

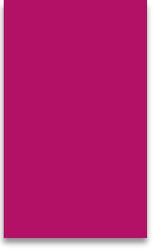
# Coercive Control in the Law: Origins and Implications of SB 1141

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*“Coercive control brings the same political principle into play that we apply in hate crimes – that acts used to subordinate a class of victims who are already unequal are unjust in a different way than acts designed to hurt persons physically and so merit different interventions.”*

Stark, E. (2007). *Coercive Control: How Men Entrap Women in Personal Life*. New York: Oxford University Press.



Stark defines coercion as “the use of force or threats to compel or dispel a particular response”

while control refers to “structural forms of deprivation, exploitation, and command that compel obedience indirectly.”

**When coercion and control occur together, he argues, the result is a “condition of unfreedom” that is experienced as *entrapment*.**

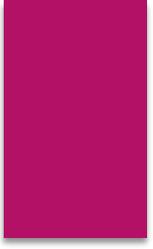
Coercive control is *traditionally gendered* as it replicates *rigid gender roles* in intimate relationships, but it can exist in any relationship involving *unequal power dynamics*.

# Intersectionalities

- ▶ POC
- ▶ Undocumented
- ▶ LGBTQ+
- ▶ Other marginalized groups facing economic and institutional barriers
- ▶ “social entrapment” (defined by James Ptacek) compounds coercive control and provides abusers with specific tactics of control.

3 components of social entrapment=

1. social isolation, fear and coercion that the predominant aggressor's coercive and controlling behavior creates in the victim's life;
2. indifference of powerful institutions to the victim's suffering; and
3. the exacerbation of coercive control by the structural inequities associated with gender, class, race, and disability.



A 2009 study by the National Institute of Justice found that “*partner control over the victim’s daily activities*” in an intimate relationship **more than quintupled the odds of homicide.**

# International Landscape

- ▶ 2015: England & Wales criminalized “coercive or controlling behavior in a family relationship” (Section 76 of the Serious Crime Act of 2015)
- ▶ Penalty of up to 5 years imprisonment
- ▶ Singular offense capturing coercive & controlling behavior
- ▶ Requires proof of “serious effect” on the victim (e.g., fear, alarm, distress)
- ▶ 2018: Scotland passed the Domestic Abuse Act of 2018
- ▶ Penalty of up to 15 years imprisonment
- ▶ Comprehensive offense encompassing range of existing crimes + coercive control
- ▶ Reasonable person standard

# Cal. Family Code vs. Cal. Penal Code

## DOMESTIC VIOLENCE

### FAMILY CODE

PHYSICAL AND SEXUAL ABUSE

HARASSMENT

DISTURBING THE PEACE

Miscellaneous behaviors  
(annoying phone calls, false  
impersonation, vandalism)

NOT LIMITED TO INFLICTION OF  
PHYSICAL INJURY

### PENAL CODE 13700

“Abuse” means  
intentionally or recklessly  
causing or attempting to  
cause bodily injury or  
placing another person in  
reasonable apprehension  
of imminent serious bodily  
injury to himself or herself,  
or another.

### PENAL CODE MISC

WILLFUL INFLICTION OF  
TRAUMATIC INJURY

WILLFUL USE OF FORCE  
(WITHOUT INJURY)

STALKING (FEAR OF INJURY)

CRIMINAL THREATS (FEAR OF  
INJURY)

OTHER MISCELLANEOUS  
CRIMES (BURGLARY,  
VANDALISM)

HUMAN TRAFFICKING

FALSE IMPRISONMENT

# Origins of SB 1141

- ▶ California Penal Code Section 236:  
FALSE IMPRISONMENT
  - ▶ UNLAWFUL VIOLATION OF THE  
PERSONAL LIBERTY OF ANOTHER
  - ▶ = PHYSICAL RESTRAINT
  - ▶ LESSER-INCLUDED OFFENSE OF  
KIDNAPPING
- ▶ California Penal Code Section 236.1:  
HUMAN TRAFFICKING
  - ▶ DEPRIVATION OR VIOLATION OF  
PERSONAL LIBERTY OF ANOTHER =  
*substantial and sustained restriction of  
another's liberty accomplished  
through force, fear, fraud, deceit,  
coercion...*
  - ▶ *with the intent to obtain forced labor  
or services or to violate [enumerated  
sex offenses].*

# Origins of SB 1141: California Penal Code Section 273.55

It is unlawful for a person to **deprive or violate the personal liberty** of a victim by means of coercive control.

To “deprive or violate the personal liberty of a victim” means **substantial and sustained restriction of the victim’s personal liberty through a course of conduct.**

Penalty = imprisonment in a county jail not to exceed one year, by imprisonment in the state prison for 16 months, 2, or 3 years.

Enhanced penalties if person has prior conviction.

Personal liberty  
includes, but is not  
limited to, liberty  
of →

ASSOCIATION,  
MOVEMENT,  
LABOR,  
DAILY BEHAVIOR,  
ACCESS TO OR USE OF ONE'S  
PERSONAL FINANCES OR FINANCIAL  
INFORMATION,  
OR ACCESS TO SERVICES.

# Course of conduct

=

two

or more acts occurring  
over a period of time,  
however short,  
evidencing a continuity of  
purpose that includes, but  
is not limited  
to →

- VIOLENCE,
- FORCE,
- FEAR,
- STALKING,
- DURESS,
- ISOLATION,
- ABUSE OR THREATENED ABUSE OF LEGAL PROCESS,
- FRAUD,
- DECEIT,
- ECONOMIC ABUSE,
- COERCION, OR
- THREAT OF UNLAWFUL INJURY TO THE VICTIM OR ANOTHER PERSON UNDER CIRCUMSTANCES WHERE THE PERSON RECEIVING OR APPREHENDING THE THREAT REASONABLY BELIEVES THAT IT IS LIKELY THAT THE PERSON MAKING THE THREAT WILL CARRY IT OUT.

# RELEVANT FACTORS

- ▶ Among the circumstances that may be considered in determining whether a person engages in coercive control are that the person does any of the following:
  - ▶ (A) Isolates the victim from friends, relatives, or other sources of support.
  - ▶ (B) Deprives the victim of basic necessities.
  - ▶ (C) Controls the victim's finances or daily behavior.
  - ▶ (D) Monitors the victim's movement through electronic devices.

# Cal. Family Code 6320 & 3044

- ▶ **§ 6320(a)** The court may issue an **ex parte order enjoining a party** from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, credibly impersonating, falsely personating, harassing, telephoning, including, but not limited to, making annoying telephone calls, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or **disturbing the peace of the other party**, and, in the discretion of the court, on a showing of good cause, of other named family or household members.
- ▶ **§ 3044 (a)** Rebuttable presumption that an award of sole or joint physical or legal custody of a child to a person **who has perpetrated domestic violence** within the previous five years against the other party seeking custody of the child is detrimental to the best interest of the child.

# Pre-SB 1141 Law: Disturbing the Peace

- ▶ *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483: Plain (dictionary) meaning of **disturbing the peace = conduct that destroys the mental or emotional calm of the other party**. It can include accessing, reading, and publicly disclosing a person's confidential emails.
- ▶ *Rodriguez v. Menjivar* (2015) 243 Cal.App.4th 816, 822 : Trial Judge: *"If you happen to be controlling, I don't think that's a good thing to do. It's unpleasant. But it's not something that this court is going to sanction."* Court of Appeal disagreed, finding that **the acts of isolation, control, and threats were sufficient to demonstrate the destruction of Rodriguez's mental and emotional calm.**
- ▶ *McCord v. Smith* (2020) 51 Cal.App.5th 358, 366 ("McCord's behavior and continually following up, visiting Ms. Smith's house, text messaging her, sending her photographs of herself and of her nursing license, asking a fairly rhetorical question, 'Is this yours?' when he knew full well the nursing license was hers ... shows that he did intend to exercise some form of dominion and control.")

# Legislative Findings & Declarations

(a) *In times of natural disasters and crises, rates of interpersonal violence historically rise, especially among households experiencing significant financial strain.*

(b) *The COVID-19 pandemic has proven this historical trend to be the reality for survivors of domestic violence as police chiefs nationwide reported increases of 10 percent to 30 percent in domestic violence assaults in the first two weeks after a national emergency was declared in March, also revealing more severe violence as compared with past years.*

(c) *During the COVID-19 crisis, reports show this is a worst-case scenario for victims experiencing domestic violence, with the data showing the virus is being used as a scare tactic to keep victims isolated from their support systems, or even their children...*

# Legislative Findings & Declarations

(d) Shelter-in-place orders and other restrictions related to COVID-19 have also resulted in victims being isolated from family, friends, and their community.

(e) While some jurisdictions have reported a drop in domestic violence calls, this does not necessarily equate to a reduction in domestic violence. Increased isolation of victims has created an environment where abuse, including coercive control, is more likely to go undetected and therefore unreported.

# SB 1141: Family Code Section 6320: Disturbing the peace

Conduct that

based on the totality  
of the circumstances

destroys the mental  
or emotional calm of  
the other party

...committed directly  
or indirectly,  
including through the  
use of a third party

by any method/means:  
telephone, online accounts, text  
messages, internet-connected  
devices, or other electronic  
technologies.

# Coercive Control: A Statutory Definition

DISTURBING THE PEACE includes, but is not limited to, coercive control

which is a **pattern of behavior** that

in purpose **or effect**

**unreasonably** interferes with

a person's **free will and personal liberty.**

Examples of coercive control include, but are not limited to, unreasonably engaging in any of the following:

- ▶ (1) **Isolating** the other party from friends, relatives, or other sources of support.
- ▶ (2) **Depriving** the other party of **basic necessities**.
- ▶ (3) **Controlling, regulating, or monitoring** the other party's movements, communications, daily behavior, **finances, economic resources, or access to services**.
- ▶ (4) **Compelling** the other party by force, threat of force, or intimidation, including **threats based on actual or suspected immigration status**, to engage in conduct from which the other party has a right to abstain or to abstain from conduct in which the other party has a right to engage.



# Best Practices: Family Law

## ▶ **Be Specific**

- ▶ Start with the **most recent incident of abuse** first.
- ▶ Describe **the physical and emotional effects of the abuse.**
- ▶ **Attach documents** to your declaration: emails, screenshots of text messages, voice messages, surveillance etc.
- ▶ Remember: Can have multiple bases for DVRO.
- ▶ Coercive control requires pattern; other forms of abuse can be singular.
- ▶ Totality of the circumstances test for all.

# Disturbing the Peace or Coercive Control?

## Coercive Control

- ▶ Involves a pattern of behavior (more than one act)
- ▶ Liberty deprivation
- ▶ Coercive control is a subset of disturbing the peace and will *usually* cause psychological harm

## Disturbing the Peace

- ▶ One act is sufficient
- ▶ Psychological abuse = destroying mental or emotional calm of the other party
- ▶ Can, but *does not necessarily*, involve liberty deprivations

# Implications for Criminal Law: Evidence Code section 1109

...in a criminal action in which the defendant is accused of an offense **involving domestic violence**, evidence of the defendant's commission of other domestic violence is **not made inadmissible** by Section 1101 if the evidence is not inadmissible pursuant to Section 352. (emphasis added).

Domestic violence has the meaning set forth in **Penal Code section 13700**.

Domestic violence has the further meaning as set forth in **Section 6211 of the Family Code**, if the act occurred no more than five years before the charged offense.

If you decide that the defendant committed the uncharged domestic violence, you may, but are not required to, conclude from that evidence that ***the defendant was disposed or inclined to commit domestic violence and, based on that decision, also conclude that the defendant was likely to commit and did commit*** the charged offense(s).

# Implications for Criminal Law: Evidence Code section 1107

- ▶ In a criminal action, expert testimony is admissible by **either the prosecution or the defense regarding intimate partner battering and its effects, including the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of victims of domestic violence,** except when offered against a criminal defendant to prove the occurrence of the act or acts of abuse which form the basis of the criminal charge.

- ▶ Domestic violence defined in **Section 6211 of the Family Code** and may include acts defined in **P.C. sections 242, 243(e), 262, 273.5, 273.6, 422, or 653m.**

**Prosecution:** You may consider this evidence only in deciding whether or not the victim's conduct was *consistent with the conduct of someone who has been abused, and in evaluating the believability of their testimony.*

**Defense:** You may consider this evidence only in deciding whether the defendant *actually believed that they needed to defend against an immediate threat of great bodily injury or death, and whether that belief was reasonable or unreasonable.*

# Best Practices: Criminal Law

- ▶ **File trial briefs and request 402 hearing** for court to rule on admissibility of prior evidence of domestic violence and/or use of expert witness.
- ▶ **If calling an expert, ask about coercive control/power** and control dynamics in abusive relationships.
- ▶ **During interview and direct exam of victim, ask about pattern of control and specific acts of defendant demonstrating coercive control** (if defense objects on relevance grounds, possible responses = relevant to victim's demeanor on the stand, reason victim behaved in certain ways – delaying reporting, minimizing to family, etc, and if using as 1109 evidence, response is that evidence is directly relevant to proving pattern of abuse (remember that 1109 has broader, F.C. definition of abuse!))
- ▶ *See People v. Mani (2021) 2021 WL 4471705* (Burglary is a form of harassment and disturbed the peace of the victims. Given the broader definition of domestic violence, which includes both harassment and disturbing the peace, the Court found that burglary is a crime of domestic violence for purposes of Evidence Code section 1109).