

## **SPECIAL REPORT**

# **Ranking of States' Domestic Violence Laws**



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## SAVE: STOP ABUSIVE AND VIOLENT ENVIRONMENTS

Passage of the Violence Against Women Act in 1994 has spawned the enactment of 1,500 state-level laws.<sup>1</sup> State domestic violence laws represent a breach of rudimentary notions of respect for civil liberties, for the following six reasons:<sup>2</sup>

1. Domestic violence laws are defined and interpreted so broadly that almost any action, verbal or physical, can be construed to fall within their purview.<sup>3</sup>
2. Judges typically accept the petitioner's allegations at face value without weighing the evidence or requiring any verification, especially if the petitioner makes claims like "I'm fearful for my safety." As one legal expert admitted, "With child abuse and spouse abuse you don't have to prove anything. You just have to accuse."<sup>4</sup>
3. Restraining orders are usually issued on an *ex parte* basis, which eliminates the ability of the respondent to refute the allegations at the time they are made.
4. In most states, only a preponderance of evidence—the weakest standard of proof—is needed to reach a finding in favor of the petitioner.
5. The consequences for the alleged abuser, especially loss of contact with the person's own children, are disproportionate to the nature of the offense and often devastating to the parent.
6. Thirty-three states now require arrest when a restraining order has been violated,<sup>5</sup> a policy that violates one of the bedrock principles of Anglo-American criminal law—that a jury trial must precede incarceration.

These civil rights violations are compounded when a restraining order that only alleges *partner* abuse is allowed to be introduced into a determination for child custody.

Many have observed that allegations of domestic violence are often made during a divorce proceeding in which there is no prior history of violence between the partners.<sup>6,7,8</sup> "A significant percentage of domestic violence occurs during litigated divorces in families who never had a history of it," notes one divorce attorney.<sup>9</sup>

This Special Report identifies the states with laws that are most likely to violate the civil rights of persons accused of domestic violence.

*Following an argument with his wife, former New England Patriots linebacker Ted Johnson was arrested on July 16, 2006 for alleged assault. There were no visible injuries, no witnesses, and no other evidence that would support a probable-cause assessment of assault.*

*A week later his wife had a different story to tell: "My husband, I adore him, and, it was my fault," explained Jackie Johnson. "It breaks my heart to think I would*

*be responsible with one emotional, irresponsible call in destroying this beautiful man's reputation.”*

*Ted and Jackie Johnson, parents of four children, divorced six months later.*

## **Findings**

This Report features information compiled from other SAVE Special Reports and other documents. The information is presented in five tables.

### *Table 1. Overly-Broad Definitions of Domestic Violence*

The information in this table comes from the SAVE Special Report, “Expanding Definitions of Domestic Violence,”<sup>10</sup> which analyzes the civil definitions of domestic violence. The report probes whether the definition of assault includes psychological criteria such as fear, and if the statutory definition of domestic violence encompasses harassment and stalking, offenses that typically are vaguely-defined.

The presence of such laws in each state is indicated in columns 1, 2, and 3. Two points are assigned for each type of law.

### *Table 2. Incentives to Make False Allegations*

The SAVE Special Report, “Incentives to Make False Allegations of Domestic Violence,”<sup>11</sup> provides the information contained in Table 2. The Report summarizes the remedies that are allowable under civil domestic violence laws, as well as how allegations or findings of abuse are considered in child custody decisions.

Statutes that list from one to four remedies are assigned a value of 1 point, and statutes with five or more remedies are assigned 2 points (column 1). States that require courts to consider evidence of domestic violence as a best-interest consideration in child custody decisions are weighted with 1 point (column 2). States that view an allegation or finding of partner abuse as the basis for a rebuttable presumption against joint custody are assigned 2 points (column 3).

### *Table 3. Domestic Violence Arrest Laws*

Pro-arrest and mandatory arrest laws violate civil liberties because they override constitutional considerations of probable cause. Primary aggressor laws, which rely on arbitrary criteria such as the person’s size and “likelihood of future violence” are tantamount to gender profiling.

The information on pro-arrest and mandatory arrest (columns 1 and 2) was obtained from a compilation by the Institute for Law and Justice.<sup>12</sup> The information on mandatory arrest

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for violation of a restraining order (column 3) and primary aggressor laws (column 4) is based on information from an article by Hirschel and Buzawa.<sup>13</sup>

Pro-arrest laws count as 1 point (column 1). Because statutes on mandatory arrest for domestic violence (column 2), mandatory arrest for violation of a restraining order (column 3), and primary aggressor (column 4) represent greater infringements on persons' civil liberties, each of these three laws is assigned 2 points.

### *Table 4. Harmfulness of Domestic Violence Laws, by State*

The total points from Tables 1, 2, and 3 are listed in columns 1, 2, and 3, respectively. For each jurisdiction, these numbers are added together and entered in column 4. Each jurisdiction is then ranked from 1 to 51 (column 5) (the inclusion of the District of Columbia is the reason there are 51 entries). The states are listed in alphabetical order.

### *Table 5. Harmfulness of Domestic Violence Laws, by Rank*

Using the information contained in Table 4, Table 5 organizes the order of the states by their ranking. The state with the most harmful DV laws (Alaska) is listed first; the state with the least harmful laws (Connecticut) appears last.

## **States Most Likely to Violate Civil Rights**

Scores range from 2 to 15 (out of a possible range of 0 to 18), which reveals considerable variation in the states' domestic violence laws. Those states are categorized into five groups:

1. *Low Risk:* No states have scores of 0 or 1.
2. *Some Risk:* Six states—Connecticut, Hawaii, Idaho, Nebraska, Vermont, and Wyoming—have scores of 2 to 4, which means that their DV laws carry some risk of violating persons' civil rights.
3. *Moderate Risk:* Twelve states—Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maryland, Minnesota, Oklahoma, and Texas—have scores of 5 to 7, meaning that their DV laws have moderate risk of civil rights violations.
4. *High Risk:* Twenty-six jurisdictions—Alabama, Arizona, Colorado, District of Columbia, Iowa, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Montana, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Washington, Wisconsin, and West Virginia—have scores of 8 to 11, putting them in the high risk section.

5. *Extremely High Risk*: Seven states—Alaska, California, Missouri, New Hampshire, New Jersey, New York, and Virginia—have scores of 12 to 15, placing them in the extremely high risk category.

It should be noted that law enforcement practices, prosecution policies, and judicial discretion influence the ways in which a law is interpreted and applied. Thus, although a state may be listed in the moderate risk category here, judicial education programs, legislative initiatives, or other state-specific factors may, in actuality, cause that state to fall into a lower or higher risk group.

## **Conclusion**

**Table 1. Overly-Broad Definitions of Domestic Violence**

<b>State</b>	<b>Definition of Assault Includes Emotional Criteria? (Yes = 2)</b>	<b>Definition of DV Includes Harassment? (Yes = 2)</b>	<b>Definition of DV Includes Stalking? (Yes = 2)</b>	<b>Total</b>
Alabama		Yes	Yes	4
Alaska	Yes	Yes	Yes	6
Arizona		Yes	Yes	4
Arkansas	Yes			2
California	Yes	Yes		4
Colorado			Yes	2
Connecticut				0
Delaware	Yes			2
District of Columbia			Yes	2
Florida			Yes	2
Georgia			Yes	2
Hawaii	Yes			2
Idaho				0
Illinois		Yes		2
Indiana	Yes			2
Iowa			Yes	2
Kansas				0
Kentucky	Yes			2
Louisiana			Yes	2
Maine	Yes	Yes		4
Maryland	Yes			2
Massachusetts	Yes			2
Michigan	Yes	Yes	Yes	6
Minnesota	Yes			2
Mississippi	Yes			2
Missouri	Yes	Yes		4
Montana	Yes		Yes	4
Nebraska				0
Nevada		Yes	Yes	4
New Hampshire	Yes	Yes	Yes	6
New Jersey		Yes	Yes	4
New Mexico	Yes	Yes	Yes	6
New York		Yes	Yes	4

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North Carolina	Yes	Yes	Yes	6
North Dakota	Yes		Yes	4
Ohio	Yes			2
Oklahoma		Yes	Yes	4
Oregon	Yes			2
Pennsylvania	Yes	Yes		4
Rhode Island	Yes			2
South Carolina				0
South Dakota	Yes			2
Tennessee	Yes			2
Texas	Yes			2
Utah	Yes			2
Vermont	Yes			2
Virginia	Yes		Yes	4
Washington	Yes		Yes	4
West Virginia	Yes	Yes		4
Wisconsin			Yes	2
Wyoming	Yes			2
<b>TOTAL</b>	<b>32</b>	<b>17</b>	<b>22</b>	

**Table 2. Incentives to Make False Allegations**

<b>State</b>	<b>Number of Remedies Allowable</b> (1-4 = 1; ≥5 = 2)	<b>Court Must Consider Evidence of DV/ Best Interest of the Child</b> (Yes = 1)	<b>Rebuttable Presumption Against Joint Custody</b> (Yes = 2)	<b>Total</b>
Alabama	1		Yes	3
Alaska	7	Yes		3
Arizona	1		Yes	3
Arkansas	2		Yes	3
California	7		Yes	4
Colorado	1	Yes		2
Connecticut	0			0
Delaware	9		Yes	3
District of Columbia	2		Yes	4
Florida	0		Yes	2
Georgia	2	Yes		2
Hawaii	0		Yes	2
Idaho	1		Yes	3
Illinois	8	Yes		3
Indiana	7	Yes		3
Iowa	1		Yes	3
Kansas	3	Yes		2
Kentucky	0	Yes		1
Louisiana	3		Yes	3
Maine	6	Yes		3
Maryland	0	Yes		1
Massachusetts	9		Yes	4
Michigan	0	Yes		1
Minnesota	1		Yes	3
Mississippi	8		Yes	4
Missouri	7		Yes	4
Montana	2	Yes		2
Nebraska	1	Yes		2
Nevada	1		Yes	3
New Hampshire	8	Yes		3
New Jersey	14	Yes		3
New Mexico	5	Yes		3
New York	4	Yes		2

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North Carolina	2	Yes		2
North Dakota	2		Yes	3
Ohio	4	Yes		2
Oklahoma	1		Yes	3
Oregon	2		Yes	3
Pennsylvania	10	Yes		3
Rhode Island	0	Yes		1
South Carolina	2	Yes		2
South Dakota	0		Yes	2
Tennessee	1	Yes		2
Texas	2		Yes	3
Utah	2	Yes		2
Vermont	0	Yes		1
Virginia	1	Yes		2
Washington	3			1
West Virginia	5			2
Wisconsin	1		Yes	3
Wyoming	1	Yes		2
<b>TOTAL</b>	<b>Average = 3.1</b>	<b>26</b>	<b>23</b>	

**Table 3. Domestic Violence Arrest Laws**

<b>State</b>	<b>Pro-Arrest for Domestic Violence (Yes = 1)</b>	<b>Mandatory Arrest for Domestic Violence (Yes = 2)</b>	<b>Mandatory Arrest for Violation of Restraining Order (Yes = 2)</b>	<b>Primary Aggressor Law (Yes = 2)</b>	<b>Total</b>
Alabama				Yes	2
Alaska		Yes	Yes	Yes	6
Arizona		Yes			2
Arkansas	Yes				1
California	Yes		Yes	Yes	5
Colorado		Yes	Yes	Yes	6
Connecticut		Yes			2
Delaware			Yes		2
District of Columbia		Yes			2
Florida	Yes			Yes	3
Georgia				Yes	2
Hawaii					0
Idaho					0
Illinois					0
Indiana					0
Iowa		Yes	Yes	Yes	6
Kansas		Yes	Yes		4
Kentucky			Yes		2
Louisiana		Yes	Yes		4
Maine		Yes	Yes		4
Maryland			Yes	Yes	4
Massachusetts	Yes		Yes		3
Michigan	Yes				1
Minnesota			Yes		2
Mississippi		Yes	Yes		4
Missouri			Yes	Yes	4
Montana	Yes			Yes	3
Nebraska			Yes		2
Nevada		Yes		Yes	4
New Hampshire			Yes	Yes	4
New Jersey		Yes	Yes	Yes	6
New Mexico			Yes		2
New York		Yes	Yes	Yes	6

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North Carolina			Yes		2
North Dakota	Yes		Yes		3
Ohio		Yes		Yes	4
Oklahoma					0
Oregon		Yes	Yes	Yes	6
Pennsylvania			Yes		2
Rhode Island		Yes	Yes	Yes	6
South Carolina		Yes	Yes	Yes	6
South Dakota		Yes	Yes	Yes	6
Tennessee	Yes		Yes	Yes	5
Texas			Yes		2
Utah		Yes	Yes	Yes	6
Vermont					0
Virginia		Yes	Yes	Yes	6
Washington		Yes	Yes	Yes	6
West Virginia			Yes		2
Wisconsin		Yes	Yes	Yes	6
Wyoming					0
<b>TOTAL</b>	<b>8</b>	<b>22</b>	<b>33</b>	<b>24</b>	

**Table 4. Harmfulness of Domestic Violence Laws, by State**

<b>State</b>	<b>Definition of Domestic Violence (Table 1)</b>	<b>Incentives to Make False Allegations (Table 2)</b>	<b>Arrest Laws (Table 3)</b>	<b>Total (Sum of columns 1, 2, and 3)</b>	<b>Ranking</b>
Alabama	4	3	2	9	27
Alaska	6	3	6	15	51
Arizona	4	3	2	9	27
Arkansas	2	3	1	6	11
California	4	4	5	13	49
Colorado	2	2	6	10	34
Connecticut	0	0	2	2	1
Delaware	2	3	2	7	15
District of Columbia	2	4	2	8	21
Florida	2	2	3	7	15
Georgia	2	2	2	6	11
Hawaii	2	2	0	4	5
Idaho	0	3	0	3	2
Illinois	2	3	0	5	8
Indiana	2	3	0	5	8
Iowa	2	3	6	11	41
Kansas	0	2	4	6	11
Kentucky	2	1	2	5	8
Louisiana	2	3	4	9	27
Maine	4	3	4	11	41
Maryland	2	1	4	7	15
Massachusetts	2	4	3	9	27
Michigan	6	1	1	8	21
Minnesota	2	3	2	7	15
Mississippi	2	4	4	10	34
Missouri	4	4	4	12	46
Montana	4	2	3	9	27
Nebraska	0	2	2	4	5
Nevada	4	3	4	11	41
New Hampshire	6	3	4	13	49
New Jersey	4	3	6	13	49
New Mexico	6	3	2	11	41
New York	4	2	6	12	46
North Carolina	6	2	2	10	34

RANKING OF STATES' DOMESTIC VIOLENCE LAWS

North Dakota	4	3	3	10	34
Ohio	2	2	4	8	21
Oklahoma	4	3	0	7	15
Oregon	2	3	6	11	41
Pennsylvania	4	3	2	9	27
Rhode Island	2	1	6	9	27
South Carolina	0	2	6	8	21
South Dakota	2	2	6	10	34
Tennessee	2	2	5	9	27
Texas	2	3	2	7	15
Utah	2	2	6	10	34
Vermont	2	1	0	3	2
Virginia	4	2	6	12	46
Washington	4	1	6	11	41
West Virginia	4	2	2	8	21
Wisconsin	2	3	6	11	41
Wyoming	2	2	0	4	5

**Table 5. Harmfulness of Domestic Violence Laws, by Rank**

<b>State</b>	<b>Definition of Domestic Violence (Table 1)</b>	<b>Incentives to Make False Allegations (Table 2)</b>	<b>Arrest Laws (Table 3)</b>	<b>Total (Sum of columns 1, 2, and 3)</b>	<b>Ranking</b>
Alaska	6	3	6	15	51
California	4	4	5	13	49
New Hampshire	6	3	4	13	49
New Jersey	4	3	6	13	49
Missouri	4	4	4	12	46
New York	4	2	6	12	46
Virginia	4	2	6	12	46
Iowa	2	3	6	11	41
Maine	4	3	4	11	41
Nevada	4	3	4	11	41
New Mexico	6	3	2	11	41
Oregon	2	3	6	11	41
Washington	4	1	6	11	41
Wisconsin	2	3	6	11	41
Colorado	2	2	6	10	34
Mississippi	2	4	4	10	34
North Carolina	6	2	2	10	34
North Dakota	4	3	3	10	34
South Dakota	2	2	6	10	34
Utah	2	2	6	10	34
Alabama	4	3	2	9	27
Arizona	4	3	2	9	27
Louisiana	2	3	4	9	27
Massachusetts	2	4	3	9	27
Montana	4	2	3	9	27
Pennsylvania	4	3	2	9	27
Rhode Island	2	1	6	9	27
Tennessee	2	2	5	9	27
District of Columbia	2	4	2	8	21
Michigan	6	1	1	8	21
Ohio	2	2	4	8	21
South Carolina	0	2	6	8	21
West Virginia	4	2	2	8	21
Delaware	2	3	2	7	15

RANKING OF STATES' DOMESTIC VIOLENCE LAWS

Florida	2	2	3	7	15
Maryland	2	1	4	7	15
Minnesota	2	3	2	7	15
Oklahoma	4	3	0	7	15
Texas	2	3	2	7	15
Arkansas	2	3	1	6	11
Georgia	2	2	2	6	11
Kansas	0	2	4	6	11
Illinois	2	3	0	5	8
Indiana	2	3	0	5	8
Kentucky	2	1	2	5	8
Hawaii	2	2	0	4	5
Nebraska	0	2	2	4	5
Wyoming	2	2	0	4	5
Idaho	0	3	0	3	2
Vermont	2	1	0	3	2
Connecticut	0	0	2	2	1

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## References

<sup>1</sup> Miller N. What does research and evaluation say about domestic violence laws? A compendium of justice system laws and related research assessments. Alexandria, VA: Institute for Law and Justice, 2005, footnote 28.

<http://www.ilj.org/publications/dv/DomesticViolenceLegislationEvaluation.pdf>

<sup>2</sup> Stop Abusive and Violent Environments. Are Domestic Violence Policies Respecting our Fundamental Freedoms? Rockville, MD. 2010. <http://www.saveservices.org/downloads/SAVE-Assault-Civil-Rights>

<sup>3</sup> Stop Abusive and Violent Environments. Expanding definitions of domestic violence. Rockville, MD. 2010. <http://www.saveservices.org/downloads/Vanishing-Rule-of-Law>

<sup>4</sup> Zorn E. A seminar in divorce, down-and-dirty style. *Chicago Tribune*, November 4, 1988, p. 1.

<sup>5</sup> Hirschel D and Buzawa E. Understanding the context of dual arrest with directions for future research. *Violence Against Women*, Vol. 18, December 2002, Table 1.

<sup>6</sup> Cook P. *Abused Men: The Hidden Side of Domestic Violence*. Westport, CT: Praeger, 1997.

<sup>7</sup> Young C. Hitting below the belt. *Salon.com*, October 25, 1999.

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<sup>8</sup> McElroy W. Abuse of temporary restraining orders endangers real victims. *FoxNews.com*, December 27, 2005. <http://www.ifeminists.net/introduction/editorials/2005/1228.html>

<sup>9</sup> Schoenberg D, quoted in Braver SL. *Divorced Dads: Shattering the Myths*. New York: Tarcher/Putnam, 1998, p. 240.

<sup>10</sup> Stop Abusive and Violent Environments. Expanding definitions of domestic violence. Rockville, MD. 2010. <http://www.saveservices.org/downloads/Vanishing-Rule-of-Law>

<sup>11</sup> Stop Abusive and Violent Environments. Incentives to make false allegations of domestic violence. Rockville, MD. 2010. <http://www.saveservices.org/downloads/Perverse-Incentives>

<sup>12</sup> Miller N. What does research and evaluation say about domestic violence laws? A compendium of justice system laws and related research assessments. Alexandria, VA: Institute for Law and Justice, 2005.

<http://www.ilj.org/publications/dv/DomesticViolenceLegislationEvaluation.pdf>

<sup>13</sup> Hirschel and Buzawa. *Ibid*.