

## Custody Decisions in Cases with Domestic Violence Allegations

State	How does the court factor in domestic violence?	Domestic Violence Definition
Alabama Ala. Code 30-3-131, 30-3-132, 30-3-133, 30-3-152	<ul style="list-style-type: none"> <li>* rebuttable presumption that not in the child's BI to award joint legal, joint physical, or sole custody to the abuser if there is DV</li> <li>* only need one instance of DV</li> <li>* judge must take into account what effect DV had on the children</li> <li>* even if no presumption invoked, DV is a BI factor (one of 5) and it is something the courts <u>shall</u> consider when making a custody determination</li> <li>* if both have abused, need to find out who was the perpetrator (case law)</li> </ul>	<p>Ala. Code § 30-3-130</p> <p>Although DV is not defined in the statute or by reference to any other statute, DV is defined elsewhere in the custody/divorce act</p> <ul style="list-style-type: none"> <li>* DV is an incident resulting in the abuse, stalking, assault, harassment, or the attempts or threats thereof</li> <li>* each offense is further defined by reference to other statutes</li> </ul>
Alaska Alaska Stat. 25.24.150, 25.20.090	<ul style="list-style-type: none"> <li>* DV is listed as a BI factor (one of 9) - any evidence of DV, child abuse, or child neglect in the custodial household or a history of violence between the parents</li> </ul>	<p>Alaska Stat. 25.90.010, 18.66.990</p> <p>Although DV is not defined in the statute or by reference to any other statute, DV is defined elsewhere in the custody/divorce act</p> <ul style="list-style-type: none"> <li>* DV is one or more of the following offenses or an offense under a law or ordinance of another jurisdiction having elements similar to these offenses, or an attempt to commit the offense, by a household member against another household member: (1) a crime against the person; (2) burglary; (3) criminal trespass; (4) arson or criminally negligent burning; (5) criminal mischief; (6) terrorist threatening; (7) violating a protective order; or (8) harassment</li> <li>* each of these offenses is further defined by reference to other statutes</li> </ul>
Arizona Ariz. Rev. Stat. 25-403	<ul style="list-style-type: none"> <li>* rebuttable presumption that it is not in the child's BI to award custody to a parent who has committed an act of DV</li> <li>* presumption does not apply if both parents have committed acts of violence</li> <li>* lists kinds of evidence to rebut the presumption</li> <li>* lists kinds of evidence to prove DV</li> <li>* even if no presumption invoked, evidence of DV is considered contrary to the child's BI and court <u>required</u> to consider it</li> <li>* JC <u>shall not</u> be granted if the court finds that there is significant DV or if the court finds by a preponderance of the evidence that there has been significant DV as defined in 13-3601 or a significant history of DV</li> <li>* definition of DV is listed in the statute</li> </ul>	<p>Ariz. Rev. Stat. Ann. § 25-403</p> <ul style="list-style-type: none"> <li>* a person commits an act of DV if that person either: (1) intentionally, knowingly or recklessly causes or attempts to cause sexual assault or serious physical injury; (2) places a person in reasonable apprehension of imminent serious physical injury to any person; or (3) engages in a pattern of behavior for which a court may issue an ex parte order to protect the other parent who is seeking child custody or to protect the child and the child's siblings</li> </ul>

\*\* See the end of chart for an explanation of the terms used in this chart.

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<p>Arkansas Ark. Code Ann. 9-15-215, 9-13-101</p>	<ul style="list-style-type: none"> <li>* rebuttable presumption against custody to abusive parent if DV occurred - preponderance of the evidence standard</li> <li>* even if no presumption invoked, if one party has committed an act of DV, then the court <u>must</u> consider evidence of it when looking at the child's BI</li> </ul>	<p>Ark. Code Ann. § 9-15-103</p> <p>Although DV is not defined in the statute or by reference to any other statute, DV is defined elsewhere in the custody/divorce act</p> <ul style="list-style-type: none"> <li>* DV is either (1) physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members; or (2) any sexual conduct between family or household members, whether minors or adults, which constitutes a crime under the laws of this state</li> </ul>
<p>California Cal. Fam. Code 3044, 3011, and 3020</p>	<ul style="list-style-type: none"> <li>* rebuttable presumption against sole or joint or legal custody if DV found within the past 5 years</li> <li>* lists kinds of evidence to rebut presumption - preponderance of the evidence standard</li> <li>* lists kind of evidence to prove DV</li> <li>* written findings and reasons when court grants abusive parent sole or JC</li> <li>* even if no presumption invoked, DV is a BI factor (one of 5) for the court to consider</li> <li>* DV defined in the statute</li> </ul>	<p>Cal. Fam. Code § 3044</p> <ul style="list-style-type: none"> <li>* intentionally or recklessly caused or attempted to cause bodily injury, or sexual assault, or to have placed a person in reasonable apprehension of imminent serious bodily injury to that person or to another, or to have engaged in any behavior involving, but not limited to, threatening, striking, harassing, destroying personal property or disturbing the peace of another, for which a court may issue a CPO</li> </ul>
<p>Colorado Colo. Rev. Stat. Ann. 14-10-124</p>	<ul style="list-style-type: none"> <li>* DV is listed as a BI factor (one of 11)</li> <li>* needs to be supported by credible evidence</li> <li>* if credible evidence of DV (statute refers to it as "spouse abuse"), then it is not in the child's BI to grant JC over the objection of the other party unless the court finds that they can make joint decisions in a safe manner with no physical confrontations</li> <li>* DV is defined in this statute</li> </ul>	<p>Colo. Rev. Stat. Ann. § 14-10-124</p> <ul style="list-style-type: none"> <li>* proven threat of or infliction of physical pain or injury by a spouse or a party on the other party</li> </ul>
<p>Connecticut Conn. Gen. Stat. 46b-56</p>	<ul style="list-style-type: none"> <li>* no custody statute referring to domestic violence - court just looks to the child's best interests</li> </ul>	<p>N/A</p>

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<p>Delaware 13 Del. C. 705A, 722, 706A</p>	<ul style="list-style-type: none"> <li>* rebuttable presumption against sole or JC of a child to a perpetrator of DV</li> <li>* rebuttable presumption that no child shall reside with a DV perpetrator</li> <li>* lists kinds of evidence to rebut presumption</li> <li>* if both parties are alleged violent, the case is referred to a Delaware agency for investigation and presentation to the court and then the court makes a custody decision that is in the child's BI</li> <li>* even if no presumption invoked, DV is one of 7 BI factors for the court to consider.</li> <li>* court <u>shall</u> consider any evidence of DV as it is a relevant factor</li> </ul>	<p>13 Del. C. § 703A</p> <p>Although DV is not defined in the statute or by reference to any other statute, DV is defined elsewhere in the custody/divorce act</p> <ul style="list-style-type: none"> <li>* DV is physical or sexual abuse or threats of physical or sexual abuse and any other offense against the person committed by one parent against the other parent, against any child living in either parent's home, or against any other adult living in the child's home</li> <li>* DV does not include self-defense</li> <li>* perpetrator of DV is one who has been convicted of committing one of a number of criminal offenses in the State, or a comparable offense in another state, against the child at issue in a custody or visitation proceeding, against the other parent of the child, or against any other adult or minor child living in the home (see citation for the list of offenses)</li> </ul>
<p>D.C. D.C. Code 16-914</p>	<ul style="list-style-type: none"> <li>* rebuttable presumption against JC where there is DV (statute refers to it as an "intrafamily offense") - preponderance of the evidence standard</li> <li>* even if no presumption invoked, DV is listed as a BI factor (one of 17)</li> <li>* written findings why it's in the child's BI if court grants the abuser custody of the child</li> <li>* definition of DV by reference to another statute</li> </ul>	<p>D.C. Code Ann. § 16-1001</p> <ul style="list-style-type: none"> <li>* an act punishable as a criminal offense committed by an offender upon one who is related by blood, legal custody, marriage, having a child in common, or with whom the offender shares or has shared a mutual residence, or has a romantic relationship</li> </ul>
<p>Florida Fla. Stat. Ann. 61.13</p>	<ul style="list-style-type: none"> <li>* rebuttable presumption that JC is detrimental to the child if there is evidence that one party has been convicted of a felony of 3rd degree or higher with regard to DV or meets other statutory criteria listed in 39.806(1)(d) (related to parent incarceration)</li> <li>* even if no presumption invoked, any evidence of DV <u>shall</u> be considered evidence of detriment to the child</li> </ul>	<p>Fla. Stat. Ann. § 741.28</p> <p>Although DV is not defined in the statute or by reference to any other statute, DV is defined elsewhere in the custody/divorce act</p> <ul style="list-style-type: none"> <li>* DV is any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member</li> </ul>
<p>Georgia Ga. Code Ann. 19-9-1, 19-9-3</p>	<ul style="list-style-type: none"> <li>* court <u>shall</u> consider evidence of DV (also referred to as "family violence" in the statute)</li> </ul>	<p>not specifically defined in the custody/divorce act</p> <ul style="list-style-type: none"> <li>* look at safety of child and parent and perpetrator's history of causing harm, bodily assault, injury or causing reasonable fear of any of these kinds of harm</li> </ul>

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<p>Hawaii Haw. Rev. Stat. 571-46</p>	<ul style="list-style-type: none"> <li>* rebuttable presumption that it is not in the child's BI to be placed in sole, joint legal, or joint physical custody with the perpetrator if there is a determination of DV (statute refers to it as "family violence")</li> <li>* lists related things to take into account when looking at DV</li> </ul>	<p>Haw. Rev. Stat. Ann. § 571-2</p> <p>Although DV is not defined in the statute or by reference to any other statute, DV is defined elsewhere in the custody/divorce act</p> <ul style="list-style-type: none"> <li>* DV is the occurrence of one or more of the following acts by a family or household member to a family or household member, but does not include acts of self-defense: (1) attempting to cause or causing physical harm; (2) placing one in fear of physical harm; or (3) causing one to engage involuntarily in sexual activity by force, threat of force, or duress</li> </ul>
<p>Idaho Idaho Code 32-717, 32-717B</p>	<ul style="list-style-type: none"> <li>* rebuttable presumption against JC by one who is found to be a habitual perpetrator of DV</li> <li>* rebut presumption with a preponderance of the evidence</li> <li>* even if no presumption invoked, evidence of DV is listed as a BI factor (one of 7) and whether or not the child actually saw DV does not matter</li> <li>* DV is defined by reference to another statute</li> </ul>	<p>Idaho Code § 39-6303</p> <ul style="list-style-type: none"> <li>* DV is physical injury, sexual abuse or forced imprisonment or threat thereof of a family or household member, or of a minor child by a person with whom the minor child has had or is having a dating relationship, or of an adult by a person with whom the adult has had or is having a dating relationship</li> <li>* irrelevant whether DV was in the presence of the child</li> </ul>
<p>Illinois 750 ILCS 5/602</p>	<ul style="list-style-type: none"> <li>* DV is a BI factor (one of 8) - physical violence or threat of violence or the occurrence of "ongoing abuse"</li> <li>* so long as DV is not found (defined under ILDVA of 1986), maximum involvement by both parents is in the child's best interests - this does NOT mean presumption for JC</li> <li>* "ongoing abuse" is defined by reference to another statute</li> </ul>	<p>750 Ill. Comp. Stat. Ann. 60/103</p> <ul style="list-style-type: none"> <li>* DV is physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation but does not include reasonable direction of a minor child by a parent or person in loco parentis</li> <li>* physical abuse, harassment, intimidation of a dependent, interference with personal liberty, and willful deprivation are further defined in the statute</li> </ul>
<p>Indiana Burns Ind. Code Ann. 31-17-2-8</p>	<ul style="list-style-type: none"> <li>* DV is a BI factor (one of 8) - evidence of a pattern of domestic or family violence</li> </ul>	<p>Ind. Code Ann. §§ 31-9-2-42</p> <p>Although DV is not defined in the statute or by reference to any other statute, DV is defined elsewhere in the custody/divorce act</p> <ul style="list-style-type: none"> <li>* DV, except for self defense, is the occurrence of one or more of the following acts committed by a family or household member to family or household members: (1) attempting to cause, threatening to cause, or causing physical harm to another family or household member without legal justification; (2) placing a family or household member in fear of physical harm without legal justification; or (3) causing a family or household member to involuntarily engage in sexual activity by force, threat of force, or duress</li> </ul>

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<p>Iowa Iowa Code Ann. 598.41</p>	<ul style="list-style-type: none"> <li>* rebuttable presumption against JC to one who is found to have a history of DV</li> <li>* lists the kind of evidence that can be used to show a history of DV</li> <li>* even if no presumption invoked, evidence of DV is a BI factor (one of 10)</li> <li>* DV is defined by reference to another statute</li> </ul>	<p>Iowa Code Ann. § 236.2</p> <ul style="list-style-type: none"> <li>* DV means committing assault as defined in section 708.1 when the assault occurs between parties that have or had a certain relationship (see statute for list of 5 relationships)</li> </ul>
<p>Kansas Kan. Rev. Stat. Ann. 60-1610</p>	<ul style="list-style-type: none"> <li>* DV is a BI factor (one of 7) - evidence of spousal abuse</li> </ul>	<p>not defined in divorce/custody act</p>
<p>Kentucky Ky. Rev. Stat. 403.270</p>	<ul style="list-style-type: none"> <li>* DV is a BI factor (one of 9) - information, records, and evidence of DV</li> <li>* DV is defined by reference to another statute</li> </ul>	<p>Ky. Rev. Stat. Ann. § 403.720</p> <ul style="list-style-type: none"> <li>* DV means physical injury, serious physical injury, sexual abuse, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault between family members or members of an unmarried couple</li> </ul>
<p>Louisiana La. Rev. Stat. Ann. 9:364</p>	<ul style="list-style-type: none"> <li>* rebuttable presumption against sole or JC to a party who has a history of perpetrating DV (statute refers to it as "family violence")</li> <li>* presumption raised if there is one incident of DV that resulted in serious bodily injury or more than one incident of DV</li> <li>* lists kinds of evidence to rebut the presumption - preponderance of the evidence standard</li> <li>*if both parties are violent, custody awarded to the party least likely to continue the violence</li> </ul>	<p>La. Rev. Stat. Ann. § 9:362</p> <p>Although DV is not defined in the statute or by reference to any other statute, DV is defined elsewhere in the custody/divorce act</p> <ul style="list-style-type: none"> <li>* DV includes but is not limited to physical or sexual abuse and any offense against the person as defined in the Criminal Code of Louisiana, except negligent injuring and defamation, committed by one parent against the other parent or against any of the children</li> <li>* does not include self-defense</li> </ul>

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<p>Maine Me. Rev. Stat. tit. 19-A §1653</p>	<p>* DV is a BI factor (one of 17) - existence of DV and how it affects the child's safety and emotional well-being</p>	<p>Me. Rev. Stat. tit. 19-A § 1501 &amp; § 4002 Although DV is not defined in the statute or by reference to any other statute, DV is defined elsewhere in the custody/divorce act * DV is the occurrence of one of the following between family or household members or by a family or household member to a minor child of a family or household member attempting to or actually: (1) causing bodily injury or offensive physical contact, including sexual assault; (2) placing another in fear of bodily injury with threatening, harassing, or tormenting behavior; (3) compelling a person by force, threat of force, or intimidation to engage in or abstain from conduct which the person has no obligation to engage in or abstain from; (4) restricting one's movements; (5) threatening to commit, or causing a dangerous crime, when the probable consequence of the threat, whether or not the crime actually occurs is to place one in fear that the crime will be committed; or (6) repeatedly following the P or being near the P's home, school, business or employment</p>
<p>Maryland Md. Code Ann. Fam. Law 9-101.1</p>	<p>* evidence of DV <u>shall</u> be looked at by the court in a custody hearing * DV is defined by reference to another statute</p>	<p>Md. Code Ann. § 4-501 * DV is any of the following acts: (1) one that causes serious bodily harm; (2) one that places a person eligible for relief in fear of imminent serious bodily harm; (3) assault in any degree; (4) rape or sexual offense under §§ 3-303 through 3-308 of the Criminal Law Article or attempted rape or sexual offense in any degree; or (5) false imprisonment</p>
<p>Massachusetts ALM GL ch. 208 §31A, ch. 209 §38, 209C §10</p>	<p>* rebuttable presumption against sole, shared legal, or shared physical custody with the perpetrator of DV * presumption is raised if there is a pattern of DV or a serious incident of DV - preponderance of the evidence standard * rebut with preponderance of the evidence * lists certain things that are not considered to be enough proof enough of DV * even if no presumption invoked, the court <u>shall</u> look at evidence of past or present DV as a factor that is contrary to the child's BI * definition of DV within the statute</p>	<p>Mass. Gen. Laws Ann. ch. 208 § 31A, 209 § 38, 209C § 10 *DV is the occurrence of one or more of the following acts between a parent and the other parent or between a parent and child: (a) attempting to cause or causing bodily injury; or (b) placing another in reasonable fear of imminent bodily injury * "serious incident of abuse" is the occurrence of one or more of the following acts between a parent and the other parent or between a parent and child: (a) attempting to cause or causing serious bodily injury; (b) placing another in reasonable fear of imminent serious bodily injury; or (c) causing another to engage involuntarily in sexual relations by force, threat or duress * "bodily injury" and "serious bodily injury" are defined in section 13K of chapter 265</p>

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<p>Michigan MCLS 722.23</p>	<ul style="list-style-type: none"> <li>* DV is a BI factor (one of 12)</li> <li>* Does not matter whether DV is directed at or witnessed by child</li> </ul>	<p>not defined in divorce/custody act</p>
<p>Minnesota Minn. Stat. Ann. 257.025, 518.17</p>	<ul style="list-style-type: none"> <li>* rebuttable presumption against joint legal or physical custody if DV has occurred between the parents</li> <li>* even if no presumption invoked, DV is a BI factor (one of 12)</li> <li>* DV is defined by reference to another statute</li> </ul>	<p>Minn. Stat. Ann. § 518B.01</p> <p>* DV means the following, if committed against a family or household member by a family or household member: (1) physical harm, bodily injury, or assault; (2) the infliction of fear of imminent physical harm, bodily injury, or assault; or (3) terroristic threats, criminal sexual conduct, or interference with an emergency call (all of which are defined by reference to other statutes)</p>
<p>Mississippi Miss. Code Ann. 93-5-24</p>	<ul style="list-style-type: none"> <li>* rebuttable presumption against sole, joint legal, or joint physical custody</li> <li>* presumption raised if D has a history of perpetrating DV (statute refers to it as "family violence") (need an incident that resulted in serious bodily harm or a pattern of DV) - preponderance of the evidence standard</li> <li>* written findings to document how and why the presumption was or was not triggered</li> <li>* lists kinds of evidence that can rebut the presumption</li> <li>* if both parents have a history of perpetrating DV, custody goes to the party least likely to continue to perpetrate DV</li> </ul>	<p>not defined in divorce/custody act</p>
<p>Missouri Mo. Ann. Stat. 455.050, 452.375</p>	<ul style="list-style-type: none"> <li>* rebuttable presumption against custody to the perpetrator of DV</li> <li>* if evidence of both parties committing DV, presumption does not apply and court should apply the BI factors listed in referenced statute - court may also appoint a GAL or CASA to represent the child in these cases</li> <li>* even if no presumption invoked, DV is listed as a BI factor (one of 8) - pattern of DV</li> <li>* written findings of fact if court finds that custody to the abusive parent is in the child's BI</li> <li>* DV defined by reference to two other statutes</li> </ul>	<p>Mo. Ann. Stat. § 455.010, 455.501</p> <p>* DV includes but is not limited to the occurrence of any of the following acts, attempts or threats against a person who may be protected pursuant to sections 455.010 to 455.085: (1) assault; (2) battery; (3) coercion; (4) harassment; (5) sexual assault; (6) unlawful imprisonment - these terms are further defined in the statute</p> <p>* DV is also any physical injury, sexual abuse, or emotional abuse inflicted on a child other than by accidental means by an adult household member, or stalking of a child</p> <p>* discipline including spanking, administered in a reasonable manner, shall not be construed to be abuse</p>
<p>Montana Mont. Code Ann. 40-4-212</p>	<ul style="list-style-type: none"> <li>* DV is a BI factors (one of 13) - physical abuse or threat of physical abuse by one parent against another parent or the child</li> </ul>	<p>not defined in divorce/custody act</p>

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<p>Nebraska Neb. Rev. Stat 42-364</p>	<ul style="list-style-type: none"> <li>* DV is listed as a BI factor (one of 4 ) - credible evidence of DV</li> <li>* definition of DV by reference to another statute</li> </ul>	<p>Neb. Rev. Stat. § 42-903</p> <p>* DV is the occurrence of one or more of the following acts between household members: (1) attempting to cause or intentionally, knowingly, or recklessly causing bodily injury with or without a deadly weapon; or (2) placing, by physical menace, another in fear of imminent bodily injury</p>
<p>Nevada Nev. Rev. Stat. Ann. 125C.230, 125C.220, 125.480</p>	<ul style="list-style-type: none"> <li>* rebuttable presumption against sole or JC</li> <li>* presumption raised if one party has engaged in one or more acts of DV - clear and convincing evidence standard</li> <li>* written findings of fact to support presumption being raised and findings that the custody and visitation determination adequately protect both the child and P</li> <li>* if both parties have committed acts of DV, determine the primary aggressor - list of kinds of evidence to determine who is primary aggressor, and if not possible to determine this then presumption applies to both parties</li> <li>* presumption against custody and visitation if party is convicted of 1st degree murder of child's other parent</li> <li>* even if no presumption invoked , DV still listed as one of 3 BI factors</li> <li>* defines DV by referring to another statute</li> </ul>	<p>Nev. Rev. Stat. Ann. § 33.018</p> <p>* DV occurs when a person commits one of the following acts against his spouse or former spouse, any other person to whom he is related by blood or marriage, a person with whom he is or was actually residing, a person with whom he has had or is having a dating relationship, a person with whom he has a child in common, or the minor child of any of those persons or his minor child: (1) battery; (2) assault; (3) compelling the other by force or threat of force to perform an act that the party does not have to perform or refrain from an act that he has a right to perform; (4) sexual assault; (5) knowing, purposeful or reckless course of conduct intended to harass the other (lists acts that would fit into this category); (6) false imprisonment; (7) unlawful entry of the other's residence, or forcible entry against the other's will if there is a risk of harm to the other from the entry</p>
<p>New Hampshire N.H. Rev. Stat. Ann. 458:17</p>	<ul style="list-style-type: none"> <li>* DV is a factor that is considered harmful to the child and courts <u>shall</u> consider it when determining whether to award joint legal custody (because presumption for joint legal custody)</li> <li>* court <u>shall</u> hear evidence of DV and <u>shall</u> determine if joint legal custody is still appropriate</li> <li>* written findings regarding decision if the court still finds that JC is appropriate when DV is present</li> <li>* defines DV by referring to another statute</li> </ul>	<p>N.H. Rev. Stat. Ann. § 173-B:1</p> <p>* DV is the commission or attempted commission of one or more of the following acts by a family or household member or current or former sexual or intimate partner and where such conduct constitutes a credible threat to the plaintiff's safety: (1) assault or reckless conduct; (2) criminal threatening; (3) sexual assault; (4) interference with freedom; (5) destruction of property; (6) unauthorized entry; or (7) harassment</p> <p>* each offense is further defined by reference to other statutes</p>
<p>New Jersey N.J. Stat. Ann. 9:2-4</p>	<ul style="list-style-type: none"> <li>* DV is a BI factor for the court to consider (one of 13) - history of DV, if any, and the safety of the child and parent from physical abuse by the other parent</li> </ul>	<p>not defined in divorce/custody act</p>

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<p>New Mexico N.M. Stat. Ann. 40-4-9.1</p>	<ul style="list-style-type: none"> <li>* DV is a BI factor for the court to consider (one of 9) - need to engage in one or more acts of DV</li> <li>* if the court finds that DV has occurred the court <u>shall</u> set forth findings that the custody and visitation orders will adequately protect the child and victim</li> <li>* DV defined in the statute</li> </ul>	<p>N.M. Stat. Ann. § 40-4-9.1</p> <ul style="list-style-type: none"> <li>* DV is any incident by a household member against another household member resulting in: (1) physical harm; (2) severe emotional distress; (3) a threat causing imminent fear of physical harm by any household member; (4) criminal trespass; (5) criminal damage to property; (6) stalking or aggravated stalking (further defined in another statute); or (7) harassment (also further defined in another statute)</li> </ul>
<p>New York N.Y. Dom. Rel. Law 240</p>	<ul style="list-style-type: none"> <li>* DV is a factor the court shall consider - act of DV against the party making the allegation or a family or household member of either party</li> <li>* how DV affects the child's BI along with other facts and circumstances the court deems relevant</li> <li>* prove DV with a preponderance of the evidence</li> </ul>	<p>not defined in divorce/custody act</p>
<p>North Carolina N.C. Gen. Stat. 50-13.2</p>	<ul style="list-style-type: none"> <li>* DV is a factor the court shall consider along with all other relevant factors</li> <li>* any order for custody <u>shall</u> contain findings of fact that the order is in the child's BI</li> </ul>	<p>not defined in divorce/custody act</p>
<p>North Dakota N.D. Cent. Code 14-09-06.2</p>	<ul style="list-style-type: none"> <li>* rebuttable presumption that the perpetrator will not be granted sole or JC if there is either (1) a serious instance that resulted in serious bodily harm or where a dangerous weapon was used or (2) a pattern of DV within a reasonable time close to the proceeding - evidence must be credible</li> <li>* presumption can be rebutted with clear and convincing evidence that shows it's in the child's BI to have the party participate in the child's life</li> <li>* evidence of other DV proceedings are relevant</li> <li>* court must make findings of fact that show that the custody arrangement chosen protects the child's BI</li> <li>* even if no presumption invoked, DV is a BI factor (one of 13)</li> <li>* defines DV by reference to another statute</li> </ul>	<p>N.D. Cent. Code § 14-07.1-01</p> <ul style="list-style-type: none"> <li>* DV includes physical harm, bodily injury, sexual activity compelled by physical force, assault, or the infliction of fear of imminent physical harm, bodily injury, sexual activity compelled by physical force, or assault, not committed in self-defense, on the complaining family or household members</li> </ul>
<p>Ohio Ohio Rev. Code Ann. 3109.04</p>	<ul style="list-style-type: none"> <li>* DV is a BI factor (one of 15) - a history of or potential for DV or whether the party has been convicted or pleaded guilty to a DV violation to the victim who was or is a household member</li> <li>* DV is defined by reference to another statute</li> </ul>	<p>Ohio Rev. Code Ann. § 2919.25</p> <ul style="list-style-type: none"> <li>* DV is when a party does one or more of the following acts to a family or household member (1) knowingly cause or attempt to cause physical harm; (2) recklessly cause serious physical harm; or (3) by threat of force, knowingly cause her to believe that the offender will cause imminent physical harm to herself</li> </ul>

## Custody Decisions in Cases with Domestic Violence Allegations

<p>Oklahoma Okla. Stat. Ann. Tit. 10 §21.1, 43 § 112.2</p>	<ul style="list-style-type: none"> <li>* rebuttable presumption that it is not in the child's BI for the perpetrator of ongoing DV to have custody, guardianship, or visitation of the child</li> <li>* DV must be proven with clear and convincing evidence</li> <li>* even if no presumption invoked, the court <u>must</u> consider evidence of DV</li> </ul>	<p>not specifically defined under custody/divorce statute but according to case law, DV should be defined in accordance with Okla. Stat. Ann. tit. 22 § 60.1</p> <ul style="list-style-type: none"> <li>* DV is any act of physical harm, or the threat of imminent physical harm which is committed by an adult, emancipated minor, or minor child thirteen years of age or older against another adult, emancipated minor or minor child who are family or household members or who are or were in a dating relationship</li> </ul>
<p>Oregon Or. Rev. Stat. 107.137</p>	<ul style="list-style-type: none"> <li>* rebuttable presumption that it is not in the child's BI to award sole or JC if a party has committed abuse</li> <li>* even if no presumption invoked , DV still a BI factor (one of 6)</li> <li>* DV is defined by reference to another statute</li> </ul>	<p>Or. Rev. Stat. § 107.705</p> <ul style="list-style-type: none"> <li>* DV is the occurrence of one or more of the following acts between family or household members: (1) attempting to cause or intentionally, knowingly or recklessly causing bodily injury; (2) intentionally, knowingly or recklessly placing another in fear of imminent bodily injury; or (3) causing another to engage in involuntary sexual relations by force or threat of force</li> </ul>
<p>Pennsylvania 23 Pa. Cons. Stat. Ann. 5303</p>	<ul style="list-style-type: none"> <li>* DV (past or present) is a factor, along with other relevant factors, that the court shall consider</li> <li>* convictions of aggravated assault and other listed crimes must be considered by the court</li> <li>* if parent has been convicted of 1st degree murder of the child's other parent, the convicted parent <u>shall not</u> be awarded custody, partial custody, or visitation subject to the wishes of the child if child is of a suitable age</li> <li>* defined by reference to another statute, although DV is not limited to that definition alone</li> </ul>	<p>23 Pa. Cons. Stat. Ann. § 6102</p> <ul style="list-style-type: none"> <li>* DV is the occurrence of one or more of the following acts between family or household members, sexual or intimate partners or persons who share biological parenthood: (1) attempting to cause or intentionally, knowingly or recklessly causing bodily injury, serious bodily injury, rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest with or without a deadly weapon; (2) placing another in fear of imminent serious bodily injury; (3) false imprisonment (defined by reference to another statute); (4) physical or sexual abuse of minor children (also defined by reference to another statute); or (5) knowingly engaging in conduct or repeatedly committing acts toward another person, without proper authority, which place the person in reasonable fear of bodily injury</li> </ul>
<p>Rhode Island R.I. Gen. Laws 15-5-16</p>	<ul style="list-style-type: none"> <li>* DV is a factor that the court <u>shall</u> consider when making custody decisions and any grant of custody shall be made to protect the child and abused parent from harm</li> <li>* <u>shall</u> also consider the perpetrator's history of physical harm, bodily injury or assault to another person</li> <li>* DV is defined in the statute</li> </ul>	<p>R.I. Gen. Laws § 15-5-16</p> <ul style="list-style-type: none"> <li>* DV is the occurrence of one or more of the following acts between spouses or people who have a child in common: (1) attempting to cause or causing physical harm; (2) placing another in fear of imminent serious physical harm; (3) causing another to engage involuntarily in sexual relations by force, threat of force, or duress</li> </ul>

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<p>South Carolina S.C. Code Ann. §20-7-1530</p>	<p>* DV is a factor that the court shall consider when making a custody decision. * primary aggressor evidence is relevant - defined by reference to another statute * DV is defined in statute and by reference to two other statutes, but DV is not limited to those two definitions</p>	<p>S.C. Code Ann. § 20-7-1530, 16-25-20, 16-25-65 * physical or sexual abuse (from 20-7-1530) * (1) physical harm or injury to a person's own household member; or (2) an offer or attempt to cause physical harm or injury to a person's own household member which has the ability to create fear of imminent peril (from 16-25-20) * (1) intentionally committing an assault and battery which involves the use of a deadly weapon or results in serious bodily injury to the victim; or (2) intentionally committing an assault, with or without an accompanying battery, which causes a person to fear imminent serious bodily injury or death (from 16-25-65)</p>
<p>South Dakota S.D. Codified Laws 25-4-45.5, 25-4-45.6</p>	<p>* rebuttable presumption that awarding custody to a party that has a conviction of DV or assault against a family or household member is not in the child's BI * conviction of a parent for the death of another parent (exception of vehicular homicide) creates a rebuttable presumption as well * DV is defined by reference to another statute</p>	<p>S.D. Codified Laws § 25-10-1 * DV is physical harm, bodily injury or attempts to cause physical harm or bodily injury, or the infliction of fear of imminent physical harm or bodily injury between family or household members</p>
<p>Tennessee Tenn. Code Ann. 36-6-101, 36-6-106</p>	<p>* DV is a BI factor (one of 10) - evidence of physical or emotional abuse to the other parent or to any other person * rebuttable presumption that sole, joint legal, or joint physical custody is not in the child's BI if there is child abuse (child abuse is defined by reference to other statutes)</p>	<p>not defined in divorce/custody act</p>
<p>Texas Tex. Fam. Code 153.004, 153.131</p>	<p>* rebuttable presumption against sole custody to perpetrator (statute refers to it as "conservatorship") if there is a history or pattern of past or present abuse - need credible evidence * DV has to be committed within 2 year period before suit is filed * prove DV with preponderance of evidence - can look at evidence of a protective order as "credible" * lists kind of evidence that can rebut presumption * court cannot award JC if there is credible evidence that shows a history of past or present DV</p>	<p>Tex. Fam. Code Ann. § 101.0125, 71.004 Although DV is not defined in the statute or by reference to any other statute, DV is defined elsewhere in the custody/divorce act * DV is an act by a member of a family or household against another member of the family or household (1) that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself; (2) abuse (defined by reference to another statute); or (3) dating violence (also defined by reference to another statute)</p>
<p>Utah Utah Code Ann. 30-3-10.2</p>	<p>* DV is a BI factor for the courts to consider (one of 10) - any history of or potential for DV - (statute refers to DV as "spouse abuse") *prove DV with a preponderance of the evidence</p>	<p>not defined in divorce/custody act</p>

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<p>Vermont Vt. Stat. Ann. tit. 15 §665</p>	<p>* DV is a BI factor for the courts to consider (one of 9) - evidence of DV, also impact of DV on the child and between the child and perpetrator * DV defined by reference to a statute</p>	<p>Vt. Stat. Ann. tit. 15 § 1101 * DV is the occurrence of one or more of the following acts between family or household members: (1) attempting to cause or causing physical harm; (2) placing another in fear of imminent serious physical harm; or (3) abuse to children (defined by reference to another statute)</p>
<p>Virginia Va. Code Ann. 20-124.3</p>	<p>* DV is a BI factor for the courts to consider (one of 10) - any history of DV - (DV is referred to as "family abuse") * DV is defined by reference to another statute</p>	<p>Va. Code Ann. § 16.1-228 * DV is any act involving violence, force, or threat including, but not limited to, any forceful detention, which results in bodily injury or places one in reasonable apprehension of bodily injury and which is committed by a person against such person's family or household member</p>
<p>Washington Wash. Rev. Code Ann. 26.09.191</p>	<p>* no JC (statute refers to it as "mutual decision making parenting plan") and no other forum for resolving the dispute besides the court if there is evidence that one party has a history of DV * DV defined by reference to another statute</p>	<p>Wash. Rev. Code Ann. § 26.50.010 * DV is the occurrence of one or more of the following acts between family or household members: (1) physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (2) sexual assault of one family or household member by another; or (3) stalking (defined by reference to another statute) *defined as an assault or sexual assault that caused "grievous bodily harm or fear of such harm"</p>
<p>West Virginia W.V. Code Ann. 48-9-201, 48-9-205, 48-9-209</p>	<p>* court <u>must</u> have an evidentiary hearing if there is credible evidence that DV occurred * once evidence of credible abuse victim will receive assistance in the form of help complying with statute mandates, referral to safe shelter, counseling, safety planning and information about impact of DV on children and civil and criminal remedies * if DV is found to have occurred, appropriate protective measures must be taken * DV is defined by reference to another statute</p>	<p>W.V. Code Ann. §§ 48-27-202 * DV is the occurrence of one or more of the following acts between family or household members: (1) attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons; (2) placing another in reasonable apprehension of physical harm; (3) creating fear of physical harm by harassment, psychological abuse or threatening acts; (4) committing either sexual assault or sexual abuse (both are defined by reference to other statutes); or (5) holding, confining, detaining or abducting another person against that person's will</p>

## Custody Decisions in Cases with Domestic Violence Allegations

<p>Wisconsin Wis. Stat. Ann. 767.24</p>	<ul style="list-style-type: none"> <li>* rebuttable presumption that it is detrimental to child and contrary to child's BI to award sole or JC if DV or interspousal battery</li> <li>* presumption raised if prove one engaged in a pattern or serious incident of DV - preponderance of the evidence standard</li> <li>* lists kinds of evidence to rebut presumption - preponderance of the evidence standard</li> <li>* determine primary aggressor - if none, presumption doesn't apply - lists factors to determine primary aggressor</li> <li>* even if no presumption invoked, DV is still a BI factor</li> <li>* written findings when presumption is raised as to whether presumption rebutted, what rebutted it, and why order is in child's BI</li> <li>* DV defined by reference to other statutes</li> </ul>	<p>Wis. Stat. Ann. 813.12</p> <ul style="list-style-type: none"> <li>* interspousal battery is defined in 940.19 and 940.20(1m)</li> <li>* DV is any of the following engaged in by an adult family member or adult household member against another adult family member or adult household member, by an adult caregiver against an adult who is under the caregivers care, by an adult against his or her adult former spouse, by an adult against an adult with whom the individual has or had a dating relationship, or by an adult against an adult with whom the person has a child in common: (1) intentional infliction of physical pain, physical injury or illness; (2) intentional impairment of physical condition; (3) a violation of s. 940.225 (1), (2) or (3); (5) a violation of s. 943.01, involving property that belongs to the individual; or (6) a threat to engage in any of the above-listed conduct (813.12)</li> </ul>
<p>Wyoming Wyo. Stat. 20-2-112, 20-2-201</p>	<ul style="list-style-type: none"> <li>* court shall consider evidence of DV - evidence of spouse abuse - (statute refers to it as "spouse abuse" and "family violence") as contrary to the child's BI</li> <li>* party applying for custody order shall notify the court of any known protection or custody orders issued on behalf of the parties from any other court</li> </ul>	<p>not defined in divorce/custody act</p>

- \* "BI" - abbreviation for best interests.
- \* "CPO" - abbreviation for civil protective order. CPO includes civil injunctions and civil restraining orders.
- \* "D" - defendant/respondent in custody hearing.
- \* "DV" - abbreviation for domestic violence. In many states, there are separate definitions of DV for domestic relations as compared to CPO.
- \* "JC" - abbreviation for joint custody.
- \* "not specifically defined under custody/divorce statute" - the custody/divorce act does not explain what DV means in the context of a custody hearing (although there may be a definition of DV under another act in the same jurisdiction).
- \* "P" - petitioner in custody hearing.
- \* "primary aggressor" - when both parents are alleging domestic violence against the other, how the courts determine who is the primary aggressor.

## **Custody Decisions in Cases with Domestic Violence Allegations**