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## Reproductive Autonomy: How Chapter 135 Strengthens Invisible Shackles on People's Right to Choose

Courtney Lamb

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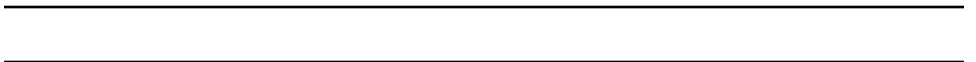
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# UNIVERSITY OF THE PACIFIC LAW REVIEW



## **Reproductive Autonomy: How Chapter 135 Strengthens Invisible Shackles on People’s Right to Choose**

*Courtney Lamb\**

### *Code Sections Affected*

Family Code § 6320 (amended).

SB 374 (Min); 2021 STAT. CH. 135.

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### I. INTRODUCTION

For the past thirteen years, Britney Spears has been under the control of a conservatorship.<sup>1</sup> Her father—her conservator from 2008 until September 2021—

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1. Gene Maddaus, *Britney Spears Demands an End to ‘Abusive’ Conservatorship*, VARIETY (June 23, 2021), <https://variety.com/2021/music/news/britney-spears-conservatorship-abuse-1235003833/> (on file with the

has prevented her from having more children.<sup>2</sup> In a public hearing on June 16, 2021, Britney expressed her desire to be free of the conservatorship because under the conservator's control she faces severe limitations on her life.<sup>3</sup> Britney testified that the conservatorship caused her significant harm.<sup>4</sup> As an example, she wants to have a baby with her fiancé.<sup>5</sup> However, her conservators have forced her to continue to use birth control because they do not want her to have children.<sup>6</sup> She would like to stop using birth control so that she can have the baby.<sup>7</sup> Her conservatorship has stripped away her reproductive choices in an act of reproductive coercion.<sup>8</sup>

While Britney Spears faces reproductive coercion in the context of a conservatorship, many people also face reproductive coercion in the form of domestic violence.<sup>9</sup> In incidents of domestic violence or intimate partner violence, reproductive coercion occurs when the perpetrator controls the reproductive choices of their partner.<sup>10</sup> Reproductive coercion includes interfering with birth control or the lack thereof.<sup>11</sup> Reproductive coercion may also arise when an abuser forces a partner to have an abortion or give birth.<sup>12</sup> Nearly three-quarters of women who experience reproductive coercion report a history of partner violence, and these victims of partner violence are twice as likely to experience unwanted

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*University of the Pacific Law Review*).

2. *Id.*; Anastasia Tsioulcas, *Jamie Spears Agrees to Step Down From Britney Spears Conservatorship*, NPR (Aug. 12, 2021), <https://www.npr.org/2021/08/12/1027223521/jamie-spears-steps-down-britney-spears-conservatorship> (on file with the *University of the Pacific Law Review*); Joe Coscarelli & Julia Jacobs, *Judge Ends Conservatorship Overseeing Britney Spears's Life and Finances*, N.Y. TIMES (Nov. 15, 2021), <https://www.nytimes.com/2021/11/12/arts/music/britney-spears-conservatorship-ends.html> (on file with the *University of the Pacific Law Review*) (“[n]early 14 years after a Los Angeles court deemed the pop sensation Britney Spears unable to care for herself, stripping the singer of control in nearly every aspect of her life, a judge ruled on Friday to end the conservatorship that Ms. Spears said had long traumatized and exploited her.”).

3. Maddaus, *supra* note 1.

4. *Id.*

5. Jesus Jimenez, *Britney Spears Announces Engagement to Longtime Boyfriend, Sam Asghari*, N.Y. TIMES (Sept. 30, 2021), <https://www.nytimes.com/2021/09/12/arts/music/britney-spears-engaged-sam-asghari.html> (on file with the *University of the Pacific Law Review*).

6. Maddaus, *supra* note 1.

7. *Id.*

8. Lisa Deaderick, *Experts Say Alleged Forced Birth Control of Britney Spears is Clear Reproductive Justice Violation*, PACIFIC SAN DIEGO (July 5, 2021), <https://www.pacificsandiego.com/local-entertainment/arts-culture/story/2021-07-05/experts-say-alleged-forced-birth-control-of-britney-spears-is-clear-reproductive-justice-violation> (on file with the *University of the Pacific Law Review*).

9. *See id.* (discussing the conservatorship's coercive behavior over Britney Spears's reproductive decisions).

10. *See* Kathleen C. Basile et al., *Prevalence of Intimate Partner Reproductive Coercion in the United States: Racial and Ethnic Differences*, J. INTERPERSONAL VIOLENCE, 2 (2019) (utilizing the term “Intimate Partner Violence” or IPV to refer to domestic violence behaviors, but this article uses domestic violence because it is the term used in California Law) (on file with the *University of the Pacific Law Review*).

11. *What Is Sexual and Reproductive Control?*, PLANNED PARENTHOOD, <https://www.plannedparenthood.org/learn/relationships/healthy-relationships/what-sexual-and-reproductive-control> (last visited on June 28, 2021) (on file with the *University of the Pacific Law Review*).

12. *Id.*

pregnancies.<sup>13</sup> A 2019 survey using data from the 2015 United States Census suggests that approximately 27 million women and 16 million men experienced reproductive coercion.<sup>14</sup> Despite the prevalence and danger of reproductive coercion, California is the first state to recognize reproductive coercion as part of its domestic violence prevention statutes.<sup>15</sup>

Chapter 135 adds reproductive coercion to the list of behaviors in the Family Code that victims may obtain protective orders to prevent.<sup>16</sup> Adding reproductive coercion to the statute provides courts with language that identifies a pattern of abusive behaviors that judges may otherwise not recognize or punish.<sup>17</sup> Chapter 135 promotes bodily autonomy because it places a criminal penalty against perpetrators who seek to control their partners' reproductive decisions.<sup>18</sup> However, Chapter 135 does not provide an effective remedy for all survivors of reproductive coercion because it is only punishable with a protective order.<sup>19</sup> If Chapter 135 added reproductive coercion to the criminal law definition of abuse in California Penal Code section 13700, more survivors could have access to justice.<sup>20</sup>

## II. LEGAL BACKGROUND

California statutes on domestic violence prevention and reproductive rights laws provide protections for bodily autonomy.<sup>21</sup> Section A discusses reproductive

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13. Elizabeth Miller et al., *Pregnancy Coercion, Intimate Partner Violence, and Unintended Pregnancy*, 81 CONTRACEPTION 316, 321 (2010) (on file with the *University of the Pacific Law Review*) (providing that when a perpetrator engages in reproductive coercion and other forms of violence, the victim's risk of unwanted pregnancy doubled.)

14. *Age and Sex: 2015: ACS 1-Year Estimates Subject Tables*, USCB, <https://data.census.gov/cedsci/table?q=2015&tid=ACSST1Y2015.S0101> (last visited July 7, 2021) (on file with the *University of the Pacific Law Review*) (tallying the 2015 United States' population as approximately 321,418,821, comprised of 163,250,987 women and 158,167,834 men); see NAT'L CTR. FOR VICTIMS OF CRIME & NAT'L COAL. OF ANTI-VIOLENCE PROGRAMS, WHY IT MATTERS: RETHINKING VICTIM ASSISTANCE FOR LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUEER VICTIMS OF HATE VIOLENCE & INTIMATE PARTNER VIOLENCE 5 (2010), <https://vawnet.org/material/why-it-matters-rethinking-victim-assistance-lesbian-gay-bisexual-transgender-and-queer> (on file with the *University of the Pacific Law Review*) (providing that LGBTQ individuals experience intimate partner violence "at approximately the same rate as heterosexual relationships, or in approximately 25 to 33 percent of all relationships[.]" including coercive behaviors, thus this paper uses gender neutral language where possible to include all survivors of abuse in the discussion).

15. See Press Release, Sen. Dave Min's Office, First of Sen. Dave Min's Domestic Violence Bills Unanimously Clears Judiciary Comm. (Mar. 23, 2021), <https://sd37.senate.ca.gov/news/first-senator-dave-mins-domestic-violence-bills-unanimously-clears-judiciary-committee> (on file with the *University of the Pacific Law Review*) (noting California's leadership on the issue).

16. CAL. FAM. CODE § 6320 (West 2021) (amended by Chapter 135) (adding reproductive coercion to the protective orders section of the family code).

17. See *id.* (introducing language into the California Family Code that clarifies reproductive coercion for judges to utilize in cases where a survivor seeks a protective order).

18. See generally *id.* (authorizing protective orders, violations of which incur criminal penalties).

19. See generally *id.* (imposing criminal penalties only after violating a protective order necessitated by previous misconduct).

20. Press Release, Sen. Dave Min's Office, *supra* note 17.

21. See CAL. FAM. CODE § 6320 (West 2021) (authorizing *ex parte* orders enjoining contact).

rights protections in California.<sup>22</sup> Section B overviews California’s criminal laws regarding spousal abuse.<sup>23</sup> Section C deliberates on the shortcomings of recent amendments to the protective order statute in the California Family Code that aims to protect individuals against coercive abuse.<sup>24</sup>

### A. Reproductive Rights in California

The California Constitution (“Constitution”) protects the right to make numerous reproductive decisions.<sup>25</sup> Specifically, the Constitution grants inalienable rights, such as the right to life and liberty.<sup>26</sup> The rights to life and liberty provide a person with the ability to make reproductive decisions and to have bodily autonomy free from external interference.<sup>27</sup> However, the Constitution does not explicitly mention reproductive rights.<sup>28</sup> Instead, courts have interpreted the right to life, liberty, and privacy to include reproductive rights.<sup>29</sup>

Reproductive rights in the California Constitution exist through case law interpretations.<sup>30</sup> The following cases demonstrate the California Supreme Court’s interpretation of reproductive rights in the Constitution.<sup>31</sup> Subsection 1 highlights *People v. Belous* and *People v. Barksdale*, which hold that Californians have the right to abortion and determined when the state government could limit abortion access.<sup>32</sup> Subsection 2 explains that California’s Reproductive Privacy Act

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22. *Infra* Section III.A.

23. *Infra* Section III.B.

24. *Infra* Section III.C.

25. See CAL. CONST. art. 1, § 13 (providing a “right of people to be secure in their persons,” that courts have interpreted to include reproductive rights); *People v. Barksdale*, 8 Cal. 3d 320, 335 (1972) (explaining that California law provides reproductive rights subject to limitations, such as a time frame of 20 weeks for legal abortions); *People v. Belous*, 71 Cal. 2d 954, 967–68 (1969) (discussing the United States Supreme Court’s finding of people’s constitutional rights to access abortion).

26. CAL. CONST. art. 1, § 1.

27. See CAL. CONST. art. 1, § 1 (providing the rights to “life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and property” that encompass the right to make reproductive decisions and to have bodily autonomy).

28. CAL. CONST. art. 1, § 1.

29. CAL. CONST. art. 1, § 1; see *Belous*, 71 Cal. 2d at 963 (providing that “the fundamental right of the woman to choose whether to bear children follows from the Supreme Court’s and this court’s repeated acknowledgment of a ‘right to privacy’ or ‘liberty’ in matters related to marriage, family, and sex”); *Barksdale*, 8 Cal. 3d at 326 (providing that “the decision to have an abortion raises at least two fundamental rights of the woman: the right to life and the right to bear children”).

30. See CAL. CONST. art. 1, § 13 (asserting that people have a right “to be secure in their persons” that provides a right to bodily autonomy); *Barksdale*, 8 Cal. 3d at 335 (relying on the reasoning from the *Belous* decision that interpreted a pregnant person’s right to life that “takes precedence over any interest the state may have in the unborn” to decide whether a statute that limited access to abortion was constitutional); *Belous*, 71 Cal. 2d at 967–68 (discussing constitutional rights that are at stake in the context of limiting access to abortion).

31. *Infra* Section III.A.1.

32. *Infra* Subsection III.A.2.

(“RPA”) provides statutory authority for people’s right to access abortion and birth control.<sup>33</sup>

*1. California Case Law Recognizing the California Constitutional Right to an Abortion*

In *People v. Belous*, the state charged Dr. Belous with conspiracy to commit an illegal abortion because he referred his patient, Cheryl, to another doctor for an abortion.<sup>34</sup> The defendants pleaded with Dr. Belous to obtain an abortion because they were unmarried.<sup>35</sup> The defendants threatened to get an abortion in Tijuana if Dr. Belous did not perform it for them.<sup>36</sup> Out of concern for Cheryl’s safety, Dr. Belous agreed to provide the referral for an abortion so that she would not risk obtaining an abortion in Tijuana.<sup>37</sup> Dr. Belous believed getting an abortion in Tijuana would be life-threatening for Cheryl and argued that the referral for the abortion was to protect her life.<sup>38</sup>

After Dr. Belous performed the abortion, the California Penal Code on illegal abortions—or the Therapeutic Abortion Act (“Act”), which allowed lawful abortions only in limited scenarios—was amended.<sup>39</sup> Under the amended Act, licensed physicians could conduct legal abortions only if necessary to preserve the mother’s life.<sup>40</sup> However, the state charged Dr. Belous under the Penal Code section 274 because that was the law when he made the referral for the abortion.<sup>41</sup>

The issue in *Belous* was to what extent the state could control access to abortions.<sup>42</sup> The court reasoned that Penal Code section 274 violated the Fourteenth Amendment because it required a doctor to decide whether the patient had a right to an abortion.<sup>43</sup> The court determined that Penal Code section 274

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33. *Infra* Subsection III.A.3.

34. *See Belous*, 71 Cal. 2d at 957–59 (“Section 274 of the Penal Code, when the conduct herein involved occurred, read: ‘Every person who provides, supplies, or administers to any woman, or procures any woman to take any medicine . . . or uses or employs any instrument or other means whatever with intent thereby to procure the miscarriage of such woman, unless the same is *necessary to preserve her life*, is punishable by imprisonment in the State prison not less than two nor more than five years.’”) (italics added).

35. *Id.* at 957.

36. *Id.* at 957–58.

37. *Id.*

38. *Id.* at 959.

39. *See id.* at 971 (providing that under the Therapeutic Abortion Act “abortion is permissible during the first 20 weeks of pregnancy by a licensed physician in an accredited hospital if it is determined under prescribed procedures either that ‘There is a substantial risk that continuance of the pregnancy would gravely impair the physical or mental health or the mother’ or that ‘The pregnancy resulted from rape or incest.’”) (citations omitted).

40. *Belous*, 71 Cal. 2d at 959–60.

41. *Id.* at 957.

42. *See id.* at 964 (“The critical issue is not whether [the right of privacy and of liberty] exist, but whether the state has a compelling interest in the regulation of a subject which is within the police powers of the state . . . whether the regulation is ‘necessary’ to the accomplishment of a permissible state policy’ . . . and whether legislation impinging on constitutionally protected areas is narrowly drawn and not of ‘unlimited and indiscriminate sweep.’”) (citations omitted).

43. *See id.* at 972 (providing that a doctor “is subject to prosecution for a felony and to deprivation of his

resulted in doctors refusing to perform even life-saving abortions to avoid legal penalties.<sup>44</sup> The *Belous* Court interpreted the Constitution to include the right to reproductive autonomy—the right to choose to either give birth or not give birth to a child.<sup>45</sup> The court concluded that reproductive choices are private matters and that the state cannot interfere unless there is a more substantial interest that weighs against the individual’s freedom of choice.<sup>46</sup>

In *People v. Barksdale*, a doctor violated the Therapeutic Abortion Act, which only authorized pre-approved abortions between thirteen and twenty weeks.<sup>47</sup> Further, a licensed physician could only perform an abortion at an accredited hospital with approval from a committee of the medical staff at the hospital.<sup>48</sup> The doctor was a licensed physician but failed to perform the abortion in a hospital or obtain approval from medical staff at a hospital before performing it.<sup>49</sup> In addition, the Act only allowed an abortion if continuing the pregnancy was life-threatening or mentally damaging.<sup>50</sup> The doctor argued that the Act was not enforceable under the Constitution because it was too ambiguous for doctors to follow.<sup>51</sup> The issue in *Barksdale* was whether the Act was constitutional.<sup>52</sup>

In *Barksdale*, the California Supreme Court found that abortions are a constitutional right in California but that the right to abortion was not absolute.<sup>53</sup> The court determined that the Act was valid and the state could limit the right to abortions to an extent.<sup>54</sup> For example, California could prohibit or restrict abortions

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right to practice medicine if his decision is wrong. Rather than being impartial, the physician has a ‘direct, personal, substantial, pecuniary interest in reaching a conclusion’ that the woman should not have an abortion.”) (citations omitted).

44. *Id.* at 973.

45. *See id.* at 963 (“That such a right is not enumerated in either the United States or California Constitutions is no impediment to the existence of the right.”).

46. *See Belous*, 71 Cal. 2d at 969 (“[T]he law has always recognized that the pregnant woman’s right to life takes precedence over any interest the state may have in the unborn. . . . Although there may be doubts as to whether the state’s interest may ever justify requiring a woman to risk death, it is clear that the state could not forbid a woman to procure an abortion where, to a medical certainty, the result of childbirth would be death.”).

47. *People v. Barksdale*, 8 Cal. 3d 320, 324 (1972).

48. *See id.* at 325 (“For purposes of our review it has been stipulated that. . . . it was not performed in a hospital accredited by the Joint Commission on Accreditation of Hospitals, or in any hospital, as required under current legislation.”).

49. *See id.* at 325 (“[P]rior to approving an application for an abortion the committee must find that ‘(t)here is substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother’ . . . , or that ‘(t)he pregnancy resulted from rape or incest.’”) (citations omitted).

50. *Id.*

51. *See id.* at 327–28 (arguing that the terms “substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother” are too ambiguous to provide clear guidance to doctors about which abortions are legal or illegal to perform) (citations omitted).

52. *See id.* at 327 (providing that the test for constitutionality requires that the statute is clear and that the Act was “impermissibly vague”) (citations omitted).

53. *See Barksdale*, 8 Cal. 3d at 327 (“We hold. . . . that the Therapeutic Abortion Act may not be enforced to prohibit abortions not falling within the conceded limits of proper state regulation . . .”).

54. *Id.* at 338.



beyond twenty weeks and require that only licensed physicians perform abortions because those rules protect life and health.<sup>55</sup>

## 2. *The Reproductive Privacy Act*

In 2003, the California Legislature enacted the RPA, which replaced the Therapeutic Abortion Act.<sup>56</sup> The RPA provides women with the right to use birth control and have children without state interference.<sup>57</sup> Under the RPA, the state cannot interfere with abortions unless it violates a limitation within the RPA.<sup>58</sup> One limitation on the right to an abortion includes protecting a viable fetus.<sup>59</sup> However, the RPA upholds the right to choose to have an abortion prior to fetal viability and to obtain abortions when the mother faces a life or health crisis.<sup>60</sup>

### *B. Domestic Abuse in California's Penal Code*

The California Penal Code provides protections against domestic violence abuse, such as physical abuse in Penal Code section 13700.<sup>61</sup> However, the California Penal Code's definition of abuse does not include emotional abuse.<sup>62</sup> The spousal abuse statute—Penal Code section 13700—defines domestic violence as abuse against partners, spouses, or cohabitants.<sup>63</sup> Cohabitants are people who live together who may be in a committed relationship, combine expenses, both use or own property, or consider themselves spouses.<sup>64</sup> The spousal abuse statute also defines abuse as causing injury or fear of immediate injury to others.<sup>65</sup>

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55. See *id.* at 335 (“[W]e think it unquestionable that such power exists, though nothing mandates its exercise, when the fetus is capable of life independent of the body of the woman.”).

56. See CAL. HEALTH & SAFETY CODE § 123462 (West 2021) (repealing the Therapeutic Abortion Act); 1 CAL. JUR. 3D *Abortion* § 9 (2021) (explaining that the Therapeutic Abortion Act allowed abortions if the “pregnancy would gravely impair the physical or mental health of the mother or where the pregnancy resulted from rape or incest”).

57. HEALTH & SAFETY § 123462.

58. CAL. HEALTH & SAFETY CODE § 123466 (West 2021).

59. See CAL. HEALTH & SAFETY CODE § 123464 (West 2021) (defining fetus viability or a viable fetus as a stage of fetal development at which, to a degree of medical certainty, there is a “reasonable likelihood” that the fetus could survive outside of the uterus).

60. HEALTH & SAFETY § 123466.

61. See CAL. PENAL CODE § 13700 (West 2021) (defining abuse as “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,” with no provision for non-physical abuses); CAL. PENAL CODE § 273.83 (West 2021) (providing that an abuser may be “the subject of a spousal abuser prosecution effort” if they violate Penal Code section 13700).

62. See PENAL § 13700 (providing no definition for emotional abuse).

63. *Id.*

64. *Id.*

65. *Id.*

Under the California Constitution, if there is a criminal conviction, the victim has the right to restitution from the defendant and to make a statement in court.<sup>66</sup> Law enforcement agencies create policies to respond to domestic violence situations, including arrests, protective orders, and providing information and aid to victims.<sup>67</sup> After reporting a domestic violence incident, a local team of trained professionals will respond to treat mental and physical ailments.<sup>68</sup>

### *C. Family Law Protections Against Domestic Abuse in California*

Domestic violence survivors in California can seek protective orders as a form of protection from abuse under Family Code section 6320.<sup>69</sup> An *ex parte* protective order is a restraining order intended to prevent specific abusive actions or behaviors.<sup>70</sup> Courts may issue protective orders to victims when the threat of abuse is apparent and the danger of abuse is imminent.<sup>71</sup> Applicants must file a request for a protective order with the court and attend a hearing.<sup>72</sup> The court issues the order if it finds the applicant's situation requires a protective order to prevent subsequent abuse.<sup>73</sup> If an abuser violates a protective order, the victim may report to law enforcement and the abuser will then face criminal penalties.<sup>74</sup> The criminal penalty for the first time an abuser violates a protective order is a misdemeanor.<sup>75</sup>

Additionally, the court may fine them up to one thousand dollars and sentence them to jail for up to one year.<sup>76</sup> Subsequent violations result in more penalties such as higher fines and more jail time.<sup>77</sup> An *ex parte* order—a temporary protective order—usually expires after three weeks.<sup>78</sup> Victims must participate in

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66. See CAL. CONST. art. 1, § 28 (providing victims with rights “to justice and due process,” including “[t]o restitution”).

67. CAL. PENAL CODE § 13701 (West 2021).

68. CAL. PENAL CODE § 13752 (West 2021).

69. CAL. FAM. CODE § 6320 (West 2021); see CAL. FAM. CODE § 6218 (West 2021) (defining an *ex parte* protective order as “an order described in 6320 enjoining specific acts of abuse”).

70. FAM. § 6218.

71. See CAL. FAM. CODE § 6250 (West 2021) (providing that courts may approve *ex parte* protective orders when “a person is in immediate and present danger of domestic violence, based on the person’s allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought”).

72. *Legal Information: California: Restraining Orders*, WOMENSLAW, <https://www.womenslaw.org/laws/ca/restraining-orders/domestic-violence-restraining-orders/steps-getting-dv-ro> (last visited July 14, 2021) (on file with the *University of the Pacific Law Review*).

73. See FAM. § 6250 (revealing that a judge will issue a protective order when the danger to a person is present and immediate).

74. CAL. PENAL CODE § 273.6 (West 2021).

75. *Id.* (prohibiting “[a]ny intentional and knowing violation of a protective order” and that doing so “is a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment”).

76. *Id.*

77. See *id.* (imposing the penalties if another violation occurs within seven years of the prior conviction and greater fines if the violation occurs within one year of the prior conviction).

78. *Legal Information: California: What Types of Orders are There? How Long Do They Last?*, WOMENSLAW, <https://www.womenslaw.org/laws/ca/restraining-orders/domestic-violence-restraining->

another court hearing to get a longer restraining order after the ex parte order expires.<sup>79</sup>

In 2020, the California legislature augmented the reach of family law protective orders to encompass mental abuse, emotional abuse, and coercion.<sup>80</sup> For example, coercive actions include isolating the victim, which includes behaviors where the abuser prevents the victim from contacting friends or loved ones.<sup>81</sup> Another form of coercion is depriving the victim of necessities like food or water.<sup>82</sup>

### III. CHAPTER 135

Senators Min and Rubio introduced Chapter 135 on February 10, 2021, then SB 374, to address widespread reproductive coercion and rising rates of domestic violence.<sup>83</sup> California is the first state to recognize reproductive coercion as part of its domestic violence prevention statutes.<sup>84</sup> Chapter 135 aims to holistically protect against domestic violence by adding reproductive coercion to California's Family Code.<sup>85</sup> Now, prosecutors can use California's Family Code to punish non-physically abusive reproductive coercion.<sup>86</sup>

Victims can use Chapter 135 to request a protective order to stop their abusers from disturbing their reproductive autonomy.<sup>87</sup> According to the bill, reproductive coercion includes forcing or pressuring a partner to become pregnant.<sup>88</sup> The amendment also defines reproductive coercion as interfering with contraceptive use and access to health information to control another person's reproductive

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orders/basic-information/what-types-orders (last visited Aug. 28, 2021) (on file with the *University of the Pacific Law Review*).

79. CAL. FAM. CODE § 6218 (West 2021) (defining an ex parte protective order as a temporary protective order to prevent abusive behavior); *What Types of Orders are There? How Long Do They Last?*, WOMENSLAW, *supra* note 80.

80. See CAL. FAM. CODE § 6320 (West 2021) (adding specific forms of coercion to the definition of "disturbing the peace" of another, including financial and economic coercion).

81. *Id.*

82. *Id.*

83. Press Release, Sen. Dave Min's Office, *supra* note 17; Complete Bill History of SB 374, [https://leginfo.ca.gov/faces/billHistoryClient.xhtml?bill\\_id=202120220SB374](https://leginfo.ca.gov/faces/billHistoryClient.xhtml?bill_id=202120220SB374) (last visited Dec. 17, 2021) [hereinafter Complete Bill History of SB 374] (on file with the *University of the Pacific Law Review*); FAM. § 6320 (amended by Chapter 135) (enacting the bill previously known as SB 374 into the Protective Orders section of the California Family Code).

84. See Press Release, Sen. Dave Min's Office, *supra* note 17 (revealing that an OBYGN doctor saw reproductive coercion on a daily basis); Complete Bill History of SB 374, *supra* note 85.

85. See FAM. § 6320 (amended by Chapter 135) (expanding Cal. Fam. Code § 6320 to enjoin reproductive coercion).

86. *Hearing on SB 374 Before the Assemb. Comm. on Judiciary*, 2021 Leg., 2020–2021 Sess. (Cal. 2021) [hereinafter *Assemb. Judiciary Hearing*] (on file with the *University of the Pacific Law Review*).

87. FAM. § 6320 (amended by Chapter 135) (defining "disturbing the peace of the other party" as behavior that "destroys the mental or emotional calm of the other party").

88. FAM. § 3620 (amended by Chapter 135).

choices.<sup>89</sup> Chapter 135 is a novel attempt to assist victims by prosecuting domestic violence using a protective order against reproductive coercion.<sup>90</sup>

#### IV. ANALYSIS

Building on California reproductive rights, Chapter 135 gives victims another avenue for protection against domestic abuse by expanding the California Family Code's ("Family Code") definition of coercion.<sup>91</sup> Reproductive coercion is only included in the family code and addressed by implementing a protective order.<sup>92</sup> Reproductive coercion would not be categorized as a criminal act unless the abuser violates the victim's protective order.<sup>93</sup> Chapter 135 would more thoroughly implement protection against reproductive coercion if further legislation added reproductive coercion to the California Penal Code definition of domestic violence.<sup>94</sup> Doing so would enable the prosecution of reproductive coercion without first requiring victims to obtain protective orders.<sup>95</sup>

Unless the victim already has a family law protective order, they will not recover from reproductive coercion because it is not in the criminal code.<sup>96</sup> Adding reproductive coercion to the criminal code would help victims obtain relief because they would have access to more resources to help them recover.<sup>97</sup> The criminal law system could provide protection from reproductive coercion to victims with limited access to the family law system.<sup>98</sup> Otherwise, victims may remain

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89. *Id.*

90. Press Release, Sen. Dave Min's Office, *supra* note 17 (providing that SB 374 "would make California the first state in the country to add reproductive coercion to its definition of domestic violence").

91. FAM. § 3620 (amended by Chapter 135); *see* Press Release, Sen. Dave Min's Office, *supra* note 17 ("By explicitly recognizing reproductive coercion, and the horrific forms of abuse that this encompasses, SB 374 gives survivors access to justice and the legal protections that our courts can offer").

92. FAM. § 3620 (amended by Chapter 135).

93. *See id.* (providing protective orders against coercive behavior); CAL. PENAL CODE § 13700 (West 2021) (limiting abuse only to physical actions and not including reproductive coercion or any other form of coercion).

94. *See Assemb. Judiciary Hearing, supra* note 88 (discussing that Chapter 135 adds reproductive coercion "as an additional example of coercive control which disturbs the peace of another and for which a restraining order may be granted," omitting any changes to criminal codes); PENAL § 13700 (defining abuse as causing bodily injury); PENAL § 273.83 (setting forth a prosecution effort for those who committed abuse as defined by section 13700).

95. PENAL § 13700; CAL. PENAL CODE § 273.83 (West 2021) (describing the "prosecution effort" against an abuser for actions prohibited by Penal Code section 13700).

96. FAM. § 6320 (amended by Chapter 135); PENAL § 13700.

97. *See* FAM. § 6320 (amended by Chapter 135) (adding reproductive coercion to the grounds for protective orders only through California family law); PENAL § 13700 (defining a list of terms such as abuse and domestic violence, to which the Legislature could add a definition of coercive behavior); *Crime Type: Domestic Violence*, VICTIMS OF CRIME RES. CTR., <https://1800victims.org/crime-type/domestic-violence/#resources> (last visited Aug. 13, 2021) (on file with the *University of the Pacific Law Review*) (providing resources that a victim can use to protect themselves).

98. *See Beware Family Court: What Victims and Advocates Should Know*, WOMEN'S JUST. CTR., [https://justicewomen.com/help\\_family\\_law.html](https://justicewomen.com/help_family_law.html) (last visited Aug. 14, 2021) (on file with the *University of the Pacific Law Review*) (highlighting the differences in protecting the victim in the criminal court versus the family court).

vulnerable to their partner's coercive tactics.<sup>99</sup> Reproductive coercion is not part of California's criminal domestic abuse law, making it only illegal if the abuser commits it in violation of a protective order.<sup>100</sup> The victim can file for a family law protective order for free, but legal representation presents a financial burden that may limit their access to protection.<sup>101</sup> In addition, the burden of having to recount traumatic events in a courtroom and effectively advocate for themselves without legal training may prevent victims from receiving help.<sup>102</sup> Without a protective order, victims do not have complete legal and punitive protection because abusers only receive criminal penalties for reproductive coercion if they violate a protective order.<sup>103</sup>

Reproductive coercion remains a threat to victims in California, despite Chapter 135's effort to provide protection.<sup>104</sup> Section A discusses the Family Code protections through Chapter 135's addition of reproductive coercion to the list of prohibited behaviors.<sup>105</sup> Section B considers how reproductive coercion is not categorized as a crime without a protective order.<sup>106</sup> Section C proposes that the Legislature add reproductive coercion to the criminal domestic violence statute to ensure complete protection to victims of reproductive coercion in California.<sup>107</sup>

#### *A. Chapter 135 Protects Against Reproductive Coercion*

Chapter 135 adds reproductive coercion to the Family Code's protective orders statute.<sup>108</sup> The protective orders statute provides victims an effective remedy against coercion because it provides a temporary restraining order that the victim enforces to defend themselves and obtain relief.<sup>109</sup> Chapter 135 expands the

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99. See FAM. § 6320 (amended by Chapter 135) (describing types of coercive tactics a party may use against another).

100. See FAM. § 6320 (amended by Chapter 135); CAL. PENAL CODE § 273.6 (West 2021). (penalizing anyone who intentionally or recklessly violates a protective order).

101. *Restraining Orders*, WOMENSLAW, *supra* note 74 (suggesting that the application for a protective order is free, but also recommending hiring an attorney for complicated cases); *Legal Information: California: Restraining Orders: How Much Does it Cost? Do I Need a Lawyer*, WOMENSLAW, <https://www.womenslaw.org/laws/ca/restraining-orders/domestic-violence-restraining-orders/who-can-get-dvro/how-much-does-it> (last visited Dec. 17, 2021) (on file with the *University of the Pacific Law Review*) (providing that it is free to file a domestic violence restraining order).

102. See *Polyvictims: Victims' Rights Enforcement as a Tool to Mitigate "Secondary Victimization" in the Criminal Justice System*, NAT'L CRIME VICTIM L. INST. 2 (2013), <https://law.lclark.edu/live/files/13797-nclpvvictims-rights-enforcement-as-a-tool-to> (on file with the *University of the Pacific Law Review*) (detailing how a victim may have more traumatic experiences when they interact with the court system).

103. FAM. § 6320 (amended by Chapter 135); CAL. PENAL CODE § 273.6 (West 2021).

104. See FAM. § 6320 (amended by Chapter 135) (defending people from reproductive coercion if they obtain a protective order); *infra* Section IV.B.

105. *Infra* Section IV.A.

106. *Infra* Section IV.B.

107. *Infra* Section IV.C.

108. CAL. FAM CODE § 6320 (amended by Chapter 135) (providing protective orders against specific forms of abuse, such as coercion of a victim's behavior and finances).

109. *Id.*

definition of coercion in the Family Code to clarify for courts the kinds of behaviors that protective orders prohibit.<sup>110</sup> However, the family law process may leave victims vulnerable to reproductive coercion and limit their access to recovery because the victim must first obtain a protective order.<sup>111</sup> If the victim cannot obtain a protective order, abusers may continue to coerce the victim's reproductive choices without legal consequences.<sup>112</sup> Reproductive coercion is a crime only when committed in violation of a protective order.<sup>113</sup>

### *B. Without a Protective Order Chapter 135 Is Ineffective*

In some instances, protective orders are an effective remedy for victims of reproductive coercion.<sup>114</sup> Without a protective order, reproductive coercion is not punishable because it is not a criminal offense.<sup>115</sup> Subsection 1 discusses California's Family Law remedies for domestic violence.<sup>116</sup> Subsection 2 explains the numerous criminal law resources to remedy domestic violence.<sup>117</sup>

#### *1. Victims' Burdens and Remedies Available through the Family Law System*

Criminal abuse can have a devastating effect on people, and for those who experience trauma, the effort it takes to find help can be overwhelming.<sup>118</sup> Victims' access to justice can be part of their healing process because the justice system allows financial recovery.<sup>119</sup> Protective orders in California's family law system provide couples and cohabitants an opportunity to work towards a solution safely.<sup>120</sup> The promise to provide safety through the family law system fails when victims cannot access resources to prove that they experienced abuse.<sup>121</sup>

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110. *Assemb. Judiciary Hearing*, *supra* note 88.

111. CAL. PENAL CODE § 273.6 (West 2021); *Beware Family Court*, WOMEN'S JUST. CTR., *supra* note 100.

112. *See Beware Family Court*, WOMEN'S JUST. CTR., *supra* note 100 ("Even at best, if the family court believes the victim, they may scold the violator, or issue a modified order which the abuser has no intention of respecting. . . .").

113. PENAL § 273.6; *What is Crime?*, LAW DICTIONARY, <https://thelawdictionary.org/crime/> (last visited Aug. 14, 2021) (on file with the *University of the Pacific Law Review*) (defining crime as "an act committed or omitted, in violation of a public law, either forbidding or commanding it; a breach or violation of some public right or duty due to a whole community").

114. Christopher T. Benitez et al., *Do Protection Orders Protect?*, 38 J. AM. ACAD. PSYCHIATRY AND L. 376, 381 (2010) (discussing the impact of protective orders on the likelihood of victims' subsequent experiences with abuse).

115. PENAL § 273.6; CAL. PENAL CODE § 13700 (West 2021) (omitting coercive control from the criminal definition of abuse).

116. *Infra* Subsection IV.B.1.

117. *Infra* Subsection IV.B.2.

118. *See* CAL. CONST. art. 1, § 28 (noting the serious impact of crime and the rights of victims to criminal prosecutions).

119. CAL. CONST. art. 1, § 28; *Polyvictims*, NAT'L CRIME VICTIM L. INST., *supra* note 104, at 4 n.6.

120. *Assemb. Judiciary Hearing*, *supra* note 88.

121. *Beware Family Court*, WOMEN'S JUST. CTR., *supra* note 100.

The victim must first obtain a protective order through family court and then only enforce it in the criminal law system when the abuser violates the order.<sup>122</sup> In the family law system, the abuser and victim appear before the judge and provide evidence and arguments with or without lawyers present.<sup>123</sup> The court expects the victim to sufficiently represent themselves and provide evidence to support their assertions as though they are professionals.<sup>124</sup> Then the judge decides whether it is necessary to issue a protective order to prevent further abusive actions.<sup>125</sup>

While filing for a domestic violence protective order in the California family court is free, other burdens may bar access to recovery.<sup>126</sup> If the family law system's burdens on victims are too great, protection may be unattainable because they cannot overcome the obstacles to receive justice.<sup>127</sup> Examples of hurdles that victims may face include psychological trauma and the financial cost of hiring an attorney if needed.<sup>128</sup>

While seeking justice, many domestic violence victims also suffer significant secondary trauma.<sup>129</sup> Facing abusers in court may cause victims to relive traumatic experiences and cause a more substantial burden than a criminal remedy against reproductive coercion.<sup>130</sup> If arguing with their abuser does not dissuade them, victims may be concerned about whether the court will believe them.<sup>131</sup> If the judge does not believe the victim, the victim may experience further trauma and feel invalidated.<sup>132</sup> The court may choose the abuser's side because they represent

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122. See CAL. PENAL CODE §§ 273.83, 13700 (West 2021).

123. *California's Criminal, Civil, and Family Law Systems: A General Overview*, VICTIMS OF CRIME RES. CTR. 9 (2020), <https://1800victims.org/wp-content/uploads/2020/10/CA-crim-civ-family-law-systems.pdf> (on file with the *University of the Pacific Law Review*).

124. *Beware Family Court*, WOMEN'S JUST. CTR, *supra* note 100.

125. CAL. FAM. CODE § 6320 (West 2021).

126. *Restraining Orders*, WOMENSLAW, *supra* note 74 (last visited July 14, 2021) (on file with the *University of the Pacific Law Review*); *Beware Family Court*, WOMEN'S JUST. CTR, *supra* note 100 (arguing that a victim of abuse "not only has the burden of proving her own case against a violent perpetrator" but "must now also mount a defense against as many accusations as the batterer wishes to hurl against her"); *Restraining Orders: How Much Does it Cost? Do I Need a Lawyer*, WOMENSLAW, *supra* note 103 (providing that it is free to file a domestic violence restraining order).

127. *Beware Family Court*, WOMEN'S JUST. CTR, *supra* note 100.

128. Maleaha Brown, *De-Weaponizing the Courts: Attorney's Fees May Help Deter Litigation Abuse Against Domestic Violence Survivors*, A.B.A.: DOMESTIC VIOLENCE (Oct. 29, 2019), [https://www.americanbar.org/groups/family\\_law/committees/domestic-violence/litigation-abuse/](https://www.americanbar.org/groups/family_law/committees/domestic-violence/litigation-abuse/) (on file with the *University of the Pacific Law Review*); *California's Criminal, Civil, and Family Law Systems: A General Overview*, *supra* note 125, at 9 (providing that if victims need legal representation they must hire an attorney).

129. *Polyvictims*, NAT'L CRIME VICTIM L. INST., *supra* note 104, at 2.

130. See *Beware Family Court*, WOMEN'S JUST. CTR, *supra* note 100 ("A just outcome to a criminal case is considered so important to society that it is the state itself that pursues justice and protection.").

131. *Polyvictims*, NAT'L CRIME VICTIM L. INST., *supra* note 104, at 2.

132. *Id.* at 1 ("External factors that influence a victim's experience with the criminal justice system, which in turn may lead to increased (or decreased) mental and physical well-being, include: (1) the manner in which the victims are treated throughout the criminal justice process; and (2) the amount of control that the victims are given as well as the extent to which they are able to participate within the system.").

themselves better with an attorney, the victim lacks competent representation or lacks necessary evidence to support their case.<sup>133</sup>

However, the advantage of the family law system is that victims have more control over their case than they would in criminal law.<sup>134</sup> Under current law, if a perpetrator violates a protective order against domestic violence, the police can arrest them, which may provide the victim some assurance for their safety.<sup>135</sup> In addition, a victim may want a non-criminal way to resolve their issues.<sup>136</sup> Therefore, the family law protective orders system can provide an effective remedy for victims who have adequate access to the resources they need to obtain protection.<sup>137</sup>

Even so, there are victims who may not have access to remedies against reproductive coercion because of financial constraints or limited access to resources such as legal assistance.<sup>138</sup> A study from the Trauma Violence Abuse journal reveals that victims of reproductive coercion are typically from lower socioeconomic backgrounds.<sup>139</sup> Victims from lower socioeconomic backgrounds may have greater difficulty with the financial burden of taking time off work to advocate for themselves in court.<sup>140</sup> If victims cannot obtain protection through the family law system because of these hurdles, they will be vulnerable because they have no avenue to obtain a protective order unless they are the victims of or witness to a crime.<sup>141</sup>

Abusers may try to further control the victim by drawing out the legal process.<sup>142</sup> The abuser may intentionally increase the burden of legal fees by filing

133. *Id.* at 2; *Beware Family Court*, WOMEN’S JUST. CTR, *supra* note 100.

134. *See generally California’s Criminal, Civil, and Family Law Systems*, *supra* note 125, at 2 (explaining that in the criminal law system the prosecutor makes decisions about whether to pursue the case, whereas in the family law system the survivor is more directly involved in the legal process).

135. CAL. PENAL CODE § 13071 (West 2021).

136. *See Assemb. Judiciary Hearing*, *supra* note 88 (reviewing the process of issuing temporary restraining orders on an *ex parte* basis).

137. *See generally id.* (providing protective orders for reproductive coercion that the survivor may enforce against the perpetrator).

138. *See Beware Family Court*, WOMEN’S JUST. CTR, *supra* note 100 (arguing the system is “especially risky for victims who present claims of violence and abuse in family court without any criminal case documents to back up those claims”).

139. Karen T. Grace & Jocelyn C. Anderson, *Reproductive Coercion: A Systematic Review*, 19 TRAUMA VIOLENCE ABUSE 371, 381 (2018) (demonstrating that women with a lower socioeconomic background were “significantly associated” with reproductive coercion experiences).

140. *Help from Your Court*, CAL. CTS.: THE JUD. BRANCH OF CAL., <https://www.courts.ca.gov/1083.htm#SHC> (last visited Aug. 15, 2021) (on file with the *University of the Pacific Law Review*) (providing that the Family Law Facilitator can provide educational materials on advocating for themselves and referrals to local childcare services, but not offering financial assistance, direct legal representation, or even translators in some cases); *Asking for Lawyer’s Fees and Costs in Family Law Cases*, CAL. CTS.: THE JUD. BRANCH OF CAL., <https://www.courts.ca.gov/33289.htm?rdeLocaleAttr=en> (last visited Aug. 15, 2021) (on file with the *University of the Pacific Law Review*) (providing that in some cases, parties may offset legal costs by asking the judge to order the other party to pay their legal fees).

141. *See Beware Family Court*, WOMEN’S JUST. CTR, *supra* note 100 (comparing the differences between family law and criminal law).

142. Maleaha Brown, *De-Weaponizing the Courts: Attorney’s Fees May Help Deter Litigation Abuse*



superfluous claims or motions.<sup>143</sup> One of the ways to combat abusive litigation is for the victim—likely with no legal experience—to prove that the abuser intends the motions to be abusive.<sup>144</sup> If the victim can successfully prove that the abuser is using the legal process to cause more harm, the abuser may have to pay the victim's legal fees.<sup>145</sup>

If the victim is not financially able to hire legal representation, the victim must jump through hurdles to understand legal procedure and effectively advocate for themselves.<sup>146</sup> The procedures include collecting evidence and advocating for themselves when they need assistance from the clerk or the judge.<sup>147</sup> A traumatized person may not remember the important details of their case or may struggle to properly advocate for themselves properly.<sup>148</sup> Self-representation may be onerous to victims because it is time-consuming and victims carry the burden of proving their case by a preponderance of the evidence, even if the person representing themselves is not an attorney.<sup>149</sup> According to the Statewide Action Plan for Serving Self-Represented Litigants, approximately sixty-seven percent of family law petitioners represent themselves.<sup>150</sup>

## *2. Reproductive Coercion in Criminal Law: The California Criminal Law System's Resources for Victims*

Under the California Constitution, victims in the criminal law system have the right to restitution and a just penalty against the perpetrator.<sup>151</sup> To obtain the

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*Against Domestic Violence Survivors*, A.B.A.: DOMESTIC VIOLENCE (Oct. 29, 2019), [https://www.americanbar.org/groups/family\\_law/committees/domestic-violence/litigation-abuse/](https://www.americanbar.org/groups/family_law/committees/domestic-violence/litigation-abuse/) (on file with the *University of the Pacific Law Review*).

143. *Id.*

144. *Id.*; *About Abuse: Litigation Abuse*, WOMENSLAW (updated Sept. 4, 2019), <https://www.womenslaw.org/about-abuse/forms-abuse/litigation-abuse> (on file with the *University of the Pacific Law Review*) (“For example, filing repeated petitions or motions, requesting many adjournments, appealing the judge’s orders without a legal basis to do so, or taking other actions that make the victim repeatedly come to court . . . . Unfortunately, litigation abuse is challenging to deal with because it is hard to limit someone’s right to file in court.”).

145. Brown, *supra* note 144.

146. *Restraining Orders*, WOMENSLAW, *supra* note 74.

147. *Id.*

148. *The Importance of Understanding Trauma-Informed Care and Self-Care for Victim Service Providers*, U.S. DEP’T OF JUST., (July 30, 2014), <https://www.justice.gov/archives/ovw/blog/importance-understanding-trauma-informed-care-and-self-care-victim-service-providers> (on file with the *University of the Pacific Law Review*).

149. *Beware Family Court*, WOMEN’S JUST. CTR, *supra* note 100.

150. JUD. COUNS. CAL., *Statewide Action Plan for Serving Self-Represented Litigants*, (2009), <https://www.courts.ca.gov/7648.htm> (on file with the *University of the Pacific Law Review*).

151. See CAL. CONST. art. 1, § 28 (“Victims of crime have a collectively shared right to expect that persons convicted of committing criminal acts are sufficiently punished in both the manner and the length of sentences imposed by the courts of the State of California.”). See generally HEATHER WARNKEN, REAL JUSTICE: VICTIMS’ RIGHTS DELIVERED: REPORT AND RECOMMENDATIONS 6 (2012), [https://www.courts.ca.gov/documents/BTB\\_XXII\\_III\\_4.pdf](https://www.courts.ca.gov/documents/BTB_XXII_III_4.pdf) (on file with the *University of the Pacific Law Review*) (reflecting that barriers to enforcement of victims’ rights include inadequate funding and lack of legal

benefits of restitution and justice, victims must first traverse a rather complicated system.<sup>152</sup> A victim of a crime in California has to request some rights, such as the right to make a statement in court.<sup>153</sup> A victim may need the guidance of a Victim Witness Assistance center to obtain these rights and to understand how to participate in the criminal law system.<sup>154</sup>

The District Attorney represents the state against the abuser, which prevents the victim from having to advocate for themselves.<sup>155</sup> If a criminal conviction follows the arrest, the abuser must pay the victim restitution, which is an order for the abuser to pay for the victim's injury.<sup>156</sup> Victims may be less burdened with navigating complex procedures to advocate for themselves in the criminal justice system because the District Attorney takes responsibility for the conviction.<sup>157</sup> The California Constitution gives victims control over how involved they are in the case by granting them rights to make statements and receive updates about the case.<sup>158</sup>

### *C. The California Legislature Should Include Reproductive Coercion in the Criminal Definition of Abuse*

Unless the California Legislature adds reproductive coercion to the criminal law definition of spousal abuse, the only remedies for abuse will be unavailable to survivors without protective orders.<sup>159</sup> Adding reproductive coercion to the criminal code would provide more comprehensive relief to victims of reproductive coercion because it would provide victims with more resources to obtain justice.<sup>160</sup>

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understanding).

152. Brown, *supra* note 144.

153. CAL. CONST. art. 1, § 28.

154. *Office of the District Attorney: Victim Assistance Program*, CNTY. OF SANTA CLARA, <https://www.sccgov.org/sites/da/VictimServices/restitution/Pages/VICTIMASSISTANCEPROGRAM.aspx> (last updated Aug. 16, 2018) (on file with the *University of the Pacific Law Review*).

155. *Beware Family Court*, WOMEN'S JUST. CTR, *supra* note 100.

156. See CAL. CONST. art. 1, § 28 ("It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer.").

157. *California's Criminal, Civil, and Family Law Systems*, *supra* note 125, at 9.

158. See CAL. CONST. art. 1, § 28 (providing victims the right "[t]o reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding, the arrest of the defendant if known by the prosecutor, the charges filed, the determination of whether to extradite the defendant, and, upon request, to be notified of and informed before any pretrial disposition of the case.").

159. See generally CAL. FAM. CODE § 6320 (amended by Chapter 135) (amending the Family Code to include reproductive coercion as a basis for restraining orders); see also CAL. PENAL CODE § 13700 (West 2021) (omitting reproductive coercion from the definition of domestic violence and abuse in the Penal Code).

160. See *Beware Family Court*, WOMEN'S JUST. CTR, *supra* note 100 ("[C]riminal courts wield the ultimate power of the state, the power to throw the abuser in jail. . . . [i]n addition, once police name the abuser as the suspect, state protections are available to the victim (and other witnesses) without any burden on the victim (or witnesses) to prove their need.").

Abuse under Penal Code section 13700 refers only to physical bodily injury and does not include mental or emotional abuse.<sup>161</sup>

By only providing protections for physical abuse, family law allows psychological and other coercive abuses continue without the justice of protective orders.<sup>162</sup> The family law protective orders provide limited protection because victims need to prove that a pattern of abuse gives them cause to request the order.<sup>163</sup> Reproductive coercion can occur as a stand-alone form of abuse, without also including physical forms of abuse.<sup>164</sup> Reproductive coercion may be too difficult for a victim to prove and obtain a protective order because there may not be a clear pattern of abuse.<sup>165</sup> The responsibility for proving reproductive coercion would shift from the victim to the District Attorney, who is likely better equipped to handle a complicated case.<sup>166</sup> If the Legislature added reproductive coercion to the definition of abuse in Penal Code section 13700, it would provide victims with more resources to defend against reproductive coercion.<sup>167</sup>

Amending the Penal Code to include reproductive coercion will create a more streamlined avenue for victims to recover against their perpetrators.<sup>168</sup> Reproductive coercion should be included within the penal code rather than requiring that victims obtain a protective order.<sup>169</sup> Reproductive coercion should be part of the criminal code so victims can recover quickly and with minimal burden.<sup>170</sup> Protective orders in the family code are effective for victims who have easy access to resources.<sup>171</sup> However, for those who do not have access to those same resources, obtaining relief from reproductive coercion will be overly complicated.<sup>172</sup>

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161. PENAL § 13700.

162. *See id.* (limiting protections against abuse to physical injury).

163. CAL. FAM. CODE § 6320 (West 2021).

164. Grace & Anderson, *Reproductive Coercion: A Systematic Review*, *supra* note 141 at 372.

165. *Id.*

166. *See* JEFFREY FAGAN, *THE CRIMINALIZATION OF DOMESTIC VIOLENCE: PROMISES AND LIMITS* 11 (1996), <https://www.ojp.gov/pdffiles/crimdom.pdf> (on file with the *University of the Pacific Law Review*) (evaluating the effect of different policies and their effectiveness).

167. *See* CAL. PENAL CODE § 13700 (West 2021) (providing the definition of abuse and adding coercive behaviors, including reproductive coercion, to it would inform courts that abuse also occurs in non-physical forms and provide survivors of abuse another venue to access justice).

168. *See generally* FAGAN, *supra* note 168 (detailing the results of several prosecutorial methods and experiments).

169. PENAL § 13700; *see also* FAGAN, *supra* note 168 (describing the advantages of prosecutorial experiments).

170. *See Beware Family Court*, WOMEN'S JUST. CTR, *supra* note 100 (highlighting how the burden of prosecuting criminal cases of abuse falls on the state).

171. *See* Press Release, Sen. Dave Min's Office, *supra* note 17 (providing that the purpose of SB 374, now Chapter 135, is to give "survivors access to justice and the legal protections that our courts can offer"); *Beware Family Court*, WOMEN'S JUST. CTR, *supra* note 100 (illustrating challenges that survivors face when seeking justice through the family law system).

172. *Beware Family Court*, WOMEN'S JUST. CTR, *supra* note 100 (providing that people seeking justice in family court face an "cases where the batterers easily fashion the family court system into one more weapon he can wield against the victim").

## V. CONCLUSION

Reproductive coercion is a form of abuse where a person seeks to control the reproductive choices of another.<sup>173</sup> Chapter 135 provides victims of reproductive coercion an avenue to protect themselves through protective orders and recover when the abuser violates the protective order.<sup>174</sup> However, the California Legislature should also add reproductive coercion to the California Penal Code so that victims have a more streamlined way to receive justice and obtain protection.<sup>175</sup> Otherwise, the cost of litigation and the strenuous legal procedures in the family law system could bar victims from recovery for their injuries related to reproductive coercion.<sup>176</sup> Thus, adding reproductive coercion to the criminal code would ensure the law more adequately protects abuse survivors by providing more avenues to justice.<sup>177</sup>

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173. Grace & Anderson, *Reproductive Coercion: A Systematic Review*, *supra* note 141, at 371.

174. CAL. FAM CODE § 6320 (amended by Chapter 135).

175. *See generally Polyvictims*, NAT'L CRIME VICTIM L. INST., *supra* note 104, at 2 ("Victims who feel that they have been treated fairly and afforded their rights tend to experience less secondary victimization, and they have greater respect for and satisfaction with the justice system.").

176. *See generally Beware Family Court*, WOMEN'S JUST. CTR., *supra* note 100 (advising victims on how to navigate a daunting system).

177. *See generally* FAM. § 6320 (amended by Chapter 135); CAL. PENAL CODE § 13700 (West 2021) (amending only the Family Code to provide protections for victims of reproductive coercion).

