



# Legal Advocacy Manual 2019



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## **Introduction**

This handbook provides sexual and domestic violence victim advocates (“victim advocates”) with a comprehensive guide for helping domestic and sexual violence victims/survivors through the process of obtaining a protective order. Readers coming to this handbook at various stages of knowledge and experience should consider that it provides both basic and intermediate levels of information about legal advocacy. It also offers context for the emotional, logistical, and legal hurdles involved in protective orders, criminal prosecutions, visa applications, and divorces.

Victim advocates may be approaching the advocate position with some prior experience with the civil courts or the criminal justice system. However, each individual case presents its own set of challenges and may be filled with emotional, cultural, and psychological conflicts that an advocate may never have encountered. This handbook will address a broad range of those conflicts, so that advocates can have a fuller understanding of the obstacles unique to sexual and domestic violence.

This handbook will also use some terminology that is common in the protective order process. It will often refer to victims who are asking for protective orders as *petitioners*, and to abusers or threatening people targeted by protective orders as *respondents*.

Additionally, it will use gendered and nongendered pronouns, to refer to survivors and perpetrators alike. Available statistics show domestic violence and sexual violence is overwhelmingly committed by individuals identified as men against individuals identified as women.<sup>1</sup> However, this handbook intentionally uses both gendered and nongendered pronouns to reflect that domestic violence and sexual violence victimization and perpetration are not limited or defined by gender identity.

## **Advocacy Techniques**

### ***Communication***

This manual will discuss the dynamics of abusive relationships in greater depth below. However, it may be helpful to start with a general emphasis on the importance of creating an open, nonjudgmental environment in which victims can express their feelings without fear or shame. If you are not working from a “trauma-informed” model of services, it may be helpful for you to educate yourself about how to do so. Trauma-informed care means understanding, recognizing, and responding to the effects of all types of trauma, including domestic or sexual

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<sup>1</sup> See, e.g., *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010-2012 State Report*, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, available at <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>.

violence. It emphasizes physical, psychological, and emotional safety for victims and providers alike, and helps victims rebuild their sense of control and empowerment over their own life and choices. For more information about trauma-informed advocacy, see Addendum.

Some advocates come to their work from experiences with intimate partner violence or sexual abuse, some come from the criminal justice system, and some come with only the desire to help others. It is natural that advocates should want to help victims become empowered and leave abusive situations. However, for many reasons explained later in this manual, not every victim will come to an advocate immediately ready to begin her journey to freedom from abuse and violence. Many victims will have logistical reasons for needing more time. Many will have emotional reasons why they are reluctant to leave an abusive situation. Many will feel shame about their abuse and how it might reflect on them as partners, spouses or parents.

**Accordingly, it is important that advocates never make a victim feel pressured to act in a certain way or judged for making a choice that is not in line with what the advocate thinks is best.** Remember a time when you might have tolerated behavior from another person that was not as respectful as it should have been and your reasons for not standing up for yourself. Remember to listen to the victim and his/her/their specific needs. Take into account pertinent issues like whether they have children or other family members that depend on them, whether they are currently in school or unemployed or whether they have religious or cultural values that are deeply important to them and affect their choices. If you have experienced abuse yourself, consider if it might be appropriate to share your experience with the victim, to make them feel less different and alone. Finally, remember that if a victim acts because of pressure from an advocate, they are functioning under the same kind of pressure that their abuser exerts on them. For them to achieve the level of strength they will need to leave their abuser permanently, it must be their own choice.

Essentially, advocates should always make sure to cultivate a space where a victim feels able to say what is on his/her/their mind without fear of judgment or pressure to respond a certain way. Here are some tips that will help establish a supportive environment:

- If you are not working out of a shelter that gives you meeting space, find a space that is comfortable and not too noisy, where the victim does not feel that surrounding people can hear what they are saying. If you are working out of a shelter or other organization, consider whether the posters on the walls suggest terms or an agenda that might make the victim feel pressure or a sense they do not belong. Many domestic violence victims do not think of themselves as “battered” or “victims,” and may not be receptive to this immediate suggestion. Conversely, many do not see themselves as feminists and respond poorly to gender equity and women’s empowerment messages. Keep in mind, a victim may be reluctant to share information about their abuse for many reasons. They may feel unsafe revealing their or their partner’s legal status, criminal status, addictive behavior, or gender/sexual orientation.
- Tell them a little bit about who you are and why you are an advocate. For them to trust you, they may need to know basic information about you. Even if your lives are not similar in ways that suggest that you have first-hand knowledge of their troubles,

helping them to feel that you are not a stranger may make them more comfortable. However, remember your job is to hear their story, so this should be brief.

- Make sure he/she/they understand from the beginning you do not believe your job is to ask them to leave the abusive relationship, or pressure them in any way. Focus instead on what they have done already to try to protect themselves and any children they may have, and what needs to be done to keep them (and the children) safe in the future.
- Validate any emotional, cultural, or financial anxieties he/she/they may have about leaving, by expressing that you hear her and hear that her circumstances are causing her anxiety.
- Start with open-ended questions like, “Tell me about the problems you are having,” or “What happens when [your abuser] does bad things?” rather than posing questions that already include a specific answer you are looking for. Questions like, “Does [your abuser] force you to have sex when they drink?” may initially limit a victim’s answers to specific anecdotes, requiring he/she/they to talk about traumatizing experiences they are not yet ready to speak about or put words in their mouth. Wait for direct questions until she has told her story her way.
- Court proceedings are very formal, and this can be intimidating and overwhelming for those who are not used to them. If you get to a point at which a victim wants to pursue a protective order or participate in criminal charges against the abusive or threatening person, try to explain the process for these proceedings in detail. If a victim knows what is coming next, he/she/they will feel more confident and in control.
- After a court proceeding or other “event,” it is good to spend some time processing, debriefing and maybe even reframing the outcome with your client even if it is not what the victim hoped for. (For example, if a victim is not able to obtain a protective order after a hearing during which he/she/they asked a judge for one, they may feel defeated. If you spend some time with them to not only engage in safety planning but to help them see how far they’ve come to be able to say to their abuser in public, “What you did to me was WRONG,” you will likely plant a seed of strength that will bolster this person in the future.)

Use these tips, as well as your own intuition and empathy, to create a safe space for victims to make themselves heard and understood.

## **Confidentiality and Privilege**

Advocates are not attorneys or therapists, but they should still be mindful of the importance of trust and privacy inherent in the relationship between a victim and an advocate.

Advocates should make sure the victims they counsel know they will not share their statements with others unless the victim has given her consent, and unless sharing that information is necessary to provide services to the victim.

The popularity of crime dramas on television has led to confusion between the concepts of privilege and confidentiality. “**Privilege**” is a rule that applies to people in certain relationships like doctors and patients or lawyers and clients. It means that the professionals in these relationships **cannot testify about any statements** the patient or client has said to them without the patient or client’s consent. It is unlikely that this issue will ever come up for most advocates, and if it does you should consult a lawyer.



“**Confidentiality**” is a much broader concept. It means that professionals like doctors or lawyers **do not repeat any information they know** about a patient or client **to anybody not involved in the client or patient’s case**. For example, a lawyer may speak with another lawyer in her office about a client’s case. However, without the client’s permission, she cannot speak to the police, an outside attorney or her friends and family about anything she knows about the client. As an advocate, you should follow the same policy.

Unlike lawyers or doctors, advocates are not required by law to stay silent about victims’ information. However, advocacy, much like law and medicine, requires trust. If you reveal information about the victims you counsel, without their permission, you will lose your credibility as an advocate and you will not be able to do your job properly.

## **Avoiding the Unauthorized Practice of Law**

Victim Advocates play an invaluable role in helping survivors navigate the justice system. Advocacy includes a broad range of activities pursued on behalf of victims to assure survivors are informed, competent and effective participants in the legal system who are able to safely achieve the remedies they seek. The primary objectives of Victim Advocates include:

- helping survivors understand the options available to help protect their rights and safety;
- assisting survivors in asserting those rights;
- providing a safe space in which survivors may disclose information;
- giving support and encouragement throughout the legal process;
- helping find answers when questions arise;



- ensuring that the system response to survivors is as fair and as helpful as possible; and
- providing continued support when the legal process has concluded.

In fulfilling this role, Victim Advocates are often called upon to walk a fine line between offering information about the justice system and process (which is appropriate) and providing legal advice (**which is not appropriate and further, is prohibited by law**).

**It is appropriate for Victim Advocates to:**

- help survivors identify their needs and preferred outcomes in the criminal justice system;
- engage survivors in critical thinking about strategies to prevent further violence and to assess their readiness to participate in the justice system, taking into account the resources of the victim and the potential barriers to achieving the preferred outcome;
- prepare victims for their experience in the courtroom and help them plan to arrive at and leave the courthouse safely;
- prepare victims for the potential outcomes of court proceedings. This includes helping victims to define “success” in ways that they can control. For example, “I am asserting my right not to be assaulted,” rather than “The judge will make sure that he never assaults me again;”
- help survivors identify safety plans to follow should the perpetrator respond violently to legal intervention;
- provide referrals to attorneys and assist in obtaining legal counsel;
- aid those who may not have proficiency in written and/or spoken English (e.g., by ensuring an interpreter or translator is available throughout the process);<sup>2</sup>
- arrange transportation, childcare, care for elderly parents and other practical assistance to make it possible for survivors to participate in the legal process;
- help survivors collect documentation of past abuse; and
- help survivors develop “back-up strategies” should their initial efforts prove unsuccessful.

It is also the role of the Victim Advocate to provide ongoing education to justice system professionals on the effects of domestic violence, sexual assault and stalking, including information on the impact of certain policies and procedures on victims. Such education should be broad and ongoing and should not focus on a specific case.

The **Unauthorized Practice of Law** (“UPL”) goes beyond these duties and intrudes on the responsibility of attorneys, who must be authorized and licensed to perform their jobs. In Virginia, the definition of “Practice of Law” includes:

- representing a person in a legal proceeding;
- giving legal advice;
- applying law or legal principles to the facts of a particular case or situation; and

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<sup>2</sup> *See, e.g.*, Code of Virginia §§ 8.01-384.1, 8.01-384.1:1, 19.2-164, 19.2-164.1.

- representing a person’s interests by “preparing legal instruments” (documents) on their behalf.<sup>3</sup>

Practicing law without a license is a **Class 1 misdemeanor**.<sup>4</sup> To avoid practicing law without a license, remember the following:

- **State clearly that you are an advocate, not an attorney.** Explain that you can help by providing information but cannot offer legal advice to individuals on their particular situation.
- **Avoid applying laws or legal principles to a person’s particular situation.** For example, instead of saying, “If you want to leave home, you can petition for custody and take your children to your mother’s house in another state,” you may say, “According to Virginia statutes, both parents typically have legal custody of the children unless there is a court order to the contrary. Generally, both parents have equal rights to petition the court for custody and/or visitation.”
- **State facts, not opinions.** An example of a statement of fact is: “One criterion for obtaining a Protective Order that a judge may consider is whether a person is in fear for her/his health or safety.” Another example of a statement of fact is: “In Virginia, individuals are eligible to petition for a Protective Order if they have been assaulted by a family or household member.” On the other hand, an example of an opinion is: “You are in fear for your safety, therefore, it is quite likely that you will be granted a Protective Order.”
- **When discussing legal options, avoid using “you” and/or “I” statements.** Rather than saying, “You have a right to do X, Y or Z,” you should say, “Generally, a person has a right to do X, Y or Z, according to Virginia law.”

Victim Advocates must be informed, victim-directed, strategic, and articulate. They must be knowledgeable about law and legal practice, skilled community organizers, engaging, diplomatic, and able to think critically. Advocates should set the standard for ethical practice and approach their work with utmost respect for the victims they serve and their colleagues in the legal and public policy arenas they seek to change. Sometimes determining the difference between unauthorized practice of law and legal advocacy can be tricky. If you have questions, please call the Virginia Sexual Domestic Violence Action Alliance (“Action Alliance”) at (800) 838-8238 or the Domestic and Sexual Violence Attorney at Virginia Poverty Law Center (VPLC) at 804-782-9430, x.33.

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<sup>3</sup> Virginia State Bar, “Practice of Law in the Commonwealth of Virginia,” *available at* <http://www.vsb.org/pro-guidelines/index.php/unauthorized-practice-rules/practice-of-law-in-the-commonwealth-of-virginia/>.

<sup>4</sup> Code of Virginia § 54.1-3904

## Safety Plans

Regardless of whether the victim is a good candidate for a protective order, their safety should be your highest priority. Safety planning will help ensure the victim has options in any given situation of threats or abuse. Safety planning is useful whether a victim is staying in the abusive relationship, leaving the relationship, or receiving threats from a person with whom they have no relationship. Safety planning helps victims to think ahead to make sure that they have the resources they need in an abusive situation. There are no set rules for safety plans; they are individualized. A safety plan is about an advocate helping the victim name the things they are doing to keep themselves safe and to **EXPAND** upon those resources.

The following tips will help victims and advocates come up with plans that account for some of the safety challenges of leaving or managing an abusive relationship.



# **Safety Plan is a Verb! (not a piece of paper...)<sup>5</sup>**

It takes **practice, information and (often) coaching** to learn the art of safety planning.

Safety Planning should:

- Be specific to a given survivor's experience and barriers; and
- Change as the victim's situation changes.

Advocates help people learn to safety plan adapt-ably, reflectively, quickly, creatively, resourcefully, individually, cooperatively & effectively.

## **Safety plan with EVERY survivor, EVERY time!**

Many domestic violence advocates have been taught that a “safety plan” is a stack of questionnaires, with questions and helpful blanks to be filled in, and that an advocate fills out with a survivor. Some organizations give this stack of papers to the survivors. Others put this stack of papers in the survivor's “client file.” If your organization requires this, talk to one of your trainers and we will talk about ways to change this.

This is reinforced by the fact that the same stack of pages that was originally called a “safety plan” has been replicated over and over thousands of times with very little variation. Google “dv safety plan” and see how little variation there is!

The original idea of a set of questions was to help spark conversation and guide initial safety planning. Unfortunately, the way that this has evolved has transformed safety planning into a standard issue, reflexive, and often, static process that does not meet survivors' needs—and wastes important opportunities to support survivors' self-determination and safety. Less copying! More praxis!

Take a look at a “standard issue” safety plan and consider the following:

- What strategies does it suggest for reducing harm while staying in an abusive relationship? (ex: LGBTQ folks who are not the legal parent of their kids)
- What information does it provide about safety planning and the presence or absence of civil protects for LGBTQ people in any given community/state?
- What information does it suggest about responding to the threat of “outing”?
- A question specific to your experience here!

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<sup>5</sup> Adapted from a handout authored by the Northwest Network of Bisexual, Trans, Lesbian and Gay Survivors of Abuse.

## ***Preparing for the Possibility of Future Violence***

While it may feel frustrating to help a victim who chooses to stay with an abuser, sometimes this is a victim's safest option for the time-being. If the victim wants to stay in an abusive relationship or cannot prepare to leave now, they should consider the following to reduce the dangers:

- The most important thing the victim should do is inform trusted friends or family of the threatening or abusive situation. Abusers try to isolate their victims from friends and family because those people are a reliable source of comfort and help. If the victim reaches out to family and friends they will create a spoken record of the abuse, and they will likely find allies to support them when they eventually are able to leave the relationship.
- Removing weapons from the house. This option should only be considered if doing so will not provoke immediate violence from the abusive person.
- Collecting important documents and leaving them with a trusted friend. This is another critically important option. It ensures that the victim will have access to their social security card, birth certificate, green card or other immigration documentation, marriage certificate, and her children's birth certificates even if they choose suddenly to leave the abusive situation.
- Informing a trusted neighbor of the threatening or abusive situation and asking them to call the police if they hear fighting or loud noises. Victims could even come up with a code word to call out to confirm that they need help.
- Deciding on and planning for emergency shelter, if necessary.
- Leaving a bag of clothing and other basic necessities at a friend's or family member's house.



## ***Safety during a Violent Incident***

Some victims will be ready to immediately leave abusive or threatening situations, but many will need time to prepare or may simply not be ready to leave. They have to think of their jobs, finances, children, and internal conflicts about religion, gender roles and the emotional attachments they have for their abusers. As they attempt to resolve these issues, days, weeks and even months may lapse. Given the reality that many victims you counsel will have to wait to leave, it is likely they will have to endure one or more incidents of threats or abuse before they

are able to remove themselves from the abusive situation. These are tips for victims to remember if the threatening or abusive person starts an argument or violent incident:

- Try to move arguments out of any space that may contain weapons (especially the kitchen), and into a space that provides victims with a way to leave.
- Use the code word suggested above to alert a trusted neighbor that a violent incident may be imminent or already beginning.
- Pay attention to different or strange behavior on the part of the abusive or threatening person during the argument/fight.
- Try to move the argument out of a room or space in which there are children (see below for a more in-depth discussion of the traumas children suffer in abusive environments).
- Do what is necessary to avoid injury and report the assault to law enforcement (if the victim wishes to report the incident) as soon as they have reached safety.

### ***Technology Safety Planning***

Technology has revolutionized the access to support, help, and information available to victims of domestic and sexual violence. However, its expanding presence inside many homes also gives abusers an additional tool to control their victims. If a victim reaches out to friends, support groups, shelters, advocates or domestic violence prevention organizations, for their safety, they will want to do so unobserved by the abusive or threatening person. You should review these tips with victims who have computers or cellphones in their homes:

#### **Computers**

Abusers can monitor computer use in many ways, depending on how much they know about computer technology. They can read a victim's emails and logs of their instant messages, and they can track the websites that a victim visits. They can install software that records everything that a victim type.

- A victim should be mindful about what accounts they are automatically logged into on a shared computer or a device. Phones and computers may automatically save passwords.
- When a victim visits websites about domestic violence support or help or sends emails or instant messages regarding their abusive situation, they should do it from a computer outside their home. They should ask friends to use their computers, use a public library computer, etc.



- If a victim sends emails or instant messages regarding their abusive situation, they should do so using new accounts that the abusive or threatening person does not know about. Using a public computer will not help them if the abusive or threatening person knows how to access a victim's accounts from home afterward.
- Move files that contain information they want to keep secret into their computer's trash file and then immediately empty the file.
- However, try not to move around large numbers of files abruptly. Victims do not want to trigger suspicion if their abusers are watching their computer use closely.

## Cell Phones and Social Media

A threatening or abusive person can use a victim's cell phone to keep track of whom they call and text.

- Cell phones store call and text histories. If a victim uses their phone to contact an advocate, a shelter or anybody else who the threatening or abusive person would not want them to communicate with, they should delete those call and text entries from her phone. Customer service representatives at their cell service provider should be able to help them figure out how to do this. They should take care not to arouse suspicion in their abuser by erasing only those calls and texts they need to conceal; if the abusive person is checking their cell phone and doesn't see the abuser's own calls and texts, the abuser will know they are hiding something.
- The victim should remember their cell phone bill still contains a record of all phone numbers with which she has exchanged calls and texts. If they pay their own cell phone bill and can manage to do this without triggering suspicion, they should have their cell phone bill sent electronically (to an account the abuser does not know about or have access to) or to a P.O. Box. If they cannot do this, they should be mindful that any calls or texts will be in their bill at the end of the month.
- To keep their phone calls and texts from showing up on their bill, use an alternate texting or calling service, such as **WhatsApp** or **Google Voice**.



- Apps like Facebook, Instagram, and Snapchat all have location tagging features. If Snapchat location features are not turned off, a friend on Snapchat can see your location on a map. Facebook may automatically post your location when you post a status or photo. You can change this feature under "settings." Victims also should talk with friends and family about not making posts that might accidentally compromise the victim's safety by alerting an abuser.

- There is competing advice from family lawyers on whether victims should delete social media accounts. On one hand, deleting social media may be beneficial for the abuser to no longer be able to see posts and photographs from the victim. However, on the other hand, the victim may want a way to access the abuser’s social media for safety reasons. If this is the case, it may be a possibility for the victim to have a trusted friend or family member through whom the victim can access the abuser’s social media.
- **Apple Maps** and **Google Maps** both have location sharing features. Victims should be aware of how to access these settings and monitor if their abuser has shared their location.
- Cameras on cell phones often use geotagging, which tags the location where photos were taken. When sending a photo to someone, the location of where the picture was taken will be listed in the metadata of the photo. Victims should turn this feature off on their cell phones.<sup>6</sup>
- **Find my iPhone** app helps when someone loses their phone. However, if an abuser has the victims’ Apple ID login information, the abuser can go onto a computer and use the “Find my iPhone” website to see the victim’s location (assuming the victim has her phone with her).
- If a victim has an iPhone, texts from the iPhone can also be viewed and sent on a Mac computer. If the abuser has access to a Mac computer, as well as the victim’s Apple ID login information, the abuser can look through text messages and send text messages from the victim’s phone number, while on the Mac computer.
- If possible, victims should consider purchasing a pre-paid burn phone to use for emergency calls and texts that can be kept secret.



## GPS Tracking Devices



These tools are becoming more commonplace, and a particularly resourceful abuser may make use of them.

- Victims should remember most GPS navigation devices store information about locations they have navigated. Abusers can search such devices to see if their victims have driven anywhere out of anything is out of the norm. If a victim is driving to meet an advocate or visiting a shelter, and they routinely rely on a GPS navigation device, they should consider getting directions from another source.
- If the threatening or abusive person seems to constantly know where the victim has been, the victim should try a physical search of their car, cell phone, purse, or any other items they routinely bring with them when they leave the house.

<sup>6</sup> See Step 4: “Know how to disable your cell phones or cameras geotagging feature ” <https://www.wikihow.com/Avoid-the-Potential-Risks-of-Geotagging>

## Cameras and Recording Devices

Camera technology has come so far, as cameras can now be hidden in plain sight - the human eye cannot even detect some types of cameras. Thus, an abuser can hide a camera in a victim's house without the victim's knowledge. On the other hand, an abuser might put an obvious camera in the house to intimidate the victim or signal to the victim the abuser is always watching the victim.



Both of these types of cameras are easy to purchase and can also be very inexpensive. The camera's feed and sound can be viewed from a cell phone. Thus, an abuser could install a camera in a house to not only know when a victim is home or not, but also what the victim is doing, who the victim is calling, and what the victim is saying. The abuser can also turn off the camera's feed when he chooses. For example, an abuser would likely not want the camera to record his own threatening words or actions, in case the victim could access the footage or recording for proof at a later time.

If a victim thinks there is a camera in her home, you should advise her to act normally and not look for a camera (if there is one, the abuser will be able to see her searching for it). The victim will need to make phone calls and do any activities she does not want her abuser to see, while outside of the home and where she is confident there are no cameras or recording devices. This will also affect other safety planning, as she will be limited to the actions she can take while inside her home.

## *Preparing to Leave*

When victims of domestic and sexual violence leave their abusers or end abusive relationships, abusers often attempt some form of retaliation. The following are tips for victims who are planning to remove themselves from an abusive relationship or situation:

- The victim should attempt to find lodging with family or friends and should avoid going places without their company. If the victim is bringing children, they should not let the children go anywhere without supervision. If the victim has to go somewhere without a friend or family member, they should make sure a friend or family member knows where they are going and when they are expected to return.
- The victim should keep a harassment log if they do have any interaction with the abusive or threatening person.
- The victim should try to leave at a time when the abusive or threatening person does not expect it.
- The victim should consider whether the abusive or threatening person is so dangerous that staying with family or friends known to the abusive person is too risky. In those circumstances, the victim should find a shelter or stay with friends the abusive person does not know about.

Please remember that leaving is **not** always the best immediate option. If possible, counsel victims to plan very carefully, taking into account the risks they may encounter while leaving.

### *After Leaving*

Once the victim has left an abusive or threatening situation, they must remember the abusive person could still be very dangerous. The abuser could try to harass the victim at their home or their workplace, pursue their children, or try to gain information about them without their knowledge. Review these tips with the victim to help them make sure they remain safe after they have left the abusive situation:

- If the victim is staying in their home, they should change the locks on the doors to prevent the abusive person from entering.<sup>7</sup>
- Consider an alarm system, a dog, bars on the windows, or an alarm specifically geared to Deaf people.
- If the victim is moving, they should consider an apartment in a high-rise building so the abusive or threatening person cannot enter through the ground-floor windows. They should also consider trying to find an apartment building or home that is easy to find on the street to reduce police response time in an emergency.
- They should take special care to be aware of their surroundings and should try not to enter their home alone.
- They should contact utility companies and make sure that none of them will release information to the abusive or threatening person.
- If the abusive or threatening person follows them while on the road, they should drive to a well-lit, populated area, preferably a hospital, police station or fire station, and call the police from their cell phone if they can do so safely while driving.
- If they work, they should decide whether they can speak with their supervisor about the abusive situation, and they should come up with a plan to safely leave work every day. If there is a security guard stationed at the building, they should show the guard the abusive person's picture.
- Victims of domestic violence, sexual violence, or human trafficking are eligible to apply for the **Address Confidentiality Program (ACP)**, a confidential mail-forwarding service for victims who have recently relocated. The program provides a cost-free mail forwarding service and authorizes program participants to use a substitute mailing address in lieu of a home address. Your organization may have someone who is certified in receiving or processing applications. If you need assistance finding your local program, please contact the Statewide Sexual and Domestic Violence Hotline at 1-800-838-8238.

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<sup>7</sup> If the abuser is on the lease, rental agreement, deed, or otherwise shares in title to the residence, the victim may need to obtain a court order excluding the abuser from the home. *See, e.g.*, Code of Virginia § 55-225.5(A).

## *Children and Abuse*

Domestic violence has powerful short-term and long-term effects on children. There are many direct consequences of exposing children to domestic violence. Studies suggest that at least one-half of domestic violence incidents committed against women also involve violence against children.<sup>8</sup> Girls living in a home where there is domestic violence are at an increased risk of sexual abuse, and conflicts over child custody and visitation increase the risk that children will experience further violence.<sup>9</sup> One study showed domestic violence was reported in more than half of parental abduction cases.<sup>10</sup>

Furthermore, child victims of domestic violence (who witness or are targets of abuse) suffer deep emotional injuries. They can have trouble with self-esteem, focusing in school, bedwetting, nightmares, violent outbursts or physical symptoms like stomach pains or headaches.<sup>11</sup> If the victims you counsel have children, they should also consider the following to help their children cope with the pain of domestic violence:

- Get treatment. There are many organizations in Virginia devoted to providing support to individuals and children who need help coping with the pain of domestic violence. Contact the Action Alliance hotline at 1-800-838-8238 for more information.
- Evaluate the dangers children face and come up with specific safety plans for them. Make sure they know to run away from a physical altercation, call 911, and have a trusted adult to speak with about any feelings they are having trouble processing.
- Encourage the victim to talk to their children and validate their feelings and anxieties.
- Whenever safe and possible, give children information about what will happen next; so, they do not sense any more chaos in their lives than is already present.
- Make sure children understand that the abuse is solely the fault of the abuser; not the child's fault.
- Continue to parent them normally whenever possible. Make sure that they still have to follow rules, go to school and participate in their normal interests and activities.
- Based on your children's age and maturity, they may feel more confident with a safety plan of their own (whether or not you're living with your abuser). Aspects of safety planning with children can include:
  - Teaching a child how and when to call 911
  - Talking about a neighbor they can go to if a situation in the home escalates.

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<sup>8</sup> Hart, Barbara J., *Children of Domestic Violence: Risks and Remedies*, Child Protective Services Quarterly (Winter 1992), available at [http://www.casaforchildren.org/site/c.mtJSJ7MPIsE/b.5525199/#Child abuse](http://www.casaforchildren.org/site/c.mtJSJ7MPIsE/b.5525199/#Child%20abuse) (last accessed Nov. 7, 2017).

<sup>9</sup> *Id.*

<sup>10</sup> National Criminal Justice Reference Service, *Reasons for Parental Abductions*, available at <https://www.ncjrs.gov/html/ojjdp/190074/page5.html> (last accessed Nov. 7, 2017).

<sup>11</sup> *Behind Closed Doors: The Impact of Domestic Violence on Children*, UNICEF, 2006, available at <https://www.unicef.org/media/files/BehindClosedDoors.pdf> (last accessed Nov. 7, 2017).

- Coming up with a code word for when they need to go to their rooms, or leave the house and find a neighbor
- Brainstorming activities they can do when they feel scared or emotionally triggered<sup>12</sup>

## **The Objective of a Protective Order**

### *Assessing the Victim's Case*

Not every victim is a candidate for a protective order. Domestic and sexual violence happens when an abusive person wants to control the victim. When a victim gets a protective order, they are standing up to that control. Thus, some abusers retaliate with violence.

Before speaking with the victim about protective orders, divorce, custody or anything else, you should ask them questions about the nature of the abusive situation. Specifically, you need to gain a sense of the abusive person's attitudes toward law enforcement and authority, and how violent and willing to take risks the abuser has become. Important questions include:

- Has the abusive person talked about homicide or suicide?
- Has the abusive person threatened homicide or suicide?
- Does the abusive person have access to weapons?
- Has the abusive person committed arson in the past?
- Has the abusive person expressed a belief of ownership over the victim—refusing to let anyone else 'have them,' or that they 'belong' to the abuser?
- Has the abusive person threatened to hurt or actually hurt the family pet?
- Has the abusive person made their relationship with the victim the central focus of their life, and indicated that they cannot live without the victim?
- Has the abusive person engaged in any violence related to the possible separation with the victim?
- Is the abusive person suffering from depression and/or any other mental health issues?
- Does the abusive person have access to the victim or the victim's family members?
- Has the victim contacted law enforcement to help stop violent disputes with the abusive person before?
- Has there been an escalation of risky behavior or violence on the part of the abusive person?
- Has the abusive person given an indication that they might take the victim or the victim's family members hostage?

If the victim believes that some of these factors are present, a protective order may only anger the abusive person, prompting the abuser to lash out violently against the victim or others. Under such circumstances, work with victims to develop a safety plan to help them get away

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<sup>12</sup> <http://www.thehotline.org/2013/04/12/safety-planning-with-children/>

from the abuser without a direct challenge to the abuser's sense of control (such as defying the abuser by filing for a protective order).

### ***What a Protective Order Does***

A protective order, together with a thorough safety plan, can be an initial step toward stopping violence, abuse or threatening behavior. A protective order is an order issued by a magistrate or a judge that it may require a person who has been engaging in threatening or abusive behavior to stop such behavior. Depending on the situation, it may specify other arrangements relating to the relationship between the victim and the respondent. Examples of these other provisions include temporary custody arrangements, temporary possession of a companion animal<sup>13</sup>, temporary possession of a family car or residence (as well as stopping a person from terminating insurances, registration or taxes on a vehicle<sup>14</sup>) or that the respondent stay away from the victim for a certain period of time. If the magistrate or judge issues the order, the respondent must follow it, and if he violates it, the respondent may face civil or criminal penalties. A victim with a final protection order for family abuse may also qualify for early lease termination under certain circumstances.<sup>15</sup>

### ***What a Protective Order CANNOT Do***

A protective order is a viable solution to threats and abuse ***only*** when the respondent has enough respect for authority and the law to follow the order. Remember a protective order is only a piece of paper. Some abusers respond to service of a protective order with violence against the victim. If that happens, law enforcement may not be able to stop the abusive or threatening person before they harm the victim. Therefore, it is important to understand the nature of the relationship the victim has with the abusive or threatening person and the kind of abuse or threats that the abuser has committed against the victim. Under some circumstances, these factors will suggest the abusive or threatening person is too volatile to abide by a protective order. You should interview the victim at length to determine if his/her/their situation is one in which a protective order would be helpful, or if it would make an already dangerous situation worse.

Furthermore, it is important to explain to the victim, if they do not know already, that a protective order does not resolve coexisting problems like divorce, permanent child custody arrangements, or the division of marital property. To address those issues, you should advise the victim to contact an attorney.

### ***Evidence for your Protective Order and Future Legal Proceedings***

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<sup>13</sup> Code of Virginia § 16.1-253.1

<sup>14</sup> Code of Virginia § 16.1-279.1

<sup>15</sup> Code of Virginia § 55-225.16 and 55- 248.21:2.

As a victim considers the above advice in his/her/their attempts to reach and maintain safety from the abusive or threatening person, they also need to consider the importance of documenting further abuse or threats. This documentation will be immensely helpful to them if they decide to get a protective order and may assist them in proving their protective order case. It can also be helpful in future legal proceedings such as when they seek child custody or a divorce. While the victim’s story about what happened is often a significant part of the evidence they present in their protective order hearing, other “impartial” evidence can be even more persuasive. Discuss the following with the victim to help them collect the best evidence possible and bring it to court for their protective order hearing (remember to counsel the victim to keep all evidence concealed from the abuser):

- When possible, victims should **record conversations** with a tape recorder or a phone. iPhones have a **Voice Memo app**, and most android users can download free recorder apps like Audio Recorder or Titanium Recorder.



- Victims should **keep a journal of abuse** detailing dates and times of encounters, injuries sustained at the hands of the abusive person, anybody who may have witnessed the abuse and the way the abuse made her feel (fearful, etc.). However, the victim should only do this if they are confident the abuser will not have access to the journal. If an abuser finds a journal of this nature, this could escalate the problem.



- Victims should **photograph injuries** and put their names and the date on the back of the photo, or in the name of the file. The victim should also label the specific body part in the photo (e.g., left rib cage). Again, though, the victim should only do this if the abuser cannot access these photographs/files.

If taken on an iPhone, for example, the abuser may be able to access the photos on iCloud with the victim’s Apple ID login information.



- If a victim seeks **medical attention for injuries** caused by the abusive person, they should request that the doctor write down how the injury happened and use the abuser’s name.<sup>16</sup>

<sup>16</sup> Depending on the age and mental or physical capacity of the victim, doctors in some instances are required by law to report suspected instances of abuse. *See* Code of Virginia §§ 63.2-1509, 63.2-1606.

- Victims should keep **copies of all court-related documents**, all prior arrest warrants and all medical records. It is important victims keep these copies in a safe place, such as with friends or family members.
- Whenever a victim speaks with the police, they should request the police officer's card and a copy of any **police report** written about an abusive incident. The victim should remember to always ask questions if they are unsure about exactly what law enforcement is doing about their situation and ask if they need to follow up with anything. If they work with a law enforcement officer who was particularly helpful, they should pay special attention to keeping that contact information if they need help in the future.
- The telephone can be a vehicle for threats and abuse. If a victim has a home phone, they should make sure their **phone number is unlisted and get caller ID**. They should screen their phone calls (or even block the phone number) and save all abusive or threatening messages from the abuser. If possible, they should record phone calls from the abusive person that they are unable to avoid. Additionally, victims should make sure their phone numbers are taken off of social media. For example, it is important to check Facebook settings to make sure phone numbers are not listed on the victim's profile.
- Victims should take screenshots and **save any threatening and harassing texts or mail (snail mail, emails, Facebook messages, etc.)** from the threatening or abusive person, making a copy for themselves and giving the original to the police. If a victim is fearful the abuser will see these pictures somehow, the victim can save these photos in an app requiring a password for access. For example, Private Photo Lock, Best Secret Folder, Keep Safe, and PhotoVault are phone apps to hide photos.
- **Witnesses to the abuse who are willing to give testimony** during a protective order hearing are extremely helpful. If they have a good relationship, a victim should ask that person to give testimony. The words of a neighbor who is unrelated to either the victim or the abuser may seem more objective to a judge and can bolster a victim's story.
- Judges are beginning to understand the toll that witnessing domestic violence takes on **children**. Therefore, if the abuse occurred in front of children, the victim should explain that to the judge, describing where the child was in relation to the assault, how the child reacted (or didn't react), etc. Thus, documenting this ahead of time is important to be prepared to present this evidence to a judge.

## Frequently Asked Questions

### What can I say to victims about the law without engaging in the unauthorized practice of law?

You can always repeat legal information, like restating what the law says. However, you should not apply the law to a victim's particular circumstances to avoid the appearance of giving legal advice.

### **What kind of confidentiality must I keep regarding victim statements?**

Virginia law does not hold non-lawyer advocates to the same ethical duty of confidentiality as attorneys. However, Virginia law does delineate legal obligations for advocates about confidentiality,<sup>17</sup> and your local program or agency might have additional confidentiality requirements. In addition to any statutory requirements, as a general rule, advocates should keep victim information confidential except where the victim has given permission to share information, to speak with other advocates, or to make referrals for advice about the victim's case. If victim advocates are subpoenaed, they should contact their executive director immediately.

### **What should be my greatest priority when meeting with a victim for the first time?**

Every victim presents unique circumstances, but an advocate's most important objective for the first meeting is to listen, to determine what is going on, and to determine whether the victim is **safe**. If the victim is not safe, help them to devise a safety plan to account for the dangers they currently face.

### **When is a protective order a good choice for a victim?**

This is often a complicated decision, and you should refer to the factors on p. 18 of this manual for a deeper analysis. In general, a protective order is a good option for a victim when the threatening or abusive person has enough respect for the rule of law that they will accept the terms of the order. If the abuser does not have that respect, a protective order may only provoke more threatening or abusive behavior. One way to help determine if this is a good choice for the victim is to intermittently ask, "Do you think this is the right option for you?"

### **What if I've been working with a client for a long time, helping them to implement their safety plan and they return to their abuser?**

This happens to all victim advocates. Victims often do go back to their abusers or are not in a safe enough position to ever leave. Safety plans do not always mean leaving an abuser. Advocates have to work with the victim "where they are." Additionally, while it is natural for you as an advocate to feel discouraged that your client has returned to their abuser, your role is to support the victim, not to pass judgment. You will have to address your disappointment in a way that does not interfere with your ability to support your client. Additionally, if a client feels like you are patient and understanding, they are more likely to come back to you in the future for assistance if they sense you will not judge them for their actions.

## **BACKGROUND**

### **What Has Changed**

#### **Excerpted History of the Battered Women's Movement: Focus on Virginia**

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<sup>17</sup> see Code of Virginia § 63.2-104.1,

- 1982 Senator Rick Boucher introduces legislation to increase the marriage license fee from \$3 to \$13. The Marriage License Tax Bill passes in both chambers, allocating \$400,000 for victims' programs and child abuse prevention programs.
- 1984 The Protective Order is created as a civil option in Virginia. This is the first time victims have an option other than filing for divorce or making a criminal complaint.
- 1986 The crimes of Marital Rape and Marital Sexual Assault are created. For someone to be charged with Marital Rape the parties must be living separate and apart, or there must be a serious physical injury. In order for the crimes to be prosecuted, each must be reported within 10 days of its occurrence.
- 1991 A new criminal misdemeanor offense is created for assault and battery upon certain family and household members. A third or subsequent offense is a class 6 felony. Warrantless arrests are also authorized for the above crime.
- 1992 Virginia becomes the second state in the nation to criminalize stalking. Stalking is categorized as a Class 2 misdemeanor.
- 1993 The Statewide Family Violence Hotline begins operation.
- 1994 The Commission on Family Violence Prevention is created. Virginians Against Domestic Violence ("VADV") joins forces with the Commission. This public/private partnership brings increased attention to the problem of domestic violence and within five years initiates sweeping changes in the Commonwealth, including Fatality Review Protocol and the 1997 Family Violence Prevention Act.

The Coalition for the Treatment of Abusive Behaviors (C-TAB) is formed.

- 1996 VADV establishes the Training Institute (Committee first met in 1995). First "Training for Trainers" is offered.

The Virginia Commission on Family Violence Prevention develops and passes a package of landmark legislation. The Family Violence Arrest Bill, including, among other items, the following provisions:

- changes "spouse" abuse to "family" abuse,
- establishes training standards and a model policy for law enforcement to handle family abuse cases,
- defines "family/household members" and
- establishes that law enforcement may arrest without a warrant if there is probable cause that an assault and battery of a family or household member has occurred.

- 1997 VADV joins with Virginians Aligned Against Sexual Assault ("VAASA") to add sexual assault services to the statewide hotline, making it the Virginia Family Violence and Sexual Assault Hotline.

Members of VADV adopt standard language and criteria for service delivery as part of a Certification Process for Domestic Violence Programs.

Temporary Aid to Needy Families replaces Aid to Families with Dependent Children statewide as the final steps are taken in reforming Virginia's Welfare System.

The new Family Violence Arrest laws are implemented on July 1, which includes language to facilitate service of protective orders.

- 1998 Legislation is introduced to make homicide of a victim with a Protective Order in place a capital offense. The legislation does not pass. VADV takes a position against the death penalty.

VADV begins monitoring family violence related fatalities. According to the Media Watch Project, 110 Virginians lose their lives during 1998 as a result of family violence.

Virginia courts establish an interface between their Case Management System ("CMS") and the Virginia State Police's Virginia Criminal Information System ("VCIN") to effect real-time transfer of essential protective order data to the law enforcement agencies responsible for their service and enforcement.

- 1999 VAdata is implemented for statewide use. Utilizing the internet, VAdata begins compiling data from Virginia's Domestic Violence Programs and Sexual Assault Crisis Centers.

VADV hosts the first annual Peace Awards, to honor individuals and organizations in Virginia that have done extraordinary work in the movement to end domestic violence.

First year of implementation of the Domestic Violence Program Certification Process.

- 2000 VADV submits a Needs Assessment Report to the Virginia Senate Finance and House Appropriations Committees. The report outlines the gaps in services for domestic violence victims. VADV requests \$15 million over two years to fill these gaps. Hundreds of advocates and citizens throughout Virginia organize in support of a funding increase. Ultimately, the General Assembly chooses to allocate \$2.5 million over two years. This funding will allow Domestic Violence Programs in Virginia to add 49 new shelter beds, the equivalent of nearly 49 new staff positions, and ten new offices and/or shelters.

The Social Justice Task Force of Virginians Against Domestic Violence is formed.

- 2001 First year of implementation of the certification process for Virginia Batterer Intervention Programs. Twenty-three programs are certified.

The VAASA and VADV Boards approved a proposal from the joint Executive Committees to enter into a formal process to define coalition transformation. The

- Coalition Transformation Committee begins meeting.
- 2002 Virginia abolishes the marital rape exemption, which states that a spouse may be charged with rape only if the parties are living separately or there is physical injury.
- 2003 The Boards of both VADV and VAASA approve the recommendation of the Transformation Committee to create a new joint coalition.
- 2004 VADV and VAASA combine forces to create the Virginia Sexual & Domestic Violence Action Alliance.
- 2005 Although the marital rape exemption has been eliminated, a deferred sentencing option remains for first-time offenders as long as victim, Commonwealth's Attorney, and defendant agree. Code § 18.2061(C).
- 2006 Establishes confidentiality of sexual and domestic violence records between victims and victims' families and the programs and individuals providing services to victims and victims' families. Code § 63.2-104.1.
- 2007 In determining whether to issue an Emergency Protective Order ("EPO") a magistrate must presume that family abuse has occurred when a warrant is issued for assault and battery of a family or household member.
- 2008 The model address confidentiality program from Arlington, VA, is expanded to 17 other areas.
- 2009 Require clerks of Juvenile and Domestic Relations District and Circuit Courts to enter and transfer essential protective order data to VCIN by the end of the court business day.
- 2010 Allows for extensions of protective orders.
- Virginia courts must coordinate its protective order forms with those of adjoining states ("Project Passport").
- 2011 Comprehensive expansion and improvements to the protective order statutes, especially for victims of domestic or sexual violence who do not meet the definition of a family or household member.
- Expansion of Address Confidentiality program statewide.
- 2012 Addition of strangulation definition and felony to the Virginia criminal laws.
- 2013 Allows early termination of rental agreements by victims of family abuse, sexual abuse, or criminal sexual assault.

- 2014 The Attorney General's Address Confidentiality Program is extended to victims of stalking. (More information about the Address Confidentiality Program is available here: [http://www.oag.state.va.us/files/ACP\\_brochure\\_2014.pdf](http://www.oag.state.va.us/files/ACP_brochure_2014.pdf))

A bill passes which criminalizes the mass dissemination of personal images that were taken with consent for personal use but distributed without the consent of the person depicted in the images--a practice known as "revenge porn."

As a result of the U.S. Supreme Court's ruling in U.S. v. Castleman, convicted DV abusers in Virginia are once again prohibited from purchasing or transporting firearms.

- 2015 A new law increases the penalty and creates a rebuttable presumption against admission to bail for those convicted of strangling a family member.

A felony is created for trafficking of persons for commercial sexual activity.

The list of misdemeanor convictions for which blood, saliva, or tissue may be taken for DNA analysis is expanded to include, among others, violation of a FAPO, stalking, infected sexual battery, and obscene sexual display.

The Virginia Sexual and Domestic Violence Program Professional Standards Committee is established.

Several new laws address the issue of campus sexual assault. Effective July 2015:

- Campus police departments are required to report any felony sexual assault to the Commonwealth Attorney within 48 hours of beginning to investigate;
- When an employee of an institution of higher learning finds out that an act of sexual violence involving a student or taking place on school property has occurred, a review committee consisting of the institution's Title IX coordinator, a law enforcement representative, and a student representative is convened within 72 hours. The committee determines how to proceed with handling the case and can bring the case to the attention of local prosecutors if they see fit.

- 2016 A historic three-pronged new gun control law prohibits respondents in "full" Family Abuse Protective Orders from possessing a firearm while the protective order is in effect (except for the 24-hour period after being served with the protective order, during which time the respondent may possess and transport any firearm in order to sell or transfer it to a non-prohibited party).

A respondent to ANY kind of protective order committing an assault and battery upon any party protected by the protective order that results in bodily injury to the party or stalks any protected party is now guilty of a Class 6 felony.

The definition of stalking<sup>18</sup> is broadened: “If the person contacts or follows or attempts to contact or follow the person at whom the conduct is directed after being given actual notice that the person does not want to be contacted or followed, such actions shall be **prima facie evidence** that the person intended to place that other person, or reasonably should have known that the other person was placed, in reasonable fear of death, criminal sexual assault, or bodily injury to himself or a family or household member.”

- 2017 A new law requires that victims of sexual assault be advised by law enforcement of their rights of their rights re: physical evidence recovery kits (PERKs). Division of Consolidated Laboratory Services and Law Enforcement must store PERKs for 50 years or for an additional 10 years following a written objection to the destruction from the victim. The law requires the Division or Law Enforcement to notify the victim at least 60 days prior to the intended date of destruction of the kit. **Additionally**, a new law was passed creating a right of notification of the completion of analysis and analysis results from victims, parents and guardians of underage victims, or next of kin for any kit that was received before July 1<sup>st</sup>, 2016.

Eligibility for the to address confidentiality program is expanded to include sexual violence and human trafficking and the certification period is increased from one to three years. Accredited sexual or domestic violence programs are authorized to accept applications and authorizes crime victim and witness assistance programs to accept applications.

High School family life education curriculum offered by a local school division are now required to incorporate age-appropriate elements of effective and evidence-based programs on the law and meaning of consent. Age appropriate instruction on sexual violence in relation to the fact that consent is required before sexual activity is also now permitted.

- 2018 Privacy rights of victims and witnesses are expanded so that upon request of a crime victim/witness in a criminal prosecution of a violent felony, law enforcement, the attorney for the Commonwealth, defendant’s counsel, and the Department of Corrections (DOC) are prohibited from disclosing any telephone number or email address of that victim/witness except to the extent that it is required by law, necessary for law-enforcement purposes, or permitted by the court.

Local Departments of Health and the Department of Transportation at each rest area in the Commonwealth and certain health care facilities are now required to post notice of the existence of a human trafficking hotline to alert possible witnesses or victims of human trafficking to the availability of a means to report crimes or gain assistance.

The court may impose certain conditions on respondents in protective order cases, including granting the petitioner with a family abuse protective order and their family or household members exclusive use and possession of a cellular telephone number or electronic

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<sup>18</sup> See Code of Virginia §18.2-60.3.

device. Further, a respondent may be stopped from terminating a cellular telephone number or electronic device before the expiration of the contract term with a third-party provider. Finally, the court may order the respondent not to use a cellular telephone or electronic device to locate the petitioner.

- 2019 Certain Alcohol and Beverage Control (ABC) stores and Virginia Employment Commission (VEC) offices must also post notice of the existence of a human trafficking hotline.

### ***Law Enforcement Protocols for Responding to Domestic and Sexual Violence***

The Virginia Department of Criminal Justice Services (“DCJS”) has created several model policies for law enforcement agencies to follow when dealing with domestic violence, sexual violence, or stalking incidents.<sup>19</sup> It is the local law enforcement agency’s responsibility to use these model protocols to develop protocols for their own agencies. If you do not already know, you may wish to find out what your local law enforcement agency’s violence, sexual violence, or stalking policies are...and whether they adhere to DCJS policies. You may have a relationship with your local law enforcement agency that allows you to assist them in implementing and following appropriate protocols and procedures.

#### ***What is a “Predominant Physical Aggressor”?***

Law enforcement officers are authorized to arrest, without a warrant, the “predominant physical aggressor” in a domestic violence situation.<sup>20</sup>

Code of Virginia § 19.2-81.3 provides, in pertinent part:

The standards for determining who is the predominant physical aggressor shall be based on the following considerations: (i) who was the first aggressor, (ii) the protection of the health and safety of family and household members, (iii) prior complaints of family abuse by the allegedly abusing person involving the family or household members, (iv) the relative severity of the injuries inflicted on persons involved in the incident, (v) whether any injuries were inflicted in self-defense, (vi) witness statements, and (vii) other observations. Law enforcement officers have to look at the “totality of the circumstances.” One factor is not indicative of who is the predominant physical aggressor.

#### ***What is a “pro-arrest” policy?***

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<sup>19</sup> See Addendum for link to documents.

<sup>20</sup> Code of Virginia § 19.2-81.3; the analysis to determine which, if any, party to a domestic violence situation should be arrested used to be “primary physical aggressor”; however, the initial aggressor is not always the person who is committing family abuse.

“Pro-arrest” policies refer to the types of situations when a law enforcement officer may arrest the perpetrator of violence immediately, i.e., without having to obtain a warrant.

**ONLY** the following violations of a protective order provision pursuant to §§ 16.1-253 (Child Protective Order), 16.1-253.1 (Family Abuse Preliminary Protective Order), 16.1-253.4 (Family Abuse Emergency Protective Order), 16.1-278.14 (jurisdiction section), 16.1-279.1 (Family Abuse Protective Order) or § 20-103(B) (*pendente lite* 15-day protective orders that Circuit Court judges may issue during a divorce proceeding) are “pro-



arrest” provisions (if Respondent is convicted of these = Class 1 misdemeanor):

- prohibition from “going or remaining upon land, buildings, or premises,”
- “further acts of family abuse,”
- “committing a criminal offense,”
- “contacts between by the respondent and with the respondents allegedly abused person or family or household member members.”<sup>21</sup>

**ONLY** violations of a Non-Family Abuse Protective Order provision pursuant to §§ 19.2-152.8, 19.2-152.9 or 19.2-152.10 that involve “**physical aggression**” are “pro-arrest” provisions (if Respondent is convicted of these = Class 1 misdemeanor).<sup>22</sup>

## Challenges Unique to Intimate Partner Abuse

Unlike other victims of threats or violence, victims of intimate partner abuse rely on and are attached to their abusers. They have often spent long periods of time growing accustomed to abusive mentalities. Abusers may suggest that victims deserve the abuse, that abusive behavior is normal, that they will never find another partner or that the abuser will prevent them from leaving. To prepare to help victims of intimate partner abuse, it is important to familiarize yourself with the nature of abusive relationships. Doing this will help you to better understand the reasoning and emotions of a victim of intimate partner abuse and make your efforts to help victims more effective.

### *Power and Control Wheel*

The Power and Control wheel is another means of visualizing the complex emotional circumstances of an abusive situation. It may help you and the victims you counsel to perceive the elements of abuse in an organized, comprehensible way, and often helps victims to connect multiple aspects of an abuser’s behavior together.

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<sup>21</sup> See Code of Virginia §§ 16.1-253.2 and 19.1-81.3.

<sup>22</sup> See Code of Virginia §§ 18.2-60.4 and 19.1-81.3.



## Cultural Support for Intimate Partner Violence

Our culture contributes to the existence and continuation of intimate partner violence. The Addendum includes a variety of power and control wheels to demonstrate the different tactics used by batterers in different communities. These wheels are not the definitive representation of all the tactics available to batterers and are not meant to impose a monolithic view of any one identity or community. Please keep in mind that when working with victims of sexual violence and intimate partner violence, it is imperative that their whole identities be valued. It is critical to understand how living within multiple cultural identities has an impact on how survivors navigate different community response systems. Additionally, this may affect a victim's own view of her experience of sexual violence and/or intimate partner violence.

### ***Batterer-Generated Risks***

One of the most difficult issues to address in individual advocacy—both for advocates and for the victim—is why the victim would stay in a relationship with a person who hurts him/her/them. As an advocate, you need to resolve this question for yourself before you can help victims consider the risks of staying versus leaving. If an advocate makes a victim feel judged or misunderstood because of their choice to stay with an abusive person, the victim will not respond to the advocate's attempts to help them. There are many reasons why a victim would choose to remain in an abusive situation. Furthermore, when a victim chooses to stay with an abuser, they have not invited the abuser to continue to abuse them. **Rather, continued abuse is solely the fault of the abusive person.**

The following list, adapted from a publication of the Domestic Abuse Project<sup>23</sup> is a composite of views collected from their victim's support groups over a period of several years. Participants offered many answers to the question: "What keeps a victim in an abusive relationship?"

#### **Victims can be motivated by fear of their partner's actions:**

- *He will threaten to leave me.*
- *She said she would "hunt me down and kill me."*
- *He will kidnap the children and disappear.*
- *She will spread horrible rumors about me.*
- *I will never be safe, I might as well live with him.*
- *She will "out" me at work or to my family (if victim is LGBTQ+).*

#### **Victims can suffer from the effects of abuse:**

- *I'm nothing and I don't deserve better.*
- *Feelings of immobility or paralysis.*
- *Can't face making decisions.*
- *I am so used to my life being this way.*
- *I have no real options or choices.*

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<sup>23</sup> <http://www.domesticabuseproject.com/get-educated/dynamics-of-domestic-violence/>

**Victims who identify as women can feel bound by roles the culture forces upon women:**

- **Guilt:**
  - *I will ruin his life if I leave.*
  - *She will lose her job if I report this.*
  - *He will start drinking again.*
  - *I will disappoint my family.*
  - *I have to take care of him.*
  
- **Economic Dependence:**
  - *She has all the money.*
  - *I have never had a good job. How will I care for kids alone?*
  - *Better to be beaten up at home than to be on the street.*
  - *I would rather die than be on welfare.*
  
- **Dependence on Traditional Gender Roles:**
  - *I am afraid to be on my own. Who will protect me?*
  - *I fear that I will never be in a relationship again.*
  - *He gives me a sense of security.*
  - *I don't want to be a divorced woman.*

**Victims may fear for their children:**

- *My children will blame me and resent me.*
- *My children need a father/mother/second parent*
- *Children need a "real family".*
- *Unwilling to give up the "house with a white picket fence, 2.2 children" dream.*
- *She will steal the children.*
- *He will turn the children against me.*
- *Sons need male role models.*
- *She is the biological mother; I have no legal rights.*

**Victims may be paralyzed by feelings of isolation:**

- *She doesn't let me out of the house; I don't even have any friends to call for help.*
- *If I ever tell anyone about this, he will kill me.*
- *My sister said I couldn't come stay with her after the last time....*
- *He said he would teach my friend a lesson if I went over there again.*

**Victims may be affected by their personal history:**

- *My father beat my mom; it just goes with being in a relationship.*
- *Being hit isn't the worst thing that can happen in a family—I know of worse things...*

**Victims may be confused by feelings of love and hope:**

- *I keep hoping that she will change.*
- *I believe him when he keeps saying that it will never happen again.*
- *I don't want to give up the good times.*
- *She promised she would go to therapy.*
- *Sex and intimacy.*
- *My marriage vows.*
- *My religion.*
- *I love him.*

Note: This list is not necessarily comprehensive, and not all of these reasons are found in each case, but a combination of some of them can usually be found and may be compelling enough to keep a victim in an abusive relationship.

## Challenges Unique to Sexual Violence

Sexual violence is often a factor in abusive relationships, but advocates will encounter many victims who have been attacked by somebody with whom they do not have a familial or intimate partner relationship. Sexual violence can take many forms other than intercourse. It may involve any touching that the victim does not want, even over clothing. Following an assault, victims may suffer attendant physical effects like pain, injury, nausea, vomiting, and headaches. Victims will likely also experience emotional and psychological symptoms after an assault, like shock or denial, anger, depression, social withdrawal, nightmares/flashbacks, difficulty concentrating, issues with memory and recall, diminished interest in activities or sex, loss of self-esteem, loss of trust in others, guilt, shame, embarrassment, thoughts of suicide and death, or substance abuse.

Advocates can help to mitigate the effects of trauma through many different kinds of support at multiple stages after an assault. This manual will give guidance regarding the advocate's role in helping a victim through the legal issues that arise for a victim after an assault.

### ***Reporting Sexual Assaults***

After a sexual assault, most victims do not want to go through the invasive, embarrassing, time-consuming ordeal of reporting an assault and getting a medical exam. Evaluating whether a victim is emotionally able and willing to report their assault at a hospital or police station is a difficult process unique to each situation. Nevertheless, it is important for advocates to understand that there is a difference between reporting an assault to a physician and reporting it to the police.

A victim can report an assault to the police long after it has happened because the criminal justice system can punish criminal acts long after they occur.<sup>24</sup> On the other hand, there

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<sup>24</sup> Misdemeanor sexual assault must be reported within one year of the crime, or before the victim turns nineteen, whichever is later. See Code of Virginia § 19.2-8. There is no statute of limitations for felonies.

is a very narrow window of time after an assault in which physicians can collect physical evidence from the victim. This evidence can be very important to a successful prosecution of a sexual assault.

### ***Reporting a Sexual Assault to a Physician***

If a victim gets a free evidence-collecting exam—known as a **Physical Evidence Recovery Kit** (“PERK”)—the victim is not required to report the assault to the police or to participate in any criminal proceedings that may result from a report. They have merely preserved their ability to do so at a later date, with physical evidence supporting their allegations. The hospital will probably call the police to give them the evidence collected in the PERK (without revealing the victim’s identity), and will then, most likely, give the police a small amount of information about the victim for the purposes of identifying the evidence. PERKs must be collected within 3-5 days of the assault to be used.<sup>25</sup>

To collect the maximum amount of evidence, advocates should advise victims to **NOT**: shower, bathe, or douche; throw away any clothes they were wearing at the time of the assault; brush or comb their hair; use the restroom; brush their teeth or gargle; put on makeup; clean or straighten up the crime scene; or eat or drink anything. It may be very uncomfortable or painful for a victim to avoid these things when desperate for the physical comfort of cleaning themselves or eating and drinking. Still, the closer a victim remains to the condition they were in immediately after the assault, the more evidence a healthcare provider can collect.

This manual has emphasized the importance of not pressuring victims to take any actions for which they are not emotionally ready. Still, advocates should remember the time constraints for collecting physical evidence are unique. Once 5 days have passed, a victim will never have another chance to get physical evidence of her assault. Even if victims are reluctant to consider the option of a physical exam after their assault, advocates should heavily stress that this will be the victim’s only opportunity to get physical proof of the crime committed against her. Emphasize that getting a PERK does not bind the victim to any course of action. In fact, it is the opposite; it creates more options for the victim to choose from when they are ready to decide what they want. If a victim wants a PERK but isn’t ready to report, it can be held as an anonymous physical evidence recovery kit.<sup>26</sup>

If a victim is adamant that they do not want to get a PERK, their advocate should support their decision, but should also suggest the victim still see a doctor if there is a possibility the assault could have resulted in pregnancy or in the transmission of a sexually transmitted infection. Explain to the victim that HIV is very rarely transmitted by sexual assault but advise them to get tested for their own peace of mind. Remember sometimes HIV infections take several months to show up on blood tests, so victims should continue to get tested every three months for up to a year.

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<sup>25</sup> <https://studenthealth.virginia.edu/perk-kit> ;  
<https://www.wm.edu/sites/sexualviolence/survivors/perk/> ;  
<https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/training-events/3536/safe1-pagerupdated.pdf>

<sup>26</sup> Once a victim gets a PERK, the laboratory is required by law to store the kit for 50 years, or for an additional 10 years following a written objection to the destruction from the victim. The laboratory will also notify the victim at least 60 days before the date of destruction of the kit.

## *Reporting a Sexual Assault to the Police*

If a victim feels able to report the assault to law enforcement, they should take some time to write down what they remember about it. Examples of specific details are the attacker's appearance (height, weight, scars, tattoos, hair color, clothes); odor; state of intoxication; or statements during the assault. The victim should also write down the sexual activities demanded and/or carried out; any weapons, threats or force used; and any special traits noticed. Writing down memories after the assault will help to solidify them in the victim's memory and give the victim a more active role in the investigation process.

This manual will cover participation in the criminal process in more detail later. Still, it is important to include an emphasis in this section that sexual violence victims must understand what emotions may result from engaging in the criminal process at the outset. Victims need to know that an acquittal should not negate the meaning of their cooperation with police and prosecutors, and more importantly, that hearing a guilty verdict read aloud will not make them whole again. When advocates encourage victims to participate in the criminal justice process, it should not be in the service of a trial verdict because a verdict is something outside the victim's control. Rather, participation is a means by which the victim can acknowledge that the assailant's actions were wrong and that she has the power to say so openly. Advocates should emphasize that the acts of reporting an assault or testifying at hearings or at trial may represent a step in taking back control of their own life and their own choices.

## **The Court System and Process**

### *Criminal Justice System v. Civil Courts*

Going to court can be an intimidating experience—for both victims and advocates. Many of us are unfamiliar with the distinction between civil courts and the criminal justice system, and it is important to make sure victims understand how the same abusive incident can result in two very different court proceedings. It may be helpful to explain the difference as follows:

When a person commits abusive or threatening behavior toward a victim, the victim may go to a **civil court** and get a protective order against that person. In civil court, it is the **victim's case** against the threatening or abusive person, and **if they win, they can get certain kinds of protection or relief**. The court can order the abusive person to leave the victim alone for a period of time, to give them temporary possession of an apartment or home, temporary custody of children, or other forms of assistance.

However, some abusive or threatening behavior is also a crime, a behavior the government has to punish to protect us all. On a local level, when we use the term, "government," we usually mean the Commonwealth of Virginia. The Commonwealth's Attorney,



or prosecutor, charges a perpetrator with violating a criminal law of Virginia. If the abusive person commits a crime against the victim, the government may want to prosecute the abusive person for it. This proceeding is the government's, not the victim's, case against the abusive person. The victim does not have control over whether the government prosecutes her abuser. The decision to prosecute rests with the government, not the victim. The prosecutor could call the victim to testify about the crime, but that does not happen in every case. If the prosecution wins, the abusive person will have to pay a fine and possibly go to jail.

### **Important Legal Terminology:**

#### ***People:***

##### Advocate

That's YOU!!! An advocate may work for a local domestic or sexual violence program. Some jurisdictions have hired their own advocates who are not associated with a local domestic or sexual violence program to assist victims with obtaining services. Some law enforcement agencies hire advocates to assist victims, too. There are Victim/Witness Advocates, often housed in the Commonwealth's Attorney's Office or the local law enforcement agency's office, who are available to assist victims navigate the criminal justice system. Some Victim/Witness Advocates only help victims who are involved in criminal cases. Others will assist them with obtaining services in civil matters, such as protective orders, too.

##### Bailiff

A law enforcement officer who is responsible for court safety. Often the bailiff will announce the entrance of the judge or take evidence from lawyers for the judge or a witness to examine.

##### Clerk

A court employee who helps the judge with paperwork and research. If the clerk is the judge's clerk, that person is usually a lawyer, often fresh from law school. If the clerk is at the Clerk's Office in the General District (GDC) or Juvenile and Domestic Relations (JDR) Court, that person is usually not a lawyer, but an administrative employee of the Court and manages paperwork either at the Clerk's Office or in the judge's courtroom. If the clerk is the head clerk of the Circuit Court, they are elected to that position.

##### Commonwealth's Attorney/Prosecutor

The lawyer responsible for prosecuting the crime against the defendant. Because the government is the party bringing the case in a criminal matter, the Commonwealth's Attorney represents the Commonwealth of Virginia, not the victim. The prosecutors who handle domestic or sexual violence matters are usually not the elected Commonwealth's Attorney for a particular jurisdiction, but an Assistant Commonwealth's Attorney (ACA).

##### Court Reporter

The court employee who types up a record of everything anybody says in the courtroom while the judge is present. JDR and GDC courts are not courts of record in Virginia. Accordingly, in

civil cases, court reporters are not present in those courts unless the parties have arranged for and paid for them in advance. Court reporters are always present in criminal cases.

### Defendant

This term is important, especially in the criminal context. It refers to the person who has been charged with a crime in a criminal case. In a civil case such as a divorce, it refers to the person who has been sued. In protective order matters, however, instead of “Plaintiff” and “Defendant,” the terms are “Petitioner” and “Respondent,” respectively.

### Intake Officer

Intake Officers are only in the JDR Court Services Unit, which is operated by the Virginia Department of Juvenile Justice, not the Office of the Executive Secretary of the Supreme Court of Virginia, which manages the other court employees, including the judge and most of the clerks. An Intake Officer in the JDR court will help a victim who has a family or household member relationship to her abuser, or who is a minor, fill out the paperwork necessary to request a Preliminary Protective Order (“PPO”) and/or a two-year Protective Order (“PO”). The General District Court (“GDC”) does not have an intake officer. For that reason, GDC petitioners should consider using I-CAN! in order to complete the paperwork necessary to file for a Non-Family Abuse Protective Order in GDC Court.<sup>27</sup>

### Interpreter

If the victim, the alleged abuser, or any witnesses do not understand English or are deaf or hard of hearing, they should arrange to have an interpreter in the courtroom ahead of time.<sup>28</sup>

### Judge

The person in charge of the courtroom. The judge will make all the decisions about what the law means. In some trials, the judge, not a jury, will also decide if the defendant is guilty of a crime or liable for a civil wrong. In divorce, custody and child support matters, the judge will make all the final decisions – there are no juries in these types of cases. The judge should be treated with respect at all times and addressed as “Your Honor” or “Judge.”

### Juror

In criminal or civil cases, somebody often needs to decide a question of fact. In a criminal trial, the question is usually whether the defendant committed the crime. In a full protective order hearing or a divorce matter, the person deciding these questions will be the judge. There are no juries in protective order, divorce, custody or other types of civil matters such as these. In a criminal case, the defendant may choose to have a jury decide the facts. In felony cases, 20 prospective jurors are called with a final jury of 12. In misdemeanor cases, 13 jurors are called with a final jury of 7.

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<sup>27</sup> I-CAN! is a free online program that helps individuals to prepare necessary court forms required to file for a protective order. The forms are available in English & Spanish, and can be found here: <http://www.courts.state.va.us/courtadmin/aoc/judpln/programs/afapo/home.html>.

<sup>28</sup> See Code of Virginia § 19.2-164 for criminal cases, and § 8.01-384.1:1 for civil cases.

### Law Enforcement

A law enforcement officer is a police officer. A law enforcement officer may work for the local police department, the Sheriff's Office and/or be assigned to address court security in the courthouse. A law enforcement officer is responsible for activities such as investigating crimes and serving court documents.

### Magistrate

A magistrate is a kind of judge who makes decisions about a limited type of emergency action. They are usually lawyers. Magistrates can issue emergency protective orders and warrants and can set the terms for bond and bail.

### Petitioner

The person who brings the protective order case (i.e., the victim).

### Plaintiff

The person who brings a suit in a civil case (except in protective order cases where the person filing is the petitioner). When a victim files for a divorce, he/she/they are the plaintiff.

### Public Defender

The Public Defender is the free attorney assigned to a criminal defendant who cannot afford to hire a private attorney to defend them.

### Respondent

The person who allegedly abused the victim in a civil case like a protective order.

## Courts

### Juvenile and Domestic Relations Court ("JDR")

JDR Courts are special courts that handle cases in which one of the parties is a minor (younger than 18 years old), or in which the subject of the case is a family matter (e.g., custody, visitation, or child support). These courts will hear all Family Abuse Protective Orders, as well as Non-Family Abuse Protective Orders in which one of the parties is a minor. They are usually closed courts, which means that only the people involved in the case can sit in the courtroom. (For instance, before starting a protective order hearing, the judge may ask the people in the courtroom who are not either the petitioner, the respondent or the attorneys to leave the courtroom. Even if a person is a witness for either the petitioner or the respondent, the judge may ask that witness to leave the courtroom; so, their testimony is not biased by what they hear of the proceedings.) It is not a court of record, which means that there is no court reporter and no transcript of what people say unless the parties have arranged beforehand to pay for a court reporter. There is no jury in a JDR civil matter.



### General District Court ("GDC")

GDC is the first level court in the Virginia system. It is an open court, which means that anybody can sit in the courtroom and watch the proceedings. The district courts hear Non-

Family Abuse Protective Order hearings (unless one of the parties is a minor), traffic violations, and some misdemeanor crimes. It is not a court of record, which means that there is no court reporter and no transcript of what people say unless the parties have arranged beforehand to pay for a court reporter. There is no jury in a GDC civil matter.

### Circuit Court

The Circuit Courts are where felony trials happen in Virginia, as well as misdemeanor appeals. If your case is in Circuit Court, you probably will want to have an attorney represent you. Circuit Courts are open courts, and they are courts of record, which means that there is a court reporter who types a transcript of everything said while the judge is present. The Circuit Court is also where divorce hearings are held. There are no juries for divorce hearings in Civil Court.

### Crimes

#### Misdemeanor

Misdemeanors are crimes for which the punishment is *no more than* one year in jail, and a fine of not more than \$2,500 (either or both) for Class 1 misdemeanors; no more than one year in jail and a fine of not more than \$1,000 (either or both) for Class 2 misdemeanors; a fine of no more than \$500 for Class 3 misdemeanor; and a fine of no more than \$250 for Class 4 misdemeanors. Code § 18.2-11.

#### Felony

Felonies are crimes for which the punishment is *no less than* one year in prison, and a fine up to \$100,000. Code § 18.2-10.

### Other Terms

#### Affidavit

An affidavit is a signed declaration of facts from a person who takes an oath of truthfulness in the presence of an official who is authorized by law to administer that oath. For purposes of immigration visas, affidavits are the story of the victim in his own voice, written down and signed by the victim.

#### Bail

In a criminal case, the money or property that the court will often require that a defendant give the court to let him out of jail before the trial begins.

#### Bond

This is a promise, often secured by the use of bail money, that a defendant will return to court for all future appearances.

Burden of Proof (related to “Standard of Evidence” below): In a **civil** case such as a protective order, the victim (the petitioner) has the burden of proving that the abuser (the respondent) committed an act of violence, force, or threat against the victim by a “preponderance of the evidence.” In a **criminal** case such as a trial to determine if the abuser (defendant) committed the misdemeanor crime of domestic violence, the prosecutor (usually an Assistant Commonwealth’s

Attorney) has the burden of proving that the abuser committed the crime “beyond a reasonable doubt.”

### Deposition

Before lawyers try cases, they need to learn everything they can about what has happened in the case. To do this, they usually want to speak with the people involved. To make sure that what people tell them is true, they often do this in a deposition. In a deposition, the lawyer will ask the person, called the “deponent,” questions about their part in the case or their own personal history. The person is under oath while this happens, and what they say is recorded. The lawyers may use this testimony to prove things in their case in the future.

### Standard of Evidence (related to “Burden of Proof” above)

In a **civil** case such as a protective order hearing, the standard of evidence is **by a preponderance of the evidence** (i.e., the judge will issue a protective order if the evidence indicates that it is **more likely than not** that the abuse happened or if the judge believes the victim’s version of the story 51% over the abuser’s version of the story). In a **criminal** case such as a trial to determine if the abuser committed the misdemeanor crime of domestic violence, the standard of evidence is **beyond a reasonable doubt** (i.e., the abuser/defendant will be convicted of the crime if the evidence indicates that there is no reasonable doubt that the defendant committed this crime). In other words, the standard of evidence for obtaining a protective order (civil) is much lower than the standard of evidence for obtaining a conviction (criminal), however, the burden of proof still rests with the victim in a civil case.

### Subpoena

Lawyers may ask a court to require people to testify, by getting a document called a subpoena. A subpoena means the person has to testify, and the judge can order jail time or a fine if the person refuses.

### Testimony

This word refers to anything a person says at a deposition, a hearing, or a trial if the person has sworn an oath of truthfulness.

## ***The Civil Court Process: Steps towards Getting a Protective Order***

Because the protective order is the victim’s case against the abusive or threatening person, they have to file the forms to begin the proceedings. Though victims benefit from legal advice, they do not need a lawyer to file the forms and speak to the judge if they understand how the process works and are comfortable speaking on their own behalf. You may need to go with a victim to court, help them understand what the forms require, and explain to them what the process entails. By giving victims a sense of familiarity with what they must do to get the order, you will help them feel more empowered to see the process through.

### **Going to the right court.**

There are two courts that issue protective orders: the JDR and the GDC. There are two circumstances when a victim should go to the JDR: (1) if the threatening/abusive person is a

family or household member, or (2) if either the victim or the threatening/abusive person (or both) are under the age of 18. For all other circumstances when you are trying to get a protective order, go to the GDC and ask the court staff for the protective order forms.

**Intake: Filling out the forms.**

GDC courts do not have a Court Services Unit Intake Office (as do JDR courts). Each court has a different means of handling protective orders; so, find out what your local practice is. Call the Action Alliance hotline at (800) 838-8238 if you are unsure of how to get this information.

The forms will ask questions about what kind of threats or abuse occurred, who needs protection from the threatening or abusive person, and what kind of relief the victim needs. It is very important that the victim be able to articulate what happened in their own words and write them on the form. Do not tell a victim to describe anything in any particular way; simply make sure that they are describing what happened in detail. If it is apparent that someone has coached the victim to say something specific, the judge may not believe the victim's story and may deny them the protective order.

Remember that sometimes the judge or magistrate will review the form without the victim present. Therefore, it needs to tell the victim's story in full in case they will not be in front of the judge or magistrate to do it themselves.

If the victim wants a Family Abuse Protective Order (because they have a family or household member relationship with their abuser; or either the victim, the abuser, or both are minors), they will go to the Court Services Unit Intake Office in JDR. There, the victim will fill out forms to request a protective order, including an affidavit and all of the other documentation to ensure that they may have a hearing before a judge to request a two-year protective order.

**Review by a judge or magistrate.**

Once the victim completes the intake forms, the Intake Officer will usually escort the victim to a judge so that they may ask the judge for preliminary review of their request and for the judge to issue a Preliminary Protective Order (PPO) that will last until the hearing time of the Protective Order. However, in no event will the PPO be issued for longer than 15 days from the date of the PPO's issuance.

At the PPO hearing, the abuser is not usually present.

The judge will read the allegations on the victim's affidavit to determine whether to issue a PPO. A victim will sometimes have to come before the judge or magistrate to answer questions, so make sure that they are prepared to describe the threatening or abusive behavior in front of other people, even though they may feel embarrassed or intimidated. If victims can present enough evidence, the judge or magistrate may issue the order.

**Service of the Order.**

If the judge issues a PPO, the abuser will obtain notice of the hearing for the two-year protective order and will be served with documentation regarding what the victim says the abuser did. Please make sure that the victim understands that once the abuser is served, he will know what the victim said in the affidavit *before* their protective order hearing date! Accordingly, safety planning with the victim is essential.

Once the court issues the PPO, law enforcement is responsible for serving it along with notice of the Protective Order hearing and other documents, including the victim's affidavit, on the abusive or threatening person—now called the respondent. A police officer will find the respondent and explain to him that the court has issued an order against him. The respondent will also get notice of the hearing for a full protective order, to be held within fifteen days.

Once the respondent has been told about the order, he must obey it. If he violates the order by committing further acts of abuse, contacting or communicating with the victim or her family, or violating any other conditions the judge or magistrate finds necessary to prevent further abuse, he may have committed a crime for which he can be immediately arrested and later tried in criminal court. You can advise the victim that she has the right to contact the police should the respondent violate the PPO in any of the above ways.

In addition to any criminal penalties he may face, any violation of a court order is an act of contempt of court. A judge may punish a respondent for an act of contempt with penalties ranging from fines to incarceration. If, for example, the respondent violates the PPO by failing to pay a household expense that the judge has ordered him to pay while the PPO is in effect, the judge can punish the respondent for contempt for violating the court order. You can advise the victim to keep a record, including any evidence, of any violation of the PPO to bring to the judge's attention at the PO hearing.

### ***The Criminal Court Process: The Steps in a Criminal Trial***

Facing the formalities of the criminal process may be very daunting for victims, as well as advocates who have little experience in dealing with the criminal justice system. Though some prosecutors are very careful to walk victims through the process, others may not realize how frightening and intimidating the system can be for those unfamiliar with it. This may be especially true for victims, who fear that participation in a criminal case relating to their abuse will subject them to exposure, shame or re-victimization. The best way to make the criminal justice system less intimidating for victims is to give them as much knowledge as possible about what comes next—the steps of a criminal case.

### **Arrest and Summons**

When the police have enough proof, or “probable cause,” to start the criminal process against someone, they will usually arrest him. Sometimes law enforcement will send those charged with misdemeanor offenses a summons (a notice ordering the defendant to report to court on the day of the criminal hearing) instead of arresting them.



### **Booking**

Law enforcement gathers information about the arrested person using this process. Police will usually photograph the arrested person and get copies of their fingerprints. They will also do a search of the person’s criminal record and their background.

### **Arraignment**

In this stage the court will explain to the defendant what criminal charges he will face and schedule a trial date.

### **Discovery**

This is the period in which both sides of the case try to gain information to use at trial. Victims may often be asked to testify at a deposition. In a deposition, the lawyer will ask the person, called the “deponent,” questions about their part in the case, or their own personal history. The person is under oath while this happens, and what they say is recorded. The lawyers may use this testimony to prove things in their case in the future. It is imperative that the victim answer all questions asked in a deposition truthfully, to the best of their ability.

### **Preliminary Hearings and Grand Juries**

Preliminary hearings take place in the district court, and they are used to determine in a felony case whether the case should move to the circuit court for the prosecution to go forward. Grand juries take place in circuit court. They consist of five to seven citizens hearing evidence from the prosecution about whether there was “probable cause” to charge the defendant. The grand jury decides if the case moves forward to trial.

### **Pre-Trial Motions**

Before the trial begins, the prosecutor and the defense attorney will both try to prevent the other side from introducing evidence. The decision the judge makes in these hearings may affect the victim’s testimony—what she may or may not say.

### **Trial**

This is the part of the criminal process with which people are most familiar from television and film. In a criminal trial, the prosecution goes first. The prosecution will call witnesses and introduce physical evidence like photographs of injuries or medical records. If the victim is testifying for the prosecution, she will do so during this part of the trial. In the first part of her testimony—called “direct examination”—the prosecutor will ask her questions that allow her to tell her story. In the second part of the testimony—called “cross examination”—the defense

attorney will attempt to cause doubt about her memory, her motives for testifying, or her general truthfulness. This, for victims, is usually very difficult and painful. Some prosecutors are experienced at helping victims through this process. However, some will not be aware of the support a victim may need to make it through this process. As an advocate, you can make a great difference fulfilling this role. The prosecution has to prove beyond a reasonable doubt that the defendant committed the crime. The defense goes second, and usually they will try to create doubt about the prosecution's evidence.

### **Sentencing**

If the fact-finder (judge or jury) finds the defendant guilty, that fact-finder will also decide how the defendant should be punished. Victims may be asked to testify again at this stage—for the prosecution or the defense—to affect the amount of time the defendant must serve.

## ***Helping a DV/SV Victim Through the Criminal Justice Process***

Sometimes the abuse that leads victims to seek a protective order results in a criminal case. Because a criminal prosecution is not the victim's case, she will have very little control over her involvement with the proceedings. The prosecutor might call victims to testify, but she might change her mind or not call the victim to testify at all. Consider the following to help victims feel more comfortable with the proceedings and prepared for the challenges of testifying in a criminal trial:

- Courtrooms can be an intimidating space, especially for those already under the emotional strain of confronting an abuser or assailant. Take a victim to the courtroom where the proceeding will occur and help her to become familiar with the physical layout of the room and where she will sit and stand when she testifies.
- Explain to victims that while there is nothing forbidding a media outlet from releasing her name, it is very unusual.
- There may be people in the courtroom the victim doesn't know.
- Join the victim at pre-trial meetings with prosecutors and explain unfamiliar terms or processes.
- Make sure victims understand court proceedings can be very long and drawn out and the process may take a long time to be fully completed. Often cases are not heard until months after the abuse occurred.
- If the victim is testifying, prepare them for the reality of cross-examination. The defense attorney will try to discredit victims, attack her motives for testifying, and assert that she is lying about the abuse or assault. This experience will likely be painful for the victim, but the more she anticipates and understands the difficult questions that will be asked, the better she will be able to withstand them.

- However, you should be mindful of the possibility that victims may not be able to withstand the emotional stress of confronting the defendant, describing the abuse or assault, and undergoing the defense attorney’s harsh questioning. Remember your first duty is to a victim and her well-being. While it may help to remind her that she will feel more empowered and more in control after testifying, you should support her decision not to testify if she truly feels unable to do so. Even if it is the only way to gain a conviction, pressuring victims to testify for the prosecution is coercive and a form of re-victimization.
- **Talk to a victim about the reality that the outcome will not make her whole again.** In our society, we are conditioned to believe that guilty verdicts will give victims a sense of victory. But even when a prosecution is successful, a victim may not experience a sense of closure. If a victim is looking for justice in a criminal court, the odds are stacked against her. However, she can find justice in living life on her own terms in defiance of the defendant’s desire to control and abuse her. Seen in that light, her participation is an element of her newfound freedom and independence. An acquittal does not diminish this.
- Some victims may try to rationalize the ordeal of participation in a difficult criminal trial by assuming the end result will be a guilty verdict. Again, as we discussed earlier, after a court proceeding like this, it can be very helpful to spend some time processing, debriefing and maybe even reframing the outcome with your client, particularly if it is not what the victim hoped for.

Help victims to see the innate value of participation rather than the outcome that might result from it. By testifying, victims are able to stand up for themselves and publicly acknowledge that the defendant’s actions were wrong. This experience is important, regardless of what a judge or jury decides afterwards.



### ***Using I-CAN!***

Sometimes forms can be intimidating, and Virginia has developed a website called “I-CAN!”<sup>29</sup> to help those seeking protective orders. It breaks down the questions on the form into simpler pieces and presents them in easier to understand language. This website is an excellent tool for you to use with victims to practice filling out the forms, or for her to practice on her own.

I-CAN is also an excellent starting place for GDC Non-Family Abuse PO petitioners because typically there is no intake officer available to assist these petitioners with GDC paperwork.

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<sup>29</sup> <http://www.courts.state.va.us/courtadmin/aoc/judpln/programs/afapo/home.html>

## **Frequently Asked Questions**

*Why is the judge saying, “I grant this protective order without findings” or “I grant a no-contact order”?*

It depends on the situation, but if a judge is saying this it may mean that the judge does not believe that the petitioner has met her burden of proof (by a preponderance of the evidence) to show an act of violence, force or threat occurred, but wants to err on the side of caution by issuing an order that prohibits further acts of violence, force or threat. The petitioner should try to check if what she’s gotten is a “no-contact” order as opposed to a protective order because a no-contact order is not entered into the Virginia Criminal Information Network (“VCIN”), the database that prevents respondents from purchasing or transporting firearms in Virginia and gives easily accessible information to law enforcement officers when they try to serve or enforce a protective order.

*Why won’t the Assistant Commonwealth’s Attorney represent the victim in the protective order hearing?*

This is a good question because it can be confusing to understand, especially when one incident leads to both a civil protective order hearing and a criminal proceeding where the Commonwealth’s Attorney has charged the abuser with a crime. The Commonwealth’s Attorney may ONLY participate in criminal matters.<sup>30</sup> They are not allowed to participate in civil matters. However, they should be present if there is a criminal violation of a civil protective order (e.g., if the respondent contacts the victim or engages in further acts of abuse after being served with a protective order).

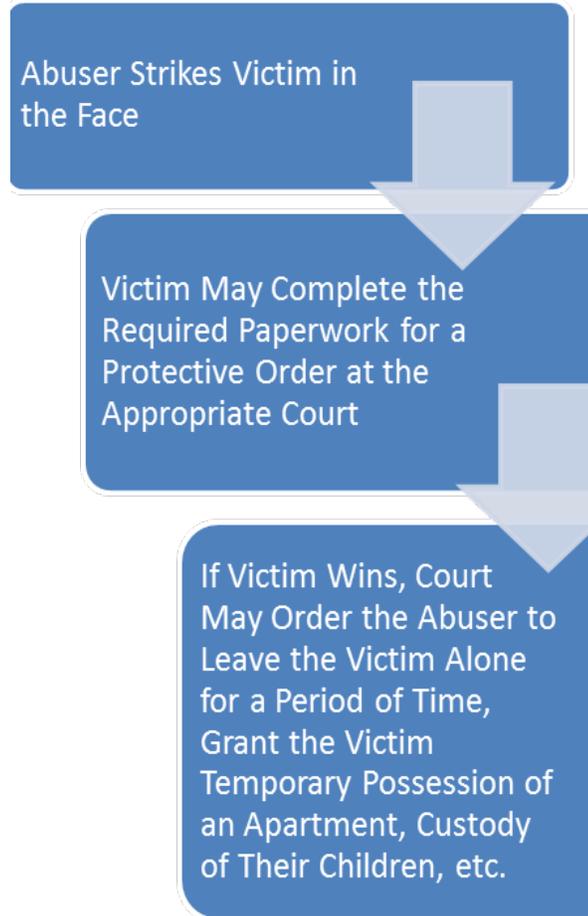
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<sup>30</sup> Code of Virginia § 15.2-1627.

## CRIMINAL CASE



## CIVIL CASE



## **Protective Order Eligibility:**

### **Family Abuse and Non-Family Abuse Protective Orders**

As of July 1, 2011, the protective order system changed in Virginia. Those familiar with the old laws should note that Family Abuse and Non-Family Abuse protective orders have now been changed to make the protective order (PO) process easier for victims who are not related to or living with their abusers. There is now one standard for abusive behavior that applies to both Family and Non-Family Abuse Protective Orders.

There are two meaningful differences remaining between Family Abuse and Non-Family Abuse POs. The first is that all Family Abuse POs are considered and issued by JDR. Those court personnel have more experience dealing with the specific circumstances of problems between family and household members. JDR courts will also hear all cases in which the victim, the respondent, or both is a minor, regardless of whether the protective order requested is for Family Abuse or Non-Family Abuse. The GDC will hear all Non-Family Abuse POs in which neither the victim nor the respondent is a minor.

The second difference is that Family and Non-Family Abuse POs each have their own distinct forms of relief.<sup>31</sup> The Family Abuse PO provides relief tailored to fit the distinct needs of victims who have been dependent, economically or otherwise, on their abusers because of the nature of the family structure.

### ***One Standard of Abuse:***

The standard of abuse is the same for Family and Non-Family Abuse POs:<sup>32</sup>

An act involving **violence, force or threat** that

- results in **bodily injury**, or
- places one in **reasonable apprehension** of death, sexual assault, or bodily injury.

Such act includes, but is not limited to,

- any forceful **detention, stalking, criminal sexual assault** in violation of Article 7<sup>33</sup> of Chapter 4 of Title 18.2, or
- **any criminal offense that**
  - results in bodily injury
  - or places one in **reasonable apprehension** of death, sexual assault, or bodily injury.

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<sup>31</sup> See Code of Virginia §§ 16.1-279.1, 19.2-152.10.

<sup>32</sup> Code of Virginia §§ 16.1-228, 19.2-152.7:1.

<sup>33</sup> Code of Virginia §18.2-61 et seq.

## *Family Abuse Protective Orders*

### *Who Qualifies?*

A victim may be eligible for a Family Abuse PO if she suffered an act of abuse as defined above **at the hands of a “family or household member.”** This means that gay and lesbian victims of domestic and sexual violence may qualify for Family Abuse POs if they lived with their abuser (and are in jurisdictions where judges view same-sex couples who live together as Family or Household Members). However, LGBTQ+ victims who are not married, who do not share children with their abuser or who have not lived with their intimate partner abuser within the last 12 months may have to ask for Non-Family Abuse POs. Any victim who has suffered an act of abuse from someone other than a family or household member must ask for a Non-Family Abuse PO.

"Family or household member" means:<sup>34</sup>

- the victims spouse, whether or not he or she resides in the same home with the person,
- the victims former spouse, whether or not he or she resides in the same home with the person,
- the victims parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents and grandchildren, regardless of whether such persons reside in the same home with the person,
- the victims mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person,
- any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time, or
- any individual who cohabits or who, within the previous 12 months, cohabited with the person, and any children of either of them then residing in the same home with the person.

### *The Family Abuse PO Process*

All Family Abuse POs petitions will be heard in JDR. You should go with the victim and help her fill out the intake forms. If she is asked to answer questions before a judge or magistrate, you should explain the process to her; so, she does not become overwhelmed.

### *Relief Available*

The relief available for Family Abuse POs reflects the specific needs of victims who may be reliant on their abusers for housing and financial stability. A victim can ask for any of these forms of relief in her petition:<sup>35</sup>

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<sup>34</sup> Code of Virginia § 16.1-228.

<sup>35</sup> Code of Virginia §§ 16.1-253.1, 16.1-279.1.

- Prohibit further acts of abuse
- Prohibit criminal offenses that result in injury to person or property
- Prohibit other contact by the respondent with the petitioner, or the petitioner's family/household members, as the judge or magistrate thinks is necessary for their health and safety
- Give the petitioner temporary possession of a premises.
- Prevent the respondent from terminating necessary utilities.
- Require the respondent to provide suitable alternative housing if the victim cannot continue to stay in the shared residence and requires support from the abusive person.
- Require temporary possession and use of a motor vehicle.
- Granting the petitioner possession of any companion animal.<sup>36</sup>
- Any other relief necessary.

## ***Non-Family Abuse Protective Orders***

### ***Who Qualifies***

Any person who has suffered an act of violence, force, or threat as described above is eligible for a Non-Family Abuse PO. However, when a victim is not eligible for a Family Abuse PO, she can still get a Non-Family Abuse PO if the abuse meets the standard explained above.

### ***The Non-Family Abuse PO Process***

All Non-Family Abuse PO petitions will be heard in GDC, with one exception. JDR will still hear any petitions in which the petitioner, the respondent, or both, are minors. If both the victim and the abuser are legal adults, the victim needs to go to GDC to fill out forms and submit her petition.

### ***Relief Available***

The relief available for Family Abuse POs is structured to take into account the realities of families and relationships. The relief available for Non-Family abuse is geared more toward preventing more incidents of violence, force, or threat. The judge or magistrate, if deciding to issue a PO, can grant the victim the following relief:<sup>37</sup>

- Prohibit acts of violence, force or threat
  - or criminal offenses that may result in injury to person or property
- Prohibit contacts by the respondent with the petitioner or family

<sup>36</sup> For definition of a companion animal, *see* Code of Virginia § 3.2-6500.

<sup>37</sup> *See* Code of Virginia §§ 19.2-152.9, 19.2-152.10.

o or household members of the petitioner as the court deems necessary for the health or safety of such persons

- Any other relief necessary to prevent
  - o (i) acts of violence, force, or threat,
  - o (ii) criminal offenses that may result in injury to person or property, or
  - o (iii) communication or other contact of any kind by the respondent.
- Possession of a companion animal.<sup>38</sup>

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<sup>38</sup> For definition of a companion animal, *see* Code of Virginia § 3.2-6500.

## Act of Violence, Force, or Threat/Family Abuse

An act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury. Such act includes, but is not limited to, any forceful detention, stalking, criminal sexual assault in violation of Article 7 (§ [18.2-61](#) et seq.) of Chapter 4 of Title 18.2, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury.

“Family Abuse” means an act of violence, force, or threat, as defined above, committed by a family and/or household member.

Petitioner is or has been, within a reasonable period of time, subjected to an act of violence.

Family/Household exists between parties, or one or both parties is a minor.

No Relationship Required

### Family Abuse Protective Order

**Jurisdiction:** Juvenile and Domestic Relations

**Relief Available:** prohibiting acts of family abuse or criminal offenses that result in injury to person or property; prohibiting contact by the respondent with the petitioner or family or household members of the petitioner as the court deems necessary for the health or safety of such persons; grant petitioner temporary possession of premises and enjoin respondent from terminating necessary utilities or require respondent to provide suitable alternative housing; temporary possession and use of motor vehicle; other relief necessary.

### Non-Family Abuse Protective Order

**Jurisdiction:** General District Court

**Relief Available:** prohibiting acts of violence, force or threat or criminal offenses that result in injury to person or property; prohibiting contact by the respondent with the petitioner or family or household members of the petitioner as the court deems necessary for the health or safety of such persons; such other conditions as the court deems necessary to prevent (i) acts of violence, force, or threat, (ii) criminal offenses that may result in injury to person or property, or (iii) communication or other contact of any kind by the respondent.

## The Types of Protective Orders

The two forms of protective orders explained above each come in three variations with respect to function and duration. The first, an **Emergency Protective Order**, lasts only *three days* and can be issued at any time outside normal court hours. This option is preferable if a victim feels that a protective order would help, but that she needs protection immediately and the local court is not in session. The second option is a **Preliminary Protective Order**, and it lasts up to *fifteen days*. A preliminary order is also the first step toward the third kind of protective order, the **Protective Order**, which is effective for up to *two years*, and can be renewed at the end of the effective period.

Within the fifteen days of issuing a preliminary protective order, the court must have a full hearing on the matter. At this hearing, the respondent (the alleged abuser) must also have the opportunity to be heard about the protective order. If at the full hearing, the court feels it is appropriate, the court can then issue the two-year **Protective Order**. (sometimes referred to as a “full” protective order).

### ***Emergency Protective Order (“EPO”)***

This option exists for victims who need a protective order immediately. Even when this need arises outside of normal court hours, there are options for victims who cannot afford to wait to get the benefits of a protective order. If a victim needs an emergency protective order at any time, she can ask law enforcement to call a magistrate, or they can visit the Office of the Magistrate or JDR in the locality in which the abuse occurred.<sup>39</sup>

### ***Preliminary Protective Order (“PPO”)***

A Preliminary Protective Order, the next step toward a two-year protective order. It can be issued by the judge *ex parte*, meaning the judge can issue the order without the respondent being present. The PPO is valid for 15 days, and the judge will schedule a hearing at some point during those 15 days for the court to determine whether a two-year protective order is appropriate.

Note that if the victim wants her petition to be heard without the respondent present (*ex parte*), she has to show “good cause.” This means she must show there is an immediate and present danger of any act of violence, force, or threat, or evidence sufficient to establish probable cause that an act of violence, force, or threat has recently occurred.<sup>40</sup>

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<sup>39</sup> See Code of Virginia §§ 16.1-253.4, 19.2-152.8.

<sup>40</sup> See Code of Virginia §§ 16.1-253.1, 19.2-152.9.

## ***“Full” Protective Order (PO)***

Once a judge grants a preliminary protective order, official notice will be given to the abuser that the PPO has been issued and that a hearing has been scheduled on whether to grant the victim a full protective order.<sup>41</sup> The hearing will be scheduled within 15 days of the issuance of the PPO. The purpose of the hearing is to give both sides the ability to be heard by the judge on the issue of whether a full protective order should be issued. At this hearing, both sides will be present in court. Both sides may produce evidence and question the other side’s witnesses. If the victim’s evidence proves her case by a preponderance of the evidence, the judge may issue a full protective order lasting up to two years. However, the judge is not required to issue a two-year protective order. A protective order is a “full” protective order even if it is less time than two years.

Unlike a PPO hearing, there is no option for an *ex parte* hearing for a full protective order. Accordingly, you will want to prepare the victim to face her abuser in court.<sup>42</sup>

## **What to Do if the Respondent Violates an Order:**

A PO is a civil matter between the victim and the respondent, and violations of a PO will be punished as contempt of a civil court. However, some violations of a PO are also a crime. If a respondent violates a PO by committing further acts of abuse, contacting the victim, or coming on the land, buildings, or premises of the victim, he has committed a crime, and the victim should call the police.

If the respondent violates a different term of the PO, he has committed a civil violation. A “show cause” hearing and order is what happens when the court requires somebody to come to court to explain why the court should not take an action requested by somebody else. In the case of POs, this means that a victim would document the violation of the PO, notify the court, and ask the court to decide that the abuser violated the order. The abuser would then have to come to court to present his side of the story. Show cause hearings can take some time to schedule and are usually reserved for issues like not abiding by the visitation order, not paying child support on time, etc.<sup>43</sup>

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<sup>41</sup> *See* Code of Virginia §§ 16.1-279.1, 19.2-152.10.

<sup>42</sup> Prepare the victim for the possibility that her abuser may not be represented by an attorney. Accordingly, the abuser himself may be questioning the victim and her witnesses.

<sup>43</sup> *See* Code of Virginia §§ 16.1-253.2, 18.2-60.4.

## ***The Effect of Full Protective Orders on the Respondent's Gun Rights***

Both Federal and Virginia law forbids abusers from buying a gun if a victim has a FULL protective order (remember, a protective order does not have to be two years to be a “full” protective order). As of 2018, possession of a firearm by a person “who has been convicted in any court of a misdemeanor crime of domestic violence” is prohibited under Virginia law.

- The phrase “misdemeanor crime of domestic violence” is any state or federal misdemeanor that “has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon” and is committed against a family member.
- A common law battery conviction satisfies the federal definition for a “misdemeanor crime of domestic violence.”).

As of July 1, 2016, a respondent in a “full” Family Abuse Protective Order may not purchase, transport *or possess* a firearm in Virginia during the course of that protective order EXCEPT for a 24-hour period immediately after service of the PO when they can transfer or otherwise dispose of firearms. Virginia law also makes abusers with concealed handgun permits give them up while the PO is still in effect. This will be stated clearly on your protective order form as a warning to the respondent.

Note: Have the victim pay attention to the expiration date of the order. The date should be written on the first page, just above the judges signature.

## **Out-of-State Protective Orders**

### ***Registering a Foreign Protective Order in Virginia***

The Violence Against Women Act (“VAWA”) requires that protective orders issued by other states, called “foreign protective orders,” are given full faith and credit in Virginia. This means out-of-state POs are valid in Virginia, and Virginia POs are valid in other states. When a victim gets a PO in Virginia, the court issuing the order is required to inform law enforcement. Law enforcement must enter the PO into the Virginia Criminal Information network (“VCIN”). When the PO is entered into the VCIN, anytime a police officer detains the respondent and checks his criminal record, the officer will know about the order. This makes service and enforcement easier. However, when a victim has an order from another state, that order will not be in the VCIN network. Victims with foreign orders can get them entered into VCIN by registering the order with the clerk in any appropriate Virginia district court. There is no filing fee. The clerk will then forward the order to local law enforcement, which will enter the information into the VCIN network. Virginia law enforcement can rely upon a foreign protective

order, as well as the statement of a person protected by the order that the order remains in effect.<sup>44</sup>

### ***Registering a Virginia Protective Order in another State***

Many states do have laws or regulations about registering or filing of out-of-state orders, which can make enforcement easier, but a valid protective order is enforceable regardless of whether it has been registered or filed in the new state.<sup>45</sup> This manual covers the specific guidelines for registration of protective orders in the states surrounding Virginia.

#### Kentucky<sup>46</sup>

Kentucky charges no filing fee for the registration of foreign protective orders. It will enforce the provisions of all foreign full protective orders, even if the relief is not available under Kentucky law. Victims may file their orders with the clerk of any competent court in the state. After the filing, the clerk must forward the information to law enforcement, which must then enter it into the Kentucky criminal information network (“LINK”).

Kentucky requires that victims provide a certified copy of the order and fill out a form provided by the Administrative Office of the Courts. This form asks those registering foreign protective orders to write and sign an affidavit containing the name, city, county, and state of the issuing court. The victim must also swear to her belief in the foreign protective order’s validity and that the issuing court has not amended, rescinded, or superseded the order.

If the victim is unable to get a certified copy of the order, she can still submit a copy to the clerk, who will treat the order like an emergency order, and it will be valid for 14 days. The clerk will contact the issuing court and request a certified copy. If the court does not receive the order within 10 days, it will extend the order for another 14 days. If the court still has not received the order after these 28 days, the victim must obtain a certified copy herself, or apply for a Kentucky order.

#### Maryland<sup>47</sup>

Maryland charges no filing fee for the registration of foreign protective orders. Victims should file a request for registration for an out of state order,<sup>48</sup> and a certified copy of the order with the district court. The court will then enter the information into Maryland’s criminal information network, “MILES.” Maryland will honor all full protective orders from other states unless the relief granted is more than what Maryland law permits. It will honor *ex parte* orders only if the issuing court followed Maryland’s standard for *ex parte* orders:

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<sup>44</sup> Victims with foreign protective orders are not required to have those orders entered into VCIN. However, having the order registered in Virginia makes enforcement of the order easier for the police and the courts.

<sup>45</sup> 18 U.S.C. § 2265(d)(2).

<sup>46</sup> Kentucky Revised Statutes §403.7521(3)-(6).

<sup>47</sup> Maryland does not have a statute for registering out-of-state protective orders.

<sup>48</sup> <https://www.courts.state.md.us/sites/default/files/import/courtforms/joint/ccdcdv016.pdf>.

“If . . . a judge finds that there are reasonable grounds to believe that a person eligible for relief has been abused, the judge may enter a temporary protective order to protect any person eligible for relief from abuse.”<sup>49</sup>

Law enforcement can arrest the abusive person for any violation of a Virginia order if the victim has either filed a copy of the order with the district court or can present a copy to the law enforcement officer. However, they are not required to make an arrest.

#### North Carolina<sup>50</sup>

North Carolina charges no filing fee for the registration of foreign protective orders. North Carolina honors all foreign protective orders, including *ex parte* orders. Victims may register their orders<sup>51</sup> with the clerk of any superior court in any county. To register an order, a victim must present a copy of the order and an affidavit to that best of her knowledge the order is presently in effect as written. Even if the victim does not register the order, she should keep a copy of the order with her at all times. Law enforcement may treat the copy and the victim’s statement that the order is in effect as proof that it is a valid foreign order. Law enforcement is required to enforce foreign orders like North Carolina orders.

#### Tennessee<sup>52</sup>

Tennessee charges no filing fee for the registration of foreign protective orders. Tennessee recognizes both full and preliminary protective orders. Victims may file a certified copy of a protective order in the court of any county in which they think enforcement will be necessary. They do not need to submit an affidavit with the copy. Clerks are required to forward the information to law enforcement, which must enter the information into the Tennessee criminal information network.

#### District of Columbia<sup>53</sup>

The District charges no filing fee for the registration of foreign protective orders. It recognizes all full and preliminary protective orders and will enforce even provisions unavailable under the District’s laws.

Victims who wish to file an order must do so in the superior court. They must present a certified copy of the order and an affidavit promising that to the best of the victim’s knowledge, the order is still in effect. Police officers must enforce foreign orders if there is probable cause to

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<sup>49</sup> Maryland Code § 4-505(a)(1).

<sup>50</sup> North Carolina General Statutes § 50B-4.

<sup>51</sup> [https://www.nccourts.gov/assets/documents/forms/cv315-en.pdf?oHwFZH\\_9oNv.\\_vsAbrcjEOBUkZaGmJYv](https://www.nccourts.gov/assets/documents/forms/cv315-en.pdf?oHwFZH_9oNv._vsAbrcjEOBUkZaGmJYv)

<sup>52</sup> Tennessee Code § 36-3-622.

<sup>53</sup> Code of the District of Columbia § 16-1044.

believe that a valid foreign protection order exists and that the order has been violated. Any copy of the order can serve as probable cause to prove the original order's existence.

#### West Virginia<sup>54</sup>

West Virginia charges no filing fee for the registration of foreign protective orders. West Virginia will enforce all full protective orders issued by other states, even if the relief granted is not available under West Virginia law. The victim must present a certified copy of the order to the WV Supreme Court of Appeals. Additionally, the victim must file an affidavit with the court, the stating that, to the best of the protected individuals knowledge, the order is currently in effect. Courts and law enforcement will enforce any order that appears valid on its face.

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<sup>54</sup> West Virginia Code §§ 48-28-3, 48-28-5.

## Immigrant Clients:

### Tips for Effective Communication:

While it can be difficult to work with immigrant clients who are not communicating in their native language, there are several tips that you can follow in order to ease this process. First, you should emphasize that a client is safe with you. Make sure you speak slowly and clearly with the client. Also, make sure to practice active listening: don't interrupt, look at the person who is talking and give them your full attention, answer in a way that lets them know you're listening, let them know you understand their point of view, allow silence, and watch your note-taking. Try to limit your interview to two hours and be mindful of your body language.

### Barriers to Working with Immigrant Clients:

**Economic Barriers:** Economic dependence on husband to support her, their children and her family abroad, lack of legal status prevents her from finding a job because she does not have a work permit

**Language Barriers:** May not feel comfortable seeking or using shelter, police, court or legal services, may have limited access to services or knowledge about services

**Cultural Barriers:** Community may ostracize her, she may want to protect spouse's standing in the community, her values/customs concerning a woman's place, her role and family expectations

**Distrust of the Legal System:** Difficulty understanding the U.S. system, may have distrust of the U. S. system because of experiences in home country, may distrust U.S. system because of undocumented status

**Fear of Deportation:** Largest concern due to threats by abuser, fear that Department of Homeland Security will act on tips by abuser, fear that U.S. citizen children will be taken from her, fear that abuser will follow her to her home country where there may not be any protection for her.

# Visas for Undocumented Victims of Domestic and Sexual Violence

Abusers often try to isolate victims to make them vulnerable and dependent on the abuser.

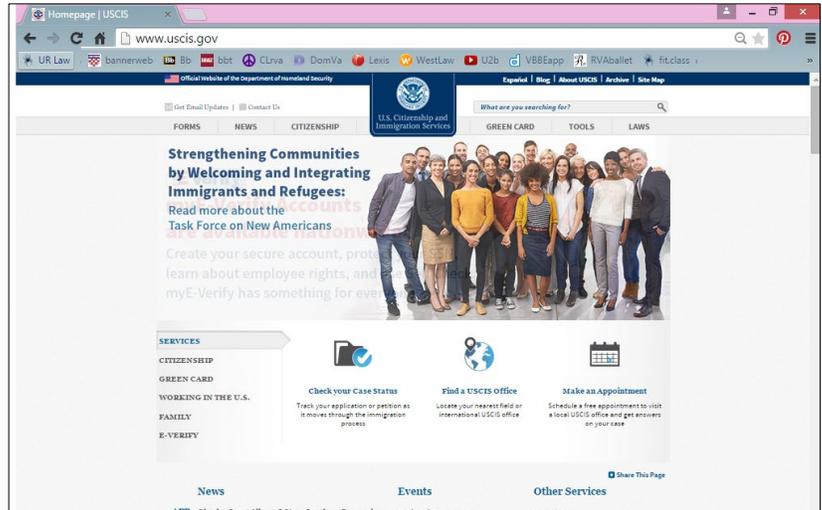


Undocumented domestic and sexual violence abuse victims are in particular danger of this isolation. They may fear that leaving their abuser will end their hopes for receiving proper documentation, or that contacting the police will cause legal troubles. However, there are options for those victims to get legal status in the United States under some circumstances. All of the forms and instructions on how to complete them, can be accessed at the United States Citizenship and Immigration Services (USCIS) website (links are provided below). Immigrant clients may file visa applications *without* the assistance of an attorney, but it's

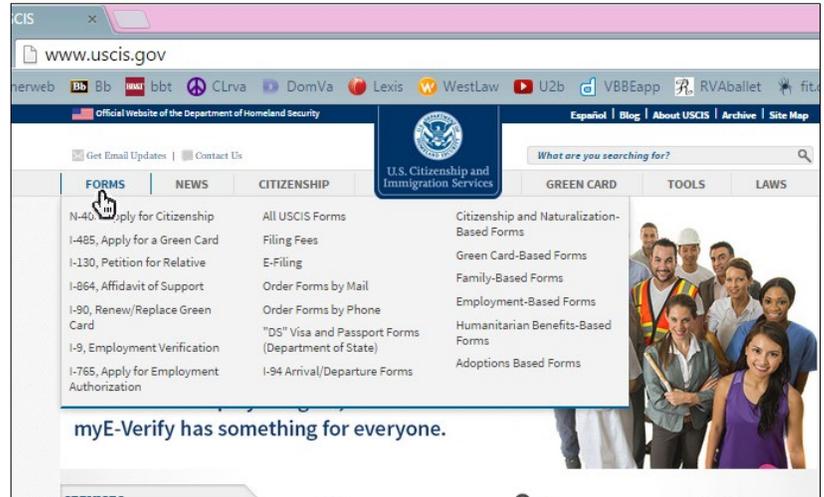
always helpful to have legal assistance, especially when navigating the immigration process. This section is intended to familiarize you with kinds of visas for which our clients may be eligible—not to substitute for the assistance of a licensed attorney.

## Navigating the U.S.C.I.S. Website:

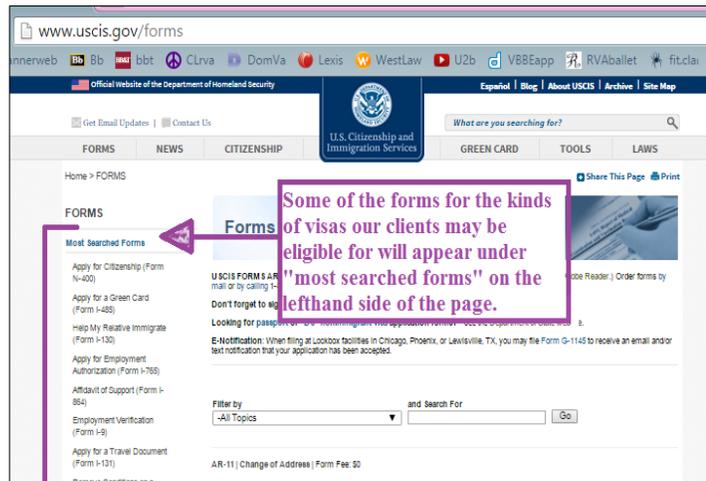
1. Go to the USCIS homepage:  
[www.uscis.gov](http://www.uscis.gov)



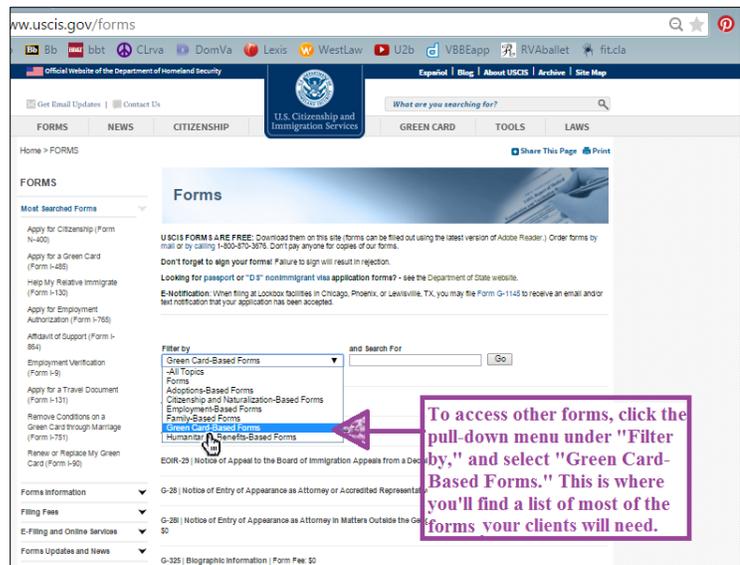
2. Click on “FORMS” in the top left-hand corner.



3. Once you've clicked on "Forms:"



4. Or, if you don't see the form you're looking for under "most searched forms:"



5. Next:

The screenshot shows the USCIS website with a search bar at the top containing the URL `www.uscis.gov/forms?topic_id=1131&search_q=`. Below the search bar is a navigation menu with various icons. The main content area displays a list of forms, including:

- Employment Verification (Form I-9)
- Apply for a Travel Document (Form I-31)
- Remove Conditions on a Green Card through Marriage (Form I-751)
- Renew or Replace My Green Card (Form I-90)
- Forms Information
- Filing Fee
- E-Filing and Online Services
- Forms Updates and News
- Department of State (D) and Other Non-USCIS Forms

Form I-360 is highlighted with a mouse cursor. A callout box with a purple border and white background contains the text: "Click on the name of the form you want." with a purple arrow pointing to the link for Form I-360.

6. Finally:

The screenshot shows the USCIS website for Form I-360. The main heading is "I-360, Petition for Amerasian, Widow(er), or Special Immigrant". Below this, there are links for "Form I-360 (244 KB PDF)" and "Instructions for Form I-360 (84 KB PDF)". The "Purpose of Form" section explains that the petition is used to classify an alien as an Amerasian, widow, or special immigrant. The "Edition Date" is listed as 03/05/13. A callout box on the right contains the text: "Once you've clicked on the name of the form, you'll arrive at a page all about that form. There, you'll find resources such as a digital copy of the form itself, instructions on how to complete it, what the form is used for ('Purpose of Form'), and the Edition Date.\*". A note below the callout box states: "\*Note: This is VERY IMPORTANT! Before submitting any forms on behalf of your client, make sure you've completed the MOST RECENT VERSION of the form! 'Edition Date' tells you when the form was last updated." A purple exclamation mark icon is located to the right of the note.

This is a picture of the main page for Form I-360. Each form has its own main page.

## Overview of Immigration Issues for Domestic and/or Sexual Violence Victims

Under the Trump Administration, longstanding policy on reviewing immigration visa applications has changed and continues to change. The President has issued executive orders that are subject to litigation and/or court review. Below we describe some of the types of visas for which undocumented or under-documented immigrant victims of domestic and/or sexual violence and trafficking may qualify. While these visas are still being accepted, reviewed and approved, the landscape is changing on a daily basis. Please consult with a bona fide immigration attorney about your particular case.

### *I-360: Violence against Women Act (“VAWA”) Self-Petition*

When a U.S. citizen or Lawful Permanent Resident (“LPR,” or “green card” holder) marries someone who does not have LPR status, he usually petitions to get his spouse citizenship or lawful permanent residency. This will grant the non-citizen spouse conditional status for the first two years of the marriage. However, when the citizen or LPR is abusive, he may try to use the victim’s immigration status to threaten her, control her, and force her to stay in the marriage. The I-360 Special Immigration form<sup>55</sup> is available to spouses and children of abusive U.S. citizens or LPRs. If a victim is or was recently married to an abusive U.S. citizen or LPR who never filed for documentation for her, she may be eligible to petition on her own to get legal status (I-360).

#### **The applicant must:**

1. Prove her own identity.
2. Prove that her abuser was a citizen or LPR.
3. Prove that she married the abuser in good faith.
4. Prove that they lived together.
5. Prove that she or her child suffered battery or extreme cruelty by the abuser.
6. Prove that she has good moral character.

### *I-918: The U-Visa*

Many undocumented immigrants fear that contacting the police about a crime will expose them to legal problems arising from their immigration status. However, there is a visa available to non-citizens, including undocumented immigrants, who are victims of certain types of violent crime. A victim who assists the police to investigate or prosecute the crime may be eligible to petition for a U nonimmigrant visa (form I-918<sup>56</sup>). If you encounter a client who fears that she cannot go to the police when her abuser behaves violently toward her, this could be a way for her

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<sup>55</sup> [www.uscis.gov/i-360](http://www.uscis.gov/i-360)

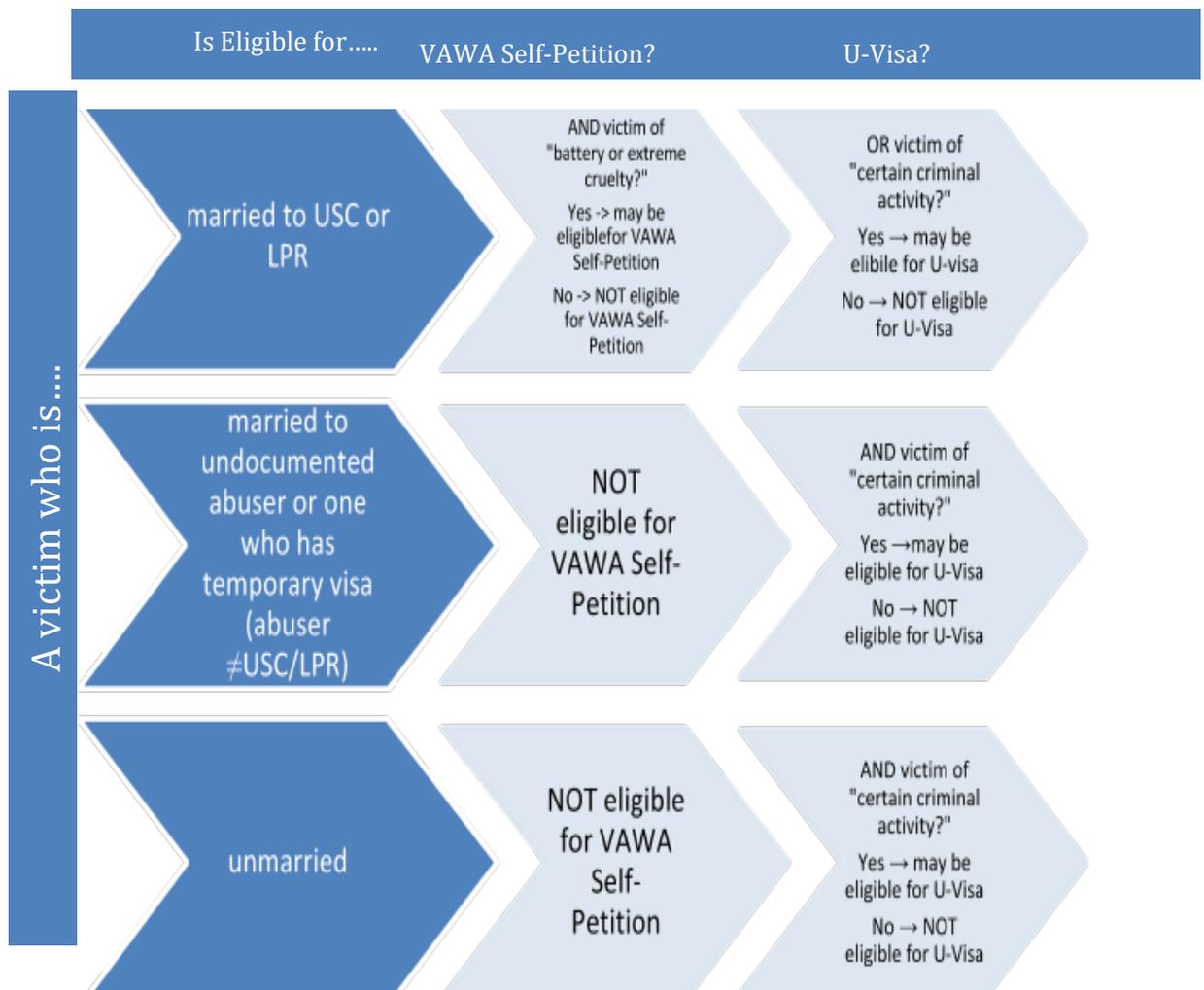
<sup>56</sup> [www.uscis.gov/i-918](http://www.uscis.gov/i-918)

to get help from law enforcement without fear of being penalized for her immigration status. However, because immigration law is extremely complex, you should help her find an immigration lawyer or organization to advise her.

**The applicant must show:**

1. She has suffered substantial physical or mental abuse as a victim of certain criminal activity.
2. She possesses information concerning that criminal activity.
3. She has been helpful, is being helpful, or is likely to be helpful to law enforcement (see I-918 Supplement B<sup>57</sup>).
4. The criminal activity violated U.S. laws or occurred in the United States.

*Qualifications: VAWA-Self-Petition vs. U-Visas.*



<sup>57</sup> Also available at [www.uscis.gov/i-918](http://www.uscis.gov/i-918)

## ***I-751: The Battered Spouse Waiver***

Victims may be eligible for a VAWA Self-Petition if the abusive spouse never filed to secure permanent legal residency for the victim. However, if the abusive spouse filed for their spouse's conditional residency and the marriage is less than two years old, a victim may have a difficult choice to make. She may not know whether to leave the abusive relationship or stay with the abuser in the hope that the abuser will follow through in helping the victim to get a permanent green card when the two-year period is finished. A victim in this situation may be eligible to petition for a Battered Spouse Waiver (Form I-751<sup>58</sup>). This will allow her to file for a permanent green card at the end of the two years without the abusive spouse's participation.

### **The applicant must show:**

1. She married the abuser in good faith.
2. The victim, or the victim's child,<sup>59</sup> was subjected to battery or extreme cruelty by the abuser.

## ***I-914: The T-Visa***

Victims of trafficking may also be afraid to contact the police for fear of arrest or deportation. Clients who have been brought to this country and forced to commit sexual acts, perform labor, or services without their consent and who comply with requests for assistance by law enforcement investigating the crime, may be eligible to petition for a T Nonimmigrant Visa (form I-914<sup>60</sup>).

### **The applicant must show:**

1. She was a victim of sex or labor/services trafficking.
2. She was physically present in the U.S. because of the trafficking.
3. She has cooperated with any reasonable request for assistance in the investigation.
4. She is admissible to the United States.

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<sup>58</sup> Form I-751 can be accessed at <http://www.uscis.gov/sites/default/files/files/form/i-751.pdf>  
Instructions on how to complete it are available here:

<http://www.uscis.gov/sites/default/files/files/form/i-751instr.pdf>

<sup>59</sup> A survivor will not qualify for a battered spouse waiver on the basis of her children's abuse alone. She may qualify individually for the abuse she has suffered, and her children may qualify for the abuse they have suffered.

<sup>60</sup> Form I-914 can be accessed at <http://www.uscis.gov/sites/default/files/files/form/i-914.pdf>  
Instructions on how to complete it are available here:

<http://www.uscis.gov/sites/default/files/files/form/i-914instr.pdf>

## ***Gender-Based Asylum Petitions***

A federal law makes it possible for victims to qualify as refugees if they cannot return to the country in which they have nationality because of “race, religion, nationality, membership in a particular social group, or political opinion.”<sup>61</sup> There are many ways in which a victim’s gender or the dynamics of abuse could create grounds for a visa under these requirements. Here are some specific examples of ways in which victims could qualify:

- She might suffer female genital mutilation, honor crimes, or a forced marriage in the country of nationality;
- Her actual or imputed political opinion is that she is a woman who believes that wives should be able to lead their lives without being dominated by their husbands;
- Her religious beliefs differ from her husband’s religious beliefs concerning the proper role of women in society; and/or
- She is a member of a particular social group of women who challenge their husbands’ domination.

In 2018, however, the U.S. Attorney General sharply limited protections for asylum-seeking domestic violence victims. Personally intervening in an asylum case involving an immigrant known as Ms. A.B., the U.S. Attorney General proclaimed that “generally, claims by aliens pertaining to domestic violence or gang violence perpetrated by non-governmental actors will not qualify for asylum,”<sup>62</sup> overturning years of precedent to the contrary. Immigration practitioners will need to watch trends carefully in the months and years to come to determine the merits of asylum cases for victims fleeing domestic and/or gang violence.

## **Frequently Asked Questions:**

*What’s the difference between being in the United States legally and illegally?*

A person does **not** have to be a U.S. citizen to be in the United States legally! If a person has a valid (unexpired) visa, they are in the U.S. legally. If a person has a “green card,” they have Lawful Permanent Resident (LPR) status in the U.S. The card shows the person has LPR status. It expires in 10 years and needs to be renewed, but the LPR status itself is indefinite. Some people who have LPR status never take the next step to become U.S. citizens. There are many reasons why a person with LPR status may not choose to become a U.S. citizen (i.e., losing property rights in their home country, etc.). When referring to your clients who do not have legal status in the U.S., use the term, “undocumented,” instead of “illegal.”

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<sup>61</sup> 8 U.S.C. § 1158.

<sup>62</sup> See *Matter of A-B-, Respondent*, decided by Attorney General June 11, 2018, U.S. DEPARTMENT OF JUSTICE OFFICE OF THE ATTORNEY GENERAL, available at <https://www.justice.gov/eoir/page/file/1070866/download>

## **Family Law Basics**

Most advocates will have some knowledge of the fundamentals of family law, either from their own lives or from the experiences of their friends and family. However, those advocates who have never seen a divorce or support situation may want some background information about how those processes work in Virginia. This legal information should help give advocates a framework for what victims may have to undergo eventually to find legal resolutions for their abusive situations. It should help advocates counsel victims through the process on an emotional level, as well as showing advocates a frame of reference for legal realities like waiting period for divorce

Advocates should remember that they CAN relate legal facts to victims. However, they CANNOT give victims legal advice about how they should proceed in light of those facts.

### **Separation**

As soon as spouses begin living apart from each other, they are considered “separated” under the law. People do not need to file forms or go to a court to become separated.

### **Divorce**

#### ***Reasons for Divorce***<sup>63</sup>

In Virginia, you can get a divorce for six reasons.

There are two reasons you can get a divorce without having to wait a certain period of time:

1. Adultery
2. Your spouse is convicted of a felony and sentenced to more than one year in prison.

Even though you may file for and receive a divorce based on adultery without waiting for one year, divorce based on adultery requires proof at a trial, which may take a long time and be very costly.

The other four reasons require a waiting period of one year:

3. Physical cruelty. (Abusive language, humiliating statements, and repeated neglect can also constitute cruelty.)<sup>64</sup>
4. Desertion. If the other spouse leaves without a good reason.
5. Constructive desertion. If the other spouse forced the victim to leave.
6. An uncontested “no fault” divorce after one year’s separation. However, if the spouses have no minor children, they only have to wait six months.



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<sup>63</sup> Code of Virginia §20-91.

<sup>64</sup> See, e.g., *Humphreys v. Humphreys*, 139 Va. 146, 123 S.E. 554 (1924); *Twohy v. Twohy*, 130 Va. 557, 107 S.E. 642 (1921).

### ***What are the steps to getting a divorce?***

1. The person seeking a divorce (“Plaintiff”) files papers with the circuit court. These papers are called a “complaint.” The court also issues a “summons,” which lets the other spouse know about the divorce.<sup>65</sup>
  
2. Plaintiff arranges for the divorce papers to be served (legally delivered) on their spouse, (“Defendant”). She may choose to have a deputy sheriff serve the papers for a small fee. She may also have the papers privately served, which costs more but is often faster and ensures that the papers go to the right person. This process may be done five different ways.
  - a. Given to the defendant in person.
  - b. Given to a member of the defendants household. The household member must be 16 or older. The person serving the papers must explain what they are.
  - c. Posted on the defendants front door and mailed to the defendant by first class mail.
  - d. If you do not know where to find the defendant, the papers may be served by publishing them in the newspaper.
  - e. The person seeking the divorce may ask the defendant to “waive” service or agree to receive the papers without being “served.” The defendant will need to sign a waiver in front of a notary.
  
3. The person seeking the divorce must provide evidence to prove her reason for wanting the divorce. In an uncontested divorce, this can be done in the form of an affidavit (signed statement) as to the circumstances of the divorcing parties. For contested divorces, parties must give evidence under oath, usually before a judge.

Note: pending a suit for divorce, the court may enjoin a party to maintain a life insurance policy on the other party.<sup>66</sup>
  
4. The affidavit, a proposed Final Decree of Divorce, and other papers are sent to the Judge for review.
  
5. If everything is in order, the Judge signs the Final Decree of Divorce.

### ***Property Settlements<sup>67</sup>:***

When two people get divorced, it is usually very important to figure out how they will split up all of their property. Property can be “real estate,” like land or housing that you own or “personal property,” like a car or clothing. To legally split the property, they have to form an agreement called a “property settlement.” These involve three steps:

- i. Figuring out whether each piece of property is **marital property** or **separate property**
- ii. Valuing each piece of marital property, and
- iii. Distributing the property equitably



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<sup>65</sup> <http://www.valegalaid.org/resource/lawhelp-interactive-no-fault-divorce-intervie>

<sup>66</sup> Code of Virginia § 20-107.1:1.

<sup>67</sup> Code of Virginia § 20-107.3.

*Separate Property:*

- All property a spouse obtains before the marriage;
- All property a spouse obtains during the marriage by inheritance, or gift from someone besides the other spouse; or
- All property a spouse obtains during the marriage from the sale of separate property, if the spouse kept it as separate property.

*Marital property:*

- (i) All property titled in the names of both parties. Title is the paper document that proves ownership of the item. Cars, homes, and bank accounts are all important pieces of property that have titles.
- (ii) All property that either spouse got during the marriage that does not meet the definition of separate property. Remember that courts assume all property a spouse gets during the marriage and before the last separation of the spouses, is marital property unless there is satisfactory evidence that it is separate property. They will also assume that marital property is jointly owned unless there is a deed, title or other evidence. This includes pensions and retirement plans.

*Property that is Both Separate and Marital (sometimes called “hybrid property”):*

- (i) Money created by separate property during the marriage (like earnings from a small business, dividends from stocks, or interest on bank accounts), will be marital property only if the other spouse substantially helped to create it.
- (ii) “Commingling”: when marital property and separate property are combined, sometimes making it difficult to show what kind of property was separate and what was marital. Examples include joint bank accounts into which both parties deposited paychecks, or real estate that the spouses bought together with separate and marital money.
- (iii) If parties retitle separate property in both of their names, the retitled property may become marital property.
- (iv) If separate property of one party is commingled with separate property of the other party, each party will be reimbursed, if the contributed property is retraceable by a preponderance of the evidence and was not a gift.

*Factors for Equitable Distribution*<sup>68</sup>

- The spouses’ monetary and nonmonetary contributions to the well-being of the family;
- The spouses’ monetary and nonmonetary contributions to getting and taking care of the property;
- The length of the marriage;
- The spouses’ age, and physical and mental health;
- The reasons why the spouses are divorcing, specifically fault-based grounds for divorce;
- How and when the spouses got the specific items of marital property;
- The debts and liabilities of each spouse;
- Whether the marital property can be sold or not;
- The tax consequences to each party;

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<sup>68</sup> Code of Virginia § 20-107.3(E).

- Whether either of the spouses used marital property wastefully to hurt the other party during the divorce; and
- Other factors the court thinks necessary or appropriate to consider in creating a fair and equitable monetary award.

## Spousal Support<sup>69</sup>

Courts do not always award support to spouses following a separation or divorce. However, courts will consider the following factors when making the decision of whether to award support:



- adultery and any other fault-based ground for divorce;
- the obligations, needs and financial resources of the parties, including income from all pension, profit sharing or retirement plans;
- the standard of living established during the marriage;
- the length of the marriage;
- the age, physical, and mental health of the parties and any special circumstances of the family;
- the extent to which age, health, or special circumstances of the parties' children would make it appropriate that a party not seek employment outside of the home;
- the contributions, monetary and nonmonetary, of each party to the well-being of the family;
- the parties' property (real estate and personal property);
- the state laws that determine how the provisions made with regard to the marital property under § 20-107.3;
- the earning capacity of the parties, including their skills, education and training;
- the parties' present employment opportunities;
- the opportunity, the time and the costs involved for a party to get the education and training to enhance his or her earning ability;
- the decisions about employment, career, family finances, education and parenting arrangements made by the parties during the marriage. These are important because they have an effect on a spouse's present and future earning potential, and may include the time the parties have been out of the job market;
- whether either party helped the other party gain education, training, career position or profession; and
- other factors, including tax consequences.

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<sup>69</sup> Code of Virginia § 20-108.1.

## Child Custody<sup>70</sup>

In all states, courts decide who gets custody of a child based a standard called “the best interests of the child.” A parent’s gender or greater wealth does not guarantee custody. There are several factors that courts in Virginia consider when deciding what is in the interests of a child:



- The age, physical, and mental condition of the child, with consideration for the child's changing developmental needs;
- The age, physical, and mental condition of each parent;
- The relationship between each parent and each child, considering the positive involvement with the child's life, the ability to understand and meet the emotional, intellectual and physical needs of the child;
- The needs of the child, considering other important relationships of the child, like siblings, peers and extended family members;
- The role that each parent has played and will play in the future, in the upbringing and care of the child;
- The likelihood of each parent to actively support the child's contact and relationship with the other parent, including whether a parent has unreasonably denied the other parent access to or visitation with the child;
- The desire and ability of each parent to maintain a close and continuing relationship with the child;
- The ability of each parent to cooperate in and resolve disputes regarding matters affecting the child;
- The reasonable preference of the child, if the court thinks that the child is of reasonable intelligence, understanding, age and experience to express such a preference;
- Any history of family abuse, neglect or sexual abuse;
- Any other factors the court finds necessary to the determination.<sup>71</sup>

Courts will consider all of these factors when deciding how to award custody. Courts will also award two types of custody: physical and legal. Physical custody means that a parent or guardian has the child physically in her home. Parents or guardians who have physical custody of a child are responsible for the daily caretaking of that child. Legal custody means that a parent or guardian has the right to make decisions about a child, even if that child does not live in the parent or guardian's home. Thus, a court may give physical custody to only one parent, but legal custody to both parents.

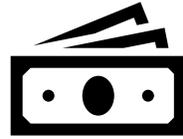
When a court gives a type of custody to both parents, it is called “joint custody.” When a court gives a type of custody to only one parent, it is called “sole custody.” A parent who does not have any physical custody may be granted “visitation,” also known as “parenting time.” In some cases, courts may order visitation to be supervised.

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<sup>70</sup> Code of Virginia § 20-107.2.

<sup>71</sup> Code of Virginia §§ 20-124.1, 20-124.3.

## Child Support<sup>72</sup>



Courts decide how much **child support** to award a parent with custody. This section takes into account factors like monthly income, number of children, and the amount of time the child spends in the physical custody of either parent and determines a number that one parent (the obligor) pays to the other parent (the obligee).

### Legal Aid Contact information:

Susheela Varky is the staff attorney for domestic and sexual violence at Virginia Poverty Law Center, [www.vplc.org](http://www.vplc.org), the statewide support nonprofit for all of the local legal aid offices in Virginia. She is also the director of VPLC's Center for Family Advocacy, under which the Legal Assistance to Victim-Immigrants of Domestic Abuse (LA VIDA) Project operates. The LA VIDA Project assists eligible, low-income, undocumented or under-documented immigrant victims of domestic and/or sexual violence or trafficking file visa applications to obtain legal status in the U.S. If you think you or your client may be eligible for LA VIDA's services, contact Simón Valencia, LA VIDA's Immigration Advocate/Paralegal at (804) 351-5256, toll-free at 1 (800) 868-8752, x. 114, or [svalencia@vplc.org](mailto:svalencia@vplc.org) to complete an intake.

Ms. Varky is available to answer your questions about the domestic or sexual violence issues your clients face. If she cannot answer your question, she will do her best to obtain an answer. Additionally, for your low-income clients who are not represented by a lawyer (local legal aid or otherwise) and who will not be able to retain an attorney for their legal issues that arise from domestic or sexual violence, Susheela may be able to provide free legal consultations over the phone although she usually cannot go to court with clients. Feel free to contact her at (804) 351-5274, toll-free at 1 (800) 868-8752, x. 204, or via email at [susheela@vplc.org](mailto:susheela@vplc.org).

Valerie L'Herrou is the staff attorney for child and family welfare under VPLC's Center for Family Advocacy. Valerie may be able to provide free legal consultations over the phone although she usually cannot go to court with clients. Feel free to contact her at (804) 351-5276, toll-free at 1 (800) 868-8752, x. 201, or via email at [valerie@vplc.org](mailto:valerie@vplc.org).

If your client is low-income and wishes to determine if they are eligible for representation by a local legal aid attorney, you/she may contact 1(866) LEGLAID (1-866-534-5243).

In addition, the attorneys at the Project for Empowerment of Survivors ("PES") at the Action Alliance are available to provide free legal advice, consultations, and referrals over the phone, although they cannot go to court with clients. You or your client may call the Action Alliance hotline at 1 (800) 838-8238 to be connected with a PES attorney.

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<sup>72</sup> Code of Virginia § 20-108.2.

## **Filing for Divorce without an Attorney:**

Parties filing for an uncontested divorce may do so without an attorney by creating their own divorce papers (called “pleadings”). If you do not have minor children together or any property for a court to divide and distribute (or a custody order is in place and you have a property settlement agreement), you may use the online divorce tool to create your own divorce pleadings: [www.legalaid.org/divorce](http://www.legalaid.org/divorce).

The Metropolitan Richmond Women’s Bar Association (MRWBA) publishes a resource, “Understanding your Domestic Relations Rights in Virginia,” which is available online in English and Spanish at [www.mrwba.org/public-resources-2/domestic-relations-rights-in-VA](http://www.mrwba.org/public-resources-2/domestic-relations-rights-in-VA).

## **Addendum**

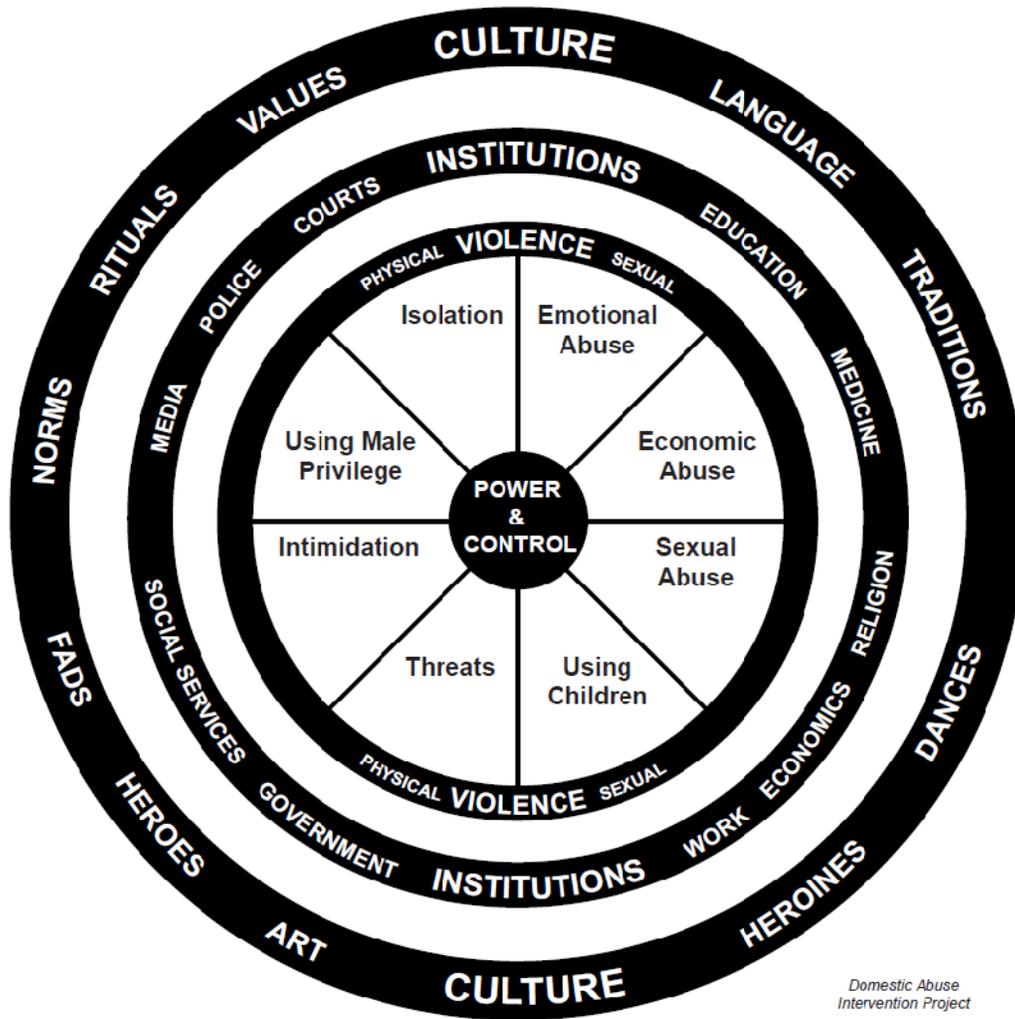
The items in this Addendum are intended to be helpful to you in serving your clients. If you have a tool or resource that you would like to see added to this addendum, please send it to or bring it to the attention of Susheela Varky, Virginia Poverty Law Center, [susheela@vplc.org](mailto:susheela@vplc.org), (804) 782-9430, x.33 or toll-free at 1 (800) 868-8752, x. 33. You may also contact the Project for Empowerment of Survivors at the Virginia Sexual and Domestic Violence Action Alliance at [legal@vsdvalliance.org](mailto:legal@vsdvalliance.org) or (800) 838-8238.

The original [Power and Control Wheel](#) and [Equality Wheel](#) were developed by the [Domestic Abuse Intervention Programs](#) in Duluth, MN. You will see several “power and control” wheels in this Addendum.

The majority of the wheels were adapted from the original DAIP model, unless otherwise specified. They are available on the National Center on Domestic and Sexual Violence website, [http://www.ncdsv.org/publications\\_wheel.html](http://www.ncdsv.org/publications_wheel.html). Please check this website for details about permission to reprint.

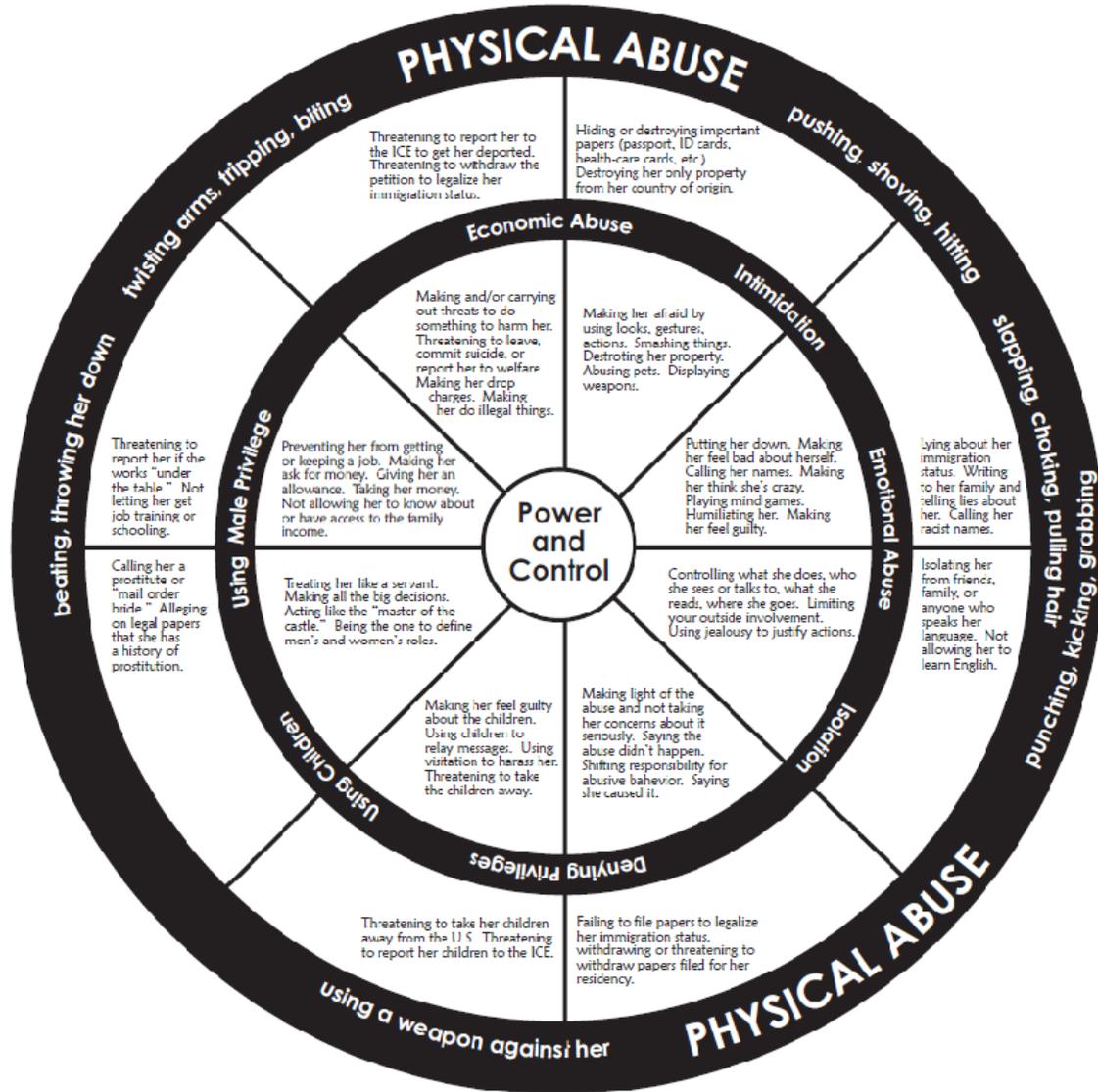
## Power and Control Wheels:

# Culture Wheel



The culture wheel is a tool that is used to understand the context in which intimate partner violence and sexual violence exist in our society. It is important to not only focus on what is happening to the individual at the center of the wheel, but to consider how the various institutions and components of our culture provide an atmosphere where sexual violence and intimate partner violence can occur. This complex view of sexual and intimate partner violence demonstrates that it does not occur in a vacuum. When working with people impacted by sexual violence and intimate partner violence, we should take into account both the relationship of the individual to the various institutions and the impact of the person's own cultural identity on the situation.

# IMMIGRANT POWER AND CONTROL WHEEL



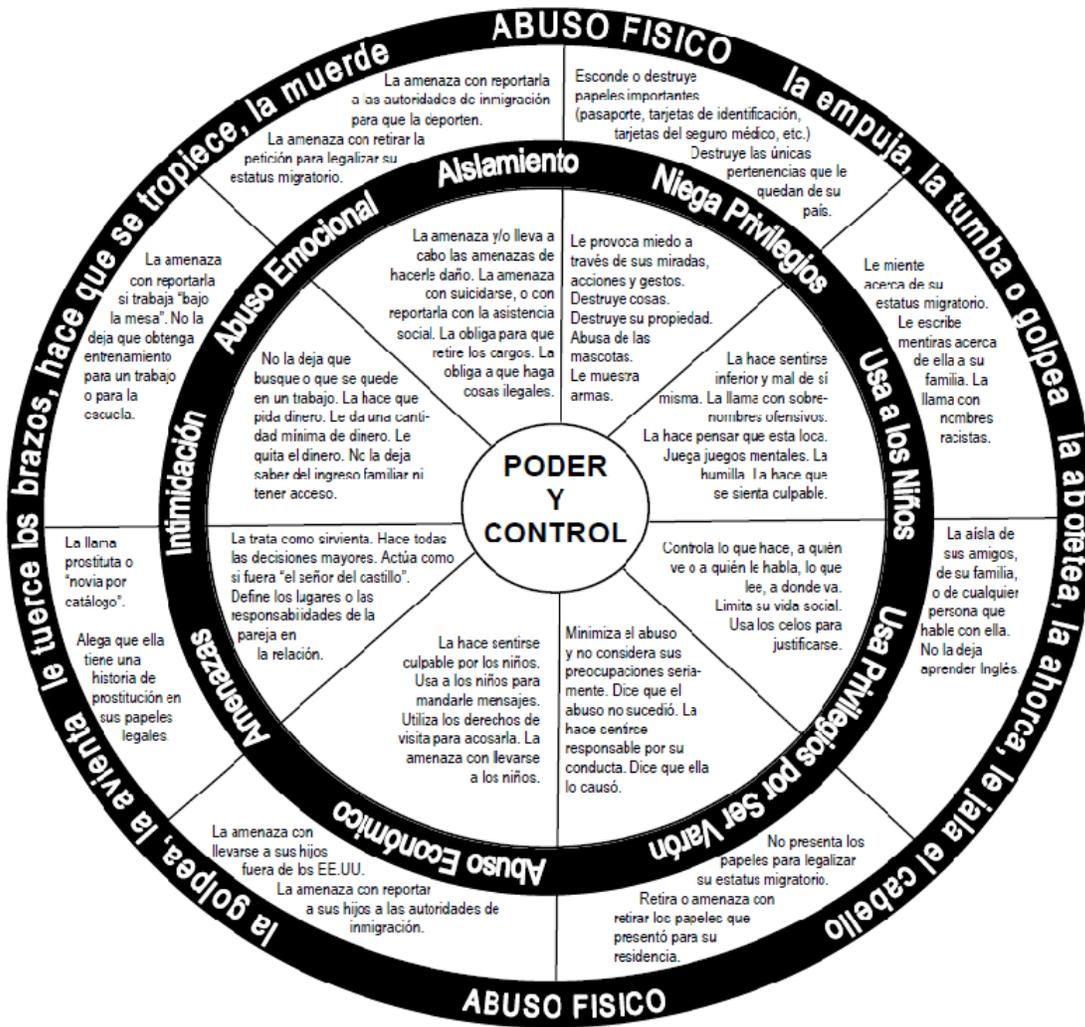
Produced and distributed by:

Adapted from original wheel by:  
Domestic Abuse Intervention Project  
202 East Superior Street  
Duluth, MN 55802  
216.722.4134



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# RUEDA DE PODER Y CONTROL MUJERES INMIGRANTES MALTRATADAS



Adaptado del diagrama original por:  
 Domestic Abuse Intervention Project  
 202 East Superior Street  
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 218.722.4134

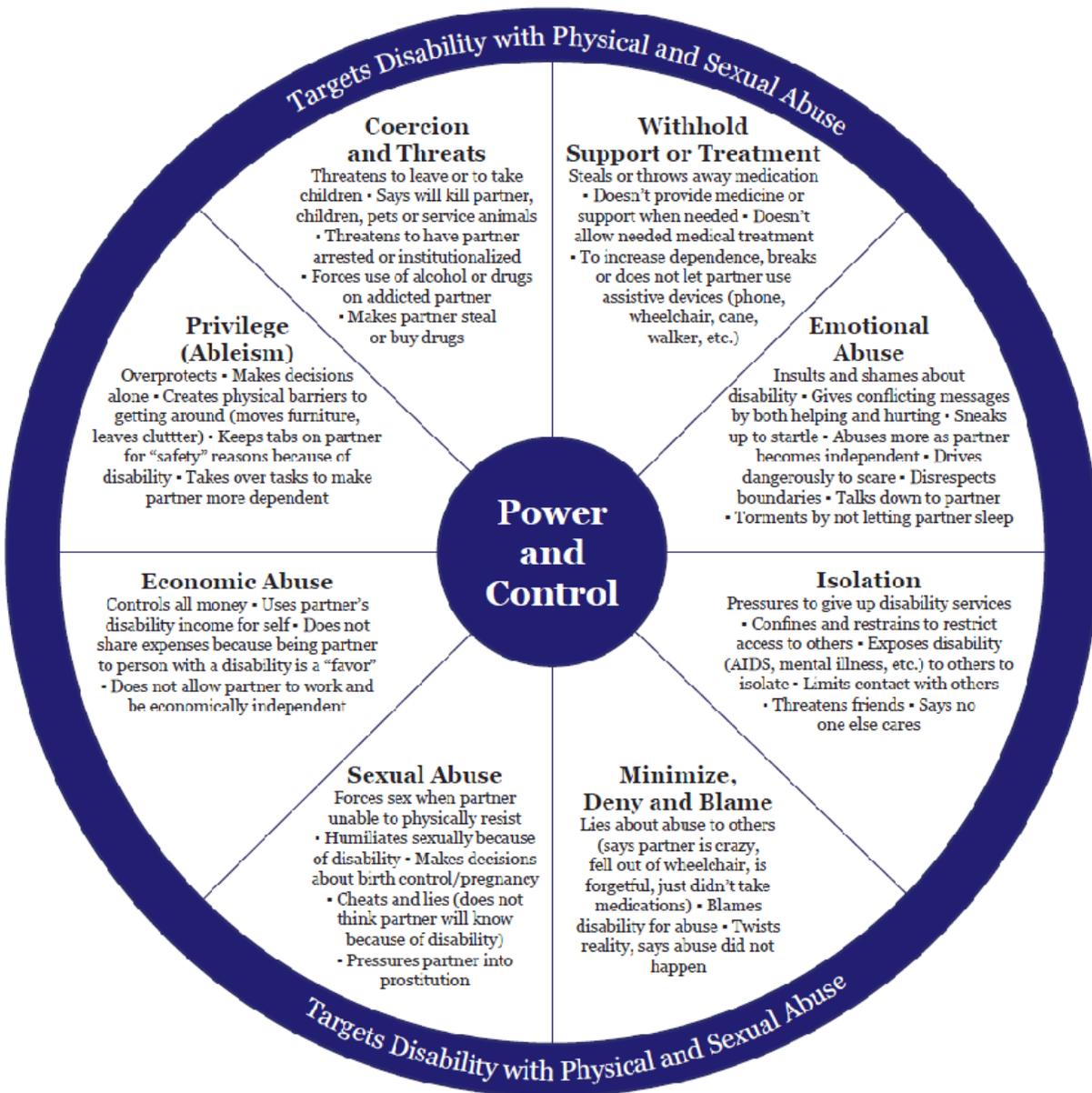


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Translation courtesy of/Traducción cortesía de The Alaska Network on Domestic Violence & Sexual Assault

## People with Disabilities in Partner Relationships



Created by



with in-depth input from people with disabilities.

Adapted with permission from

DOMESTIC ABUSE INTERVENTION PROJECT

202 East Superior Street

Duluth, MN 55802

218.722.2781

[www.theduluthmodel.org](http://www.theduluthmodel.org)

DisabilityServices@SafePlace.org | [www.SafePlace.org](http://www.SafePlace.org) | Austin, Texas  
24-hour Hotline: 512.267.SAFE (7233) or 512.967.9616 TTY for the Deaf community

**Intimidation:**

- Using ASL to make you afraid with gestures, facial expressions, or exaggerated signs, then denying it by saying that is Deaf culture to justify the behavior (example: saying you are so fat in ASL with deep or strong facial expressions, and claiming that it is permissible by Deaf culture to do so)
- Overuse of floor stomping and pounding on the table or door to get your attention
- Signing very close to your face when angry
- Using intimidation with body language in ASL
- Getting angry because you look away while he is talking

**Using Emotional Abuse:**

- Making fun of your speech or English skills
- If your partner is Deaf, he puts you down by calling you "hearing" because you are not fluent enough in ASL, or because you do not identify strongly as Deaf
- Making fun of your ASL style
- Taking advantage of the Deaf hierarchy, saying Deaf families are better
- Telling you that you have problems while he has no problems interacting in the Deaf community
- Telling you that you are too sensitive, too "hearing," or "hearing-minded"

**Using Isolation:**

- Taking your SSI check
- Checking your pager, instant messenger, or e-mail
- Checking your TTY, VRS, and Videophone conversations
- Controls which Deaf friends you talk to
- Moving away from the Deaf community to isolate you
- Demanding that you discuss issues with him first before discussing with others in the Deaf community
- Telling you that no one will believe you, and that he is too well respected in the Deaf community
- Telling you that a shelter will not accept you because you are deaf
- Taking advantage of the lack of accessible services for Deaf survivors

**Minimizing, Denying & Blaming:**

- Denying abuse by saying it is ok in Deaf culture to touch you roughly or talk to you roughly
- Throwing objects as an acceptable way to get attention
- Telling private things to people while standing next to you (example: "My wife is lousy in bed."); justifying this action by saying that is common for Deaf people to share everything with each other

**Using Children:**

- If you have a hearing partner, he doesn't allow the children to use ASL to communicate with you
- He doesn't allow the children to be proud of Deaf culture, he puts down you as a Deaf mother, and puts down your Deaf friends
- He tells you and the children that you cannot go to a shelter because everyone is hearing, so you are better off with him because you can communicate with him

**Using Hearing Privilege:**

- He does not tell you when people try to call you
- He excludes you from important phone calls (example: making financial decisions without you knowing)
- Leaving you out in social situations with hearing people
- Not allowing you to have access to Deaf culture, or putting down the Deaf community
- Taking advantage of the system which is not fully accessible to Deaf people (example: the restraining order hearing gets postponed because of no interpreters)
- Putting you down by saying you are no good because you are Deaf
- If you call the police, he will try to interpret and take control of the situation to his benefit

**Economic Abuse:**

- Taking away your SSI checks or making you lose it by reporting additional income
- Ruining your chances for a job by spreading rumors about you in the Deaf community

**Using Coercion and Threats:**

- Threatening to report you to SSI if you make too much money
- Destroying your reputation by spreading false rumors
- Using his power in the Deaf community to pressure you to stay with him
- Using the Deaf school as the reason why you have to stay together to support your Deaf children
- Using his prestige as a leader or position of power in the Deaf community to discredit your story about the violence

## Abuse in Later Life Wheel

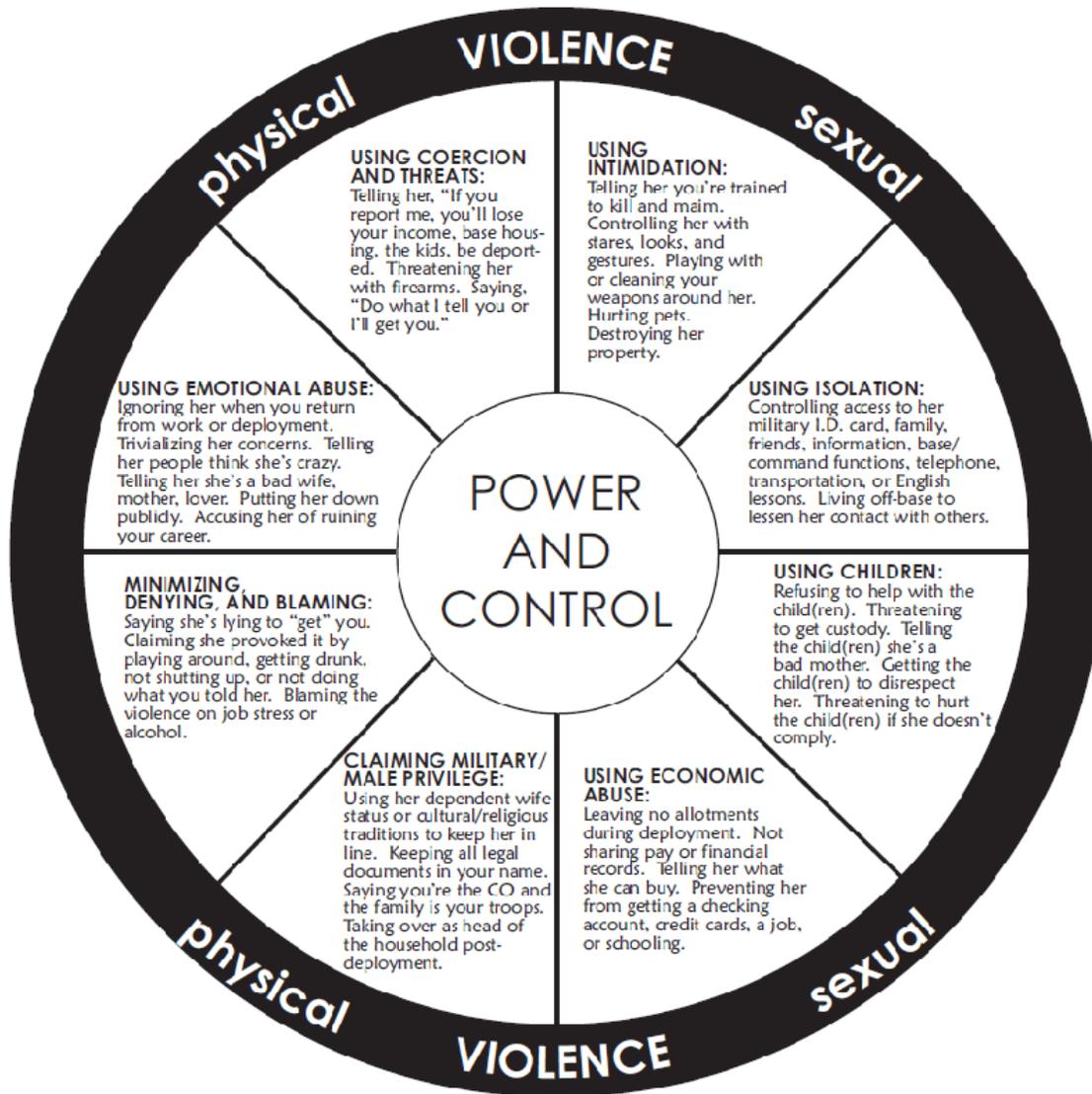


Created by the National Clearinghouse on Abuse in Later Life (NCALL), a project of the Wisconsin Coalition Against Domestic Violence (WCADV)  
 307 S. Paterson St., Suite 1, Madison, WI 53703 608-255-0539  
[www.ncall.us/www.wcadv.org](http://www.ncall.us/www.wcadv.org)

This diagram adapted from the Power and Control/Equality wheels developed by the Domestic Abuse Intervention Project, Duluth, MN

Permission to Adapt 2006

# MILITARY POWER AND CONTROL WHEEL



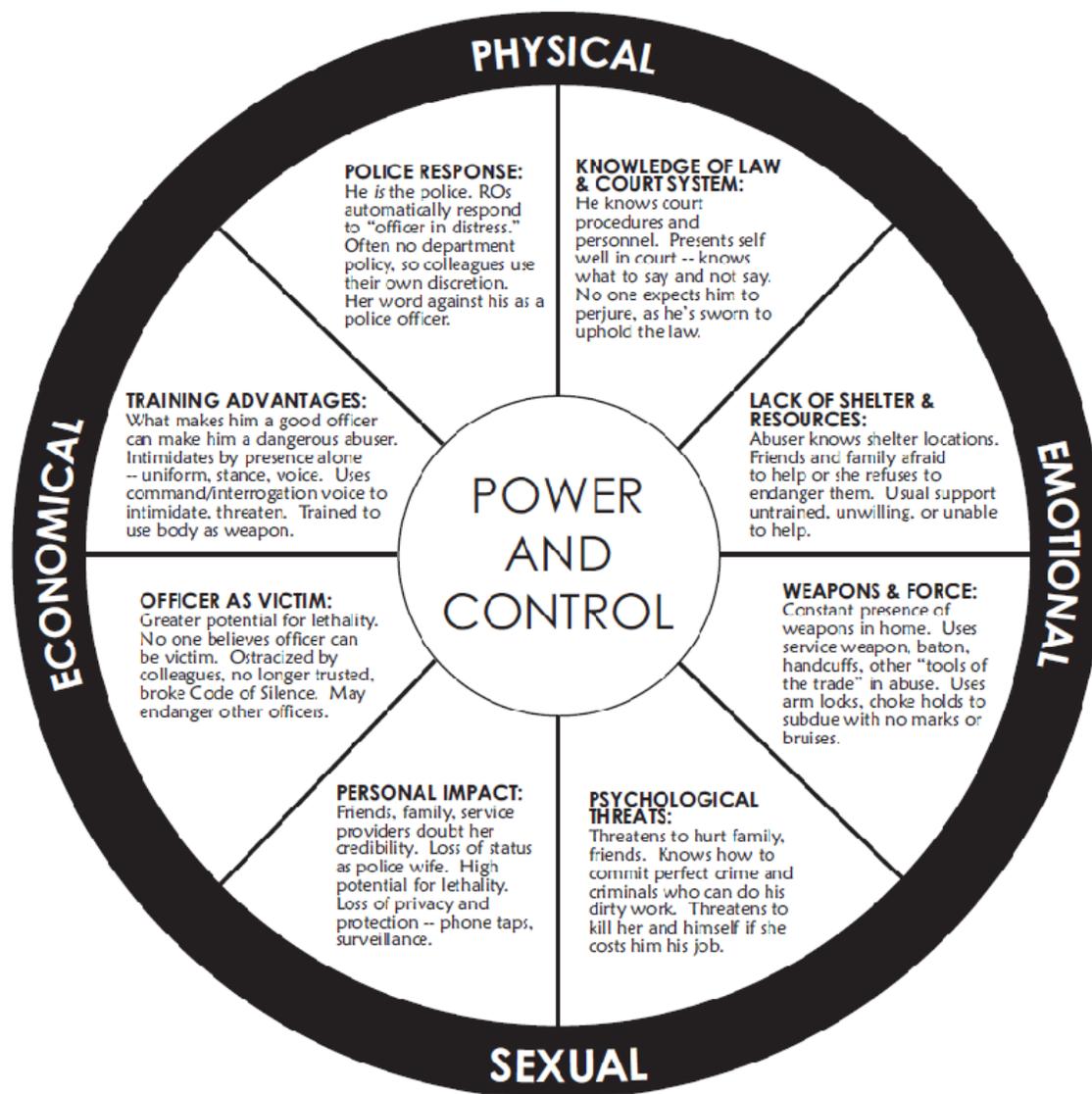
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Developed from:  
 Domestic Abuse Intervention Project  
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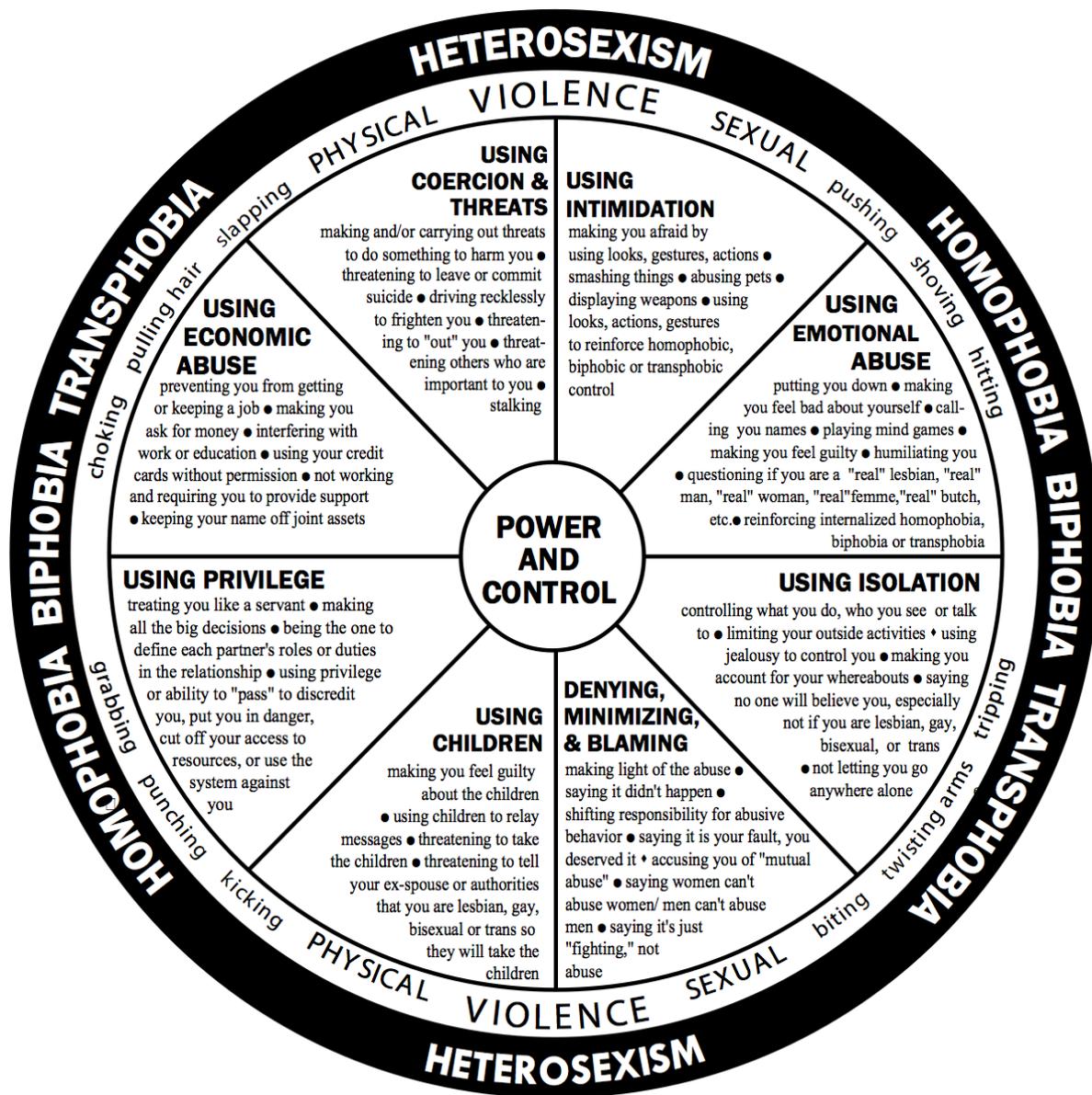
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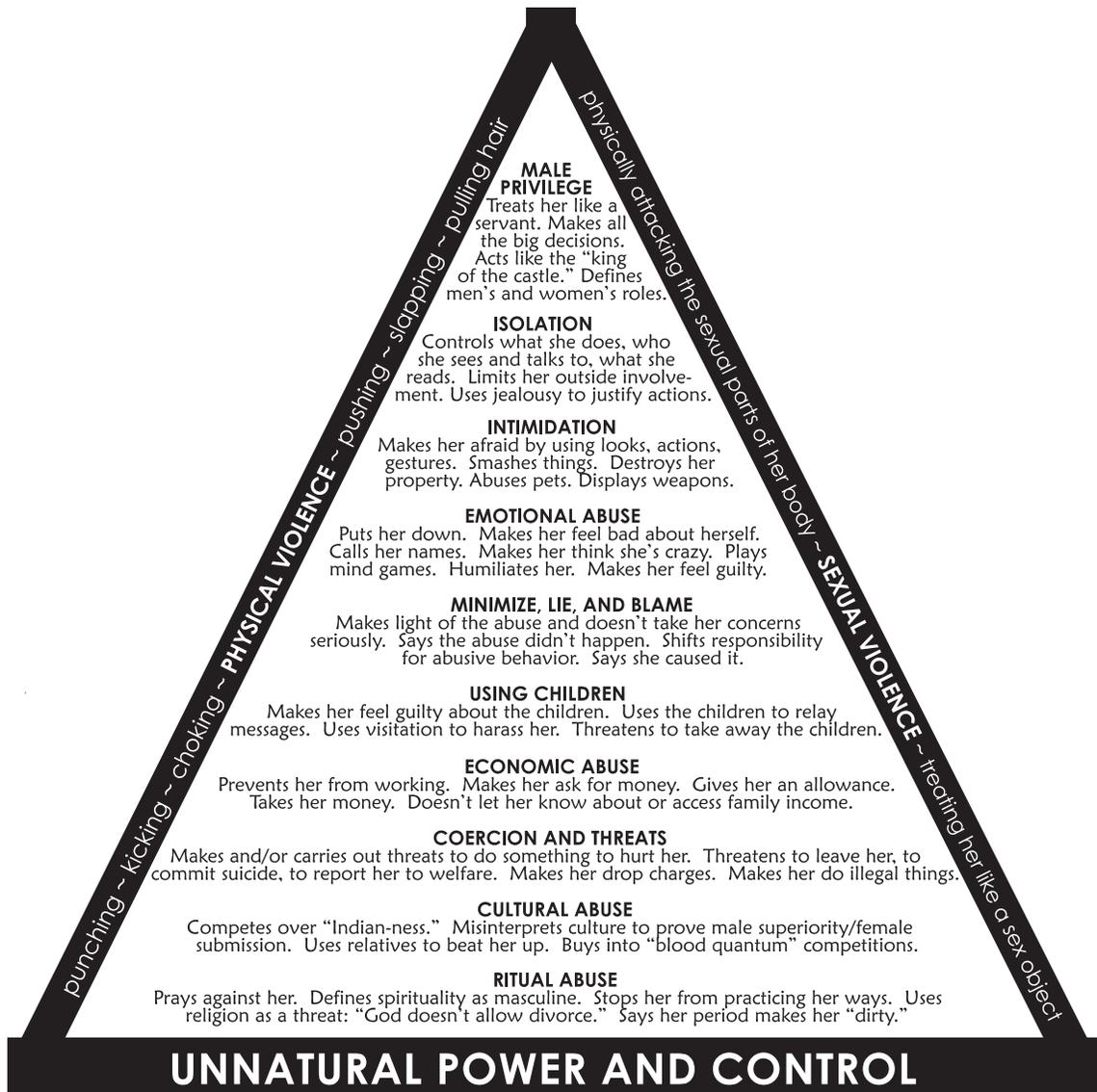
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# LGBTQIA Intimate Partner Violence



<sup>73</sup> <http://www.thehotline.org/wp-content/uploads/sites/3/2013/09/Screen-Shot-2013-09-18-at-2.08.31-PM.png>

# VIOLENCE AGAINST NATIVE WOMEN: BATTERING



Produced and distributed by:

Developed by:  
Sacred Circle - National Resource  
Center to End Violence Against  
Native Women



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## **Protective Order Forms and Laws:**

**The Family Abuse Protective Order forms may be found at the following link:**

<http://www.courts.state.va.us/courtadmin/aoc/legalresearch/resources/manuals/dcforms/districtcourtformsmanual.pdf>. The Petition for Protective Order – Family Abuse form (Form DC-611) can be found by first clicking the blue “DC-600S DOMESTIC RELATIONS” hyperlink on the left side of the screen. You can then scroll down to “DC-611 Petition for Protective Order – Family Abuse” (or to whichever form you may need).

**The Non-Family Abuse/General District Court (GDC) Protective Order forms may be found at the following link:**

<http://www.courts.state.va.us/courtadmin/aoc/legalresearch/resources/manuals/dcforms/districtcourtformsmanual.pdf>. The Petition for Non-Family Abuse Protective Order form (Form DC-383) can be found by first clicking the blue “DC-300S CRIMINAL” hyperlink on the left side of the screen.<sup>74</sup> You can then scroll down to “DC-383 Petition for Protective Order” (or to whichever form you may need).

**The links in the above manuals connect you to the Office of the Executive Secretary of the Supreme Court of Virginia’s district court manuals. The numbers in the fields of the forms correspond to instructions in the manual. This may be helpful for you to review in your spare time.**

**The Virginia Code is the collection of all the laws of Virginia. For links to current provisions of the Virginia Code, go to <https://law.lis.virginia.gov/vacode>. If, for example, you want to look up the current language of the Family Abuse EPO, §16.1-253.4, you would go to the above link and type “16.1-253.4.” You can also search by keyword(s) (e.g., “family abuse”) or by clicking on the link to “Title 16.1 Courts Not of Record.”**

**For a full list of model law enforcement policies that the Virginia Department of Criminal Justice Services (DCJS) makes available, please see: <https://www.dcjs.virginia.gov/law-enforcement/model-policies-virginia-law-enforcement-agencies>.**

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<sup>74</sup> Note that a petition for a protective order does not commence criminal proceedings against the respondent.



# Legal Advocacy Manual 2019



**VPLC**  
Virginia Poverty  
Law Center



Virginia Sexual and Domestic Violence  
**ACTION ALLIANCE**

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