

SPECIAL REPORT

**Incentives to Make
False Allegations of Domestic Violence**



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False allegations of domestic violence have become a major problem in our society.

From the perspective of the wrongfully-accused, such allegations are difficult to refute because of broad and often vague definitions of abuse. From the point of view of victims, such claims undermine their credibility and divert services and protections away from persons in need. And for taxpayers, such allegations represent a waste of limited resources:

Wendy Flanders of Pennsylvania filed over 30 accusations of domestic abuse, harassment, and criminal contempt over a four year period against former boyfriend Ben Vonderheide. None of the charges were found to be true. In 2007, Flanders was found guilty on three counts of making false statements to law enforcement officials. Vonderheide had spent \$350,000 for his legal defense.¹

False allegations are seen in both criminal and civil law cases. Under *criminal* law, about one million persons are arrested each year for intimate partner violence.² But only 33% of arrests for domestic violence result in a conviction, revealing that many persons are being wrongfully accused and incarcerated.³

Under *civil* law, false allegations are even more widespread. One analysis of restraining orders concluded 80% were unnecessary or false.⁴ Indeed, physical violence was not even *alleged* in half of all petitions for restraining orders, according to a Massachusetts Trial Court study.⁵

A summary of the varied nature of intimate partner aggression illuminates the context of false allegations:

- About two-thirds of partner abuse cases are *minor* (e.g., shoving, throwing a pillow), while the remaining one-third involve *severe* incidents (kicking, punching, and choking).⁶
- Men and women are equally likely to initiate and engage in partner aggression.⁷
- In about half of abuse cases, the aggression is mutual, meaning that there is no clear-cut initiator.⁸
- Due to differences in size and strength, women are more likely to be harmed during an altercation. Nonetheless, 38% of persons who suffer an injury from partner aggression are male.⁹

This Special Report analyzes the remedies that are allowed for in domestic violence and family law statutes in the 50 states and the District of Columbia.

The Role of Restraining Orders

The most common legal vehicle for the filing of a false allegation is a restraining order. Such orders are intended to prohibit all forms of contact between the two parties. An estimated 2-3 million restraining orders are issued each year.¹⁰

In most cases, a judge issues a temporary order to the “petitioner” (or “claimant”) on an emergency *ex parte* basis. As a result, the accused (the “respondent”), unaware that the charge has been made, is not afforded the opportunity to contest or refute the accusations. The effect on the unsuspecting partner has been described this way: “In ten days, the hypothetical husband has gone from having a normal life with a wife, children and home to being a social pariah, homeless, poor, and alone, trapped in a Kafkaesque nightmare.”¹¹

Since restraining orders are issued under civil law, the “preponderance of evidence” standard usually applies. Unlike the “beyond a reasonable doubt” standard used in criminal law, this means that even if the accused has a reasonable case, the alleged victim prevails if that person has a slightly stronger case.

Allegations of domestic violence tend to occur when partners are undergoing separation. Such persons typically have no prior history of violence.^{12,13,14} In this context, allegations of domestic violence are often made to gain a legal advantage:

- Elaine Epstein, former president of the Massachusetts Bar Association, revealed, “Everyone knows that restraining orders and orders to vacate are granted to virtually all who apply....In many cases, allegations of abuse are now used for tactical advantage.”¹⁵
- In California, the State Bar admits that protective orders are “almost routinely issued by the court in family law proceedings, even when there is relatively meager evidence and usually without notice to the restrained person...it is troubling that they appear to be sought more and more frequently for retaliation and litigation purposes.”¹⁶
- An article in the *Illinois Bar Journal* notes that allegations of abuse and restraining orders are often used as “part of the gamesmanship of divorce.”¹⁷

One legal expert noted with surprising candor, “With child abuse and spouse abuse you don’t have to prove anything. You just have to accuse.”¹⁸

In addition to mandating the separation of the two parties, judges can order that the alleged victim receive a variety of additional “remedies” and forms of “relief.” These incentives fall into two categories, which are discussed in the following sections:

1. Monetary and property incentives
2. Award of child custody

Monetary and Property Incentives

In most jurisdictions, the judge has broad discretion to award the petitioner a broad range of benefits, including monetary compensation, property, and other forms of relief:¹⁹

Monetary

In most states, the judge can require the defendant to pay for a variety of expenses, such as attorney's fees, suitable alternative housing, alleged property damage, moving expenses, and medical and psychological services for the alleged victim.

In Illinois, for example, the judge may:

Order respondent to pay petitioner for losses suffered as a direct result of the abuse, neglect, or exploitation. Such losses shall include, but not be limited to, medical expenses, lost earnings or other support, repair or replacement of property damaged or taken, reasonable attorney's fees, court costs and moving or other travel expenses, including additional reasonable expenses for temporary shelter and restaurant meals.²⁰

Property

States also allow the judge to award the exclusive use of the family residence to the petitioner. In many states, the judge can award other types of property as well.

In Missouri, for example, the judge can “order that the petitioner be given temporary possession of specified personal property, such as automobiles, checkbooks, keys, and other personal effects.”²¹ In Idaho and other states, the judge can even restrain the “respondent from taking more than personal clothing and toiletries and any other items specifically ordered by the court.”²²

Other Forms of Relief

The statutes in many states include open-ended language such as “including, but not limited to” and “other relief deemed necessary.”

In Nebraska, for example, the law permits “Ordering *such other relief deemed necessary* to provide for the safety and welfare of the petitioner and any designated family or household member.”²³ [italics added]

In Massachusetts, the wording of the law is broader in “ordering the defendant to pay the person abused monetary compensation for the losses suffered as a direct result of such abuse. Compensatory *losses shall include, but not be limited to*, loss of earnings or support, costs for restoring utilities, out-of-pocket losses for injuries sustained,

replacement costs for locks or personal property removed or destroyed, medical and moving expenses and reasonable attorney's fees.”²⁴

Among all the states, New Jersey has the largest number of additional allowable remedies—14. The state’s statute reads as follows (remedies beyond basic spousal and child support are indicated in italics):²⁵

(4) ...Compensatory losses shall include, but not be limited to, *loss of earnings or other support*, including child or spousal support, *out-of-pocket losses for injuries sustained, cost of repair or replacement of real or personal property damaged or destroyed or taken by the defendant, cost of counseling for the victim, moving or other travel expenses, reasonable attorney’s fees*, court costs, and *compensation for pain and suffering*. Where appropriate, *punitive damages* may be awarded in addition to compensatory damages....

(8) An order requiring that the defendant make or continue to make *rent or mortgage payments* on the residence occupied by the victim.

(9) An order granting either party temporary possession of specified personal property, such as an *automobile, checkbook*, documentation of health insurance, an identification document, a *key*, and *other personal effects*.

(10) An order awarding *emergency monetary relief*, including emergency support for minor children, to the victim and other dependents, if any.

The New Jersey statute is also notable because it allows for compensation for pain and suffering and punitive damages, remedies that are generally awarded only after a jury has reached a decision following a full evidentiary trial.

Summary

The Appendix to this report, Incentives for Allegations of Domestic Violence, summarizes information for each state and the District of Columbia.

The Number of Remedies column reveals the number of allowable remedies ranges from 0 to 14 (in addition to award of temporary child custody, use of the family residence, and temporary financial support):

- No additional remedies are specified in the following nine states: Connecticut, Florida, Hawaii, Kentucky, Maryland, Michigan, Rhode Island, South Dakota, and Vermont.
- Twenty-three states allow for 1–2 additional remedies, the most common being legal fees/court costs, personal property, and “other relief.”
- In 14 states, 5 or more extra remedies are enumerated. These states are: Alaska, California, Delaware, Illinois, Indiana, Maine, Massachusetts, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, Pennsylvania, and West Virginia.

Award of Child Custody

Child custody decisions can be swayed by the existence of a restraining order. The American Bar Association has compiled the legal requirements for judicial consideration of domestic violence allegations or findings in child custody decisions.²⁶ The information is presented in the last three columns of the Incentives for Allegations of Domestic Violence table:

- The Court Must Consider Evidence of DV/Best Interest of the Child column lists 26 states that have enacted such requirements.
- The Rebuttable Presumption Against Joint Custody column lists states in which joint or sole custody should *not* be awarded to the alleged abuser unless that person is able to produce compelling evidence that the allegation of domestic violence is false. Such a requirement shifts the burden of proof from the accuser to the defendant. Twenty-three jurisdictions have such statutes.
- The Prohibition of Joint Custody column indicates that the statute precludes a joint custody award in the event of an allegation or finding of domestic violence. Four states—Arizona, Pennsylvania, Texas, and Washington—have such provisions.

The irony is that an allegation of partner abuse may become the basis for a parent losing child custody—even if such abuse was never alleged or never occurred.

A Stain on Our System of Law

False allegations of domestic violence have become ubiquitous in modern-day society. Millions of sports figures, media celebrities, politicians, and common citizens have been faced with the legal conundrum of having to defend oneself from a baseless accusation, an action that can trigger the ripple effects of social stigmatization, depletion of assets, loss of job, and even dismemberment of the family.

This Special Report has reviewed the statutes in all 50 states and the District of Columbia. This report documents that in only five states—Connecticut, Maryland, Michigan, Rhode Island, and Vermont—do the statutes contain no undue incentives to make trivial or unwarranted claims.

Given the lack of proof for the effectiveness of restraining orders,²⁷ a careful re-examination is in order of the incentives that give rise to false allegations of domestic violence.

Incentives for Allegations of Domestic Violence

State	Number of Remedies *	Type of Remedies	Court Must Consider Evidence of DV/ Best Interest of the Child	Rebuttable Presumption Against Joint Custody	Prohibition of Joint Custody
Alabama	1	Other relief		Yes	
Alaska	7	Vehicle, personal items, medical expenses, counseling, shelter, and repair or replacement of damaged property, legal fees	Yes		
Arizona	1	Other relief		Yes	Yes, if the court finds that there is significant DV
Arkansas	2	Legal fees; other relief		Yes	
California	7	Personal property, liens, loss of earnings, medical care, temporary housing, legal fees, other relief		Yes	
Colorado	1	Other relief	Yes		
Connecticut	0				
Delaware	9	Personal property, medical, dental, counseling, loss of earnings, repair or replacement property, moving, travel expenses, and legal fees		Yes	
District of Columbia	2	Personal property and legal fees		Yes	
Florida	0			Yes	
Georgia	2	Personal property and legal fees	Yes		
Hawaii	0			Yes	

* Excluding temporary child custody, use of the family residence, and temporary financial support.

SAVE: STOP ABUSIVE AND VIOLENT ENVIRONMENTS

State	Number of Remedies *	Type of Remedies	Court Must Consider Evidence of DV/ Best Interest of the Child	Rebuttable Presumption Against Joint Custody	Prohibition of Joint Custody
Idaho	1	Personal property		Yes	
Illinois	8	Alternative housing, personal property, medical expenses, lost earnings or other support, repair of property, legal fees, moving expenses, restaurant meals	Yes		
Indiana	7	Car, personal effects, legal fees, alternative housing, medical expenses, counseling, and repair of property	Yes		
Iowa	1	Legal fees		Yes	
Kansas	3	Alternative housing, legal fees, personal property	Yes		
Kentucky	0		Yes		
Louisiana	3	Legal fees, medical care, and psychological care		Yes	
Maine	6	Personal property, loss of earnings, expenses for personal injuries, property damage, reasonable moving expenses, and legal fees	Yes		
Maryland	0		Yes		
Massachusetts	9	Loss of earnings, restoring utilities, losses for injuries sustained, replacement of locks, personal property destroyed, medical care, moving expenses, reasonable attorney's fees, other remedies		Yes	
Michigan	0		Yes		
Minnesota	1	Restitution		Yes	
Mississippi	8	Medical expenses, loss of earnings, losses for injuries sustained, moving expenses, legal fees,		Yes	

INCENTIVES TO MAKE FALSE ALLEGATIONS

State	Number of Remedies *	Type of Remedies	Court Must Consider Evidence of DV/ Best Interest of the Child	Rebuttable Presumption Against Joint Custody	Prohibition of Joint Custody
		counseling, medical treatment, and other remedies			
Missouri	7	Alternative housing, automobiles, checkbooks, keys, other personal effects, legal fees, and medical care		Yes	
Montana	2	Automobile and other personal property	Yes		
Nebraska	1	Such other relief deemed necessary	Yes		
Nevada	1	Legal fees		Yes	
New Hampshire	8	Automobile, household furniture, insurance, health care, utilities, rent, legal fees, and other relief	Yes		
New Jersey	14	Loss of earnings, out-of-pocket losses for injuries, cost of repair or replacement of personal property, counseling, moving expenses, other travel expenses, legal fees, compensation for pain and suffering, punitive damages, rent, automobile, checkbook, other personal effects, and emergency monetary relief	Yes		
New Mexico	5	Medical care, counseling, temporary shelter, replacement or repair of damaged property, and lost wages	Yes		
New York	4	Restitution not to exceed \$10,000, legal fees, health insurance, and medical care	Yes		
North Carolina	2	Personal property and	Yes		

SAVE: STOP ABUSIVE AND VIOLENT ENVIRONMENTS

State	Number of Remedies *	Type of Remedies	Court Must Consider Evidence of DV/ Best Interest of the Child	Rebuttable Presumption Against Joint Custody	Prohibition of Joint Custody
		legal fees			
North Dakota	2	Legal fees and personal property		Yes	
Ohio	4	Alternative housing, car, personal property, and other relief	Yes		
Oklahoma	1	Legal fees		Yes	
Oregon	2	Legal fees, emergency monetary assistance		Yes	
Pennsylvania	10	Health insurance, rent, medical care, dental care, moving expenses, counseling, loss of earnings, repair of property, other out-of-pocket losses for injuries, and legal fees	Yes		Yes, if other parent has been convicted of first degree murder of the other parent
Rhode Island	0		Yes		
South Carolina	2	Personal property and legal fees	Yes		
South Dakota	0			Yes	
Tennessee	1	Suitable alternative housing	Yes		
Texas	2	Legal fees and personal property		Yes	Yes, if there is credible evidence that shows a history of past or present domestic violence
Utah	2	Car and essential personal effects	Yes		
Vermont	0		Yes		
Virginia	1	Car, alternative housing, legal fees	Yes		
Washington	3	Legal fees, personal effects, and car			Yes, if one party has a history of

INCENTIVES TO MAKE FALSE ALLEGATIONS

State	Number of Remedies *	Type of Remedies	Court Must Consider Evidence of DV/ Best Interest of the Child	Rebuttable Presumption Against Joint Custody	Prohibition of Joint Custody
					domestic violence
West Virginia	5	Personal property, medical care, transportation, shelter, and other expenses			
Wisconsin	1	Legal fees		Yes	
Wyoming	1	Medical care	Yes		
TOTAL	Average = 3.1		26	22	4

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