



# COERCIVE CONTROL CODIFICATION POLICY BRIEF: DOMESTIC VIOLENCE PROTECTION ORDERS

BWJP Position Statement on the Codification of “Coercive Control”  
Language into Civil Protection Order Statutes

# BWJP

# Overview

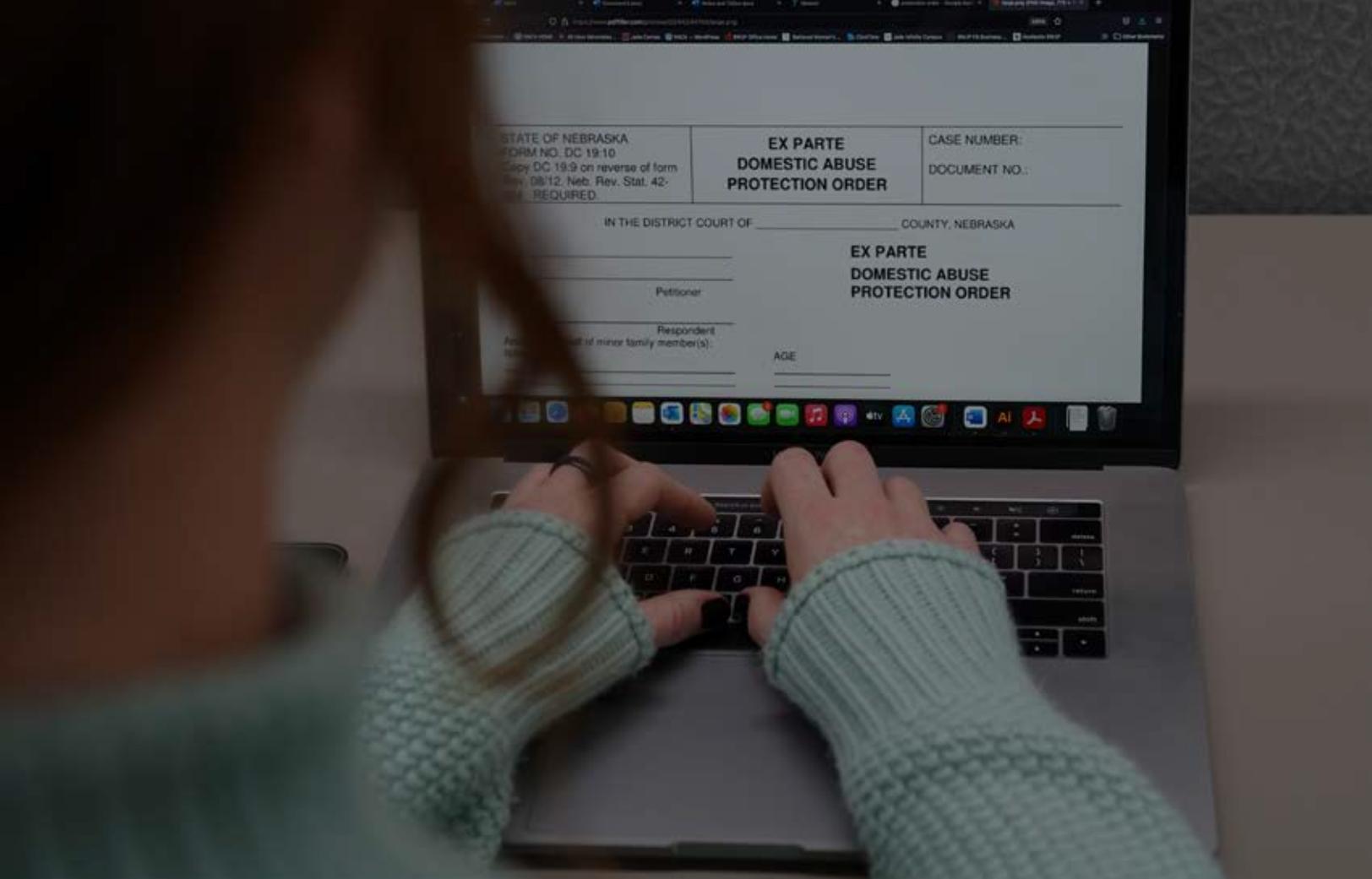
Jurisdictions across the U.S. are wrestling with how to best reflect the experiences of victims of intimate partner violence (IPV) in domestic violence-related civil protection order (DVPO) statutes. Many victims, domestic violence advocates, civil attorneys, and legislators believe existing DVPO statutes fail to give courts options to respond to many types of non-physical abuse, excluding large numbers of victims from legal protection. Many victims of intimate partner violence face coercion, control, entrapment, and other abuse that, while clearly devastating, fall outside the definition of “domestic abuse” in these statutes. For this reason, proposals to insert language into DVPO statutes that better captures the broad spectrum of abuse that intimate partner violence (IPV) victims experience, including “coercive control,” are gaining significant traction.

While coercive control is defined differently in different contexts, there is a shared fidelity to its basic concept across various definitions. Coercive control is understood as a behavioral pattern in intimate partner relationships of threatening, humiliating, or intimidating actions that seek to take away a person’s freedom and strip away their sense of self. An abuser uses coercive control to make their partner dependent on the abuser by isolating them from support, exploiting them, depriving them of independence, and regulating their everyday behavior.<sup>1</sup>

Despite the laudable intent driving the proposals to expand the language of protection order statutes to include “coercive control,” BWJP discourages adoption of this language until certain prerequisites are sufficiently met. The premature legislative adoption of this language otherwise presents too great of risks for too many victims. This position is based on the following concerns: 1) courts currently lack capacity to effectively apply this statutory language; 2) codification is likely to disproportionately endanger marginalized survivors; and 3) more research and data about DVPO proceedings in the U.S. are needed to understand how different statutory language choices will affect survivors.



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## Background

BWJP embarked on a comprehensive exploration of this policy issue to better understand the considerations involved and to offer a thoughtful recommendation to the field. In Fall 2021, BWJP held listening sessions with intimate partner violence advocates, state coalition staff, and people working with survivors in criminal and civil legal systems across the United States. Staff spoke to over 100 professionals from 50 jurisdictions, including 44 states, 4 Tribal Nations, D.C. and the U.S. Virgin Islands. A brief overview of the issues raised can be found in this [guide](#). As of January 2022, Arkansas, California, Connecticut, Hawai'i, and Puerto Rico have codified (included) coercive control in their DVPO statutes. A coercive control codification [matrix](#) is available and details codification in every U.S. state and territory, including citations to the coercive control laws. This exploration resulted in our determination that the costs of codifying coercive control currently outweigh the benefits. Our primary observations are detailed below.

# Courts Currently Lack Capacity to Correctly Apply Statutory Language

## The Context of Violence Matters

Courts often struggle to distinguish the various contexts in which actual physical violence occurs between intimate partners. For example, if an individual throws an object (e.g. a glass) at their partner, the meaning and effect of this action, as well as the implications for the partner's ongoing safety, depend wholly on the context in which the action occurred. The glass could be thrown by a coercively controlling abuser to punish a victim for noncompliance with an order; the glass could be thrown by a victim of ongoing abuse to protect themselves or others; or the glass could be thrown impulsively, detached from any pattern of violence or threats. In each instance, the ongoing safety implications for the individual hit with the glass are very different, warranting differentiated court responses.

While the intent of the wrongdoer and the impact of the violence on the victim are enormously relevant in determining appropriate responses to physical violence, these factors are frequently missed or misunderstood by courts. Courts' lack of capacity to differentiate the various contexts of physical violence serves as a caution regarding their ability to properly differentiate or contextualize behaviors that fall short of physical violence.

## The Context of Behaviors Matter

Statutory definitions of "coercive control" encompass many behaviors that are very vulnerable to misinterpretation by courts. Depending on the intent of the wrongdoer and the resulting impact on the victim, a single behavior could indicate coercive control, a protective strategy by a victim, or something much more isolated and benign. For example, consider the following behaviors that fall short of physical violence:

Taking a partner's wallet

Slamming a door or breaking an object during an argument

Threatening to tell friends their partner's secrets

Reading a partner's text messages without permission

Depending on the context of the behavior – the intent behind it, the effect it has on the partner and how it fits into an overall pattern – it might be part of an abuser's strategy to force compliance from their partner, or it could be a survivor's attempt to escape violence, or it could be an isolated bad decision on the part of anyone in a relationship. Differentiating between the contexts in which these similar behaviors occur requires a very educated bench, good information from parties and the right tools.

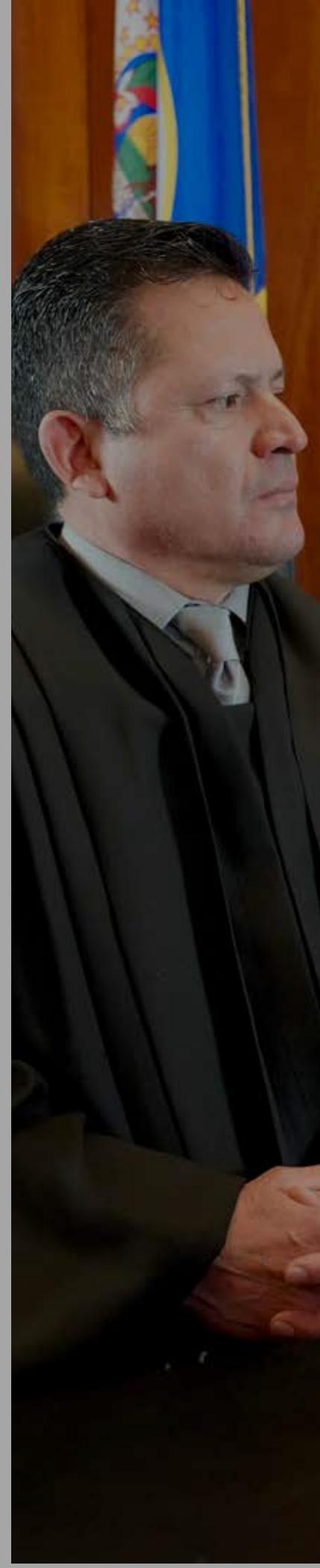
Proponents of codifying coercive control argue that adding this language to statutes will encourage courts to identify IPV (and associated risks) without relying solely on evidence of physical violence or threats. Without a doubt, courts should recognize that some survivors are in great need for legal protection even if they have not yet experienced a blatant act of physical violence or an explicit threat thereof - that IPV involves much more than physical violence or the threat thereof. However, before expanding the grounds upon which individuals can seek protection orders to certain non-assaultive behaviors, courts should first demonstrate a reliable ability to use evidence of these same non-assaultive behaviors to properly contextualize actual physical violence. Indeed, proper consideration of coercive controlling behaviors when violence is alleged will help courts better understand victims' lethality risks, discourage the issuance of mutual protection orders, and encourage stronger findings of fact and relief in the final orders. But coercive control alone should not serve as the basis for the issuance of a DVPO until courts first demonstrate the ability to recognize the relevance of these behaviors in the context of physical violence.

## Impact of Criminalization

The actual codification of coercive control into DVPO statutes has ramifications beyond the encouragement of courts to recognize different forms of IPV. By creating additional bases for the issuance of a DVPO, it substantially widens the net for those exposed to criminal sanctions. If courts don't have the skills or tools required to properly assess coercive controlling behaviors in context, too many people – including victims – will be unnecessarily subject to court orders that impose criminal consequences (arrest, prosecution, probation, jail time, criminal record, etc.).

## Implementation of Specialized Training and Tools

The training and tools that most judges and court professionals receive are not adequate to prepare them to consistently and correctly assess the context of those behaviors that petitioners might allege when seeking court relief based on coercive control. In many protection order courts, actual fact-finding in a courtroom is limited to a few minutes, and judges struggle to learn enough information to assess the credibility of the allegations and assess the risks faced by petitioners. During the listening sessions held in 2021, many participants shared how difficult it is for survivors to obtain a DVPO when there is physical violence.





**BWJP has a suite of tools – the SAFeR Framework...**

Performing fact-finding around more nuanced, contextualized behaviors, such as those implicated in “coercive control,” does not lend itself to the abridged nature of most protection order hearings. Survivors will continue to struggle to obtain protection orders until judges have the expertise, information, tools and time to make these determinations.

The increased use of virtual hearings raises additional issues regarding courts’ capacity to make nuanced contextual assessments in protection order hearings. Information provided by parties to the courts, courts’ access to information and the adaptation of tools for virtual use are all important precursors to codification.

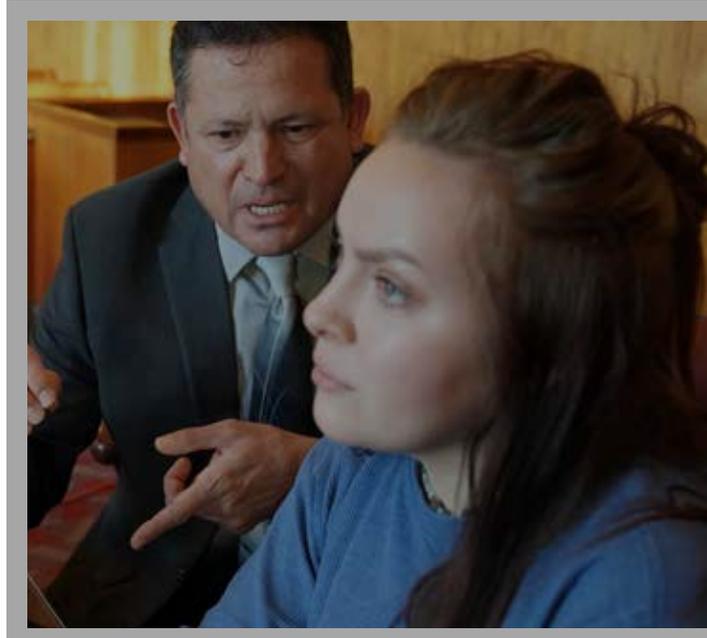
BWJP has a suite of tools – the SAFeR Framework - which have been adapted to the protection order context that facilitate both fact-finding as well as contextualization of facts in cases involving intimate partner violence. Adaptation of tools like SAFeR, supported by court processes that enable the routine use of these tools in courts, as well as broad participation in training that ensures the proper use of these tools, are important groundwork to lay prior to the codification of coercive control in any jurisdiction’s protection order statutes.

## Codification’s Negative Effects May Disproportionately Impact Marginalized Survivors

Abusers are skilled at manipulating survivors and legal systems. Too often DVPOs are granted against survivors because their abuser files first or cross-petitions. Unfortunately, courts frequently misinterpret a survivor’s defensive actions as violence, As already noted, most of the behaviors covered in existing coercive control statutes describe behaviors that can be interpreted in different ways and so are therefore prone to manipulation. This raises the risk that racial and gender bias will play a greater role in determining outcomes, and that already marginalized survivors will have more difficulty accessing DVPOs and more likely to have orders issued against them.

Many judges do not view women's stories of abuse as credible, because they understand neither the nature of intimate partner violence or trauma.<sup>2</sup> The demeanor of survivors, and survivors of color in particular, is scrutinized, their motivations for seeking help are questioned, and negative cultural stereotypes are applied as excuses for not granting orders.<sup>3</sup> In the worst cases, orders are granted against survivors. Coercive control codification should be considered only when courts and professionals have a comprehensive understanding of intimate partner violence and tools for controlling the impact of implicit bias on their credibility determinations.

Many listening session participants expressed concern about the potential unintended impacts of coercive control codification on marginalized survivors. Research suggests that survivors of color are significantly less likely to receive protection orders compared to white survivors.<sup>4</sup> When the perpetrator in these cases is white, survivors of color are even less likely to be granted a DVPO.<sup>5</sup>



Because coercive control is difficult to understand and apply, its codification in protection order statutes will result in more women suffering negative outcomes, and these negative outcomes will disproportionately impact Black, Indigenous and women of color, as they are already subject to bias, hyper-scrutiny and negative stereotyping by courts. The expansion of the grounds upon which individuals can seek protection orders will result in more filings by abusers against victims and subjecting more victims to criminal legal system consequences. Those victims that already suffer from over-criminalization and bias by legal systems – Black, Indigenous, and women of color, LGBTQ individuals, immigrants and otherwise marginalized - will bear the brunt of this expansion hardest.

## Research and Data Needed

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**In light of the risks posed to survivors, particularly those survivors that have been historically marginalized from legal and other systems, by incorporating “coercive control” language into DVPO statutes, legislatures and advocates should show caution.** Those states that have already codified coercive control have not yet reported comparative data that would provide some insight into the impact of the statutory changes. While filings are likely to increase as a result of expanded language, outcome data is most crucial. For example, is there an increase or decrease in cross-filings post-codification? Is there an increase or decrease in the issuance of mutual protection orders post-codification? Does the percentage of orders issued, in light of all petitions filed, increase or decrease? Are there any variations on this data across localities, and can they be correlated with particular statutory language? Are there variations tied to the demographics of the parties or whether or not they are self-represented?

Qualitative studies of petitioner, respondent and judicial perspectives, as well as of petitioners' and respondents' experiences in court, would provide important insight into whether codification of coercive control positively impacts survivor safety. A careful approach to codification involves collecting the following types of information from states that have codified coercive control as well as those that haven't:

- Judicial perceptions of petitioner and respondent credibility
- Petitioner and respondent perceptions of judicial receptivity
- Amount and degree of litigation involved
- Behaviors alleged and associated outcomes by demographic
- Type and quality of findings of fact as well as relief ordered

This type of information and data will be increasingly available to researchers and will provide important lessons to jurisdictions in advance of legislative action so that jurisdictions can avoid exacerbating harm to survivors.

## Conclusion

Currently, courts do not have a sufficient understanding of intimate partner violence to properly assess the nuances of coercive control; marginalized survivors are most likely to suffer the negative consequences of expanding the grounds for obtaining a protection order; and too little data exists to support the hoped-for benefits of coercive control codification. Until these issues are addressed, BWJP discourages the codification of coercive control in DVPO statutes.



# Endnotes

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- 1 Stark, E. D. (2009). *Coercive control: The entrapment of women in Personal life*. Oxford University Press.
- 2 Epstein, D. (2020). *Discounting credibility: Doubting the stories of women survivors of sexual harassment*. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.3575843>
- 3 Id.
- 4 Winstead, A. P., & Stevenson, M. C. (2021). *Effects of intimate partner violence perpetrator and victim race on Protective Order determinations*. *Journal of Interpersonal Violence*, 088626052110281. <https://doi.org/10.1177/08862605211028164>
- 5 Id.

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