



THE REALITY OF DOMESTIC VIOLENCE: DEMEAN, DOMINATE, DESTROY

Domestic violence is all too common. Many victims live in constant fear that another violent episode is just around the corner. The domestic violence trigger is different for different batterers. Whatever the cause, the victim is at risk of severe injury and even death.

All states consider domestic violence a serious offense and have fashioned legal remedies for the victim and penalties for the abuser. Civil statutes permit the victim to obtain an immediate temporary order of protection based on her word only. Within a short period, the alleged abuser is given his day in court to contest the victim's allegations. After a hearing, the court has the power to enter a long-term order of protection. Domestic violence may also be prosecuted as a crime.

The overwhelming majority of domestic violence victims are female and the majority of abusers are male. Thus, for clarity and simplicity, feminine pronouns are used for the victim and masculine pronouns for the abuser. However, abusers and victims can be of any sex, gender identity, or sexual preference.

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WHAT IS DOMESTIC VIOLENCE?

The definition of domestic violence may vary slightly from state to state. As a general rule, domestic violence is violence perpetrated on a victim by a current or former spouse, current or former romantic partner, a family member, or a member of the victim's household. Domestic violence encompasses a wide range of behaviors including assault, battery, aggravated assault and battery, sexual assault, stalking, kidnapping, false imprisonment, and threats of physical harm with the intention and apparent ability to carry them out. Each of these behaviors is explained further below. They are both crimes and torts. The batterer may be criminally prosecuted and also sued by the victim in civil court for damages.

- **Battery is touching the victim against her or his will.** Battery includes hitting, striking, slapping, pulling hair, kicking, and scratching. Battery also occurs when a batterer impermissibly touches an object being held by the victim. The object becomes an extension of the victim. For example, girlfriend has her iPhone in her hand as she dials 911. Batterer rips the iPhone out of her hand. Or girlfriend is standing in front of her 52" flat-screen TV, holding it with both hands to protect it from damage by boyfriend. Boyfriend strikes the TV with his baseball bat destroying it.
- **Assault is a verbal threat made to commit a battery against the victim made within the victim's proximity.** Typically, the victim must understand the batterer has made a threat to harm the victim with the intention and apparent ability to carry it out. For example, batterer tells victim, "Give me that phone; you're not making any phone calls today." Batterer then rips the phone out of victim's hand. He has committed assault and battery.
- **Aggravated assault and aggravated battery are assault and battery with the added threat of serious bodily injury and an attempt to carry out the threat.** The attempt is often made with a deadly weapon, such as a gun, knife, or blunt instrument. A deadly weapon is not required. An attempt to cause the victim's death by choking, suffocation, or beating is also aggravated battery.
- **Sexual assault is a sexual act or conduct to which the victim does not consent.** It can range from unwanted sexual touching to forcing the victim to perform sex acts to rape.
- **Stalking is the unwanted pursuit of a victim.** Through stalking, the batterer instills uncertainty and fear in the victim. The batterer may appear unannounced at places the victim frequents like the victim's grocery store, exercise class, or workplace. He may tailgate the victim's vehicle. Stalking can include telephoning, texting, and emailing numerous times per day at all hours. Threats imparted by the alleged perpetrator in phone calls, messages, and emails exacerbate the fear and intimidation.
- **Kidnapping and false imprisonment are included in most definitions of domestic violence.** A victim who locks herself in the bathroom to call 911 for help and fears leaving the bathroom has been falsely imprisoned. As the batterer attempts to break into the bathroom, or remove the door from its hinges, the fear and intimidation factor escalates. Snatching the victim by force and against her will is kidnapping and an act of domestic violence. The alleged abuser may deny the victim access to cash, bank accounts, or a debit or credit card depriving the victim of independence. Control is intensified when the victim is the subject of continual verbal abuse, demeaning comments, and intimidation or the victim is prohibited from having social contacts.

Unfortunately, the victim may not realize she is a domestic violence victim, at least at first. The occasional slap on the cheek, hair pulling, the demand for unwanted sexual activity, or even rough sex may be regarded as playfulness. As the conduct escalates, the victim may finally recognize the danger.

PREVALENCE OF DOMESTIC VIOLENCE

Domestic violence is pervasive. Most abusers are male and most victims (85 percent) are female.

In the United States, there are, on average, 10 million domestic violence victims annually. Nearly 20 people per minute are physically abused by an intimate partner. On a typical day, more than 20,000 phone calls are made to domestic violence hotlines throughout the nation.

Nineteen percent of domestic violence acts involve the use of a weapon. One in 15 children is exposed to acts of domestic violence and 90 percent of those children are actual eyewitnesses to the violence. Approximately one in four women and one in nine men have experienced some form of domestic violence in the United States.¹

These statistics have been compiled by the National Coalition Against Domestic Violence. They exemplify the profusion of violence in the home; it is a national problem. You can find additional details and updated statistics on the Coalition's website at www.ncadv.org.

TRAITS OF THE DOMESTIC VIOLENCE ABUSER

Domestic violence abusers tend to possess characteristic traits.

- **The abuser may have a charming personality.** The abuser may display this charm in public to the extent that a casual observer cannot believe that the abuser could be capable of domestic violence. The abuser can turn the charm on and off at will for his pleasure and amusement.
- **The abuser has an interest in controlling every aspect of the victim's life.** The abuser views himself as far superior to the victim and demands that the victim be subservient to him. The abuser orders the partner to perform perfectly to his every whim. When the victim falls short in complying with the abuser's demands, episodes of domestic violence can erupt. The abuser wishes to exert financial and economic control over the victim, depriving the victim of self-worth and financial independence. The abuser desires that the victim be entirely dependent on him.
- **The domestic violence abuser may exhibit frequent and sudden mood swings.** Mr. Nice Guy can become a raging violent person with a simple innocent or mildly critical comment from the victim. Often the abuser engages in drug or alcohol abuse which may increase the possibility of an attack. Verbal and physical assaults leave the victim insecure, scared, shaken, and timid. The victim must be on perfect behavior to avoid the abuser's wrath.
- **The abuser places full priority on himself; his needs must be met completely and perfectly by the victim.**

¹ "The National Coalition Against Domestic Violence Fact Sheet" www.ncadv.org

- **An abuser generally treats the victim as property.** The abuser owns the victim and becomes jealous when the abuser-victim relationship is threatened by another person. A male abuser may feel threatened not only by another man who finds the victim attractive, but also by the victim's family members, friends, co-workers, and others outside of the abuser-victim relationship.
- **Most abusers engage in verbal and emotional abuse of the victim.** The purpose of this conduct is to demean the victim, thereby lowering the victim's self-worth. A victim with low or no self-worth is much easier to dominate in all aspects, as well as less likely to object, fight back physically, report to local authorities, or take legal action against the abuser.
- **The domestic violence batterer often has personal problems.** He cannot maintain employment, has no friends, and the like. The abuser tends to make excuses for his misfortune and blames his situation on others.

Unfortunately, the victim often lacks the ability to identify these traits, or purposely overlooks them because she has grown dependent on the abuser. The victim's environment must change, but such change is difficult due to the circumstances.

CYCLICAL NATURE OF DOMESTIC VIOLENCE

The abuser's motive is to control the victim. The abuser may physically batter the victim, but may also control the victim's finances, keep the victim from seeing friends and relatives, confine the victim at home against her will, and threaten to harm the victim or the victim's family members. Ways to exert control over the victim are limitless. The potential for physical injury from battery is continual; the victim remains at risk and in peril.

Case Study #1. Brian and his girlfriend Ava were vacationing in Florida. Brian drank a six-pack of beer at the motel. Ava commented disapprovingly on his intoxication. Brian went into a rage and began beating and choking Ava. A motel guest called 911. The police arrived and arrested Brian taking him to county jail where he was charged with criminal battery. He remained in county jail for 10 days. Ava wrote a letter to the judge and the state prosecutor begging for Brian's release verifying they would attend counseling when they returned home. The criminal battery charge was dismissed on Ava's request. One month later at the home they shared, Brian went into an inexplicable rage punching numerous holes in the walls, breaking the flat-screen TV, and attempting to choke Ava when she sought refuge in the bathroom. The following day, Brian was contrite, asking Ava for forgiveness and agreeing to attend counseling to treat his rage problem. Brian failed to attend counseling. Two months later, Brian and Ava began arguing for some insignificant reason. Ava gathered her two small children and sped off in her vehicle to get away from Brian. Brian went into another rage breaking his favorite guitar against the wooden banister; he jumped into his car and began tailgating Ava's vehicle at a dangerously high rate of speed, bumping into the rear end of her vehicle with the toddlers as passengers. Ava got on and off the interstate highway attempting to lose Brian and headed for the local police department. Brian abandoned his chase. The next day, Brian was again contrite and asked for forgiveness for his conduct. Ava forgave him and accepted his promise to quit drinking and to attend counseling.

Brian displays classic domestic violence traits. He likely has a drinking problem which can provoke a domestic violence attack. He has the capacity to commit aggravated battery against Ava potentially resulting in a life-threatening injury. He can explode into domestic violence with an insignificant event, going into an uncontrolled rage. He is unconcerned about the lives of Ava's children during a rage episode. The domestic violence events recur monthly.

Domestic violence incidents are repetitive and cyclical. Tension gradually builds between the parties while arguing about insignificant issues. Perhaps the victim requests money for diapers or groceries from the abuser. He insists she spends too much money; therefore, he denies her request and berates and demeans her. The tension continues to build as the victim is told she is worthless and is ordered to stop crying. The victim is unable to control her emotions; the situation escalates resulting in an overt incident of domestic violence where the victim is punched, kicked, slammed against the wall or worse. In another day or two, the abuser expresses remorse, begs for forgiveness from the victim, and promises such incidents will never happen again. The victim does not want to end the relationship and forgives the batterer. The relationship continuesuntil next month when the incident becomes even more violent.

Increasingly violent attacks in a cyclical pattern are the hallmark of domestic violence. The victim is controlled by the abuser. The victim becomes dependent on the abuser and comes to believe her lifestyle is normal. The attacks become regular and frequent often with physical injury. The victim is emotionally and psychologically weakened and unable to defend herself from these attacks.

PETITION FOR ORDER OF PROTECTION AGAINST DOMESTIC VIOLENCE

Most states have laws that permit domestic violence victims to petition the court for an order of protection against domestic violence. Forms are usually available in the clerk's office that enable the victim to prepare a petition for an order of protection without an attorney's assistance. The pre-printed forms guide the victim to properly plead a domestic violence case. The victim must sign the petition under penalty of perjury.

The clerk takes the completed petition to a judge who hears domestic violence cases. This first hearing is an ex parte (one-sided) hearing, that is, no evidence is presented other than the petition. If the judge finds the petition makes a sufficient case (known as a prima facie case), the judge issues a temporary ex parte order of protection and sets a hearing at which the victim can present evidence of abuse (e.g., photos, texts, emails, witnesses) and the abuser can offer a defense.

A copy of the temporary ex parte order will be served on the abuser notifying him of the protective order and the date of the hearing. Typically, the hearing must be held within 15 to 30 days. However, sometimes the hearing is delayed because more time is needed to serve the abuser or the court may have a congested calendar.

A domestic violence victim must be prepared for the possibility that the abuser will attempt to talk her into voluntarily dismissing the domestic violence court case. The abuser will beg for forgiveness, promise to make amends and never hurt her again. He may even be sincere at the time. Unfortunately, many victims fall into this trap and dismiss the

proceedings, only to find themselves in an identical situation two or three months later prompting the filing of another petition for protection against domestic violence.

Case Study #2. Here are some additional details on Ava and Brian from Case Study #1. Recall that Ava was choked by Brian in the Florida attack. When Ava agreed to file a petition for a protective order in her home state based on the Florida incident, the Florida court dismissed the charges against Brian. Ava filed the petition as promised. Her home state court entered an ex parte temporary order and set the matter for an evidentiary hearing within the required 15 days. Brian received a copy of the temporary order and notice of the hearing. Immediately, he violated the no-contact portion of the temporary order and began his bid to control Ava. He insisted she voluntarily dismiss the domestic violence case so they “can be a family once again.” Brian continued to exert his control over Ava. Ava believed he was sincere as he asked for forgiveness, promised he would change, and promised to attend counseling. She wrote a letter to the judge and clerk of court requesting dismissal of the case. The judge dismissed the case on Ava’s request.

The next month, after Brian went into a rage punching holes in the wall, breaking the flat-screen TV, and attempting to choke Ava, she once again filed a verified petition for protection against domestic violence describing this second attack. An ex parte temporary order was entered and a hearing set on the matter. Just as before, Brian convinced Ava to dismiss the case and the ex parte temporary order and to cancel the hearing.

Again, two months later, after the high-speed car chase, Ava filed another petition, an ex parte temporary order was entered, a hearing was scheduled, and notice given to Brian. Once again, all were canceled and dismissed on Ava’s request.

Ava’s dismissal of legal proceedings against Brian illustrates the reluctance of the victim to escape the control and the abuse of an abuser. Why is the cycle so difficult to break? Three dynamics: love, hope, and fear keep the cycle in motion trapping the victim.

- The victim still loves the abuser. The relationship has its good points; it is not all bad.
- The victim continues to hope that things will change. The relationship didn’t begin this way; it is not like this all the time.
- Although the victim fears that the threats will become a reality, the victim fears more a future alone, and that she won’t be able to make it without the abuser’s help.

So, the victim forgives the abuser. The relationship continues ... until the next incident.

With the support of family, friends, and community resources, such as a domestic violence advocate and counseling, a victim may be able to take advantage of an order of protection and break the cycle of domestic violence.

THE ORDER OF PROTECTION AGAINST DOMESTIC VIOLENCE

Based on the evidence presented to the court at the hearing, the temporary ex parte order of protection against domestic violence may be made permanent (or final) and extended for a period of six months to two years, or longer, depending on state law.

An order of protection typically requires the abuser to remain away (a specified distance, e.g., 100 yards) from the victim's residence, place of employment, other family members' homes, the children's school in some instances, and other places she frequents.

It contains a "no contact" provision meaning the abuser may not contact the victim in any manner, in person, by telephone, email, regular mail, messaging, or through a third party. The final order remains in effect until the time set by law expires (e.g., two years) or the order of protection is modified or dismissed by the court.

Penalties for violating a protective order depend on state law but are usually severe including fines and jail time. A first offense is typically a misdemeanor, but subsequent offenses may be felonies.

The "no contact" provision of the order for protection against domestic violence deserves additional comment.

Case Study #3. Marissa obtained an order of protection against her soon-to-be ex-husband, Dan, with a no-contact provision. Dan is enjoined from contacting Marissa directly, indirectly, by telephone, email, text, instant Messenger, or in any manner, or through a third party. Dan has limited supervised visitation with their three children at their Guardian ad Litem's office. After spotting Dan parked across the street watching her home on several occasions, Marissa phones him. Dan answers the phone; he knows he should not be talking with Marissa. Marissa tells Dan the kids miss him; three hours every other Saturday at somebody's office is insufficient and not homey. She invites Dan to her home to see the children that evening. Against his better judgment, Dan goes to Marissa's home. As he climbs the steps onto the porch, Marissa locks the door and dials 911. The police arrive and take Dan to the county jail. He is released the following morning and advised a hearing has been set for next week to determine if he violated the order of protection. Based on Marissa's testimony at the hearing, the court finds Dan in contempt for violating the order and sentences him to 10 days in the county jail.

The lesson here is that "no contact" means absolutely no contact. The parties, abuser and victim, cannot agree to violate the court's order. Dan should not have been lurking around Marissa's home. He should not have given in to her ploy that the kids wanted to see him. Violating an order of protection is a serious offense.

An order of protection against domestic violence that prohibits contact between the abuser and victim complicates matters when they are the parents of minor children. Visitation schedules will require modification. A neutral intermediary may need to pick up and drop off the children. Visitation may need to be supervised at a neutral location if the judge believes the children are at risk.

ADDITIONAL PROVISIONS IN THE ORDER OF PROTECTION

Based on the evidence presented at the hearing, the court may include additional provisions in the protective order to enhance the protection of the victim and her family.

- If the abuser owns firearms, the court can require that they be deposited at a designated place out of the abuser's access.
- The court can award the victim temporary custody of the children, exclusive use of the residence the victim and abuser previously shared, and temporary child support to be paid by the abuser.
- The court can require the abuser to attend domestic violence abuse counseling, or a batterer's intervention course (often an inpatient treatment program for twenty-one days or more).

OTHER LEGAL REMEDIES UNDER CONSIDERATION BY SOME STATES

Many states are considering implementing a domestic violence offender database. Placing the abuser on the state's domestic violence registry will make the information available to all law enforcement officers in the state and perhaps in the nation. Any violation of the domestic violence order will be readily accessible by all agencies.

Stalking of a former spouse or partner years after the protective order has expired is becoming more common. Continued stalking of the victim years after the relationship has ended may require the victim to relocate to a new, undisclosed location in another state or even to obtain a new identity. Some states are working to pass legislation that will provide compensation to the victim for leaving her employment, losing seniority at her workplace, having to relocate to another state, and similar damages. The success of such legislation remains to be seen.

ADDITIONAL RESOURCES TO HELP DOMESTIC VIOLENCE VICTIMS

If you are a domestic violence victim or fear that you may become one, familiarize yourself with the resources available in your area and with the services offered in your local court system for obtaining a domestic violence protective order.

Each state and many private agencies have a full complement of resources for the protection of victims. Many agencies offer domestic violence shelters for temporary undisclosed housing for victims and children and domestic violence counseling to provide support to carry on throughout the litigation until entry of a final domestic violence order and/or final judgment of divorce.

An internet search for domestic violence resources in your area should provide you with numbers to call for help. If you don't have internet access, you can call the National Domestic Violence Hotline, 1-800-799-SAFE (7233) or TTY 1-800-787-3224, for help. It is answered 24/7. Workers there can refer you to the local resources you need.

DOMESTIC VIOLENCE CAN BE FATAL

The goal of the domestic violence abuser is to denigrate, demean, verbally abuse, and psychologically and emotionally destroy the victim. With this conduct, the abuser dominates and controls the victim in every sense. The abuser's mood swings can precipitate a domestic violence outburst resulting in a severe or fatal injury to the victim.

Case Study #4. Amy and Greg were married for four years. They have a three-year-old daughter. During their relationship, Greg dominated Amy in every phase of her life. He refused to permit her to have a relationship with her mother and grandmother. He denied her access to any bank accounts and credit or debit cards and provided her with only minimal amounts of cash to purchase groceries and personal hygiene items. He battered her routinely. Greg was careful to avoid causing obvious injuries. Bruises on Amy's back, abdomen and upper thighs were unnoticeable and covered by her clothing when she was in public. Greg avoided hitting Amy in the face or breaking any bones. Amy was terrorized by her husband. She finally confided in her mother and grandmother that she lived in constant fear of him. Amy's mother and grandmother convinced her to file for a divorce and get out of the marriage. They accompanied her to see an attorney. The attorney gathered the necessary information from Amy and prepared a petition for divorce. Amy demanded that the attorney not contact her. She would come to his office when she was ready to sign the divorce papers. One month later, Amy came to the attorney's office and told the attorney to stop work on the divorce as she and husband had worked out their differences. The attorney stopped all work as directed. Within two months, Amy was discovered dead in her home. She suffered trauma to her head by a blunt instrument. Greg was the prime suspect as the instrument was identified as his carpenter hammer. Greg was arrested and charged with the murder of his wife.

A domestic violence victim is always at risk for serious injury or death. The need for protection cannot be overemphasized.

ABUSE OF THE SYSTEM

Case Study #5. Mike and Carly have been married for 12 years and have two children. Mike is gainfully employed and provides adequately for the family's financial needs. Unfortunately, Mike is a heavy drinker and frequently arrives home late and under the influence of alcohol. Arguments ensue nightly, but Mike never threatens or commits domestic violence. Typically, Carly and the children leave the home, returning after Mike has passed out from drinking. Carly wants out of the marriage but wants to ensure she has the upper hand in the divorce. Without an attorney's help, she files a petition for an order of protection against domestic violence in which she alleges that Mike beat her on three occasions. Her testimony is false. She requests temporary custody of the children and exclusive occupancy of the family home. She further requests that Mike be removed from the home, prohibited from contacting her, given supervised visitation with the children, and ordered to pay child support. She requests that his handguns, shotguns, and hunting rifles be taken away from him. The court grants all her requests based on her statements only. A hearing on Carly's domestic violence petition is set as early as possible on the court's calendar, which is 45 days down the calendar. Carly then engages an attorney and files her petition for dissolution of marriage.

Through Carly's false testimony in her petition for protection against domestic violence, she has gained an unfair advantage in divorce court. Her divorce attorney files a motion to consolidate the domestic violence case with the divorce case. The hearing on the domestic violence petition scheduled 45 days down the calendar is canceled. The current status quo is in Carly's favor and she is happy to have it continue. Mike's attorney now must schedule a hearing on the temporary issues in the divorce court for an opportunity to offer evidence refuting Carly's allegations. This hearing may be even farther down on the court's calendar than 45 days.

Case Study #5 is a prime example of abuse of the system. Carly has temporarily profited using false allegations in the domestic violence court to gain custody, child support, and exclusive use of the home as the divorce case commences. Her strategy could well backfire. She could be charged with perjury for falsely testifying in her domestic violence petition. In its discretion, the court can fashion other sanctions against her for her misconduct.

Depending on the experience and ability of Carly's divorce attorney, she may suffer no consequences for her bad acts. A dissolution of marriage case is like any other civil litigation. The presiding judge has much discretion in rendering a decision on the facts of the case. Litigation is always risky, uncertain, and expensive. Instead, the couple may attempt a resolution through negotiation or mediation and avoid the risk of an adverse ruling by a judge. However, Mike may not be readily inclined to work out an amicable settlement after Carly's high-handed behavior.

PRACTICAL TIPS FOR PROTECTING YOURSELF AND YOUR CHILDREN FROM DOMESTIC VIOLENCE

- Understand that domestic violence is cyclical; incidents will continue to happen.
- Know that you can obtain a protective order simply and immediately. You do not need a lawyer. Call or visit the clerk's office at your local courthouse and ask for instructions.
- Although the court will issue a temporary order of protection immediately based on the statements in your petition, later you will need to appear before a judge to prove your case. Gather evidence to support your petition. Take photos or video of your injuries immediately. Save text messages, emails, and voice messages. Talk to anyone who might be willing to serve as a witness. A witness might be someone who observed an incident of domestic violence or observed your injuries, or to whom you spoke about the violence.
- Report the incident to the police. They may also take photographs and they may arrest the abuser beginning the process of criminal prosecution.
- In your petition, be specific in asking for the relief you need, i.e., temporary custody of the children, temporary use of the family residence, temporary child support, abuser to stay away from your residence and place of employment, abuser to attend batterer's intervention program, etc.
- If your abuser owns weapons or firearms, let the court know about them.
- You absolutely must tell the truth in your petition for a protective order. Do not file a petition for protection against domestic violence to gain an unfair advantage in a case for custody of your children. Making false statements to the court that you have sworn are true can subject you to perjury charges. Perjury is a serious crime that can be punished with fines and significant jail time.

- Do not agree to dismiss the protective order case without first consulting your domestic violence victim advocate, counselor, or an attorney familiar with domestic violence cases.
- If you have a divorce or custody case involving your abuser pending in another court, you can have the domestic violence case consolidated with the divorce case so that one judge can hear all issues.
- Make the court aware of all relevant and connected domestic violence incidents, if any, and the disposition of those cases.
- The protective order is a court order prohibiting the abuser from engaging in further acts of domestic violence. However, in practicality, it is a piece of paper that can be easily disregarded by the abuser despite the potential for severe punishment. Protect your children and yourself always.
- Have a strategy and exit plan in place. When the tension in the environment escalates, or injury is imminent, exit immediately. Know the undisclosed location where you will go for protection and safety.
- Report all violations of your order of protection to the police promptly so they can intervene to prevent further and perhaps more dangerous violations.
- Contact your local domestic violence center so that a victim advocate can be assigned to help you. The advocate can refer you to initial safe havens and arrange for counseling and group therapy for you and your children.
- Your lawyer or advocate can help you prepare an escape plan with confidential locations where you can temporarily go into hiding. Do not go to places where your abuser will search, such as the homes of friends and relatives. You will also need advice on the best ways to get cash to finance your escape. Use of a credit card or check may allow your abuser to locate you.
- Seek safety in a protected, undisclosed location. Commence filing for an order of protection immediately; your life may depend on swift, appropriate action. If you are temporarily residing in a secure, undisclosed location, you don't need to reveal it on your petition for an order of protection. Merely identify your temporary residence as "undisclosed."