

THE BABY AND THE BATHWATER: REPRODUCTIVE ABUSE AS DOMESTIC VIOLENCE AND EMPOWERING BODILY AUTONOMY THROUGH THE LAW

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Abstract

Reproductive abuse—ranging from contraceptive sabotage and coerced pregnancy to coerced abortion and sexual violations such as stealthing—operates as a distinct and under-recognized form of domestic violence. By assessing medical, sociological, and legal research, it is clear how reproductive abuse holds a victim’s body and reproductive ability hostage, producing long-term physical, psychological, and familial harms. Existing criminal statutes, which focus on force-based sexual offenses, do not capture non-physical reproductive violations such as medication tampering or nonconsensual condom removal. Further, civil remedies, including tort claims and custody determinations, inadequately account for the harms of coerced conception and the long-term legal ties it creates between victims and abusers. Through comparative statutory analysis, this Article demonstrates the gaps in current law and argues for targeted reforms, including criminalization of contraceptive tampering, new civil causes of action, custody rules that account for coercive conception, and restoration of abortion access. Ultimately, this Article concludes that recognizing reproductive abuse as domestic violence is essential to protecting bodily autonomy and enabling survivors to reclaim control over their reproductive lives.

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INTRODUCTION

At a point during every intimate relationship, family planning becomes a heavy topic of discussion. Partners in the relationship might first want to determine if they are compatible with their desires for, or lack thereof, a family, and further down the line partners might start to consider how to make these desires a reality. Do you want kids, and if so, how many? Can we have children conventionally, or should we consider adoption or fertility assistance? If a partner has children from a former relationship, how will we blend our family together? Questions like these ideally come about out of respect for the other partner and a desire to build a life together. In cases of domestic abuse, however, such respect is missing, and an intimate partner can often find themselves without any say in how their family is created. A partner in an abusive relationship may not be a party to discussions about family planning, instead their bodily autonomy may be violated and controlled by an abusive partner as

an extension of intimate partner violence. These are cases of reproductive coercion: deliberate attempts to control, limit, or interfere with a person's reproductive autonomy.¹

The term reproductive coercion, hereinafter used interchangeably with reproductive abuse, was first used academically in 2010 in a study by Dr. Elizabeth Miller assessing racial differences in rates of unintended pregnancy.² The term was used particularly in the context male partners enforcing their pregnancy intentions on their female partners, resulting in actions such as trying to impregnate their partner against their wishes, interfering with contraceptive use, and manipulating condoms.³ Further studies have focused on physical and sexual conduct that may result in unplanned pregnancy, such as refusal to wear a condom during sex, and have expanded to include attempts to forcibly terminate a pregnancy against the pregnant partner's wishes, including attempts to induce a miscarriage.⁴ While these are important physical aspects of reproductive abuse, the term also considers a psychological dimension.⁵ Reproductive abuse should be analyzed in the context of both actions taken to control or manipulate the reproductive ability of one partner, and the intent to control or instill fear in a partner, using their reproductive ability as an avenue of abuse.⁶ Focusing on the intention to control an abused partner's reproductive ability reveals it to be a tool of domestic abuse and helps to focus on the harms that result from reproductive abuse. For example, abusers often use children as a connection to the victim/mother, giving them a reason and purpose to "maintain contact with the woman" and prevent her from breaking ties with the abuser.⁷ Having children with an abuser makes the children more so a tool of abuse than a family member. Thus, there is an incentive for abusers to pressure their partners into having children, or, at worst, exert control over their reproductive ability to force them into having children.

Recognizing reproductive abuse as domestic abuse is important to recognize women experiencing intimate partner violence, and to identify the most dangerous times in women's lives and relationships. In 2020, the risk of homicide of pregnant and postpartum women was thirty-five

1. Laura Tarzia & Kelsey Hegarty, *A Conceptual Re-Evaluation of Reproductive Coercion: Centering Intent, Fear and Control*, 18 REPROD. HEALTH 87, 87 (2021).

2. Elizabeth Miller et al., *Pregnancy Coercion, Intimate Partner Violence and Unintended Pregnancy*, 81 CONTRACEPTION 316, 316–18 (2010).

3. *Id.* at 317.

4. COMM. ON HEALTH CARE FOR UNDERSERVED WOMEN, AM. COLL. OF OBSTETRICIANS AND GYNCOLOGISTS, COMMITTEE OPINION NO. 554: REPRODUCTIVE AND SEXUAL COERCION 1 (2013).

5. Tarzia & Hegarty, *supra* note 1, at 93.

6. *Id.*

7. LUNDY BANCROFT, JAY G. SILVERMAN & DANIEL RITCHIE, *THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS* 92 (2d ed. 2012).

percent higher than women who were not pregnant or postpartum.⁸ Healthcare providers have urged greater domestic violence assessments of their patients in the wake of this data, encouraging providers to “think about maternal mortality, or maternal issues” in relation to “the entire lifecycle of a woman, of her family, of everyone who touches that familial unit”—to consider the relationship context in which a woman is entering pregnancy and the larger threats to her health and well-being.⁹ This urgency is especially stark after the death of *Roe v. Wade*,¹⁰ where the Supreme Court devolved the right to abortion to the states.¹¹ The number of calls to the National Domestic Violence Hotline related to reproductive coercion doubled—from 1,230 to 2,442—after the Supreme Court struck down the right to an abortion in *Dobbs*.¹² With access to abortion care restricted, victims of abuse have less control over their reproductive ability, creating a culture where women are potentially forced to have a child with their abuser, or allowing abusers to threaten their partners with unsafe abortion procedures.¹³

While women’s healthcare is attempting to catch these abuse concerns, the legal system is typically not accessible to victims of reproductive abuse and does not generally recognize the harms that result from such abuse, giving victims few claims to damages.¹⁴ While states regularly criminalize rape, both between strangers and between married couples,¹⁵ when reproductive abuse occurs without a clear, violent, physical act of violation such as rape, victims often have difficulty proving abuse occurred. Many states have moved towards enacting statutes to recognize coercive control—which is meant to recognize non-physical tactics to dominate and harm a victim mentally, emotionally,

8. Maeve E. Wallace, *Trends in Pregnancy-Associated Homicide, United States, 2020*, 112 AM. J. PUB. HEALTH 1333, 1334 (2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9382166/pdf/AJPH.2022.306937.pdf> [<https://perma.cc/Q7ED-VEBK>].

9. Jacqueline Howard, *With Homicide a Leading Cause of Maternal Death, Doctors Urged to Screen Pregnant Women for Domestic Violence*, CNN HEALTH (Oct. 20, 2022, at 18:49 ET), <https://www.cnn.com/2022/10/20/health/homicide-maternal-mortality-us-editorial/index.html> [<https://perma.cc/SW8B-63XN>].

10. Nina Totenberg & Sarah McCammon, *Supreme Court Overturns Roe v. Wade, Ending Right to Abortion Upheld for Decades*, NPR (June 24, 2022, at 10:43 ET), <https://www.npr.org/2022/06/24/1102305878/supreme-court-abortion-roe-v-wade-decision-overturn> [<https://perma.cc/SP6C-TMZG>].

11. *See Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 232 (2022).

12. Jennifer Gerson, *Domestic Violence Calls About ‘Reproductive Coercion’ Doubled After the Overturn of Roe*, THE 19TH (Oct. 18, 2023, at 12:13 ET), <https://19thnews.org/2023/10/domestic-violence-calls-reproductive-coercion-dobbs-decision/> [<https://perma.cc/52HE-MCFH>].

13. *Id.*

14. *Id.*

15. *See, e.g.*, VA. CODE ANN. § 18.2-61(A) (West 2024).

financially, etc.¹⁶—but still need greater specificity to capture the long-lasting harm that reproductive abuse can cause victims and consider the family context this abuse can create.

Participation in reproductive abuse is not limited to intimate partners; likewise, victimization is not limited to those assigned female at birth.¹⁷ Although this discussion will focus on the perpetration of reproductive abuse by male partners against female victims, it must be acknowledged that anyone assigned female at birth (including cisgender women and transgender men) occupies a unique position in concerns about reproductive abuse.¹⁸ Pregnancy can be *inflicted* upon such individuals when it is used as a tool of assault or when pushed upon a nonconsenting witness, regardless of whether the intercourse itself was consensual.¹⁹ Thus, the focus on female victims is meant to highlight the particular danger to bodily integrity they face in domestic violence scenarios.

This Article will walk through various manifestations of reproductive abuse, their impacts on victims and the family unit, and possible legal relief by comparisons of state law. After, recommendations will be given to expand the law to provide victims of reproductive abuse greater relief and provide a legal model to help victims take back control over their bodies after abuse.

I. FORMS AND TACTICS OF REPRODUCTIVE ABUSE

Reproductive abuse occurs in various forms, ranging from overt violence to gradual coercion—but every act of reproductive abuse occurs to exert control over a victim’s body and pregnancy outcome.²⁰ Sexual abuse, such as rape, molestation or condom tampering, is itself not a form of reproductive abuse, but can be used to enact reproductive control.²¹ Rape itself is best understood as a crime of power against the victim, and may not have any intent to create pregnancy.²² Reproductive abuse, definitionally, is best understood in Laura Tarzia and Kelsey Hegarty’s 2021 article, which posits that a central factor must be present for abuse

16. See *What Is Coercive Control?*, DOMESTICSHELTERS.ORG (Nov. 28, 2023), <https://www.domesticshelters.org/articles/identifying-abuse/what-is-coercive-control> [https://perma.cc/A8RV-67WR].

17. Miller et al., *supra* note 2.

18. Miller et al., *supra* note 2.

19. Miller et al., *supra* note 2, at 317.

20. HEATHER DOUGLAS, NICOLA SHEERAN & LAURA TARZIA, IDENTIFYING AND RESPONDING TO REPRODUCTIVE COERCION IN A LEGAL CONTEXT: ISSUES PAPER 4 (2020), <https://core.ac.uk/reader/323094710> [https://perma.cc/R7Z2-TAAF] (“rape is . . . a deliberate, hostile, violent act of degradation and possession on the part of a would-be conqueror, designed to intimidate and inspire fear[.]”).

21. Tarzia & Hegarty, *supra* note 1, at 90.

22. SUSAN BROWNMILLER, AGAINST OUR WILL: MEN, WOMEN, AND RAPE 391 (Simon & Schuster 1975).

to qualify as reproductive abuse: intent to control pregnancy outcomes.²³ Simply, the behavior and abuse must be enacted “with the intention of either impregnating a woman or preventing her from . . . remaining pregnant.”²⁴ This intent must be present alongside two other factors—fear and control—which holds a victim’s body and reproductive ability itself hostage to their partner’s whims.²⁵ Sexual, physical, and psychological violence is leveraged by abusers with the purpose to control pregnancy; without that intent, it is simply domestic violence.²⁶

While centering intent is helpful to recognize the overarching outcome of reproductive abuse, it may gloss over the lived reality of sexual, psychological, and medical abuse that accompanies reproductive abuse. Focusing solely on the intent to control pregnancy confuses the purpose of reproductive abuse, making the abuse a means to its own end. Rather, reproductive abuse must be seen as a tool of domestic violence itself, not a particular form of it. When an abuser commits acts of reproductive abuse, their intent may or may not be to induce or prevent pregnancy and childbirth—but their intent is always to limit and control the bodily autonomy of their victim. Acts of sexual violence are leveraged to threaten the reproductive autonomy of the victim. This may be done to specifically control pregnancy, but that serves a larger purpose of abuse: to control and undermine the victim’s freedom within and outside of the relationship.

Most explicit is the crime of rape, which occurs often by force, coercion, or incapacitation of the victim to have sex against their will.²⁷ While rape is not typically committed with the intent to impregnate—rather, many rapists will admit they commit rape out of a perceived “right to sex”²⁸—rape is a violent assertion of control over the body, and with it, the reproductive system.²⁹ Anthony Lathrop’s article, *Pregnancy Resulting from Rape*, maps the experience of a patient named MR, who had her second child as a result of rape.³⁰ MR’s partner and rapist became violent, forced her into sex, and she blacked out from fear and trauma—but before so, she knew that his “intent” was simply to have sex with

23. Tarzia & Hegarty, *supra* note 1, at 90.

24. Tarzia & Hegarty, *supra* note 1, at 90.

25. Tarzia & Hegarty, *supra* note 1, at 89.

26. Tarzia & Hegarty, *supra* note 1, at 95.

27. *An Updated Definition of Rape*, U.S. DEP’T OF JUST. (Apr. 27, 2022), <https://www.justice.gov/archives/ovw/blog/updated-definition-rape> [https://perma.cc/WP3B-4AES].

28. Anthony Lathrop, *Pregnancy Resulting from Rape*, 27 J. OBSTETRIC, GYNECOLOGIC & NEONATAL NURSING 25, 26–28 (1998), [https://www.jognn.org/article/S0884-2175\(15\)33527-9/pdf](https://www.jognn.org/article/S0884-2175(15)33527-9/pdf) [https://perma.cc/AQX2-FSQ9].

29. *Id.* at 27.

30. *Id.* at 28.

her.³¹ Multiple respondents in a similar study assessed this violation as “coerced childbearing,” another weapon of control over them by their partner and rapist: “part of the purpose in having a baby is to control you.”³² MR herself felt emotionally volatile, expressing anger towards her rapist for “forcing [her] into” having a child.³³ The intent of the violation may not have been to induce pregnancy, but the pregnancy became a violation when it resulted from the rape. The pregnancy, like the rape, is a physical and mental overpowering of one’s bodily integrity with the intent to control it.

Another form of sexual assault which includes disregard for reproductive integrity is condom tampering and “stealthing,” which is nonconsensual condom removal during sex, with or without the penetrated party’s knowledge.³⁴ Tarzia excludes these tactics from the “intent” dimension of reproductive coercion, as removal of the condom or pressure not to use one stems mostly from men’s desire to heighten their own pleasure during sex.³⁵ Similarly, however, this is a blatant disregard for the women’s pregnancy intention, and while pregnancy is not the intent of the condom tampering, the action seeks to undermine the woman’s control over their body by placing them at risk of pregnancy (and sexually transmitted diseases) in exchange for men’s increased sexual pleasure.³⁶ “Stealthing” is commonly used by men with “more hostile attitudes towards women” and who often have more partners who developed unintended pregnancies.³⁷ Victims often report “feel[ing . . .] a violation of trust and a denial of autonomy, not dissimilar to rape.”³⁸ While stealthing may occur most specifically to heighten pleasure, some types of condom tampering (i.e., poking holes in condoms) include an intent to circumvent contraceptive intent by the woman. Both should be understood as a sexual violation, as acting against the consent of the victim and putting their reproductive decision-making in the balance.

Perhaps most representative of Tarzia’s intent, fear, and control analysis of reproductive abuse is medication tampering, which is the alteration, destruction, or removal of birth-control and other actions to make birth-control less effective or ineffective.³⁹ For example, in Miller’s

31. *Id.* at 27.

32. *Id.*

33. *Id.* at 27–28.

34. Laura Tarzia et al., *Exploring the Gray Areas Between “Stealthing” and Reproductive Coercion and Abuse*, 10 WOMEN & HEALTH 1174, 1174 (2020).

35. Tarzia & Hegarty, *supra* note 1, at 90.

36. Alexandra Brodsky, ‘Rape-Adjacent’: *Imagining Legal Responses to Nonconsensual Condom Removal*, 32 COLUM. J. GENDER & L. 183, 188 (2017).

37. Kelly Cue Davis, “Stealthing”: *Factors Associated with Young Men’s Nonconsensual Condom Removal*, 38 HEALTH PSYCH. 997, 999 (2019).

38. Brodsky, *supra* note 36, at 184.

39. Tarzia & Hegarty, *supra* note 1, at 87.

original study across family planning clinics, one in seven patients reported birth control sabotage, and occurrence was the highest among older women.⁴⁰ Birth control sabotage can occur by less explicit means, such as an abuser dissuading their partner from using birth control and making it emotionally difficult for them to use birth control.⁴¹ In more explicit acts of control, an abuser may flush or throw pills away.⁴² In these situations, medical providers will often recommend internal birth control devices such as intrauterine devices (IUDs), vaginal rings (i.e., the NuvaRing), or implants (i.e., Nexplanon).⁴³ However, these more discrete forms of birth control are still in danger the more violent and controlling an abuser is over the intimate aspects of a partner's life. One survey respondent told interviewers that she started using a NuvaRing to quell her abuser's anger over her taking the pill.⁴⁴ It worked until the next time they had sex, at which point he "pulled it out" of her vagina and questioned her.⁴⁵ Another woman reported her partner "yanked out the string" of her IUD, presumably in an attempt to remove the IUD itself.⁴⁶ Yet another woman in a study response detailed her partner threatening to break her arm implant, and reported that he would grab and touch the implant area at intermittent times.⁴⁷

Studies into the phenomenon often conflate condom tampering and other kinds of medicine or device tampering.⁴⁸ While stealthing and condom tampering are also considered birth control sabotage in the medical field, classifying the tampering of medication and birth control devices separately allows us to recognize the *additional* degree of medical control that accompanies reproductive abuse. This prevents

40. Miller et al., *supra* note 2, at 318.

41. Rebekah E. Gee et al., *Power Over Parity: Intimate Partner Violence and Issues of Fertility Control*, 201 AM. J. OBSTETRICS & GYNECOLOGY 151, 153 (2009).

42. *1 in 4 Callers to the National Domestic Violence Hotline Report Birth Control Sabotage and Pregnancy Coercion*, NAT'L DOMESTIC VIOLENCE HOTLINE (2011), <https://espanol.thehotline.org/news/1-in-4-callers-to-the-national-domestic-violence-hotline-report-birth-control-sabotage-and-pregnancy-coercion/> [https://perma.cc/VL3Q-N947] (last visited Apr. 17, 2026).

43. Jeanna Park et al., *Reproductive Coercion: Uncloaking an Imbalance of Social Power*, 214 AM. J. OBSTETRICS & GYNECOLOGY 74, 77 (2016).

44. Ann M. Moore et al., *Male Reproductive Control of Women Who Have Experienced Intimate Partner Violence in the United States*, 70 SOC. SCI. & MED. 1737, 1741 (2010).

45. *Id.*

46. Caroline Helwick, *Pregnancy Coercion and Birth Control Sabotage by Partner Are Common*, 3 THE OB/GYN NURSE-NP/PA 13 (2011).

47. Karen Trister Grace et al., *Experiences of Reproductive Coercion Among Latina Women and Strategies for Minimizing Harm: "The Path Makes Us Strong,"* 65 J. MIDWIFERY & WOMEN'S HEALTH 248, 250 (2020), <https://onlinelibrary.wiley.com/doi/epdf/10.1111/jmwh.13061> [https://perma.cc/7XX3-XLSU].

48. Park et al., *supra* note 43, at 74.

women from controlling their reproductive ability in any aspect of their lives, sexually and medically.

Even when not tampering with medicine or medical devices, abusive partners may exert influence over their partners' medical decisions and take medical decisions into their own hands. More violent abusers may threaten their victim either to get an abortion or to carry the pregnancy to term. Some respondents to a medical survey who did not want to remain pregnant reported their partner threatening to kill them if they aborted the pregnancy, with one respondent saying she was too scared of her partner to go through with the appointment.⁴⁹ Others reported similar threats to force them to get an abortion, and if they did not, the abuser would attempt to induce a miscarriage ("If you don't get it done, I'm throwing you down the steps." and "I'll punch you in the stomach.").⁵⁰ Some may use less physically violent and more coercive means to exert control over their partner's pregnancy, such as threatening the partner with homelessness or denying financial support unless they aborted the pregnancy.⁵¹ They may attempt to "scare" their partners out of using birth control by exaggerating side effects and placing the woman's bodily decisions below their own feelings.⁵² These are clear and intentional threats to control the pregnancy outcome of a victim, and often involve inducing fear to ensure such a result.⁵³

Coercion to become pregnant and have a child with an abuser must also be considered reproductive control. Here, we have the intent to control a partner's reproductive outcome (to carry to term a pregnancy and keep the child with the abuser); however, the "fear" element of Tarzia's analysis may seemingly be missing. Few women report outright violence (though it occurs), but many report "begging, badgering and making promises to support the baby" to induce women to continue the pregnancy.⁵⁴ Abusers may be upfront about their intentions, stating that their goal is to make their partner pregnant to maintain an emotional tie.⁵⁵ One caller to the National Domestic Violence Hotline stated their abusers told them such: "He has tried to talk me into having a child. He told me he wanted to keep me from leaving him."⁵⁶ Abusers may hold their victims emotionally hostage, threatening to leave or cheat on them unless

49. Moore et al., *supra* note 44, at 1741.

50. Moore et al., *supra* note 44, at 1741.

51. Molly Wellington & Kelsey Hegarty, *Women's Lived Experiences of Reproductive Coercion and Abuse*, 28 J. FAM. VIOLENCE 1, 4 (2023); see also Laura Tarzia et al., *Exploring the Gray Areas Between "Stealth" and Reproductive Coercion and Abuse*, 10 WOMEN & HEALTH 1174, 1180 (2020).

52. Moore et al., *supra* note 44, at 1741. Note this often persists as a form of financial abuse.

53. Tarzia & Hegarty, *supra* note 1, at 92.

54. Moore et al., *supra* note 44, at 1741.

55. NAT'L DOMESTIC VIOLENCE HOTLINE, *supra* note 42.

56. NAT'L DOMESTIC VIOLENCE HOTLINE, *supra* note 42.

they have children together.⁵⁷ Still, absent these explicit threats, men may exert pressure to reduce their partner's security in their own reproductive autonomy. This may occur through recurring comments on a partner's desire for a child while downplaying the woman's own desires.⁵⁸ Rather than outright threats or hostility, an abuser may employ "emotional blackmail," as one woman explains: "It was always like, if you really loved me, you'd want to have my baby[.]"⁵⁹ In the aftermath of a coerced pregnancy, victims often feel tied to the biological father indefinitely, making them feel trapped.⁶⁰ These feelings are based on good reason—the victim is now legally and emotionally tied to their abuser for the entirety of the child's minority, and possibly after. While there might not be an infliction of fear on the victim, there is always a feeling that the victim's options to control her pregnancy are not her own, and fear may be implicit in these feelings.

It is necessary to include not just strictly intentional infliction of fear to control a partner's reproductive choices in recognizing reproductive abuse, because an abusive partner's control of their victim's body will encompass their reproductive ability whether pregnancy control is the explicit intent or not. Because control of, and active disregard for, a partner's bodily autonomy is central to reproductive abuse, it functions to diminish the partner's ability to make choices for herself, regardless of pregnancy intention. If a partner does not have the freedom to say "no" to an abusive partner, she cannot have any meaningful, actionable reproductive intention of her own—it all melds into to the abuser's intent. As such, recognizing reproductive abuse in the above forms is important not just for victims to pinpoint specific instances of such abuse, but to recognize it as a larger tool within the abusive relationship.

II. LONG-RANGING EFFECTS OF REPRODUCTIVE ABUSE

Reproductive abuse, for the large part, does not occur on its own. Attitudes towards women, sexual aggression, and domestic violence outside of reproduction factor into high predictors of reproductive abuse. Women who report experiencing reproductive abuse are more likely to report both physical and sexual interpersonal violence than those who do not report having such experiences.⁶¹ Women who experience intimate

57. Wellington & Hegarty, *supra* note 51, at 4; *see also* Grace et al., *supra* note 47, at 250.

58. Sylvie Lévesque & Catherine Rousseau, *Influence of the Relational Context on Reproductive Coercion and the Associated Consequences*, 27 VIOLENCE AGAINST WOMEN 828, 836 (2021).

59. *Id.*

60. Wellington & Hegarty, *supra* note 51, at 4–5.

61. *See* Emily A. Muñoz et al., *Reproductive Coercion and Intimate Partner Violence Victimization Among a Racially and Ethnically Diverse Young Adult Sample*, 38 J. INTERPERSONAL VIOLENCE 1261, 1270 (2023).

partner violence are at a much higher risk of experiencing reproductive abuse, which creates a much greater risk of unintended pregnancy.⁶² Cultural attitudes among men regarding women and their social role are also a strong factor in predicting reproductive abuse.⁶³ Lifetime experience for reproductive abuse is also “significantly higher” for female victims who are Hispanic and/or Black American.⁶⁴ Latina women particularly have high odds of unintended pregnancy, seventy-one percent higher compared to white women, and prevalence of reproductive abuse ranges between fourteen percent to seventeen percent.⁶⁵ Stealthing, as discussed earlier, is strongly associated with sexual aggression and hostile attitudes towards women; such factors work as predictors of men who will engage in stealthing.⁶⁶ With these significant impacts on hyper-marginalized women and the heightened risk of domestic abuse, the larger effects of reproductive abuse must be considered when legislating recovery methods for victims.

A. Reproductive Abuse as a Predictor of Family Abuse

A strong area of concern with rectifying reproductive abuse must be preventing further harm to the family unit. Because reproductive abuse is a tool of domestic abuse and, as discussed above, a predictor of further interpersonal abuse, it also predicts how such abuse will affect the lives of children born into such an environment.

Lundy Bancroft, Jay Silverman, and Daniel Ritchie discuss the effects of domestic abuse on children and the use of children as tools of domestic violence in their 2012 book, *The Batterer as Parent*.⁶⁷ Abusive partners, particularly those who are physically abusive, do not limit the reach of their abuse to their partner; children witness and are highly aware of the violence occurring in their homes.⁶⁸ Exposure to this violence leads to a higher rate of post-trauma effects in preschool-aged children, and disrupts

62. See Miller et al., *supra* note 2, at 320.

63. See Grace et al., *supra* note 47, at 252 (discussing the cultural normal of hypermasculinity and “machismo” as influencing themes).

64. See Emily A. Muñoz et al., *supra* note 61, at 1262 (“5.6% of White participants, 10.5% of Black/African American participants, and 14.8% of Hispanic/Latinx participants reported experiencing reproductive coercion.”); see also Charvonne N. Holliday et al., *Racial Differences in Pregnancy Intention, Reproductive Coercion, and Partner Violence Among Family Planning Clients: A Qualitative Exploration*, 28 WOMEN’S HEALTH ISSUES 205, 207 (2018) (finding that reproductive coercion was more prevalent among black women than white woman).

65. Grace et al., *supra* note 47, at 248.

66. Davis, *supra* note 37, at 999.

67. BANCROFT, SILVERMAN & RITCHIE, *supra* note 7, at 42, 49.

68. BANCROFT, SILVERMAN & RITCHIE, *supra* note 7, at 42 (citing J. Erickson & A. Henderson, *Diverging Realities: Abused Women and Their Children*, in EMPOWERING SURVIVORS OF ABUSE: HEALTH CARE FOR BATTERED WOMEN & THEIR CHILDREN (J. Cambell ed., 1998)).

their emotional and social development.⁶⁹ Children, who witness the abuse of their mothers, report violent, intrusive memories, avoidance of play with other children, anger with, and detachment from, others, and much more.⁷⁰ Children in abusive homes, especially male children, have higher rates of aggression and a host of other behavioral problems.⁷¹ Children of all genders in an abusive home have a harder time making friends and developing strong emotional connections to others, and report a range of mental health concerns such as elevated anxiety.⁷² While these are merely a short list of the effects of domestic abuse on children, it can be understood that having a child with an abusive partner carries with it the risk of harming said child, even if the child is not the target of the abuse.

However, children are not safe from abuse in the home merely because the abuser limits their abuse to the partner. Children born out of and into domestic violence often themselves become pawns in the violence. Women recount instances where their abusers made threats against their children to ensure the victim's compliance ("He would go into great detail about how [if she left him] he would hunt me down . . . and . . . kill me as well as kill our daughter.").⁷³ Having a child with an abusive partner will often make the child a tool of such violence, rather than a member of the family—such as one client of Bancroft, who reported her abuser "balance[ing her] infant on the edge of a high stair" to provoke fear in the mother, often laughing at her fear response.⁷⁴ Even when there are no threats of violence made against the children, they remain pawns, often with the abuser threatening to have the children taken away by Social Services to curtail attempts by the victim to fight

69. BANCROFT, SILVERMAN & RITCHIE, *supra* note 7, at 43.

70. BANCROFT, SILVERMAN & RITCHIE, *supra* note 7, at 43 (citing Sandra A. Graham-Bermann & Alytia A. Levendosky, *Traumatic Stress Symptoms in Children of Battered Women*, 13 J. INTERPERSONAL VIOLENCE 111, 122 (1998)).

71. BANCROFT, SILVERMAN & RITCHIE, *supra* note 7, at 44 (citing Sandra Graham-Bermann, *The Impact of Woman Abuse on Children's Social Development: Research and Theoretical Perspectives*, in CHILDREN EXPOSED TO MARITAL VIOLENCE 33 (Geffner & Houriles eds., 1998); Frank Ascione et al., *Battered Pets and Domestic Violence: Animal Abuse Reported by Women Experiencing Intimate Violence and by Nonabused Women*, 13 VIOLENCE AGAINST WOMEN 365 (2007)).

72. BANCROFT, SILVERMAN & RITCHIE, *supra* note 7, at 44 (citing Sandra Graham-Bermann, *The Impact of Woman Abuse on Children's Social Development: Research and Theoretical Perspectives*, in CHILDREN EXPOSED TO MARITAL VIOLENCE 42 (Geffner & Houriles eds., 1998); Laura McCloskey et al., *The Effects of Systemic Family Violence on Children's Mental Health*, 66 CHILD DEV. 1239 (1995)).

73. Tarzia et al., *supra* note 34, at 1180.

74. BANCROFT, SILVERMAN & RITCHIE, *supra* note 7, at 94.

back.⁷⁵ Many abusers will use the children as “weapons” themselves—“using the children to monitor the mother’s behavior, intimidating her by his aggression toward the children, [and] using the children as a way to maintain contact with the woman when she was attempting to break away[.]”⁷⁶ One 2007 study found that abusive fathers were more likely than non-paternal abusers to use the children as weapons against the mother, particularly when the mother attempted to separate or end the relationship.⁷⁷ Women who have children with their abusers cannot win—even if the child does not suffer abuse, the child becomes a tool to justify and prolong abuse against her, or they suffer the mental effects of living in a home with abuse.

B. *Physical and Mental Repercussions of Reproductive Abuse*

Reproductive abuse also has implications for negative physical and mental health effects. Most obviously, unprotected sexual behavior is known to increase the risk of sexually transmitted infections and diseases (STI/Ds) and HIV transmission, and increased fear of and deference to male partners’ sexual health choices in settings of reproductive abuse can contribute to lack of sexual protection.⁷⁸ Women who suffer tactics of reproductive abuse, which lead to unprotected sex, often report fear of contracting a sexually transmitted infection or disease.⁷⁹ Interpersonal violence itself is a strong predictor of poor mental health, largely causing victims to develop eating disorders, depression, post-traumatic stress disorder, and suicidal ideation.⁸⁰ Reproductive abuse often coincides with “limited financial resources and the high probability of exposure to . . . violence” during the critical period of young life, particularly for Black American women, worsening the effects of reproductive abuse.⁸¹ In one study consisting of young Black women with 37.8% reporting

75. BANCROFT, SILVERMAN & RITCHIE, *supra* note 7, at 71 (detailing a victim’s story of arguing with her abusive husband and asking him to live elsewhere; the husband invokes this threat in response).

76. BANCROFT, SILVERMAN & RITCHIE, *supra* note 7, at 92 (citing Lyungai F. Mbilinyi et al., *What Happens to Children When Their Mothers Are Battered? Results from a Four City Anonymous Telephone Survey*, 22 J. FAM. VIOLENCE 309 (2007)).

77. BANCROFT, SILVERMAN & RITCHIE, *supra* note 7, at 93 (citing Marisa Beeble & Deborah Bybee, *Abusive Men’s Use of Children to Control Their Partners and Ex-partners*, 12 EUR. PSYCH. 54, 58 (2007)).

78. Ariadna Capasso et al., *Pregnancy Coercion as a Risk Factor for HIV and Other Sexually Transmitted Infections Among Young African American Women*, 82 JAIDS 155, 159 (2019).

79. Tarzia et al., *supra* note 34, at 1182.

80. Jamila K Stockman et al., *Intimate Partner Violence and Its Health Impact on Ethnic Minority Women*, 24 J. WOMEN’S HEALTH 62, 75 (2015).

81. Kamila A. Alexander et al., *Associations Between Reproductive Coercion, Partner Violence, and Mental Health Symptoms Among Young Black Women in Baltimore, Maryland*, 36 J. INTERPERSONAL VIOLENCE 9840, 9842 (2021).

reproductive abuse, 69% of that group experienced depression and 45.1% experienced PTSD.⁸² By comparison, among the sample of women who did not experience reproductive abuse, only 35% experienced depression, and 18.8% experienced PTSD.⁸³

Mental health effects of reproductive abuse are also strongly related to the effects on mothering and the mother-child relationship. Women who continue unwanted or unplanned pregnancies are at higher risk for post-partum depression, difficulty emotionally connecting with their child, and increased stress as a parent.⁸⁴ Mental health effects of reproductive coercion can thus continue well into the life of the mother and effect the child's mental health and relationship with the parent.⁸⁵ Women who had children in the context of reproductive abuse often reported "years of anguish" about parenting and their relationship to their child, and felt they could not speak about the distress or emotional burden without diminishing their role as a mother.⁸⁶

Because of foreseeable harms to the family unit and mothers' relationship to the child, it is important as a governmental interest to make it as easy as possible for women to leave abusive relationships with their children. This serves to protect children born into abusive contexts and serves to prevent children from growing up in harmful environments. Because "involving children in the relationship increases the likelihood that the mother will stay in the relationship,"⁸⁷ it is also important to dissuade women from having children with their abusers and to make it as easy as possible for women to avoid co-parenting with their abuser. The mental and physical effects of such reproductive abuse also make it a public health concern, particularly in deterring the spread of sexually transmitted infections or diseases. The legal remedies available to support victims in this context are important to determine if we are, in fact, supporting victims, or contributing to their abuse.

III. CURRENT LEGAL LANDSCAPE FOR POST-ABUSE REMEDIES

Remedies for reproductive abuse exist both in criminal law, as causes of action for civil damages, and family law proceedings. However, the viability of these remedies in combating, and restoring victims of, reproductive abuse varies by state due to the variability of state statutes addressing criminal law and child welfare. This section will compare

82. *Id.* at 9846–48, 9850.

83. *Id.* at 9848, 9850.

84. Mandy McKenzie et al., *Mothering in the Aftermath of Reproductive Coercion and Abuse*, 31 VIOLENCE AGAINST WOMEN 2505, 2507 (2025).

85. *Id.* at 2506, 2513.

86. *Id.* at 2518.

87. Shane M. Trawick, *Birth Control Sabotage as Domestic Violence: A Legal Response*, 100 CALIF. L. REV. 721, 741–42 (2012).

various statutes and case law across states and assess their use as remedies for reproductive abuse.

A. Criminal Statutes Against Sexual Abuse

All states criminalize sex without consent of the victim. However, many jurisdictions require a showing of force, or a showing that the victim resisted force, for a sexual penetration to be considered rape.⁸⁸ For example, North Carolina classifies second-degree sexual offenses as “a sexual act with another person” engaged “by force and against the will” of the victim, or with someone who has no mental or physical capacity to consent.⁸⁹ North Carolina requires evidence the perpetrator used either actual or constructive force to make the victim submit to, or coerce the victim into committing, the sexual act.⁹⁰ Constructive force is evidenced by “proof of threats or other actions by the defendant which compel the victim’s submission to sexual acts.”⁹¹ Constructive force may encompass some acts such as threats of violence or impermissible use of authority or power, but coercive tactics such as pressure to have sex without protection do not pass the force requirement.⁹² Still, victims of stealthing report experiencing a “violation of a sexual agreement,”⁹³ and advocates of stealthing refer to the practice as “trick[ing]” a partner into condomless sex.⁹⁴ These are cases where a non-consensual sex act is obtained through deception, such that the victim does not have the ability to complain until after the fact of the violation. Rape and sexual abuse laws which require a showing of force, as such, do not give victims of condom tampering and stealthing an offense to pursue.⁹⁵

Comparatively, California defines “rape” in their statute as “an act of sexual intercourse . . .” which occurs, among other possible circumstances, “[i]f a person is at the time unconscious of the nature of the act, and this is known to the accused . . . [w]as not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to

88. CAROL E. TRACY ET AL., RAPE AND SEXUAL ASSAULT IN THE LEGAL SYSTEM 4, 17–18 (2012), <https://www.womenslawproject.org/wp-content/uploads/2016/04/Rape-and-Sexual-Assault-in-the-Legal-System-FINAL.pdf> [<https://perma.cc/PB6D-K57J>].

89. N.C. GEN. STAT. § 14-27.27 (2025).

90. *State v. Etheridge*, 352 S.E.2d 673, 680 (N.C. 1987).

91. *Id.* (discussing threat of serious bodily injury as sufficient to constitute constructive force).

92. See TRACY BATEMAN & JOHN J. DVORSKE, STRONG’S NORTH CAROLINA INDEX 4TH: RAPE AND ALLIED OFFENSES § 95 (2026); see *State v. Alston*, 312 S.E.2d 470, 476 (N.C. 1984) (“[A]bsent evidence that the defendant used force or threats to overcome the will of the victim to resist the sexual intercourse alleged to have been rape, such general fear was not sufficient to show that the defendant used the force required to support a conviction of rape.”).

93. Brodsky, *supra* note 36, at 186.

94. Brodsky, *supra* note 36, at 188.

95. Brodsky, *supra* note 36, at 205.

the perpetrator's *fraud in fact*."⁹⁶ California courts consider two types of fraud: (1) fraud in the fact and (2) fraud in the inducement.⁹⁷ Fraud in the fact occurs when a victim is induced to consent to X sexual act, and the perpetrator, "in the guise of doing act X," actually does sexual act Y.⁹⁸ Whereas fraud in the inducement, the victim is "fraudulently induced to consent" to sex act X, and the perpetrator does commit sex act X.⁹⁹ Fraud in the fact impairs the consent given by the victim, or there was no consent to begin with; comparatively, fraud in the inducement does not impair consent.¹⁰⁰ Where a victim consents to sex with a condom, or sex with a birth control device, and the sexual partner does not use the agreed upon condom or tampers with the device, this may be considered fraud in the fact. However, this would only be considered such if sexual penetration without the condom is considered a different sexual act than with a condom, and there is little case law to this point. Criminal statutes addressing condom tampering are insufficient when addressing rape or sexual assault by force, and the inclusion of fraud in circumstances of rape or assault may provide an actionable offense for victims.

Where pregnancy results from rape by force or fraud, courts allow evidence of the pregnancy to support the charge of rape, rather than holding the pregnancy resulting from the rape as its own separate injury.¹⁰¹ However, courts may be inclined to view pregnancy as an accompanying injury to rape for the purpose of sentence enhancement.¹⁰²

For example, in *People v. Sargent*,¹⁰³ the court held that the defendant inflicted on his victim a "great bodily injury" when the rape resulted in a pregnancy, and thereafter an abortion.¹⁰⁴ The court recognized that "[a] pregnancy resulting from a rape [and the resulting abortion] are not injuries necessarily incidental to an act of rape," and "[p]regnancy cannot be termed a trivial, insignificant matter."¹⁰⁵ Rather, because the rape inflicts substantial psychological and emotional distress, and pregnancy inherently inflicts significant bodily impairment on women's health and

96. CAL. PENAL CODE § 261(a)(4)(C) (West 2026) (emphasis added).

97. *People v. Harris*, 155 Cal. Rptr. 472, 478 (Cal. Ct. App. 1979).

98. *Id.*

99. *Id.*

100. *Id.* (finding that if the kidnapping victim willingly got in the defendant's car through fraudulent misrepresentation, it was thus not a violation of kidnapping statute).

101. *See State v. Henderson*, 139 A.2d 515, 518 (Me. 1958) (holding that evidence of pregnancy was proper "to corroborate the statement of the girl that she had had intercourse with the respondent").

102. *See, e.g., CAL. PENAL CODE § 12022.8* (West 2026), which declares that "[a] person who inflicts great bodily injury . . . on a victim . . . involving a specified sexual offense . . . shall receive a five-year enhancement for each violation in addition to the sentence provided for the felony conviction." (emphasis added).

103. *People v. Sargent*, 150 Cal. Rptr. 113, 115 (Cal. Ct. App. 1978).

104. *Id.*

105. *Id.*

well-being, pregnancy “amounts to significant and substantial bodily injury or damage.”¹⁰⁶ Similarly, the court in *Kendrick v. State*¹⁰⁷ held that a full-term pregnancy resulting from the molestation of the minor victim was a physical injury.¹⁰⁸ Although the victim desired to carry the pregnancy to term, the fact of the *de jure* lack of consent to intercourse made her pregnancy a physical injury within meaning of the statutory rape statute, which affirmed the defendant’s conviction.¹⁰⁹ While the concurrence seeks to limit this finding to child molestation, as “it would be highly unusual (and indeed offensive) to refer to a woman’s pregnancy as a “physical injury[.]”¹¹⁰ it must be acknowledged the same injury results from a rape to a woman legally capable of consent, as discussed by the court in *People v. Sargent*. In these cases, the pregnancy itself is not an injury, but the pregnancy *resulting from its connection to the rape* makes it a bodily injury.

B. Civil Causes of Action for Sexual Abuse and Pregnancy

Damages for pregnancy and birth resulting from fraud and rape are either prohibited by statute or based exclusively on case law. Many states prohibit causes of action for the wrongful birth of a child.¹¹¹ Minnesota prohibits both wrongful life and wrongful birth lawsuits, stating that no plaintiff can receive an award of damages based on a claim that “but for the negligent conduct of another, the [child] would have been aborted[.]”¹¹² Potential victims therefore cannot make claims for damages against abusers for preventing them from obtaining an abortion. Such a prohibition does not typically apply to medical malpractice actions for wrongful conception,¹¹³ however the Minnesota courts upheld the law to prohibit actions for wrongful conceptions by affirmative actions of other persons.¹¹⁴ However, plaintiffs can bring suit for battery and emotional distress when a rape has occurred, and damages may be

106. *Id.*

107. 769 S.E.2d 621 (Ga. Ct. App. 2015).

108. *Id.* at 623 (finding pregnancy to include “at least some impairment of physical condition” within the Black’s Law Dictionary definition of injury).

109. *Id.*

110. *Id.* (Dillard, J., concurring).

111. Cailin Harris, *Statutory Prohibitions on Wrongful Birth Claims & Their Dangerous Effects on Parents*, 34 B.C.J.L. & SOC. JUST. 365 (2022).

112. MINN. STAT. ANN. § 145.424(1)-(2) (West 2025).

113. See *Molloy v. Meier*, 660 N.W.2d 444, 457 (Minn. Ct. App. 2003), *aff’d*, 679 N.W.2d 711 (Minn. 2004) (holding that the prior statute does not prohibit a wrongful conception claim that alleged “conception would have been avoided had negligence not occurred”).

114. See, e.g., *Jevning v. Cichos*, 499 N.W.2d 515, 518 (Minn. Ct. App. 1993) (holding that the statute prohibited all wrongful birth and life suits *except* in a medical malpractice action, and therefore appellant could not sue for child support reimbursement from birth resulting from mother’s intercourse with him while he was a minor).

awarded.¹¹⁵ For example, in *Deborah S. v. Diorio*,¹¹⁶ a New York court determined that the plaintiff was entitled to both compensatory and punitive damages upon showing that her physical and emotional injuries resulting from the rape were “substantial and lasting.”¹¹⁷ While no pregnancy was brought forward as evidence of a “substantial and lasting” injury in the preceding case, it may possibly be asserted.

In cases where pregnancy occurs because of fraud, pregnancy may be considered a harm that requires damages. For example, in *Alice D. v. William M.*,¹¹⁸ the Small Claims Court of New York held that a plaintiff could recoup damages from the defendant for consensual intercourse which resulted in pregnancy and thereafter an abortion.¹¹⁹ Fraud must be a representation of fact which is either (a) untrue and known to be untrue or (b) is recklessly made and offered to deceive the other party and induce them to act, resulting in an injury.¹²⁰ Here, the plaintiff was induced into having unprotected sex with the defendant because he represented to her that he was sterile, when he reasonably should have known he was not.¹²¹ The defendant was found to be negligent in ascertaining his fertility, and, thus, the statement of his sterility was recklessly made.¹²² The court determined that she was, in fact, harmed by the pregnancy because it was induced against her will, and the fact she obtained an abortion on a personal choice “does not alter the fact that she has suffered harm resulting from the conception, pregnancy, and subsequent abortion.”¹²³ The court further stated that emotional distress is a foreseeable and proximate cause of an unwanted pregnancy, and the plaintiff was therefore entitled to damages.¹²⁴ In a claim for damages resulting from fraud in fact, such as stealthing, a plaintiff may be able to recover for a resulting pregnancy.

Only two states have statutes providing a civil cause of action for fraudulent sexual acts, such as stealthing and condom tampering: California and Washington. California provides that circumstances constituting sexual battery includes: when a person “causes contact between a sexual organ, from which a condom has been removed, and the

115. *Hilgarth v. Nankervis*, 612 N.Y.S.2d 542 (Sup. Ct. 1994). *See Deborah S. v. Diorio*, 583 N.Y.S.2d 872, 878 (App. Term 1994) (“Compensatory damages recoverable for sexual assault, battery and intentional infliction of mental distress include compensation for the injury itself, conscious pain and suffering including mental and emotional anxiety. . . .”).

116. *Diorio*, 583 N.Y.S.2d at 878.

117. *Id.*

118. 450 N.Y.S.2d 350 (N.Y. Civ. Ct. 1982).

119. *Id.* at 356.

120. *Id.* at 354.

121. *Id.* at 351–52.

122. *Id.* at 354–55.

123. *Id.* at 356.

124. *Id.* at 357.

intimate part of another who did not verbally consent to the condom being removed,” or “[c]auses contact between an intimate part of the person and a sexual organ of another from which the person removed a condom without verbal consent.”¹²⁵ If such sexual battery is found, the court may award equitable relief, including costs and an injunction.¹²⁶ This statute was amended to include the prior subsections in 2021, and became effective January 1, 2022, in response to greater awareness of condom tampering.¹²⁷

Washington passed its stealthing bill in March of 2024, and became effective July 1st of the same year.¹²⁸ It provides that any person who engaged in sexual contact and penetration with any person under an agreement that a protection device would be used, and the other person (1) “[r]emoved the sexually protective device without consent of the person bringing the action”; (2) “[k]new or became aware that the sexually protective device had been unintentionally removed” and continue[d] the sexual conduct without the person’s consent; (3) “used a sexually protective device that the other person knew had been tampered with”; or (4) “[m]isled the person bringing the action into believing that a sexually protective device was used” and the other person “knew that the device was not used, had been tampered with, or was otherwise inoperable” is liable for damages.¹²⁹

At the time of writing this Article, no stealthing cases on record have been brought forth in California or Washington. However, advocates against sexual assault view the enactment of these laws as helping to clarify consent in the social and cultural context.¹³⁰ Providing victims the ability to sue, and making it their own choice, gives victims power over the violation, and further confirms in the law that consent to one particular sex act does not mean consent to any and every sex act.¹³¹

C. Laws Against Medication Tampering and Resulting Pregnancy

Case law regarding the destruction and alteration of birth control drugs and devices are slim to none. While victims may typically not have

125. CAL. CIV. CODE § 1708.5(a)(4)–(5) (West 2026).

126. *Id.* § 1708.5(c).

127. Joe Hernandez, *California Is the 1st State to Ban 'Stealthing,' Nonconsensual Condom Removal*, NPR: LAW (Oct. 7, 2021, 21:37 ET), <https://www.npr.org/2021/10/07/1040160313/california-stealthing-nonconsensual-condom-removal> [https://perma.cc/B864-FUCV]; A.B. 453, 2021-2022 Leg., Reg. Sess. (Cal. 2021).

128. 2024 Wash. Sess. Laws 1378.

129. WASH. REV. CODE § 7.113.020 (2026).

130. Sara M. Moniuszko, *What Would a 'Stealthing' Ban Mean for Survivors of Sexual Violence?*, USA TODAY (Sept. 13, 2022, 10:00 ET), <https://www.usatoday.com/story/life/health-wellness/2022/09/13/stealthing-condom-removal-legal-us/7929661001/> [https://perma.cc/3QFN-PDPN].

131. *Id.*

the economic ability to bring cases or have the evidence necessary to sustain a civil case, birth control sabotage is also not commonly charged as a crime.¹³² There are potential avenues to pursue if a partner destroys or adulterates birth control medication, however due to the lack of case law, it is difficult to say if these avenues are fruitful to provide any empowerment for victims. The lack of case law and criminal charges for birth-control adulteration may point to the negative. Regardless, the following statute interpretations may be made to support such a case.

Virginia statute provides that any person who adulterates any “prescription or over-the-counter medicine” with the intent to kill or injure the individual who consumes or uses the medication may be guilty of a felony.¹³³ As discussed in subsection i, pregnancy as a result from rape may be considered a great bodily injury for the purpose of sentence enhancement,¹³⁴ and as discussed in section ii, pregnancy (and a following abortion) can be found as an injury for which damages can be awarded in civil cases on the showing of fraud or substantial and lasting injury.¹³⁵ Victims may argue that, as such, a pregnancy resulting from the adulteration of birth control should be considered an injury in the terms of the statute. A problem arises however with showing the adulteration was done with the intent to induce pregnancy, which may provide evidentiary issues.¹³⁶ Virginia also classifies the destruction or removal of personal property if the value of or damage is less than \$1,000 as a misdemeanor, and victims might report destruction of medications by partners as a property trespass.¹³⁷

In cases of physical removal of a contraceptive device (i.e., the removal of a NuvaRing), a victim may report it as an assault. For example, Florida statute defines battery as the intentional “touch[ing] or strik[ing of] another person” against their will, or the intentional cause of bodily harm to another person.¹³⁸ The forcible removal of a physical birth control device is intentionally done to harm the wearer, even if the primary intention is to exert control over the victim’s body. A victim may also argue a pregnancy resulting from such an assault may also qualify for payment of damages.

132. Deanne Katz, *Birth Control Sabotage: Is It Illegal?*, FINDLAW (Mar. 21, 2019), <https://www.findlaw.com/legalblogs/law-and-life/birth-control-sabotage-is-it-illegal/> (last visited May 15, 2026).

133. VA. CODE ANN. § 18.2-54.2 (2026).

134. *See supra* notes 102–09 and accompanying text.

135. *See supra* Part III.B.

136. *See* Carol Sanger, *The Lopsided Harms of Reproductive Negligence*, 118 COLUM. L. REV. ONLINE 29, 29 (2018); *see also* L. Pamela P. v. Frank S., 449 N.E.2d 713, 716 (N.Y. 1983).

137. VA. CODE ANN. § 18.2-137 (2025).

138. FLA. STAT. § 784.03(1)(a) (2025).

D. *Child Custody*

In most jurisdictions, questions of child custody and visitation rights are determined by the factors determining the best interests of the child.¹³⁹ These factors are imprecise and vary from state to state. For example, South Carolina's statute gives seventeen factors for courts to consider in total, and Ohio courts must consider judicial interviews with the child along with eight other factors.¹⁴⁰ About two-thirds of states, including South Carolina, require courts to consider evidence of domestic abuse in determining custody.¹⁴¹ In practice, it is common for accusations (without clear convictions) of domestic abuse between the parents to go unconsidered, and joint custody is typically awarded.¹⁴² In one study of Wisconsin family law cases where one parent was convicted of domestic abuse within five years after the final custody order, only eight percent of cases had a formal domestic abuse finding, with eighty percent stipulating to custody agreements.¹⁴³ Only once the abuse is evidently affecting the children or is occurring in front of the child, can a court award the victim sole custody over the abuser.¹⁴⁴

As courts appear to mainly consider escalated abuses in custody cases, victims with children born through coercive tactics of reproductive abuse would have little cause to pursue sole custody when they have reason to believe the courts would not find their complaint credible to constitute abuse. Once the child is born, abuse must be shown to have an effect or impact on the child, or it must be shown that the child is harmed by a continued relationship with the abuser, to affect a court-ordered custody agreement. However, one arena where the abuser's rights to the child may be curtailed in favor of the victim is when the child is born out of rape.

1. Revocation of Parental Rights

There have been bipartisan pushes to allow mothers who bear children through rape to terminate the parental rights of the rapist. In 2015, the

139. See, e.g., *Monahan v. Hogan*, 507 P.3d 588, 592 (Nev. App. 2022) (stating that the best interests of the child standard is a "polestar of judicial decision making in family law matters").

140. S.C. CODE ANN. § 63-15-240 (2025); *In re A.F.*, 103 N.E.3d 1260, 1274 (Ohio Ct. App. 2018).

141. S.C. CODE ANN. § 63-15-240(B)(15) (2025); Katharine T. Bartlett, *U.S. Custody Law and Trends in the Context of the Ali Principles of the Law of Family Dissolution*, 10 VA. J. SOC. POL'Y & L. 5, 26 (2002).

142. Teresa Meuer, et al., *Domestic Abuse: Little Impact on Child Custody and Placement*, 91 WIS. LAW. 16 (2018).

143. *Id.* at 18.

144. See *Keesee v. Keesee*, 675 So.2d 655, 657 (Fla. Dist. Ct. App. 1996) (discussing the mother's messy housekeeping and abuse of diet pills as a factor against her before finding abuse that "escalated from threats and yelling to pushing and hitting" and eventually took place in front of the children).

Rape Survivor Child Custody Act (RSCCA)¹⁴⁵ was passed by Congress to support this push. The Act instructed the Department of Justice to increase federal funding for states that have passed statutes allowing the mother of a child born of rape “to seek court-ordered termination of the parental rights of her rapist.”¹⁴⁶ The Act itself provides its findings that “[t]housands of rape-related pregnancies occur annually in the United States” and rapists pursuing custody of such a child forces victims to have “continued interaction” with her rapist.¹⁴⁷ The continued interaction negatively impacts the mother and her relationship with her child—further, the mere threat by rapists of pursuing custody acts as a blackmail tactic, pressuring the victim not to report the rape and to acquiescence to his demands.¹⁴⁸

While the federal government has given states an incentive to adopt these statutes, they often come with a requirement for criminal conviction of the rapist, forcing victims to use the criminal justice system to assert their statutory right. However, there is a good reason for this requirement. In *Santosky v. Kramer*,¹⁴⁹ the Supreme Court ruled that because the natural parents to a child have a fundamental liberty interest in maintaining the relationship, the termination of such rights requires “clear and convincing evidence.”¹⁵⁰ While states still have a legitimate interest in protecting victims and children, anything less than the clear and convincing evidence standard violates the due process rights of the rapist.¹⁵¹ The most common way states have dealt with this standard is by requiring a criminal conviction for rape before parental rights can be terminated. For example, Oregon statute provides that a rapist’s parental rights may be terminated “if the court finds that the child or ward was conceived as the result of an act that led to the parent’s conviction for rape[.]”¹⁵² When a statute does not require a conviction, however, the victim must prove that her rape meets the statutory definition of a rape—just as in a criminal proceeding.

Indiana provides that if a victim has a child born from “an act of rape,” the victim may “file a verified petition” to terminate the parental rights

145. Pub. L. No. 114-22, 129 Stat. 227, 243–45 (2015).

146. Katelyn Humiston, *Rapists and Child Custody: The Battle for Parental Rights in the U.S.*, THE JUST. J. (May 11, 2022), <https://gwjusticejournal.com/2022/05/11/rapists-and-child-custody-the-battle-for-parental-rights-in-the-u-s/> [https://perma.cc/JVN2-WLD6].

147. 34 U.S.C. § 21302(2), (8).

148. *Id.* (9)–(10); see also Jo Ciavaglia, *She Gave Birth to Her Rapist’s Child, Then Tried to Sever His Parental Rights in Pa. The Law Was Not on Her Side.*, PHILLYBURBS.COM: NEWS (Oct. 23, 2020, at 12:34 ET), <https://www.phillyburbs.com/story/news/2020/10/20/parental-rights-rape-pennsylvania-adoption-sexual-assault/5977478002/> [https://perma.cc/LQ6U-K2P3].

149. *Santosky v. Kramer*, 455 U.S. 745, 767 (1982).

150. *Id.* at 760, 769.

151. *Id.* at 769–70.

152. OR. REV. STAT. § 419B.510(1) (2026).

of the alleged perpetrator.¹⁵³ The statute does not specify whether a criminal conviction for rape is required, and the Indiana Court of Appeals has limited what constitutes “an act of rape” to proving an act listed under Indiana Code section 31-9-2-0.9.¹⁵⁴ The statute provides four acts of forcible intercourse that are considered rape, including: when the victim “is compelled by force or the threat of force,” or she “attempts to physically, verbally, or by other visible conduct refuse the intercourse.”¹⁵⁵ Acts of rape that are not proven to the sufficiency of the statute or fall outside the defined acts do not provide grounds for termination of parental rights.¹⁵⁶ Considering the constitutional requirement to terminate parental rights, this is perhaps the easiest way for courts to enforce it, as the petitioner needs only to convince the factfinder that the rape was within the statutory meaning, and also convince them that what occurred ought to be considered rape. In practice, however, this means that victims who do not or cannot resist the rape and cannot prove force are tethered to their rapist.¹⁵⁷

For a termination of parental rights to proceed, a victim must either have her rapist convicted or prove that the rape was within the jurisdiction’s definition of rape—each amounting to the same thing. A victim who has a child born out of reproductive abuse may not find these solutions helpful, especially where the inseminating act was born from coercive tactics and not forcible rape. If a victim becomes pregnant by reproductive coercion and cannot pass termination proceedings, obtaining an abortion may be her best option to cut ties with her abuser.

E. Abortion Restrictions and Exceptions

In 2022, the Supreme Court ruled in *Dobbs v. Jackson Women’s Health Organization* that there was no constitutional right to abortion, overruling *Roe v. Wade* and sending the determination of abortion rights to the state legislatures.¹⁵⁸ What has occurred since then has been a patchwork of abortion laws. Thirteen states have enacted a total abortion ban, including the aforementioned Indiana, and twenty-eight states limit abortion procedures based on gestational periods.¹⁵⁹ Time limitations can

153. IND. CODE § 31-35-3.5-3 (2025).

154. D.H. v. A.C., 225 N.E.3d 232 (Ind. Ct. App. 2023).

155. *Id.* at 235.

156. *Id.* at 236 (reversing order of termination of father’s parental rights and remanding to trial court for parties to prove that child born to fourteen-year-old girl was born out of forcible rape as defined in the statute, and not merely statutory rape).

157. *Id.*

158. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 231 (2022).

159. *State Bans on Abortion Throughout Pregnancy*, GUTTMACHER (Mar. 10, 2026), <https://www.guttmacher.org/state-policy/explore/state-policies-abortion-bans> [<https://perma.cc/L9JX-RRVT>].

range from twenty-four weeks to six weeks or based on fetal viability.¹⁶⁰ Only nine states and the District of Columbia do not limit abortion by gestational period.¹⁶¹ Victims who are impregnated and do not wish to carry to term must time their abortion appointments very strictly—if not, they may be barred from obtaining an abortion, or have to travel to a less restrictive state to have the procedure.

Victims of rape may qualify to obtain an abortion even in a state where the procedure is banned entirely under a rape and incest exception. However, even that is a patchwork of laws: ten states with either gestational limits or full bans have no exceptions for rape or incest, requiring victims of such acts to carry the child to term.¹⁶² An estimated 65,000 rape-caused pregnancies occur in fourteen states where abortion is banned.¹⁶³ In states with exceptions, most require that the assault be reported to law enforcement and the victim must provide a copy of the law enforcement report for the exception to kick in.¹⁶⁴ The police then become another barrier to abortion access—as best exemplified by the case of a ten-year-old girl in Ohio, who police refused to issue a report of rape for until the twenty-seven-year-old rapist admitted to the act.¹⁶⁵ Victims, in effect, are asked to pre-litigate their rape to the police to be allowed an abortion, and put them at risk of retaliation from their abuser. In reproductive abuse cases that spawn pregnancy, victims may not want to pursue criminal action, as the perpetrator is often their significant other.

States with full abortion bans or limited exceptions prevent victims from rectifying a forced or coerced pregnancy unless they go through the criminal justice system, which may not be viable. In this way, the state itself prevents a victim from controlling her pregnancy outcome, which an abuser can use against her. When a victim is being forced or coerced into *obtaining* an abortion, however, criminal law may be more helpful.

160. *Id.*

161. *Id.*

162. Mabel Felix, Laurie Sobel & Alina Salganicoff, *A Closer Look at Rape and Incest Exceptions in States with Abortion Bans and Early Gestational Restrictions*, KFF (Aug. 7, 2024), <https://www.kff.org/policy-watch/rape-incest-exceptions-abortion-bans-restrictions/> [https://perma.cc/8SUW-84FB].

163. Selena Simmons-Duffin, *Raped, Pregnant and in an Abortion Ban State? Researchers Gauge How Often It Happens*, NPR: REPROD. RTS. IN AM. (Jan. 24, 2024, at 11:02 ET), <https://www.npr.org/sections/health-shots/2024/01/24/1226161416/rape-caused-pregnancy-abortion-ban-states> [https://perma.cc/G2HS-2WXD].

164. *Id.*

165. Fabiola Cineas, *Rape and Incest Abortion Exceptions Don't Really Exist*, VOX: POLITICS (July 22, 2022, at 16:20 ET), <https://www.vox.com/23271352/rape-and-incest-abortion-exception> [https://perma.cc/3LUW-Z3FW].

1. Legal Resources for Coerced Abortions

While many states have made it a criminal act to obtain an abortion, those same states similarly made it criminal to coerce someone into getting an abortion. Louisiana, for example, criminalizes coerced abortion, which it defines as an act “committed when any person intentionally engages in the use or threatened use of physical force against the person of a pregnant woman, with the intent to compel the pregnant woman to undergo an abortion against her will, whether or not the abortion procedure has been attempted or completed.”¹⁶⁶ This statute is specific to instances of reproductive coercion, and would provide victims a reportable offense when threatened by her partner to induce a miscarriage if she does not obtain an abortion. Yet it only covers instances of force, and not financial or emotional threats. More importantly, Louisiana is one of the thirteen states to ban abortion completely,¹⁶⁷ both surgical and medication abortion.¹⁶⁸ Every abortion performed is criminal “with or without the consent of the pregnant female,”¹⁶⁹ showing the concern behind the coerced abortion law is not one of consent—rather, the policy presumed here is that victims’ consent to pregnancy is irrelevant, as long as it does not result in an abortion.

Many states, prior to *Dobbs*, had passed bills referred to as the “Woman’s Right to Know” Acts, which govern and prescribe information abortion providers must give to women seeking an abortion.¹⁷⁰ These laws generally require voluntary, informed consent from those seeking an abortion,¹⁷¹ and may require signage to be posted in the clinic’s

166. LA. STAT. ANN. § 14:87.6 (2025).

167. See GUTTMACHER, *supra* note 159.

168. See LA. STAT. ANN. § 14:87.7 (2025); see also LA. STAT. ANN. § 14:87.9 (2025) (making it a crime to “knowingly cause[] an abortion to occur by means of delivering, dispensing, distributing, or providing a pregnant woman with an abortion-inducing drug”).

169. LA. STAT. ANN. § 14:87.7(A) (2025).

170. See, e.g., Benjamin Bailey & Amy Jett, *Woman’s Right to Know Act: Require Certain Types of Identification to Be Presented in Order for a Physician to Perform an Abortion; Change Provisions Relating to Required Participation by or Notice to Parents, Guardians, and Others and Court Proceedings for Waiver of Such Provisions; Provide That Abortions Must Be Performed in Certain Facilities and by Certain Persons; Provide for Certain Reports; Provide for Certain Forms; Provide for Certain Reports by the Department of Human Resources; Provide for Penalties and Remedies for Failure to Provide Such Reports; Enact the “Woman’s Right to Know Act”; Provide for a Short Title; Provide for Definitions; Require That a Female Give Her Informed Consent Prior to an Abortion; Require That Certain Information Be Provided or Made Available to a Female Prior to an Abortion; Require a Written Acknowledgement of Receipt of Such Information; Provide for the Preparation and Availability of Certain Information; Provide for Procedures in a Medical Emergency; Provide for Reporting Requirements and Penalties for Noncompliance; Provide for Anonymity of Certain Persons in Civil Actions; Provide for Related Matters; Provide for Severability; Provide for an Effective Date; Repeal Conflicting Laws; and for Other Purposes*, 22 GA. ST. U.L. REV. 147, 148–50 (2005).

171. See *id.*; ARK. CODE ANN. § 20-16-1703 (2025).

waiting room. Arkansas requires the following text to be displayed in every waiting room, patient room, and procedure room:

It is against the law for anyone, regardless of his or her relationship to you, to force you to have an abortion. You have the right to contact any local or state law enforcement or any social service agency to receive protection from any actual or threatened physical, emotional, or psychological abuse. It is against the law to perform, induce, prescribe for, or provide you with the means for an abortion without your voluntary consent.¹⁷²

Facilities are also required to keep this signage posted as a condition of continued licensure.¹⁷³ In the interest of helping women to make autonomous choices about their reproductive ability, this requirement may be helpful in providing women with resources and opportunities to report abuse resulting in a coerced abortion. However, viewed collectively with the Arkansas Women's Right-to-Know Act,¹⁷⁴ this signage is meant to dissuade and coerce women away from getting an abortion, not provide them with avenues out of abuse. Arkansas law, in addition to the signage, requires physicians to inform patients of the "immediate and long-term medical risks" of abortion, the "probable gestational age of the unborn child" at the time of abortion, the "probable anatomical and physiological characteristics of the unborn child" at the time of abortion, and give the patient printed materials and a DVD regarding alternatives to abortion.¹⁷⁵ After all this information, patients are required to wait seventy-two hours before the procedure can be performed.¹⁷⁶

While these requirements may help some patients who are coerced into abortions and show them alternative childcare resources, they do not provide victims with real reproductive autonomy. The purpose of these laws is to emotionally coerce women out of abortions and make the procedure burdensome. These Right-to-Know Acts are a "thinly veiled effort to stigmatize the procedure and instill fear in patients that are contemplating an abortion," and often include medically incorrect information to do so.¹⁷⁷ Further, after the *Dobbs* ruling, Arkansas began

172. ARK. CODE ANN. § 20-16-1705(a)(2) (2015).

173. *Id.* § 20-16-1705(c).

174. ARK. CODE ANN. § 20-16-602 (2023).

175. ARK. CODE ANN. § 20-16-1703 (2021).

176. *Id.* 1703(1)–(2).

177. Rachel Mipro, 'Disproven and Unsupportable': Kansas Judge Blocks Junk Science Abortion Restrictions, KAN. REFLECTOR (Oct. 30, 2023, 16:43 ET), <https://kansasreflector.com/2023/10/30/disproven-and-unsupportable-kansas-judge-blocks-junk-science-abortion-restrictions/> [<https://perma.cc/TW6A-P9DW>] (discussing an injunction ruling on a similar law in Kansas by a state judge).

enforcing a complete abortion ban,¹⁷⁸ further evidencing the state's interest in preventing abortion entirely rather than curbing coercion.

Victims of reproductive abuse are not helped by criminalizing abortion, even when coerced abortion is also criminalized. Reproductive freedom requires allowing them to make choices about the circumstances of their pregnancy, childbirth, and parenting, absent from abuse. Anything less aids and abets the abuser.

IV. CENTERING VICTIMS: RECOMMENDATIONS FOR LEGAL CHANGES

Most state laws regarding crimes of rape, sexual abuse, and birth control tampering are not easily applicable to victims of reproductive abuse. Victims of rape have the option to report their rapist or may sue their rapist for damages, but these are always toss-ups. About six percent of reported rapes lead to an arrest, and only one percent lead to a conviction—but almost all of their victims report emotional distress.¹⁷⁹ Victims of these assaults are often aware of the bias against them and their perceived lack of credibility, which is likely why an estimated only twenty-one percent of rapes are reported.¹⁸⁰ Victims may also not have the economic ability to retain an attorney and sue for emotional damages, further restricting the remedies they have in the wake of an intimate violation. With abortion no longer constitutionally protected, victims who become pregnant have restricted abilities to take charge of their bodily autonomy, and many are forced to have a child with their abuser. For victims who want to keep the child, they can be pressured to maintain a relationship with their abuser through the child. They can only qualify for a termination of the abuser's parental rights upon a clear showing of rape (which does not currently cover stealthing or contraceptive removal) or gain sole custody of the child with evidence that the abuse against her *independently* harms the child.

Further, while reproductive abuse can be violent and forcible, it is often consensual—up to a point. Victims “chose” to have sex without condoms, they chose to stop taking birth control, they chose to get an abortion, they chose to have the child with their abuser, they chose to

178. Stephen Simpson, *Arkansas Attorney General Implements State's Abortion Ban; Governor Hails Court's Decision*, ARK. DEMOCRAT GAZETTE (June 24, 2022), <https://www.arkansasonline.com/news/2022/jun/24/watch-live-arkansas-attorney-general-governor-to-certify-trigger-law-discuss-rulings-effect-on-state/> [https://perma.cc/BW9T-XS4D].

179. Andrew Van Dam, *Less than 1% of Rapes Lead to Felony Convictions. At Least 89% of Victims Face Emotional and Physical Consequences*, WASH. POST (Oct. 6, 2018), <https://www.washingtonpost.com/business/2018/10/06/less-than-percent-rapes-lead-felony-convictions-least-percent-victims-face-emotional-physical-consequences/> [https://perma.cc/VY9C-XELG].

180. ALEXANDRA THOMPSON & SUSANNAH N. TAPP, U.S. DEP'T OF JUST., NCJ 307089, CRIMINAL VICTIMIZATION, 2022 6 (2023), <https://bjs.ojp.gov/document/cv22.pdf> [https://perma.cc/Z8Z4-H4M8].

stipulate to custody agreements. Yet these choices are not choices at all in the context of the relationship: victims are manipulated or pressured into sex without a condom, they are pressured or scared into not taking birth control, they are threatened to get an abortion, they have no option but to have a child with their abuser, they stipulate out of fear of a worse outcome. Their control and autonomy are taken away without force, just fear, and the courts reinforce that fear when they do not consider abuse outside of force.

Legislatures and courts must recognize the inherent harm in having a child in a coercive and abusive home. If we care about the best interests of the child, we must consider the relationship context they are born into.¹⁸¹ As a culture, we may not want to recognize the fact, but oftentimes that hypothetical child's best interest is not to be born, because the best interest of the mother is to cut ties with the father and give herself a better future to make decisions. Victims of reproductive abuse often feel the perception of themselves and their situation is one of powerlessness and weakness, discouraging them from seeking out resources from friends and advocates.¹⁸² They may also feel dehumanized, stemming from the violation of their consent and a perceived lack of respect from their partner.¹⁸³ Giving victims more legal avenues to regain their reproductive autonomy gives them a way to assert control with the backing of a larger institution.

As such, the following are proposed legal adjustments to provide victims with greater remedies.

A. *Adjustments and Additions to Criminal Statutes*

1. Criminal Statute Against Stealthing and Contraceptive Tampering

Shane Trawick proposes a model statute for the criminalization of birth control sabotage in his piece, *Birth Control Sabotage as Domestic Violence*.¹⁸⁴ The proposed statute makes criminal reproductive coercion when a partner:

“a) [K]nowingly or recklessly tamper with a chemical or barrier contraceptive device, against his or her sexual partner's will, with the specific intent of inducing pregnancy;
or

b) knowingly or recklessly fails to withdraw, or cooperate with withdrawal, before ejaculation with the specific intent

181. Trawick, *supra* note 87, at 742.

182. Lévesque and Rousseau, *supra* note 58, at 838–39.

183. Lévesque and Rousseau, *supra* note 58, at 840.

184. *See generally* Trawick, *supra* note 87 (discussing the need for a new statute criminalizing unconsented to sexual acts).

of inducing pregnancy. Subsection (1)(b) shall apply only if both parties have agreed in advance that the male shall withdraw prior to ejaculation and the female has agreed in advance to cooperate with withdraw.

. . . .

5. Attempted use of chemical contraceptives or a barrier method of birth control shall serve as evidence that the victim did not consent to unprotected sexual intercourse.

6. A court shall consider all relevant evidence, including evidence related to prior or simultaneous acts of domestic violence, in determining the occurrence of reproductive coercion.”¹⁸⁵

This proposal presents a clear crime of birth control tampering and provides a rebuttable presumption that the attempted use of contraceptives shows the lack of consent by the victim of unprotected intercourse. However, proving the “intent” element within (1)(a) may prove difficult or near impossible for victims and prosecutors without independent evidence of statements or actions of unconsented pregnancy attempts. Further, subsection (1)(b) may be used against the female victim. Withdrawal is necessarily an unreliable birth control method, and there is difficulty proving when a person “recklessly” failed to withdraw and or if the method simply failed.¹⁸⁶ If a woman becomes pregnant after the use of this method, male partners may pursue criminal charges against the woman for the failure of the contraceptive method, alleging that she was reckless in its use. Rather, the statute should make criminal the intentional manipulation or removal of “chemical or barrier contraceptive device, against his or her sexual partner’s will” and include the further sections only.¹⁸⁷ This statute should only apply to external contraceptive methods and the female condom.

2. Removal of Internal Contraceptives as a Battery; Rape Elevation

The forcible removal of an internal contraceptive device must be classified as a battery, and if penetrative intercourse follows on the heels of such removal, the charge can be elevated to rape. This is because of the intentional invasion of the victim’s body and the injury that occurs to the organs and body from the forcible removal. The elevation to rape occurs based on the timing between the device removal and sexual

185. Trawick, *supra* note 87, at 755.

186. *Pull Out Method*, CLEV. CLINIC (Sept. 15, 2022), <https://my.clevelandclinic.org/health/articles/24174-pull-out-method> [<https://perma.cc/XN7L-54YP>] (stating 1 in 5 people to use this method become pregnant).

187. Trawick, *supra* note 87, at 755.

intercourse, as the timing between the two provides evidence similar to section (5) above: that the use of the contraceptive is evidence of lack of consent to unprotected sex. It also makes explicit the intent of the intercourse, following so closely on the heels of contraceptive removal, is to induce pregnancy.

3. Medication Tampering by Private Actors as a Criminal Offense

It is further recommended that more states lay out an explicit statute against the tampering, destruction, removal, or alteration of medication with the intent to injure by a private actor.¹⁸⁸ Injury should further be defined as the interruption of prescribed medical treatment by one person to the person prescribed, as birth control pills have medical uses outside of reproduction, which includes pregnancy. It should be recognized that abusers may use this statute to punish victims who get pregnant even when taking birth control, as there is no 100% prevention rate.¹⁸⁹ The assertion may be that the woman tampered with her own medication or misrepresented her birth control use to induce a pregnancy. Thus, restricting the crime to an interruption of medical treatment by a perpetrator against the person the medication is prescribed keeps the statute from being used as a weapon.¹⁹⁰

4. Legalization of Abortion

States must recognize the right to an abortion. The patchwork of abortion laws only further restricts the choices victims have to control their body—women in abusive relationships often have neither the money nor the time to travel to another state to obtain an abortion, especially when it must be done in secret.¹⁹¹ Because exceptions for rape require a police report, victims may not seek an abortion to avoid putting themselves in danger from their rapist, which further excludes victims who become pregnant through coercion. The legalization of abortion in all states is necessary to provide equal opportunity.

188. See VA. CODE ANN. § 18.2-54.2 (2025).

189. See Tess Catlett, *How Effective Is Each Birth Control Method?*, HEALTHLINE (Feb. 17, 2025), <https://www.healthline.com/health/healthy-sex/how-effective-is-birth-control> [https://perma.cc/2TRU-P3KV].

190. Incidentally, this statute would also serve victims of medical abuse outside of the reproductive context.

191. Samuel Dickman, *As a Rule, Rape Exceptions for Abortion Don't Work*, STAT (Apr. 9, 2024), <https://www.statnews.com/2024/04/09/as-a-rule-rape-exceptions-for-abortion-dont-work/> [https://perma.cc/8TT6-F5BY] (detailing the story of a woman, pregnant from her boyfriend's rape, seeking an abortion after Texas implemented a six-week limit).

B. *New Civil Causes of Action and Right to Damages*

Most legal changes, however, must not rely on the criminal justice system. Alexandra Brodsky, author of *Rape-Adjacent*, argues that civil litigation is the more empowering legal solution to stealthing, as it allows victims to make decisions for themselves rather than relying on the state via the criminal justice system.¹⁹² Victims may not want to get law enforcement involved, particularly victims of color who do not trust police and do not wish to weaponize it against their abusers. Emphasizing civil causes of action and ways to limit parental rights of abusers then gives victims more power over their bodies and lives.

1. Civil Causes for Rape

Rape statutes must have a parallel, civil cause of action that considers assault stemming not merely from force, but threats of retaliation or the instillation of fear. Many victims do not resist rape to prevent worse harm or the use of force or may experience a “freeze” response to the trauma of the violation.¹⁹³ Requiring the active resistance of the victim or a showing of force leaves many victims without remedy. However, these cases may also be difficult to prosecute, as evidence of the rape becomes about the intent of both parties—difficult to prove “beyond a reasonable doubt,” as it should be. A civil cause of action, with the award of damages for mental health care, emotional damages, and medical care (including abortion care or prenatal care), allows victims to pursue tangible reparations for the violation.

Similarly, more states must adopt statutes similar to Washington state’s civil cause of action for condom and contraceptive tampering.¹⁹⁴ The Washington statute provides for multiple considerations of stealth and contraceptive tampering and is clearly stated to provide relief upon a showing by the victim-plaintiff of the defendant’s knowledge of the condom’s removal. A similar cause of action for damages must exist for a showing of pregnancy carried or terminated resulting from reproductive abuse, which must include the larger relationship context to establish such abuse, including a coerced or forced abortion.

2. Parental Rights and Custody

The termination of parental rights must also apply to childbirth resulting from a clear and convincing showing of reproductive abuse, such that the mother would not have become pregnant absent the abuse. Such abuse should include a relationship history of sexual assault, tampering of birth control and contraceptive devices like condoms,

192. Hernandez, *supra* note 127.

193. TRACY ET AL., *supra* note 88, at 8.

194. WASH. REV. CODE § 7.113.020 (2024).

explicit and implicit threats to discontinue financial support unless the partner becomes pregnant or keeps the pregnancy, etc. Even when there is not a clear and convincing showing of reproductive abuse to terminate parental rights, courts must take evidence of such abuse into account when awarding child support and determining custody arrangements. Additionally, the relationship between the parents must play a larger role in determinations of the best interest of the child; domestic violence should support a presumption against shared custody.¹⁹⁵

3. Expanded Legal Access

Most importantly, victims must have access to these legal actions in the form of a dedicated advocate. Law enforcement should be trained in what qualifies as medication and contraceptive tampering, along with how to provide trauma-informed support to victims. Prosecutors should also be trained on medication and birth control tampering and be encouraged to prosecute such cases. Trial court judges and court advocates must be required to receive, at a minimum, eight hours of domestic abuse training per year, with at least two of those hours dedicated to understanding forms of reproductive abuse and the necessary legal evaluation of such abuse. Custody evaluations in cases of alleged domestic abuse should be conducted by an agent or evaluator with an educational or professional background in domestic violence programs or seek the assistance of one.¹⁹⁶

Finally, there must be additional state funding for legal aid services, with the requirement that they handle civil cases for sexual abuse and family law. Victims of abuse may have every desire to pursue litigation or pursue custody, but may have neither the economic means to retain an attorney nor the ability to pursue *pro se*. Even with new causes of action available and new resources to provide damages to victims of reproductive abuse, victims cannot avail themselves of these remedies without an advocate to help them. Funding legal aid attorneys to represent low-income or financially strained women who need help asserting their rights is necessary to support victims.

CONCLUSION

Reproductive abuse exists as a tool of domestic violence. It allows the abuser to diminish the bodily autonomy of the victim, violate her humanity, and, when resulting in childbirth, maintain a coercive connection with her indefinitely. This abuse results in adverse mental health effects for the victim, increased risk of STI/Ds and HIV, poor

195. BANCROFT, SILVERMAN, & RITCHIE, *supra* note 7, at 256 (discussing poor outcomes for children in joint custody cases where “tensions between the parents remain high”).

196. BANCROFT, SILVERMAN, & RITCHIE, *supra* note 7, at 254.

material bonds between mother and child, and increased risk of family abuse. Children suffer from being born into abusive relationships, and risk poor social development and estrangement from others. As such, public policy and child welfare must include preventing reproductive coercion and supporting victims in leaving abusive relationships without a family tie to the abuser.

Such a policy can be enacted through increased recognition of sexual abuse through coercion or fraud (such as stealthing) and violence and coercion over reproductive autonomy as gendered violence. Making the intentional tampering of external contraceptives and the forcible removal of internal contraceptives a crime of rape and battery help to deter these actions. Providing mirroring civil causes of action also serve to help victims who do not want to pursue criminal charges and helps provide victims with concrete awards to recover. Evaluating the relationship history and dynamic between the parents when determining child support and custody allows children to grow up in safer, more loving homes and lets mothers raise their children without the shadow of abuse. Most significantly, providing greater funding to legal aid resources and training legal professionals enables more victims to seek help and regain control over their lives. When we see reproductive abuse as domestic violence and care about the context in which families are created, we can truly care for women and the family unit.