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE, *supra* note 10, at 12.

²⁹ OVERVIEW: BRAINWASH, OXFORD REFERENCE

[https://www.oxfordreference.com/view/10.1093/oi/authority.20110803095524780#:~:text=Pressurize%20\(someone\)%20into%20adopting%20radically,%2C%20and%20especially%20Communist%2C%20states](https://www.oxfordreference.com/view/10.1093/oi/authority.20110803095524780#:~:text=Pressurize%20(someone)%20into%20adopting%20radically,%2C%20and%20especially%20Communist%2C%20states) (last visited Nov. 11 2022).

³⁰ STARK, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE, *supra* note 10, at 12.

abusers could use.³¹ This tool became widely used and helped expand what techniques were associated with domestic abuse. Today, many advocacy programs use the Power and Control Wheel to help victims of domestic violence recognize the extent of the abuse they experienced.³² Although there has been progress with recognition of coercive control and coercively controlling tactics, mainstream understanding of coercive control is still lacking. American sociologist, Michael Johnson, initially described coercively controlling violence as patriarchal terrorism.³³ Stark notes that the shortcoming of labeling this type of violence “patriarchal terrorism” is that the perpetrator is not necessarily doing things a terrorist would.³⁴ Coercive control is more likely to occur when there is a more significant power imbalance between partners and an abuser’s unwillingness to compromise. Coercive control is not the same as a series of sporadic fights. Coercive control requires a perpetrator to have a desire for complete dominance over a submissive partner.

What Is Domestic Violence?

When representing a survivor in a DVSJA case you will want to focus on what qualifies your client for DVSJA sentencing relief and what you will have to prove at a hearing. Does your client meet the legal definition of domestic violence in the context of Penal Law § 60.12?

There are two components to any definition of domestic violence. The first component consists of defining the behavior or range of behaviors employed by one person against another. The second component consists of defining the relationship between the abuser and the victim of the abusive act.

As noted in NY Law of Domestic Violence, the legal definition of domestic violence varies with the statutory context and may be, in some instances, narrower in scope than the societal meaning.³⁵ Definitional parameters can be found in New York Social Services Law § 459-a, Family Court Act § 812, Executive Law Article 22, and Criminal Procedure Law § 530.11 (1). The context of each of these statutes links the domestic violence to specific penal law crimes or family offenses. Therefore, in that context the behavioral component of the definition of domestic violence requires an act that would constitute a violation of the penal law. However, there is no requirement in the context of the DVSJA, that the abuse include criminal conduct.

In the context of the DVSJA, the behavior must simply be “substantial physical, sexual or psychological abuse.”³⁶ The relationship component is satisfied when the person perpetrating the

³¹ *Power and Control Wheel*, CAWS NORTH DAKOTA <https://www.cawsnorthdakota.org/resources/power-and-control-wheel/#:~:text=The%20power%20and%20control%20wheel,the%20tactics%20that%20abusers%20used> (last visited Feb. 2, 2023).

³² STARK, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE, *supra* note 10, at 13.

³³ Parveen Azam et al., *A literature review of intimate partner violence and its classifications*, 31 AGGRESSION AND VIOLENT BEHAV. 16, 25 (2016).

³⁴ STARK, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE, *supra* note 10, at 229.

³⁵ BREGER ET AL., N.Y. L. DOMESTIC VIOLENCE, §1:1 (3d ed. 2022).

³⁶ N.Y. PENAL LAW § 60.12 (1)(a).

abuse is “a member of the same family or household as the defendant” as such term is defined in CPL § 530.11 (1).³⁷

There are other definitions of domestic violence that help flesh out the meaning of domestic violence in the DVSJA context and place coercive control squarely within the meaning of domestic violence.

In NY Law of Domestic Violence domestic violence is defined as consisting of “behavior or a range of behaviors employed by one intimate partner or family member against another in a pattern designed to exercise power and control.”³⁸

The New York State Office for the Prevention of Domestic Violence defines domestic violence as “a pattern of behavior used by an individual to establish and maintain power and control over their intimate partner. The behavior includes abusive tactics, threats, and actions that may or may not rise to the level of criminal behavior. The tactics may include physical, emotional, financial, and sexual abuse.”³⁹

The New York State Unified Court System provides a definition for domestic violence on their website. “Domestic violence is a pattern of behavior used by one partner to maintain power and control over another partner in an intimate relationship. It may be sexual assault. It may be physical abuse. But it does not have to be either. A victim can be controlled or terrorized by many different tactics like emotional abuse, economic abuse, physical abuse, and threats and intimidation.”⁴⁰

Domestic violence is a pattern of behavior used by one partner to maintain power and control over another partner in an intimate relationship. It may be sexual assault. It may be physical abuse. But it does not have to be either.

For purposes of the DVSJA, domestic violence and domestic abuse are interchangeable terms. The terms “violence” and “abuse” are both used in the DVJSA law. This helps make it clear that to be a victim of domestic violence under the DVSJA does not require that the defendant had been a victim of physical violence. The statute applies to defendants who were “a victim of domestic violence” who faced “substantial physical, sexual or psychological abuse.”⁴¹ The term “abuse” connotes a broader range of harmful tactics than the term “violence.” Even though domestic violence does not have to be physical, the word “violence” typically connotes a physically abusive action and may be the source of judicial confusion. Domestic abuse connotes a more encompassing definition of all the ways a victim can be abused.

³⁷ *Id.*

³⁸ BREGER ET AL., *supra* note 35, at § 1:1.

³⁹ *About Domestic Violence*, NEW YORK STATE OFF. FOR THE PREVENTION OF DOMESTIC VIOLENCE, <https://opdv.ny.gov/learn-more-about-domestic-violence> (last visited July 31, 2022).

⁴⁰ *Domestic Violence Basics*, NYCOURTS.GOV, <https://www.nycourts.gov/courthelp/Safety/DVindex.shtml>. (last visited Sept. 30, 2022).

⁴¹ N.Y. PENAL LAW § 60.12

However, abuse alone is not coercive control. Coercive control relies on a pattern of abusive and exploitative tactics that degrades and deprives the victim of her autonomy. Of course, coercive control is not the only form of domestic abuse that would qualify a defendant under the DVSJA. Because coercive control primarily causes psychological damage, understanding the context in which abusive tactics were employed is more important than looking for individual instances of physical violence. Victims of coercive control may not have evidence of physical abuse. While definitionally physical abuse is not the only type of domestic violence, the connotation of “domestic violence” still conjures images of bruises for some. Coercive control is just as detrimental as physical abuse, if not more. Coercive control is a framework of control that imprisons a victim in her relationship. Coercive control is domestic abuse and domestic violence. Connecting the context in which a victim is coercively controlled with the requirements for abuse under the DVSJA is crucial, since there may be no physical signs of a battered victim, and standalone instances do not portray the web of manipulation and domination a victim faces under coercive control.

Coercive control is a primary factor in many DVSJA cases, however, under the DVSJA the defendant is not required to prove coercive control. All that is required is a showing of “substantial physical, sexual or psychological abuse.”⁴² Be mindful that when you are trying to explain why your client stayed with her abuser or made certain decisions it may be more persuasive to prove that there was coercive control in order to explain how the abuse was a significant contributing factor to her criminal behavior than to rely on individual instances of abuse.

Although the DVSJA makes it clear that physical violence is not the only form of domestic abuse mitigated by Penal Law § 60.12, it is important to emphasize this point in court submissions and at the hearing. Otherwise, this obvious point may be lost on some judges who will apply antiquated and outdated notions regarding domestic violence as noted recently by an appellate court.⁴³

You will likely come across the term intimate partner violence. Intimate partner violence is a more recent term that specifically refers to violence between partners in a dating or romantic relationship.⁴⁴ The World Health Organization (WHO) defines intimate partner violence as:

“behaviour by an intimate partner or ex-partner that causes physical, sexual or psychological harm, including physical aggression, sexual coercion, psychological abuse and controlling behaviours”.⁴⁵

There is a difference between the term abuser in the context of the DVSJA and abuser in the intimate partner context. For DVSJA purposes the abuser can fall within the wide array of

⁴² N.Y. PENAL LAW § 60.12 (1)(a).

⁴³ *People v. Addimando*, 197 A.D.3d 106, 117 (2d Dept. 2021).

⁴⁴ *The Language We Use*, WOMEN AGAINST ABUSE, <https://www.womenagainstabuse.org/education-resources/the-language-we-use>. (last visited July 31, 2022).

⁴⁵ *Violence against women*, WORLD HEALTH ORGANIZATION (Mar. 9, 2021) <https://www.who.int/news-room/factsheets/detail/violence-against-women>.

people who fit the definition of CPL § 530.11 (1). That would include an intimate partner, but is considerably more inclusive. Intimate partner violence is simply a subset of DVSJA domestic violence. Note that CPL § 530.11 (1) uses the more expansive term “intimate relationship” rather than “intimate partner.” Both terms can apply to situations of relationship violence. Since this guide is primarily focused on coercive control perpetrated by an intimate partner, both terms will be used interchangeably. Be aware that coercive control can also be exercised by members of the same family or household, including parents, not just intimate partners.

To whom does the DVSJA apply?

The DVSJA applies to victims of domestic violence. In the context of the DVSJA, domestic violence refers to abuse between people in the same family or household.⁴⁶ Domestic violence is not limited to any gender, race, age, socio-economic status, or other demographic group.⁴⁷ This can include abuse between intimate partners, but also could include violence between others in a domestic situation, including parents, children, cousins, or siblings.⁴⁸ The DVSJA (Penal Law § 60.12 (1)(a) directs us to CPL § 530.11 (1) for the definition of “members of the same family or household” as:

“a) persons related by consanguinity or affinity; (b) persons legally married to one another; (c) persons formerly married to one another regardless of whether they still reside in the same household; (d) persons who have a child in common, regardless of whether such persons have been married or have lived together at any time; and (e) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors the court may consider in determining whether a relationship is an "intimate relationship" include but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship".⁴⁹

Care should be taken to establish that your client was abused by a person meeting the definitional requirements of CPL § 530.11 (1).

What actions are considered acts of domestic violence?

New York State has rejected the outdated notion that physical abuse is required to rise to the level of domestic violence.⁵⁰ Domestic violence may be physical, but it need not be. A victim can suffer domestic violence by being controlled or terrorized by many different tactics like

⁴⁶ N.Y. PENAL LAW § 60.12 (1)(b).

⁴⁷ BREGER ET AL., *supra* note 35, at § 1:1.

⁴⁸ *The Language We Use*, *supra* note 44.

⁴⁹ N.Y. CRIMINAL PROCEDURE LAW §530.11 (1)

⁵⁰ *Matter of Andreija N.*, 177 A.D.3d 1236, 1239 (3d Dept. 2019). “Our concern with these observations is that domestic violence is not limited to physical violence. In our view, respondent’s behavior and threats were alarming and demonstrated a concerted effort to control and coerce the mother and others...”

emotional abuse, economic abuse, physical abuse, and threats and intimidation,⁵¹ The New York State Office for the Prevention of Domestic Violence recognizes that the “behaviors used by a perpetrator to exercise power and control”⁵² include “abusive tactics, threats and actions that may or may not rise to the level of criminal behavior.”⁵³ These tactics can include, but may not be limited to, physical, emotional, financial, or sexual abuse.⁵⁴ Domestic violence includes a wide variety of behaviors and it is important to consider how seemingly non-criminal conduct can be manipulated in a way to exert control over someone else.

The DVSJA explicitly acknowledges that the domestic violence required to ameliorate the sentence of a victim goes beyond physical violence and includes “physical, sexual or psychological abuse.”⁵⁵ Key to the presentation of your DVSJA case is to place emphasis on the fact that the individual acts of domestic abuse, in whatever form, have a cumulative effect, that can break the victim’s will and make her more vulnerable to coercive control.⁵⁶

What Is the Relationship of Coercive Control to Domestic Violence?

“Coercive control is a core principle of domestic violence and is a destructive form of it.”⁵⁷ Coercive control is a type of domestic violence. Since coercive control does not always result in physical signs of abuse, like a black eye, it is important to emphasize that coercive control, even without physically violent aspects, is still domestic violence. As Stark has explained, “Most people still imagine that the broken bones, black eyes, and bruises that mark the abused women shown on television or on posters during ‘Domestic Violence Week’ are typical of abusive relationships. Nothing could be further from the truth.”⁵⁸ In divorce cases, a narrow view of what qualifies as domestic violence “ignores the corrosive concept of coercive control between divorcing spouses.”⁵⁹ The primary result of coercive control is psychological damage. The possible lack of bruises in coercive control victims should not take away from the severe psychological harm that is central to the insidious framework of coercively controlling abuse.

Coercive control is a core principle of domestic violence and is a destructive form of it. –Richard A. Dollinger & Alan Feigenbaum, *Repeat After Me: Coercive Control is Domestic Violence*, N.Y. L. J. (July 22, 2022), <https://www.law.com/newyorklawjournal/2022/07/22/repeat-after-me-coercive-control-is-domestic-violence/>.

⁵¹ *Domestic Violence Basics*, *supra* note 40.

⁵² BREGER ET AL., *supra* note 35, at § 1:1.

⁵³ *Learn More About Domestic Violence*, NEW YORK STATE OFF. FOR THE PREVENTION OF DOMESTIC VIOLENCE, <https://opdv.ny.gov/about-domestic-violence> (last visited Jul. 31, 2022).

⁵⁴ *Id.*

⁵⁵ N.Y. PENAL LAW § 60.12 (1)(a).

⁵⁶ *People v. D.M.*, 72 Misc. 3d 960, 964-967 (Sup Ct, Queens County 2021).

⁵⁷ Richard A. Dollinger & Alan Feigenbaum, *Repeat After Me: Coercive Control is Domestic Violence*, N.Y. L. J. (July 22, 2022), <https://www.law.com/newyorklawjournal/2022/07/22/repeat-after-me-coercive-control-is-domestic-violence/>.

⁵⁸ Stark, *Looking Beyond Domestic Violence: Policing Coercive Control*, *supra* note 18, at 203.

⁵⁹ Dollinger & Feigenbaum, *supra* note 57.

You may find your case presided over by a judge with antiquated ideas about domestic violence. This judge may point to the language of the DVSJA and say, “I don’t see the words coercive control in the statute.” The judge may use this strict construction to reject your argument that coercive control is a core principle of domestic violence despite what the New York State Unified Court System and the State of New York have to say. Do not be deterred. You should argue that coercive control is psychological abuse in all of its forms.⁶⁰ Not only should you argue that coercive control squarely fits within one of the specific categories of abuse required by the statute – psychological abuse – you should move on to make the point that all three forms of abuse – physical, sexual and psychological – can be tactics used to implement coercive control.

Survivors may deal with negative consequences of coercive control even after their intimate relationship with a perpetrator ends.⁶¹ It may be necessary for a survivor to remain in contact with her abuser after their relationship has ended for custody, child support, or visitation.⁶² This leaves open an avenue for the controlling effects of a perpetrator’s abuse to continue long after a relationship has ended. A perpetrator still has opportunities to use a shared child, child support, or other arrangements to exert control over a former partner.⁶³ Coercive control does not require violence to create an atmosphere where a victim feels subordinated to and under the surveillance of a perpetrator. After a relationship ends, the fear and loss of autonomy a victim has grown accustomed to feeling does not simply disappear; with opportunities for continued contact, like through children, the perpetrator continues to exercise his nonviolent abusive control over a former partner.⁶⁴

Importantly, in most domestic abuse situations, “tactics other than violence are the most salient and consequential.”⁶⁵ When screening clients for DVSJA hearings, physical or other traditionally telltale signs of abuse cannot be the only signs to look for. Seemingly mundane or non-abusive things, like a client only wearing certain things or only associating with certain people, are easily overlooked and keep the coercive control abuse hidden in plain sight. Looking at the context in which a victim was told to act a certain way or wear certain things can uncover a pattern of coercive control. The title of a Richard A. Dollinger and Alan Feigenbaum article in the New York Law Journal sums up the relationship between coercive control and domestic violence - “Repeat After Me: Coercive Control Is Domestic Violence.”⁶⁶

⁶⁰ *Id.*

⁶¹ Kimberly A. Crossman et al., “*He Could Scare Me Without Laying a Hand on Me*”: Mothers’ Experiences of Nonviolent Coercive Control During Marriage and After Separation, 22 VIOLENCE AGAINST WOMEN 454, 467 (2016).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Stark, *Looking Beyond Domestic Violence: Policing Coercive Control*, *supra* note 18, at 201.

⁶⁶ Dollinger & Feigenbaum, *supra* note 57.

Coercive control and the DVSJA requirement that the substantial abuse be “physical, sexual, or psychological”

The challenge for clients who have experienced coercive control is trying to convey the entire scheme of coercive control and its detrimental effects while fitting it into one of the three categories of control involve psychological abuse, often physical or sexual abuse, and other activities that do not explicitly fall into these categories. It is both overlapping and overarching; coercive control in its entirety has detrimental effects to a victim’s physical and mental health. Coercive control is an abusive pattern that permeates the daily life of a victim, with the potential to impact the victim even after she is no longer in a relationship with her abuser. Conveying the way coercive control infiltrates every aspect of a victim’s life may require touching on each category of abuse of the DVSJA. Importantly, focusing on a specific individual category of abuse must not be in lieu of narrating the web of coercive control tactics that trapped the victim. abuse. Coercive control is substantial abuse. However, it is not as “obvious” as photos of physical abuse. The superficially subtle, primarily psychological nature of coercive control is not as clearly “substantial” as other forms of domestic abuse. Tactics of coercive

Psychological abuse and coercive control

Of the psychological, physical, and sexual abuse categories, coercive control is primarily psychological abuse. Physical and sexual abuse tactics are used by the perpetrator to successfully deteriorate the psyche of his victim. The goal of a perpetrator is to gain and maintain control over his partner and deprive her of her independence and autonomy.

Psychological violence includes the use of various tactics and behaviors intended to humiliate or control another individual, either in public or in private.⁶⁷ Coercive control generally fits best into this category. Physical and sexual abuse can be elements of the coercive control framework inflicted on a victim, or physical, sexual, and psychological abuse can all occur simultaneously in a coercively controlling situation. However, coercively controlling partners aim to reduce their victim’s autonomy and self-worth through whatever individualized tactics will achieve that goal. While sexual and physical abuse may be occurring, it is helpful to think about them as overlapping into the psychological category as tools that make the deprivation of independence that is central to coercive control more effective.

Physical abuse and coercive control

Physical abuse can be used to exert control by threatening or punishing a victim. The use of physical violence, even once, can make clear to a victim that the perpetrator is capable and willing to harm his partner to maintain control. Once physical violence occurs, the perpetrator’s future threats become more credible. Not every coercively controlling situation is physically violent, although many cases do involve physical abuse.⁶⁸ Even if physical violence is not used repeatedly, the control a perpetrator has over his victim can occur long after any physical abuse

⁶⁷ Azam et al., *supra* note 33, at 18.

⁶⁸ Evan Stark & Marianne Hester, Coercive Control: Update and Review, 25(1) VIOLENCE AGAINST WOMEN 81, 89 (2019).

has taken place.⁶⁹ A lack of physical violence does not mean the coercive control is less severe. A woman's perceived and actual level of violence in a relationship can be predicted by the presence of coercive control, regardless of whether physical violence was occurring.⁷⁰

Sexual abuse and coercive control

Sexual abuse tactics vary based on each victim. Sexual abuse in coercively controlling relationships is used to exploit the insecurities, anxieties, and vulnerabilities of a victim. Rape or sexual assault are not the only type of sexual abuse that can occur. Perpetrators can force victims to have sex without the use of a condom or require that every sexual interaction be filmed. If an abuser knows his partner craves security and loyalty, when she disobeys his commands, he may have sex with someone outside of the relationship and flaunt the interaction to his partner. As with all tactics in coercive control, the perpetrator intentionally chooses his actions based on the specific vulnerabilities and fears of his partner.

As with all tactics in coercive control, the perpetrator intentionally chooses his actions based on the specific vulnerabilities and fears of his partner.

Why has it been difficult to connect coercive control with domestic violence?

As previously mentioned, one difficulty with connecting coercive control to domestic violence is the way “domestic violence” or “intimate partner violence” is colloquially defined. The inclusion of the word “violence” automatically triggers thoughts of physical force; while physical violence does often occur, focusing on “violence” as being intertwined with physical force has negative effects for survivors who faced abuse that was not primarily physical.⁷¹ Additionally, a widely accepted conceptualization of “violence” focuses only on major and repetitive incidents; a partner punching, hitting, kicking, or otherwise causing significant physical harm. Often, the minor domestic fights that involve slapping, shoving, or other actions that cause minor physical damage, can easily be hidden under the guise of normal partner interactions during a fight.⁷² This is a dangerous conceptualization, especially for coercive control, because so much of the dominance a partner establishes over his victim stems from seemingly “minor” physical violence and fights.⁷³ Domestic violence is not just physical; it is psychological and emotional as well. Although violence can be an instrument within the coercive control framework, it is the deprivation of autonomy and entrapment of women in their intimate relationships that truly defines coercive control and the harms that arise from it.

Another impediment to establishing coercive control is the criminal legal system and police responses to domestic abuse. When police are called to a home, the reports are focused on

⁶⁹ *Id.*

⁷⁰ *Id.* at 90.

⁷¹ STARK, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE, *supra* note 10, at 84-85.

⁷² *Id.*

⁷³ *Id.*

incidents over patterns. These recorded incidents can be used as evidence in court, but they miss the overarching pattern of coercive control. “Minor” fights that go unreported to the police or by the police miss the cumulative impact of these events. If the victim is the only person who sees the true extent of the abuse, there is no way the legal system can adequately account for her experience. Additionally, the victim may not even understand the true extent to which coercive control has harmed her experiences and perspectives. As has been recognized by at least some prosecutors, most domestic violence prosecutions focus on a single event of violence, but it is critical to understand these acts of violence are often part of a pattern of coercion, intimidation, and harm.⁷⁴ Even the files of the police and prosecutors may not reveal the true nature of the abuse.

Without asking questions to uncover the pattern of coercive control, it is impossible to recognize the seemingly minor moments that add up to coercive control.

Coercive Control and the DVSJA Requirement that “At the Time of the Instant Offense, the Defendant Was a Victim of Domestic Violence...”

The first prong of the DVSJA requires that for the defendant to prevail the court must determine that:

“...(a) at the time of the instant offense, the defendant was a victim of domestic violence subjected to substantial physical, sexual or psychological abuse...”

Since the DVSJA is relatively recent, jurisprudence is still developing. Judges are still interpreting this particular language of the DVSJA. The interpretation of this phrase should be informed by current research and science about coercive control and the trauma caused by domestic violence.

There are long-term effects of many forms of domestic violence including child abuse and intimate partner abuse. The psychological trauma that results from coercive control, as compared to physical abuse, is overall longer lasting and has potentially greater negative impact on the victim.

The effects of coercive control are felt by survivors after their relationships end. Additionally, victims in coercively controlling relationships experience the weight of coercive control daily, even if a “major” physical incident has not recently occurred. If, early in a relationship, a victim witnesses her partner harming a third party, she quickly understands that her partner is willing and able to harm those who upset him. He does not need to physically abuse her every day. Once she realizes a threat is real, she becomes more submissive and more entrapped in the coercive control framework. Even if the abusive relationship has ended, the trauma a survivor experienced does not end. The lasting effects of domestic abuse remain with a survivor long after she separates from her intimate partner.

⁷⁴ ARIANA ORFORD ET AL., PROSECUTORS’ DOMESTIC VIOLENCE HANDBOOK 5 (2017), <https://waprosecutors.org/wp-content/uploads/2019/04/FINAL-DV-MANUAL.pdf>.

What has been clear to judges is that there is neither a requirement that the abuse occur simultaneously with the instant offense nor a requirement that the defendant be in the throes of an attack or that one be imminent.⁷⁵ In significant part this is the result of the recognition that the effects of domestic violence are cumulative and long-lasting.

One interpretation of this phrase is that it is simply a requirement that the defendant have attained the status of being a victim of domestic violence at the time the defendant committed the instant offense. Another interpretation of the statute is that there is no “temporal nexus” required and that the nexus between the domestic abuse and the criminal conduct was established by the “significant contributing factor” requirement.

To date, only one appellate court has interpreted the “at the time of” language to require a temporal nexus between the abuse and the offense. The court opined that this temporal limitation could only be met by a showing that the “abuse or abusive relationship be ongoing.”⁷⁶ Since the effects of the trauma from the abuse and the coercive control can continue long after the abuse or the abusive relationship has ended, this interpretation ignores the current research and science of trauma and coercive control.

If the judge or prosecution gives weight to *Williams*, you should advance three possible arguments: 1) The abuse and abusive relationship were ongoing; 2) The nexus required is not temporal, but is instead satisfied by proof of the “significant contributing factor” requirement, or 3) That if there is a temporal nexus requirement, the court in *Williams* erred when it overlooked a third option to establish that nexus which is that the effects of the trauma from the coercive control were ongoing at the time of the instant offense.

How Does Coercive Control Work?

Operational overview

Coercive control works when there is an actual or perceived consequence the victim believes will occur if she does not properly comply with the wishes of the perpetrator. Coercive control involves a demand and an accompanying threat of what will happen if the demand is not met.⁷⁷ Over time, as the victim learns to obey implicit and explicit demands and anticipate future demands, her autonomy is diminished. She may feel shame and a depleted sense of self, because her every action is done in order to appease her abuser. Coercive control infiltrates every aspect of her daily life, forcing her to live in a constant state of hypervigilance to do as her partner wishes. The distorted reality of the abuser becomes the reality of the victim, who sacrifices her own independence to avoid punishment from her perpetrator.

⁷⁵ See *People v. Williams*, 198 A.D.3d 466 (1st Dept. 2021); *People v. Smith*, 69 Misc. 3d 1030, 1037 (Erie County Ct 2020).

⁷⁶ *Williams*, 198 A.D.3d at 467.

⁷⁷ Dutton & Goodman, *supra* note 20, at 749.

Setting the stage and wearing down resistance

Perpetrators use varying tactics to “wear down” their partner’s willingness to resist control or disobey demands.⁷⁸ Emotional, psychological, physical, or other subtle techniques are used to repeatedly devalue a victim’s self-worth until she feels she has no choice but to comply. A partner can set the stage for coercive control by repeatedly telling his partner that she is worthless, because people with low self-esteem are less likely to have the will to resist control.⁷⁹ A perpetrator may also use legitimation, the tactic of convincing a partner that he has the right to control and punish her, to set the stage for a coercively controlling relationship and wear down her resistance to future attempts at control.⁸⁰ A perpetrator may also wear down resistance by isolating his partner from resources needed for effective resistance, like financial independence or strong social support.⁸¹ While this aspect of coercive control may happen in earlier stages of the relationship to prime a victim for future threats and demands, these tactics can happen throughout the course of the abusive relationship.

Demands

An expectation becomes a coercive demand when the victim understands that noncompliance with the demand will result in punishment, opportunity cost, or other consequence.⁸² A demand is coercive when the demand involves threats or the use of force to encourage or discourage a specific response.⁸³ Assessing coercive demands requires understanding both the obvious and disguised demands; those demands that are woven into the daily interactions between partners and no longer need to be explicitly stated.⁸⁴

Credible threats

Coercive control is only successful when the threats contingent on noncompliance are credible. Credible threats are necessary to coercive control because if the victim does not believe a threat is real, there is no strength of a perceived consequences as a means of forcing compliance.⁸⁵ A credible threat can be communicated explicitly or implicitly, and there are numerous factors that contribute to making a threat credible.⁸⁶ Some factors that increase the credibility of a threat include: a victim witnessing her partner commit acts of violence against others who have angered him, a partner committing violence against the victim, or even past experiences a victim has had with violent family members or partners, completely unrelated to the current partner she is with.⁸⁷ For example, if a survivor has witnessed the perpetrator assaulting a third party for upsetting the perpetrator, the threat of “or else” becomes much more

⁷⁸ MICHAEL P. JOHNSON, A TYPOLOGY OF DOMESTIC VIOLENCE: INTIMATE TERRORISM, VIOLENT RESISTANCE, AND SITUATIONAL COUPLE VIOLENCE 15 (2008).

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 16.

⁸² Dutton & Goodman, *supra* note 20, at 750.

⁸³ STARK, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE, *supra* note 10, at 228.

⁸⁴ Dutton & Goodman, *supra* note 20 at 749.

⁸⁵ *Id.* at 750.

⁸⁶ *Id.* at 749.

⁸⁷ *Id.* at 748.

credible to the survivor – she has now seen what “or else” means. Additionally, once intimate partner violence occurs, even just one time, the possibility forever remains to the survivor that it may happen again.⁸⁸

However, experiences with violence are not the only underlying factors that make a threat credible. Economic, political, cultural, social, familial, and individual factors all weave together in ways that can increase threat credibility.⁸⁹ Since so many factors can contribute to the perceived credibility of a threat, it is crucial to understand the context of any given situation or relationship to gain a more complete understanding of why a perpetrator’s threats are perceived to be credible.⁹⁰ Critically, coercive control does not require every threat to be actualized – only the victim’s continued belief that it could be.⁹¹

Surveillance

Coercive control often involves surveillance, because a perpetrator wants to have some way of knowing whether a given demand was complied with.⁹² Surveillance does not have to occur with every demand; the survivor must at least believe the surveillance is happening as a means of keeping her under the fear and lack of autonomy necessary to facilitate a coercively controlling situation.⁹³ The credibility of a threat and necessity to comply with a demand can be enhanced if the perpetrator convinces the victim that he is surveilling her to ensure compliance.⁹⁴

Who Uses Coercive Control?

Anyone can be a perpetrator of coercive control, but most perpetrators are men. Certain characteristics may make a person more likely to use coercive control against a partner. Abusers are not a homogenous group, and the presence of a specific personality disorder or characteristic does not definitively mean someone is an abuser. Since coercive control centers around the perpetrator desiring to control his partner by depriving her of her independence and autonomy, narcissism is a particularly relevant personality trait of perpetrators. People with narcissism may see themselves as rightfully in control. They may feel that they should be in charge and that a partner should obey their commands and do only as they please.

Men who are possessive or who feel a particular sense of entitlement may be more likely to use coercive control against a partner. Men who feel hostile towards women may be more likely to abuse a partner.⁹⁵ Generally, male attitudes toward women can affect the likelihood that they will be abusers.⁹⁶ The power imbalances in coercively controlling relationships can be based on the difference in gender between partners. Societal expectations and sexism are inevitably intertwined with coercive control. Men who are accepting of violence, impulsive, or who have

⁸⁸ *Id.*

⁸⁹ *Id.* at 745.

⁹⁰ *Id.* at 747.

⁹¹ *Id.* at 750.

⁹² *Id.* at 745.

⁹³ *Id.* at 750.

⁹⁴ *Id.*

⁹⁵ JOHNSON, *supra* note 78, at 31.

⁹⁶ *Id.*

“traditional” beliefs about the roles of each gender may see themselves as the rightful head of the family, which can lead to a higher desire to control a female partner.⁹⁷

Who Is Susceptible to Coercive Control and Why?

Anyone can be a victim of coercive control. Both perpetrators and victims of coercive control are people of all ethnicities, races, ages, genders, gender identities, abilities, religions, sexual orientation and socio-economic status. It is just as important not to assume that all people who share certain experiences will become survivors as it is not to assume all survivors have shared experiences. However, certain variables can put some women at more risk of losing their independence and falling victim to coercive control than others. Factors that influence a person’s susceptibility to coercive control operate at different levels; both internally, such as trauma established from prior life experiences such as being abused as child abuse, or prior intimate partner violence, and externally, such as trauma induced by socioeconomic factors or the perpetrator. Additionally, variables such as access to money, employment, and social support can change a person’s susceptibility to remaining in coercively controlling situations.⁹⁸ While a partner can create vulnerabilities through abusive language and other techniques, women who have numerous existing vulnerabilities before entering a relationship are already at a disadvantage. The more vulnerabilities that exist, the more that can be exploited at the outset of a relationship.

The socio-ecological model: individual, relationship, community, and societal factors

The socio-ecological model was developed in the late 1970s as a framework to understand how different factors operating at different levels can cross and impact people in different ways, based on a person’s intersectional experiences.⁹⁹ Factors that exist on one level also impact factors at the next level.¹⁰⁰ While there are variations on how the levels of the socio-ecological framework are broken up, for purposes of visualizing how different factors can make a person more susceptible to coercive control, the CDC socio-ecological model is sufficient. The CDC breaks up the levels into individual factors, relationship factors, community factors, and societal factors.¹⁰¹

⁹⁷ *Id.* at 32.

⁹⁸ Melissa E. Dichter & Richard J. Gelles, *Women’s Perceptions of Safety and Risk Following Police Intervention for Intimate Partner Violence*, 18 VIOLENCE AGAINST WOMEN 44, 45 (2012).

⁹⁹ *About the Socio-Ecological Model*, UNIV. MINNESOTA CTR. FOR LEADERSHIP EDUC. IN MATERNAL & CHILD HEALTH, <https://mch.umn.edu/sem/#:~:text=The%20%E2%80%9C%20socio%20ecological%20model%E2%80%9D,influences%20and%20nested%20environmental%20interactions> (last visited Feb. 2, 2023).

¹⁰⁰ *The Social-Ecological Model: A Framework for Prevention*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/violenceprevention/about/social-ecologicalmodel.html> (last accessed Aug. 17, 2022).

¹⁰¹ *Id.*



(Image from: *The Socio-Ecological Model: A Framework for Prevention*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/violenceprevention/about/social-ecologicalmodel.html>)

The individual level focuses on a person’s biological and personal history.¹⁰² Factors on this level include age, education level, income, and history of substance abuse.¹⁰³ Generally, women who are young, have little education, or are part of a low-income bracket are more susceptible to coercive control.¹⁰⁴ The relationship level focuses on close relationships a person has that may increase their risk of experiencing intimate partner violence.¹⁰⁵ These relationships can be between intimate partners (both previous and current), close friends, and family members.¹⁰⁶ For example, a person who was raised in a household where fights, tension, or abuse was common may be more likely to accept that dynamic in an intimate relationship.¹⁰⁷

The community level focuses on the settings in which close relationships occur, such as at school or at home, and examines the dynamics of the setting to determine if there are characteristics that may increase a person’s likelihood of experiencing violence.¹⁰⁸ Where the relationship level focused on interactions within relationships, the community level is focused on the spaces where those relationships exist. Factors in this level include how socially connected neighborhood residents are, the income level of a neighborhood, and the rate residents move in and out of the area.¹⁰⁹ If there is little neighborhood interaction and residents move in and out frequently, a person may feel isolated and would be more susceptible to being coercively controlled because her social support network is not strong. Factors at the community level also include a person’s knowledge of nearby abuse-related resources.¹¹⁰ These resources include emergency rooms, restraining orders, and other medical or legal services.¹¹¹ For people with disabilities, accessibility of community resources is a particularly crucial factor.¹¹² If resources

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Suman Kanougiya et al., *Predictors of spousal coercive control and its association with intimate partner violence evidence*, INDIA - NATIONAL FAMILY HEALTH SURVEY-4 1, 9 (2015-2016).

¹⁰⁵ *The Social-Ecological Model: A Framework for Prevention*, *supra* note 100.

¹⁰⁶ *Id.*

¹⁰⁷ CENTERS FOR DISEASE CONTROL AND PREVENTION, *THE SOCIAL-ECOLOGICAL MODEL: A FRAMEWORK FOR VIOLENCE PREVENTION* 2, https://www.cdc.gov/violenceprevention/pdf/sem_framework-a.pdf.

¹⁰⁸ *The Social-Ecological Model: A Framework for Prevention*, *supra* note 100.

¹⁰⁹ *THE SOCIAL-ECOLOGICAL MODEL: A FRAMEWORK FOR VIOLENCE PREVENTION*, *supra* note 107 at 2.

¹¹⁰ Miranda Sue Terry, *Applying the Social Ecological Model to Violence Against Women with Disabilities*, 3 J. WOMEN’S HEALTH CARE 1, 4 (2014).

¹¹¹ *Id.*

¹¹² *Id.* at 5.

are inaccessible to women with disabilities, their vulnerability to experiencing and remaining in abusive situations significantly increases because they have little to no access to supportive services.

The societal level examines broad societal factors, including social and cultural norms, social policies, and education that may create a climate in which violence is acceptable or discouraged.¹¹³ Societal factors include but are not limited to; discriminatory treatment in numerous different fields, levels of poverty, limited professional training in domestic violence and coercive control, lack of screening tools for domestic violence and coercive control, stereotyping, language barriers, and immigration status. Factors at the societal level also include social norms and legislative policies. The United States operates under a patriarchal, capitalistic system. What is considered acceptable and normal, even if that is changing, plays a role in shaping a person's experiences and expectations for themselves.

Prior experiences of domestic violence

A person who has previously experienced domestic violence has an increased susceptibility for future violence.¹¹⁴ All trauma is cumulative, so trauma experienced from a prior experience with domestic abuse, or any other kind of trauma, can be exploited by an abuser choosing coercive control tactics. Additionally, someone who has prior experiences with domestic abuse may experience PTSD, intergenerational transmission of trauma, disrupted attachment, overdeveloped fawning response to fear, or other effects. This could cause someone to desire stability, affection, or consistency in future intimate relationships or adopt the submissiveness they learned from an abused parent.

Recognizing Tactics of Coercive Control in Client Narratives

Coercive control, like trauma, builds upon itself over time. Since violence is not necessary for coercive control to be effective, certain instruments and tactics may not initially appear abusive to the survivor. For example, at first, a new partner's desire to spend all his time with his victim may seem to her romantic. Maybe there are a few arguments, or maybe he makes a few degrading comments. Over time, the desire for the victim to stop spending time with anyone but her partner loses its initial romantic appeal. The degrading comments are no longer few or far between; they are frequent, and the victim internalizes them more. Each instrument or tactic is but one tool in a larger toolbox, implemented over a continual period. Even when looking at individual tactics that are commonly used, the crucial point is that each tactic is not used in a vacuum, but rather as one piece of a larger scheme to entrap the victim in a coercive situation where she feels stripped of her autonomy. Additionally, there can be no comprehensive list of instruments or tactics that perpetrators employ for coercive control to be effective. Specific tactics are tailored to specific victims, and are heavily dependent on the victim's

¹¹³ *The Social-Ecological Model: A Framework for Prevention*, supra note 100.

¹¹⁴ Desmond Ellis et al., *Effects of Historical Coercive Control, Historical Violence, and Lawyer Representation on Post-Separation Male Partner Violence Against Mother Litigants Who Participated in Adversarial Family Court Proceedings*, 27 VIOLENCE AGAINST WOMEN 1191, 1192 (2021).

specific vulnerabilities, past traumas, and experiences.¹¹⁵ However, there are some instruments of coercive control, like surveillance, or the belief that surveillance is occurring, that will be prevalent in most situations.

A core feature of coercive control is that the perpetrator uses intimate knowledge about his partner's vulnerabilities to coercively control her. Accordingly, each tactic a perpetrator employs is purposefully chosen based on his specific victim.¹¹⁶ Coercive control is tailored to the victim, making it extremely effective at depriving her of her free choice, and making coercive control tactics difficult to definitively determine. Some common tactics include surveillance, manipulation, exploitation, isolation, intimidation, extreme regulation, deprivation, and degradation.¹¹⁷ Additionally, a common goal of the perpetrator is to weaken the victim's access to other resources, like her familial or personal relationships.¹¹⁸ Physical violence may not be necessary to develop a strong coercive control framework. Depending on the victim and her vulnerabilities, instilling fear, or focusing on other, nonviolent tactics may have a stronger effect.¹¹⁹ Not every tactic used in coercive control is a criminal offense. Individual, seemingly minor, trivial, or unconventional tactics, when viewed as isolated events rather than as a pattern are rarely recognized to be domestic violence.¹²⁰ For example, monitoring a victim's daily activities, particularly those that fit within the stereotypical expectations of a partner's role, may go unnoticed by police or courts.¹²¹ Yet, this surveilling behavior from a perpetrator may be an indicator of a greater pattern of coercive control. It is the cumulative tactics of coercive control that rise to the level of domestic violent amounting to psychological abuse.

Some survivors experienced domestic abuse as a child at the hands of a family member. All trauma is cumulative and growing up in an environment where domestic violence is common can make a person more susceptible to experiencing domestic violence and coercive control later in life. Additionally, psychological effects of abuse faced as a child can be a vulnerability that a perpetrator of coercive control exploits.

Isolation

Isolation is a common tactic of coercive control because it erodes the social support systems a survivor may have had, forcing her to rely solely on her abuser. A perpetrator can isolate his victim by controlling who she can speak to and when she can leave the house. He can take her cell phone or other communication tools away from her or monitor how she uses them. He can feed her false information about her friends and family in an attempt to drive a wedge between her and her social support. If a victim feels isolated, she may be less likely to leave her abuser and more likely to obey and appease him because she may feel she has no option but to

¹¹⁵ Jenny E. Mitchell & Chitra Raghavan, *The Impact of Coercive Control on Use of Specific Sexual Coercion Tactics*, 27 VIOLENCE AGAINST WOMEN 187, 188 (2021).

¹¹⁶ *Id.* at 187-88.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 188.

¹²⁰ Evan Stark, *Looking Beyond Domestic Violence: Policing Coercive Control*, *supra* note 18, at 204.

¹²¹ *Id.* at 209.

maintain her relationship. Isolation may also prevent her from seeking advice or help from others to change her situation.

Intimidation, manipulation, degradation, and gaslighting

Intimidation, manipulation, degradation, and gaslighting are all techniques used to diminish the self-worth of the victim of coercive control by frightening her and challenging her perception of what is truly happening. A perpetrator can gaslight his victim by denying her account of reality and telling her what she feels is untrue and wrong. Over time, as he repeatedly gaslights her version of reality, she becomes unsure if her perception of an abusive situation is accurate or if she is at fault for causing abuse to be done to her. An abuser can intimidate or manipulate his victim by threatening her and exploiting her anxieties and vulnerabilities. For example, if a victim of coercive control grew up homeless, an abuser may threaten to lock her out of the house or leave her homeless again if she fails to comply with his demands. In this way, he exerts control, intimidates her, and manipulates her existing trauma to ensure her obedience.

Micro-regulation

A perpetrator will regulate or micro-regulate the daily actions of his victim. This is how coercive control permeates into the fabric of everyday reality; a victim faces constant, around the clock regulations and demands from her partner. Micro-regulation tactics are demeaning. An abuser's control over seemingly minor aspects of his partner's life devalues and undermines her self-worth. Her ability to choose is taken away for even minor tasks. Micro-regulation promotes dominance and control of the abuser and subordination and obedience of the victim.

Micro-regulation can also increase the fear a victim feels in her relationship. The more daily activities are specifically regulated, the more opportunity for an abuser to be displeased with what his victim does. He does not need to repeat demands daily; he can make it clear once or a few times what is expected and what the consequence is for failure to obey. He may demand his partner vacuum in a certain way, wear certain things, style her hair a certain way, or only speak to certain people. These demands create an entrapment, where every part of a victim's life is controlled by her perpetrator.

There are innumerable ways a perpetrator can micro-regulate his partner. He can control what she wears, where she can go, who she can spend time with, or what she can buy. He can check the odometer on her car to see the distance she has traveled each day and ensure that she goes only where he tells her to go. He can control what types of food are in the house, or what she is allowed to eat. He can tell her when she can go to sleep and wake up, or where she is allowed to sleep in the house. There are also regulations an abuser can enforce that are more uncomfortable to inquire about. For example, an abuser can require that his partner only have unprotected sex with him or that their sexual activities must be videotaped. A perpetrator can maintain further power over his victim once she obeys with a requirement that she feels to be demeaning because he can threaten to tell or show others about what she has done.

Sexual coercion

Sexual coercion is the nonviolent persuasion of an unwilling partner to engage in nonconsensual sex.¹²² Sexual coercion involves tactics that are common to the greater scheme of coercive control, including verbal coercion and manipulation.¹²³ Sexual coercion can be part of a coercively controlling framework. Higher levels of coercive control increase the likelihood of sexual coercion.¹²⁴ Additionally, higher levels of coercive control increase the likelihood that a perpetrator will use exploitation, pressure, relational threats, bullying, and his partner's feelings of helplessness and hopelessness to sexually coerce her.¹²⁵ These six subtypes of sexual coercion are also general tactics that could be employed by a perpetrator of coercive control. A technique of coercive control can be to reward and punish the victim, including with sexual behavior.¹²⁶ A victim may feel hopeless or helpless and comply with the sexual demands to placate an abusive partner.¹²⁷ Relational threats include threats from a perpetrator that the relationship will end, or that the victim is not fulfilling her duties as an intimate partner and therefore deserves to be abused and controlled.¹²⁸ Bullying and exploitation focus on diminishing the self-worth of a victim, making her feel like she does not deserve other experiences.¹²⁹ Additionally, a perpetrator can use his own infidelity as a technique to coercively control his partner. For example, a perpetrator may threaten his partner with further abuse if she discovers his unfaithfulness.¹³⁰

Sexual coercion is a specific tactic within coercive control that a victim may not initially identify as part of a coercive control framework. Sex is expected between intimate partners, so it can be difficult for a survivor to place her own experience as one of sexual violation and not one of fulfilling societal expectations.¹³¹ Sexual coercion can be often overlooked because of societal expectations but may be an indicator of a coercive control pattern within an intimate relationship.¹³²

How Does an Abuser Select Tactics of Coercive Control?

Perpetrators of coercive control intentionally choose their abusive tactics. Coercive control does not happen randomly. An abuser systematically learns about his victim and then uses that intimate knowledge to force her subordination. A perpetrator understands his victim's anxieties and exploits them to get his own way.¹³³ Coercive control is especially harmful because of the manipulation of a victim's information that only someone in a domestic situation would

¹²² Mitchell & Raghavan, *supra* note 115 at 189.

¹²³ *Id.*

¹²⁴ *Id.* at 197.

¹²⁵ *Id.*

¹²⁶ *Id.* at 198.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ Ebony A. Utley, *Infidelity's Coexistence With Intimate Partner Violence: An Interpretive Description of Women Who Survived a Partner's Sexual Affair*, 81 WESTERN J. COMM'N 426, 436 (2017).

¹³¹ Mitchell & Raghavan, *supra* note 115 at 200.

¹³² *Id.* at 201.

¹³³ *Abdur-Razzaq*, 60 Misc. 3d at 636-37.

know. Strangers cannot coercively control strangers because they lack the insider information needed to select effective tactics. An abusive partner will identify a victim's specific vulnerabilities and exploit them. For example, if a victim desires security or affection, a perpetrator will withhold or threaten a victim's access to those specific desires. A victim's fear of another abuser, being homeless, or losing a child are all vulnerabilities that are frequently exploited for coercive control. This is why there is no singular definition of coercive control tactics or strategies; abusers are creative and they tailor their abuse to the victim.

What Are the Psychological Effects of Coercive Control on the Victim?

Coercive control can cause feelings of fearfulness, depression, anxiety, posttraumatic stress disorder (PTSD), suicidal thoughts, and substance abuse.¹³⁴ Clients may be dealing with traumatic psychological effects that they are not fully aware of. Also, the issues of physical and mental health effects are compounded when considering the impact of racism and other oppressions on survivors, as well as their unique cultural context.¹³⁵ Mental and physical health effects of domestic violence, especially of coercive control, can only be fully understood when considering the intersection of race, gender, ethnicity, socioeconomic states, and other societal elements.

All trauma is cumulative. Domestic violence experienced as a child can remain with a person as they age and enter their own intimate relationships. Children who witness domestic violence have social and emotional adjustment issues.¹³⁶ Psychological effects developed from a prior experience with domestic violence remain with a survivor who is suffering under coercive control. Even if her prior trauma is unrelated to the perpetrator of coercive control, the effects of the trauma remain and can worsen the impact of the current coercive control.

While there are common psychological effects of coercive control and domestic violence, each survivor may exhibit a unique set of psychological effects. There are different factors that can account for the variety of effects and varying degrees a survivor of coercive control feels. For example, lack of social support, including family, friends, and social support systems, and negative life events can negatively affect psychological functioning.¹³⁷ Many women in coercively controlling situations have few social connections or relationships outside of their partner.¹³⁸ Isolation is a tactic used to exert coercive control over a partner, and the lack of social support can result in increased feelings of depression or traumatization in victims.¹³⁹

¹³⁴ Tricia B. Bent-Goodley, *Health Disparities and Violence Against Women: Why and How Cultural and Societal Influences Matter*, 8 TRAUMA, VIOLENCE, & ABUSE 90, 92 (2007).

¹³⁵ *Id.*

¹³⁶ Alytia A. Levendosky & Sandra A. Graham-Bermann, *Parenting in Battered Women: The Effects of Domestic Violence on Women and Their Children*, 16 J. FAM. VIOLENCE 171, 172 (2001).

¹³⁷ *Id.* at 186.

¹³⁸ *Id.* at 187.

¹³⁹ *Id.*

Trauma and stress induced conditions

Trauma and stress induced disorders can occur after a person is exposed to certain traumatic or stressful events. A common trauma and stress related psychological effect on survivors of domestic violence is Post-Traumatic Stress Disorder (PTSD). Other trauma or stress related disorders, such as acute stress disorder and adjustment disorders, can also be long-lasting psychological effects of experiencing domestic abuse.

Post-traumatic stress disorder (PTSD)

PTSD is characterized by the development of distinctive symptoms after experiencing traumatic events.¹⁴⁰ PTSD can be especially long-lasting when the initial trauma was interpersonal and intentional, like sexual violence.¹⁴¹ PTSD does not present the same way in every person, and not all people who experience trauma develop PTSD. PTSD can develop in response to experiencing or witnessing actual or threatened death, serious injury, or sexual violence, or learning that traumatic events happened to a friend or family member.¹⁴² Symptoms can be behavioral, emotional, or fear-based, or individuals can predominantly experience distressing moods and negative conditions. Those with PTSD can also experience arousal, dissociative symptoms, reactive-externalizing symptoms, or a combination of multiple symptom patterns.¹⁴³

While there are numerous potential triggers that can cause PTSD, most relevant to coercive control are threatened or actual physical assault, childhood physical abuse, threatened or actual sexual violence, noncontact sexual abuse, being kidnapped, or witnessing traumatic events.¹⁴⁴ After the trauma occurs, individuals with PTSD will experience one or more intrusive symptoms associated with the traumatic events that occurred that cause “clinically significant distress” or impair important areas of functioning, and these disturbances will last for more than one month.¹⁴⁵ PTSD can have delayed expression in individuals, meaning that the full diagnostic criteria is not met until at least six months after the traumatic event(s).¹⁴⁶ An individual with PTSD may experience “recurring, involuntary, and intrusive distressing memories of the traumatic events,” have flashbacks or other dissociative reactions, physiological reactions to triggers that cue the past traumatic events, and long-term psychological distress.¹⁴⁷ Individuals with PTSD may also lose memory of the traumatic events and may avoid situations, people, places, activities, or objects that provoke distressing memories from the trauma experienced.¹⁴⁸ PTSD can also exaggerate negative feelings about oneself and can cause the individual to have a distorted perception about the cause of the traumatic events.¹⁴⁹ Further, individuals with PTSD

¹⁴⁰ AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 274 (Am. Psychiatric Ass’n, 5th ed. 2013).

¹⁴¹ *Id.* at 275.

¹⁴² *Id.* at 271.

¹⁴³ *Id.* at 274.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 271-2.

¹⁴⁶ *Id.* at 272.

¹⁴⁷ *Id.* at 271.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 272.

may remain in a negative emotional state or display angry outbursts, irritable behavior, self-destructive behavior, exaggerated startle response, difficulty sleeping, or difficulty concentrating.¹⁵⁰ PTSD is one common example of the long-lasting, detrimental effects coercive control has on its victims.

Other trauma and stress related disorders

Survivors of domestic violence experience a wide-ranging variety of psychological effects. Each survivor lives with the psychological effects of domestic abuse in a different way. For some survivors, PTSD may be the primary avenue domestic abuse continues to impact their lives after the actual abuse ends. For others, different trauma and stress related disorders may be more prevalent, especially if a survivor does not meet all of the diagnostic criteria for PTSD. These disorders can include, but are not limited to, acute stress disorder, adjustment disorders, or other specified and unspecified trauma-and-stressor-related disorder.¹⁵¹ Essentially, a survivor's exposure to trauma in the form of coercive control and other domestic abuse can significantly change her psyche. Noticing a survivor's negative mood, dissociative reactions, avoidance of traumatic memories, hypervigilance to questions, or extreme stress or anxiety can be an indicator that they are experiencing a lasting psychological effect of domestic abuse.¹⁵²

Trauma-Coerced attachment (trauma bonding)

Trauma-coerced attachment is a trauma response in which victims form a strong emotional bond with their abusive partners.¹⁵³ Trauma bonding does not occur in every abusive relationship, but conditions that make trauma bonding more likely to occur include perceived threat to one's physical and psychological self at the hands of the abuser, perceived kindness from the abuser, isolation, and inability to escape.¹⁵⁴ Trauma bonds can be formed through the interaction of abusive control dynamics; the exploitation of power imbalances; and perpetrator inflicted punishments and rewards.¹⁵⁵ Victims who experience trauma-coerced bonding have a cognitive shift in their internal perspective because the perpetrator has effectively diminished their sense of self.¹⁵⁶

The cycle of trauma-coerced bonds includes periods of abuse, control, and dependency, but also periods of love, admiration and gratefulness.¹⁵⁷ The cycle of violence usually begins with tension building in the relationship, the perpetrator violently releases the tension and blames the victim for doing so, and then the perpetrator attempts to reconcile the situation by acting affectionate.¹⁵⁸ This cycle continues, bonding the partners in a cycle of violence. Self-blame and

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 280-90.

¹⁵² *Id.* at 280-86.

¹⁵³ Chitra Raghavan & Kendra Doychak, *Trauma-Coerced Bonding and Victims of Sex Trafficking: Where Do We Go from Here?*, 17 INT'L J. EMERGENCY MENTAL HEALTH 583, 583 (2015).

¹⁵⁴ Joan A Reid et al., *Contemporary Review of Empirical and Clinical Studies of Trauma Bonding in Violent or Exploitative Relationships*, 8 INT'L J. PSYCH. RSCH. 37, 38 (2013).

¹⁵⁵ Raghavan & Doychak, *supra* note 153 at 583.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 584.

¹⁵⁸ Reid et al., *supra* note 154, at 47.

lowered self-worth are common effects of trauma bonding on the survivor. Victims may feel as though abuse happened to them because of something they did wrong.¹⁵⁹ This self-blame can be a factor in why victims do not leave their abusive situations.

Victims who experience trauma bonding with their abuser may be less inclined to report the abuse, or to even realize the extent to which it is occurring. Victims may fear their family breaking up, their abuser going to jail, and may feel shame and self-blame for the abuse occurring at all.¹⁶⁰ Victims of trauma bonding may also deny their own victimization and have difficulty leaving their partner because of the emotional bonds formed.¹⁶¹ Trauma bonding can also create challenges when asking for victim testimony. If a victim has experienced trauma bonding with her partner, she may be unwilling to say negative things about her partner, even though he has abused her. She may still be in love with her abuser and fears that her testimony will send him to prison, upsetting him and separating their relationship. Her partner may apologize to her before she considers seeking legal help, promising not to hurt her again, deterring her from seeking legal recourse. She may change her testimony because of threats from her abuser or conflicting feelings about speaking out against him. This does not mean a victim's experiences are not credible. It does not mean the abuse a victim experienced is more minor than she initially expressed. Trauma bonding is a strong emotional bond created from the cycle of violence. Even if a victim knows she is being abused, her feelings of love for her abuser do not immediately disappear.

A useful explanation of trauma bonding is provided in *People v. Abdur-Razzaq* and helps explain why the victim becomes submissive to her abuser's demands, seeks to placate him, remains in the relationship, and idolizes her abuser.¹⁶²

What Are the Behavioral Effects of Coercive Control on the Victim?

In coercively controlling relationships, victims learn to placate their partners through compliance in an attempt to avoid negative consequences. Women respond to coercive control by internalizing controls placed on them and learning to anticipate future demands from their partner.¹⁶³ An "unreality" is created for victims of coercive control, where they must internalize and anticipate demands and controls from their abuser partners.¹⁶⁴ The perpetrator determines the expectations and rules their victim must follow. In the perpetrator's unreality, the victim acts to please her partner, not out of her own autonomy.¹⁶⁵ In a coercively controlling relationship, a victim's learned behaviors are those that appease her controlling partner. Those behaviors can include daily activities, such as a partner's demands that the carpet must be vacuumed a specific way, a victim's hair must be cut and styled a specific way, and other easily overlooked,

¹⁵⁹ *Id.* at 48.

¹⁶⁰ *Id.* at 55.

¹⁶¹ *Id.* at 56.

¹⁶² *Abdur-Razzaq*, 60 Misc. 3d at 636-37.

¹⁶³ Emma Williamson, *Living in the World of the Domestic Violence Perpetrator: Negotiating the Unreality of Coercive Control*, 16 VIOLENCE AGAINST WOMEN 1412, 1415 (2010).

¹⁶⁴ *Id.* at 1416.

¹⁶⁵ *Id.*

microregulated activities that impact daily life. These learned responses do not cease once a relationship ends. Coercive control causes a victim to become submissive, dependent, and obedient to her partner. Her behaviors become focused on pleasing her partner and acting in accordance with his explicit and implicit wishes.

As a result of being trapped in a coercively controlling relationship, the victim may remain in that relationship and agree to participate in criminal conduct that she would not otherwise participate in, so as to please her abuser and to maintain the relationship.

However, importantly, submissiveness and self-defense are not mutually exclusive. Victims living with a coercively controlling situation may use violence or self-defense. A victim can be submissive and still have a “breaking point,” or a moment when her coping mechanisms change from obedience and anticipating her partner’s desires to self-defense.

Behavioral effects and children

Children can be coercively controlled by a parent. Additionally, children can be used as a tool by a perpetrator to ensure a victim complies with his demands. Coercive control may undermine the relationship a mother has with her child. A mother may feel forced to prioritize the needs of her coercively controlling partner over her child’s needs.¹⁶⁶ Children exposed to domestic violence can develop trauma that affects their lives long after the domestic violence ends.¹⁶⁷ Children can develop emotional attachment disorders or become more susceptible to experiencing coercive control in their future relationships.

What Is the Relationship Between Coercive Control and the DVSJA’s Requirements that the Domestic Violence Be a “Significant Contributing Factor” to the Defendant’s Criminal Behavior?

The DVSJA requires that the domestic abuse be a “significant contributing factor to the defendant’s criminal behavior.”¹⁶⁸ Coercive control impacts victims in several ways. Understanding how coercive control breaks down a victim’s will and her ability to make her own choices and exercise autonomy helps illuminate how coercive control can be a significant contributing factor to a defendant’s criminal behavior. The coercive control a victim experienced does not have to be the sole reason for her criminal actions. It does not even need to be the “overriding factor” for her criminal behavior.¹⁶⁹ Under the DVSJA, a significant contributing factor “does not mean the trauma has to be the causal factor of the crime...”¹⁷⁰ The defendant does not have to be “in the throes of an attack” or have an attack be imminent.¹⁷¹ To determine if the domestic violence was a substantial contributing factor to the criminal conduct, a court “must

¹⁶⁶ Ravi Thiara & Cathy Humphreys, *Absent presence: the ongoing impact of men’s violence on the mother–child relationship*, 22 CHILD AND FAMILY SOCIAL WORK 137, 139 (2017).

¹⁶⁷ *Id.* at 143.

¹⁶⁸ N.Y. PENAL LAW § 60.12

¹⁶⁹ *People v. S.M.*, 72 Misc. 3d 809, 814 (Erie County Ct 2021).

¹⁷⁰ *Id.*

¹⁷¹ *Smith*, 132 N.Y.S.3d at 258.

evaluate a defendant's conduct in light of the cumulative effect of her abuse."¹⁷² Essentially, explaining how the cumulative impact coercive control has on a victim and how that impact can lead to criminal conduct can be sufficient under the DVSJA "significant contributing factor" requirement.

Importantly, coercive control exerts a different influence on a victim than direct coercion. While a victim can be directly coerced and forced into committing a crime, coercive control generally operates on a more subtle level. By the time a victim commits a criminal act, her will to resist her partner's demands and sense of autonomy has been eroded. Likely, she has learned how to appease her abuser by complying with his requests or inferring what his next requests may be. Her abuser may not have needed to expressly demand or physically force her to engage in criminal conduct. His needs and desires were internalized by his victim. Coercive control can be built on trauma bonds. Trauma bonding is common in abusive relationships where a victim is stuck in a cycle of violence, characterized by intermittent periods of adoration and punishment. In order to remain in the adoration phase, a victim is more likely to be submissive to her partner, adopt his worldview, and aim to please him. Coercive control can exploit attachment disorders a victim developed as a child. If a victim was neglected or abused as a child, she may crave affection and stability. Her desire to maintain a relationship may lead her to become loyal to a partner who shows her care, even if he is also abusive. Coercive control may cause fawning, a fear response where a victim aims to placate her abuser to avoid punishment. This fear response can further increase the likelihood that a victim will behave in accordance with her abuser's desires and demands. Each of these theories are parts of the coercive control framework. Each piece works together to increase a victim's submissiveness and destroy her self-image. Over time, she is influenced by her partner without the need for him to explicitly make demands. These building blocks influence a victim's every move and make coercive control a significant contributing factor to a defendant's criminal conduct.

At the time of the initial sentencing, the defendant's criminal acts may have appeared unmitigated, and the judge did not understand the factors that drove the defendant to commit a criminal act. The DVSJA allows for the abusive circumstance a defendant faced to be considered, not as a defense, but a mitigation to explain the behavior. If a judge can understand the reason for a defendant's conduct, they will understand why a lesser sentence is appropriate. A defendant who was abused is not simply a wrongdoer; she is a victim, driven to commit criminal acts in part because of the domestic abuse she faced. Her criminal conduct could be a crime of reaction, committed to escape or defend herself from her abusive partner, or a crime of appeasement, done with the hope of preventing further abuse by her partner. The more the judge understands the mitigation, the more the likely sentence can be ameliorated. Victims of domestic abuse may participate in criminal activity out of fear or survival instincts, particularly if they harm their abusive partners to escape an abusive situation. Explaining coercive control as a "significant contributing factor" is about creating compassion and understanding for a defendant's actions.

¹⁷² *Id.*

Educating the judge during the course of the hearing about coercive control and its pernicious effects is key to convincing the judge that the abuse that victimized your client was a “significant contributing factor” to her criminal behavior.

Interviewing and Screening a Survivor of Coercive Control

Approach your DVSJA client as you would any survivor of trauma. Whether you are interviewing and screening for physical abuse, sexual abuse, psychological abuse or coercive control, keep in mind that they all are likely to have the same effect on your client – trauma. Assume that your client is still suffering from the effects of trauma. Thoughtful preparation, communication, and attention to a trauma-informed approach will help you provide your client with the representation needed to successfully have her story told and appreciated and have her sentence ameliorated.

A trauma-informed representation

The emergence of trauma theory has created a significant shift in the way we understand the role of domestic abuse and trauma’s effects on the behavior of survivors. Over the last decade this concept has been developed for use in many different programs, organizations, and systems by the U.S. Department of Health and Human Services (SAMHSA). The 4 R’s represent the four key assumptions in trauma-informed representation.¹⁷³ Using a trauma-informed approach you should:

- **Realize** the impact of trauma on your client.
- **Recognize** the signs and symptoms of trauma.
- **Respond** by integrating knowledge about trauma into all facets of representation, to your client, to your approach to the case, to your advocacy, and to the court.
- **Resist** retraumatization of your client in every interaction, every question you ask, and every decision you make.

The central goals of trauma-informed representation are to reduce retraumatization, recognize the role that trauma plays in the lawyer-client relationship, and to improve your legal advocacy by recognizing the effects of trauma.

Your first interview with your client is crucial. If she develops an initial impression that you are untrustworthy, judgmental, or do not understand her experiences, your client may shut down and refuse to provide you the information about her abuse that you need to represent her effectively. Developing a relationship based upon trust is critical. This trust will be built upon how you communicate, your ability to be transparent, and your recognition and empathy for your client’s traumatic experiences and the risk of retraumatization, during your interviews and at a hearing. If you are able to understand and identify the characteristics of abusers and their strategies of coercive control this will help build trust with your client.

Many survivors have had negative experiences with the legal system and may not understand the process. By explaining your role and the role of others involved in the DVSJA

¹⁷³ SAMHSA, SAMHSA’S CONCEPT OF TRAUMA AND GUIDANCE FOR A TRAUMA-INFORMED APPROACH 9 (2014), https://ncsacw.acf.hhs.gov/userfiles/files/SAMHSA_Trauma.pdf.

process, and what can happen during the course of representation, you can alleviate the stress and anxiety your client is feeling and build the trust that is necessary. When your client feels comfortable, she is more likely to share the intimate details of her abuse that are so important to the case.

Some helpful strategies and techniques to aid you in your trauma-informed approach include:

- Take the time to develop a rapport with your client before you have them discuss or recount traumatic experiences.
- Talk to your client about what helps them when they are triggered or reminded of traumatic experiences.
- Learn grounding techniques to help client reorient to the present when they are triggered.
- Explain to your client what to expect and how the process works.
- Explain how the DVSJA works and what will be required at a hearing.
- Talk your client through the process step by step.
- Be patient if your client is struggling to recount (and may be reliving) some of the worst moments of her life.
- Involve the client in decision-making and solutions.
- Involve peers and other survivors if possible.

An essential component of being trauma-informed is to understand these behaviors not as character flaws or symptoms of mental illness, but as strategies or behavioral adaptations developed to cope with the physical and emotional impact of past trauma.¹⁷⁴

Interviewing and screening

There are three types of interview techniques and it may be necessary, over time, to employ all three in order to get all the information that you need. The three basic techniques are:

- open-ended questions
- structured interview
- questionnaire

In most instances you will want to start interviewing with open-ended questions. Essentially you are giving your client the opportunity to tell her story in her own words, uninterrupted. Give her the opportunity to speak as expansively as she can. This will make the client feel comfortable and serve to build trust in you by telling you her story. Once you feel that your client is comfortable with her relationship with you, you can move to a structured technique.

The purpose of the structured interview is to focus the questions on concrete details of her circumstances and abuse. When the client is speaking you can focus your questions on

¹⁷⁴ SAMSHA, DRAFT FOR REVIEW AND COMMENT: ESSENTIAL COMPONENTS OF TRAUMA-INFORMED JUDICIAL PRACTICES: WHAT EVERY JUDGE NEEDS TO KNOW ABOUT TRAUMA 3 (2013), https://www.nasmhpd.org/sites/default/files/DRAFT_Essential_Components_of_Trauma_Informed_Judicial_Practice.pdf.

specific details. When your client's descriptions are vague or lack details, ask questions about specifics to help her remember concretely what was going on. This will help get to the details.

A questionnaire is as much a tool to help you as it is to help the client. The questionnaire will help remind you of details and questions that you want to ask about. Sometimes it is useful to go over the questionnaire together. The questionnaire helps you recall conduct and behavior that needs to be developed. Similar to a questionnaire, the power and control wheel can be used to help you review the different facets of domestic abuse with your client.

Telltale signs of Coercive Control

From the literature some telltale signs of coercive control are identified that may help you recognize coercive control in your case. Listed below are some of the tactics of coercive control, but it is not an exclusive list.

1. Isolation and restriction of freedom
2. Emotional abuse
3. Power imbalance – establish and maintain
4. Pattern of coercive and abusive behaviors
5. Threats and intimidation creating fear and anxiety
6. Engendering fear through physical violence, direct or indirect, or other intimidation
7. Monitoring and surveillance
8. Gaslighting
9. Control of finances
10. Control of decision-making
11. Degrading/ humiliating/ dehumanizing/ blackmail
12. Destruction of property
13. Control of sex life/sexual coercion/intimidation
14. Punishment and rewards used for manipulation
15. Micro-regulation – food – drinks – clothes – rules for everyday living – activities – friends
16. Non-constructive criticism
17. Constantly changing expectations for victim's behavior
18. Shifting blame to victim
19. Change in relationship – initially intimate partner loving, attentive, and caring but changes to demanding, entitled and abusive
20. Unreasonable demands followed by threats and pressure
21. Manipulating use of the children
22. Reinforcement of gender roles
23. Making jealous accusations
24. Demands to engage in criminal conduct
25. Tactics tailored to fit victim specific vulnerabilities
26. Jealousy and possessiveness
27. Display of weapons
28. Causing injury or threats to others

Abuse looks different for everyone. Not every abusive partner uses all these tactics or uses them in the same way. Abuse may happen slowly and get worse over time. If one partner

uses a pattern of behaviors to maintain power and control, that is abuse, even if it is not on this list.

Looking for patterns

Coercive control extends across a continuum. It is not just a few isolated incidents. While there may be a few incidents of physical violence or more “obvious” moments of abuse, those incidents do not reveal the extensive framework of coercive control. Does the perpetrator threaten to use physical violence again if his victim does not do as he pleases? Did the few, isolated, “major” incidents increase the fear a victim felt? Did her obedience become more regular? Is there a pattern of a “major” incident happening after a victim does not appease her abuser? Are the “major” incidents really isolated, or do they fit within a greater scheme of demands and compliance? Context matters. Looking to understand the context in which events occurred can help uncover coercive control in a relationship. Coercive control is a pattern of tactics employed to systematically deprive the victim of her independence. Not every abusive relationship is coercively controlling, but some are. Focusing on single incidents as opposed to looking for potential patterns will keep the reality of coercive control hidden. Seemingly unrelated details of your client’s experience may begin to emerge as part of a pattern of abuse, if you are aware that a pattern is what you are looking for and you are skillful in your interviewing.

Focusing on single incidents as opposed to looking for potential patterns will keep the reality of coercive control hidden.

Careful language

Not every victim believes she is a victim. Some survivors of coercive control do not recognize the extent to which they have been abused and controlled. Others simply may not prefer the term victim. Immediately referring to her experience as one of a victim/abuser may not be effective because the survivor may not see her experiences that way. As a survivor shares her experience and starts to come to terms with her own narrative, she may start to come to terms with the domestic abuse that occurred. When screening a client for DVSJA cases, insisting on labels to characterize the person or their experiences may have the opposite of the intended effect. The survivor may be adamant that she never was a victim and may refrain from sharing more details of her experience. Helping a client talk through her experiences and frame her narrative can help her come to terms with her own experiences in a way she has not previously done.

Cultural competency

Culture matters. It is impossible to fully understand the impact of coercive control on a survivor without understanding her intersecting identities; racial, ethnic, cultural, socioeconomic, and other influential factors. Broad screening questions designed to fit the full needs of *every*

client will do little for *any* client.¹⁷⁵ Of course, a “toolkit” of screening questions can be helpful, but any screening questions should be a guide, and not a script. Cultural competency is not about pinpointing differences in cultural expectations that create a cultural “other” full of shortcomings; it is about recognizing the cultural framework a client is immersed in to allow for opportunities to better engage survivors of domestic violence and coercive control.¹⁷⁶

In *Towards a Culturally Competent System of Care*, Cross et al. define cultural competency as “a set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals and enable that system, agency, or those professionals to work effectively in cross-cultural situations.”¹⁷⁷ The use of the word “culture” includes the “thoughts, communications, actions, customs, beliefs, values, and institutions of a racial, ethnic, religious, or social group.”¹⁷⁸ Cultural competency requires understanding the importance culture plays in all aspects of life, the role of cross-cultural influences, expanding one’s own cultural knowledge, and tailoring services as possible to meet a person’s unique needs.¹⁷⁹

Cultural competency is not a skill that can be learned and mastered, because cultures are diverse and ever-changing.¹⁸⁰ Cultural competency is an ongoing process and commitment to understanding the role culture plays in shaping a client’s perspective. The journey to be a more culturally competent lawyer starts with understanding one’s own culture and then developing a willingness to research, learn, and respect a client’s cultural perspective.¹⁸¹ Clients with different cultural backgrounds may have varying perspectives towards domestic violence, gender roles, and the legal system. It would be difficult, if not impossible, to give adequate support to a client without exploring her cultural background. Cultural blindness, or the belief that different racial and cultural backgrounds make no difference to a person, is especially harmful in a legal setting.¹⁸² For example, some expectations and policies that appear to support survivors may have a different impact amongst people of color, who face different challenges within the American legal system.¹⁸³ A culturally blind lawyer would not be able to connect this reality with a client’s experiences, and some of the client’s experiences would inevitably be left out of the narrative.

Cultural competency improves relationships with clients because each client will feel more included and better represented in the legal process. Although clients seeking relief under

¹⁷⁵ Bent-Goodley, *supra* note 134, at 98.

¹⁷⁶ *Id.* at 93-94.

¹⁷⁷ Terry L. Cross et al., *A Culturally Competent System of Care* (March 1989) (on file with CASSP Technical Assistance Center, Georgetown University Child Development Center). <https://spu.edu/-/media/academics/school-of-education/Cultural-Diversity/Towards-a-Culturally-Competent-System-of-Care-Abridged.ashx> (last accessed Nov. 11, 2022).

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ SAMSHA, *A TREATMENT IMPROVEMENT PROTOCOL: IMPROVING CULTURAL COMPETENCE*, xvi (2014), <https://store.samhsa.gov/sites/default/files/d7/priv/sma14-4849.pdf>.

¹⁸¹ *Id.*

¹⁸² Cross et al., *supra* note 177.

¹⁸³ Bent-Goodley, *supra* note 134 at 98.

the DVSJA have necessarily interacted with the legal system prior to seeking a DVSJA hearing, a culturally competent mindset can improve a client's experiences with the legal system.

Developing and respecting narratives

Narratives are foundational to the legal system. Specifically for coercive control, the experiences of a survivor and the system of control they lived under are initially shaped by retelling of their own experiences. A narrative can help a survivor regain and maintain a sense of self by showing her that she is not at fault for the domestic violence inflicted against her.¹⁸⁴

The role of a lawyer in shaping a narrative is challenging; a survivor may not initially identify herself as a survivor of coercive control, and a lawyer can help her realize the true abuse she has experienced. However, a lawyer can also accidentally erase a survivor's story to mold it to a courtroom setting. A client is very dependent on her lawyer to effectively convey to a judge the context for coercive control. Without the help of a lawyer shaping a client's narrative to meet the needs of the court, a judge may view this narrative as not compelling and unworthy of his/her empathy. Yet, it is disempowering to a client if their narrative is reshaped in a way that is inconsistent with their choices and feelings.¹⁸⁵ There is a tricky balance to be struck; shaping a narrative in a way that includes all of the facts that created a coercively controlling scheme, but not shaping the narrative so as to minimize the true experience of the survivor.

Preparation with Your DV Expert

Although some DVSJA cases can be, and have been, successfully litigated without the use of a domestic violence expert, lack of judicial familiarity with coercive control increases the need for an expert in cases involving this type of domestic abuse.

The lack of familiarity and awareness of coercive control is identified by Cindy Kanusher, the Executive Director of the Pace Women's Justice Center: "Too often, a course of behavior in domestic violence which involves coercive control or psychological or emotional abuse is not taken seriously and is downplayed despite the fact that this type of abuse is exceedingly common in domestic violence cases, is one of the major forms of power and control, and, causes severe harm to victims."¹⁸⁶

Coercive control is a core principle of domestic violence and affects the decision-making and behavior of its victims. The effects of this type of domestic violence are psychologically damaging and can have a far longer negative impact on the victim than any broken bone resulting from physical violence.¹⁸⁷ As Dollinger and Feigenbaum have recognized, New York has made inroads into making coercive control a factor in the state's jurisprudence by the enactment of the 2019 DVSJA which permits survivors of coercive control to apply for ameliorated sentencing or resentencing if there is evidence of psychological abuse.¹⁸⁸ But this

¹⁸⁴ Goodmark, *supra* note 3, at 79.

¹⁸⁵ *Id.* at 121.

¹⁸⁶ Dollinger & Feigenbaum, *supra* note 57.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

advance should not leave us to assume that the judiciary has been prepared to recognize and understand coercive control.

Although coercive control is well established as a core principle of domestic violence, recognized by the research and literature in the field of domestic violence, it has, for the most part, been absent from the educational foundation of domestic violence for many judges. The education of judges about coercive control falls to defense counsel and domestic violence experts during the course of the DVSJA hearing.

A narrow and antiquated view of domestic violence can lead an uninformed judge to limit DVSJA sentencing relief to those cases where physical abuse such as a black eye or a broken bone is demonstrated. Such a limited definition of domestic violence is obsolete and ignores the corrosive psychological abuse of coercive control in its many forms. Without the assistance of an expert, the judge might misconstrue abusive acts to be benign, myths to be reality, patterns to be unrecognized, and victims' decision-making and actions to be unreasonable.

Listed below are some of the ways that a domestic violence expert can help you and your client with a DVSJA case:

1. Educate you about coercive control. If we are educated about coercive control it will allow us to understand the truth about our client's life and enable us to help the judge know how to interpret the survivor's narrative correctly.
2. Educate the judge about coercive control by:
 - Defining and explaining coercive control.
 - Explaining that coercive control is domestic violence.
 - Helping the judge know how to interpret the survivor's narrative correctly.
 - Identifying the tactics of coercive control in the case.
 - Identifying the pattern of coercive control.
 - Identifying the tactics of coercive control.
 - Explaining the effects of coercive control on the survivor's decision-making and behavior.
 - Identifying telltale signs of coercive control.
 - Explaining counterintuitive behavior of the survivor.
 - Explaining how coercive control can result in trauma.
 - Explaining the cumulative and compounding effects of coercive control and trauma.
 - Explaining how trauma and coercive control can have long-term effects.
 - Explaining the social context in which domestic violence occurs which will provide an accurate understanding of apparently inexplicable and illogical behavior of both the abusive partner and the survivor.
 - Explaining the context of the relationship.
 - Helping the judge understand the effects of trauma.
 - Deconstructing stereotypes and dispelling myths and misunderstandings so that misconceptions don't cloud the understanding of the judge.

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