

# Domestic Violence and Custody Issues

**D**omestic violence is a pattern of assaultive and coercive behaviors used by some individuals to control their partners. There are many types of domestic violence:

- Physical abuse is what most people think of when they think of domestic violence. Examples of physical abuse include hitting, punching, slapping, kicking, choking, shoving, hitting with objects and holding someone against their will.
- Emotional abuse includes yelling, name-calling, repeated insults, isolation, threats and hurting pets. Emotional abuse also includes crazy-making, a complex and intentional process that causes an individual to question what is real.
- Sexual abuse includes, among other things, unwanted sexual touching, rape and demanding sex. Marital rape is also a type of sexual abuse and is defined as any sexual activity by a married or cohabiting partner performed without the consent of the other partner.
- Stalking is a pattern of harassment, including following someone when they leave their house, harassing phone calls, purposefully running into the victim in public places, and calling or stopping by someone's workplace too often.

Domestic violence is not an isolated, individual event, but rather a complex pattern of repeated behaviors. This can include tactics of coercive control that, on their own, can be difficult for others to recognize as abuse, but create a cumulative effect of intimidation, threats and isolation. Individuals who have experienced ongoing, chronic exposure to such abusive tactics can become traumatized and might suffer lingering effects, such as post-traumatic stress disorder.

## FOCUS on Kids

*This guide is part of a series aimed at helping families in which parents are separated or divorcing and who share parenting responsibilities for children. We will use the terms divorce and separation interchangeably to describe parents who are separated from each other.*

## Power and control

There are many different ways individuals might abuse and control their partners.

- One might threaten to hurt their partner or themselves to get what they want.
- One might exert power over their partner with behaviors based on ideas of societal privilege, such as male privilege, enforcing traditional gender roles, racism and misusing

cultural traditions.

- One might economically abuse their partners by preventing them from working, making partners ask for money or not giving partners access to family income at all.

Following breakup or divorce, abusive individuals might:

- use the couple's children to control partners, such as using children as messengers or manipulating the children;
- threaten to take children away or use visitation or exchanges as an opportunity to harass their ex-partners; or
- intimidate their partners by destroying property, brandishing weapons and abusing pets.

Individuals who experience domestic violence know there are many other tactics their partners use to try to control them. Many abusers also isolate their partners from family and friends so they feel there is nowhere to turn when they decide to seek help.

## Safety issues

There are a number of ways individuals who experience abuse can try to protect themselves and their children. A survivor can file a criminal police report about the abuse, or they can file for an order of protection in civil court. Through an order of protection, the court places restrictions on abusers that can subject them to arrest and jail time. Survivors can ask judges to tailor an order of protection to their needs and include custody issues if need be. It is important to note, however, that once a custody order is made or pending in a divorce or paternity case, a custody order cannot be made in an order of protection.

If a survivor already has an order of protection in place when the custody case begins, an opposing counsel might suggest dismissing the existing order of protection in favor

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of a no-contact order in the dissolution case. A no-contact order in a dissolution case does not have criminal penalties, unlike an order of protection. Abusive individuals cannot be arrested for violating a no-contact order, and the police will not enforce no-contact orders contained in a dissolution or custody order.

During a custody court process, survivors have to make several decisions about the future for themselves and their children. The courts greatly emphasize cooperation between separating parents. For example, mediation and joint custody arrangements are routine in custody cases. However, survivors can ask the court to waive mandatory mediation because they are victims of domestic violence. It is important to discuss these issues with an attorney.

If survivors fear for their safety in the courthouse, they can also seek the services of a domestic violence shelter advocate or an escort to take them to court and elsewhere. Survivors can also request for the court marshal or bailiff to use appropriate safety measures in or after court. Marshals and bailiffs might be able to accompany survivors to their vehicle or ask that the abusive partner remain in the courthouse while the survivor leaves. Learn what safety measures a local court can provide.

## Dissolution and custody cases

Many individuals who have experienced abuse fear losing custody of their children to an abusive partner. Missouri is a friendly parent state, which means that courts favor granting joint custody. It is the policy of the state that frequent, continuing and meaningful contact with both parents is in children's best interest. There is an exception to this policy for cases in which the court finds that such contact is not in the best interest of the children, such as in a domestic violence situation.

Not all attorneys are knowledgeable about domestic violence. Some attorneys understand better than others the dynamics of domestic violence and have experience with the impacts of domestic violence on custody issues. To locate an experienced attorney, survivors might contact:

- local victim advocate services, such as local domestic violence programs or shelters;
- local legal services, such as Legal Aid or Legal Services; or
- family lawyers experienced in domestic violence issues who offer free 30-minute consultations.

If it is safe to do so, survivors can keep copies, records and personal journals of the following to help with their case:

- Written records of all interactions with the abuser, including exact times and dates children are picked up and returned, dates and amounts of child support paid and owed, and any violations of court orders of protection
- Documentation of abuse, such as police reports, medical records, photographs and claims for crime victim compensation
- Certified copy of marriage certificate, children's birth certificates and Social Security cards

- Rent receipts, bank statements, utility bills, credit card records, tax information, real estate information and children's report cards

These documents might be necessary when going to court over custody arrangements or visitation. Survivors might also need them if there are future incidents of abuse or motions to modify custody or child support arrangements.

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### Safety in emergencies and during an abusive incident

There are some important things you can do to protect yourself during an abusive incident:

- Be alert for any signs that your abuser might be upset or break out in violence.
- Go into a room or area with access to an exit; not the bathroom, kitchen or anywhere near weapons.
- Practice how to safely get out of your home with your children.
- Keep a packed bag ready and hidden to leave quickly.
- Fuel up the car in advance, making sure it is facing the exit, with only the driver's door unlocked and a spare key well hidden from the abuser.
- Identify a neighbor you can tell about the violence and ask them to call the police if they hear a disturbance.
- Devise a code word to use with your children, family, friends, coworkers and neighbors when you need the police.
- Develop a plan for where you will go if you have to leave home, even if you don't think you will need to. Know the phone number of a shelter in your area you can call if you need a safe place to stay.
- Use your instincts and judgment. If the situation is dangerous, consider giving the abuser what is necessary to calm them.

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### Safety when preparing to leave

There are several considerations when preparing to leave an abusive situation:

- Open a savings account in your name and think of other ways to make yourself more independent.
  - Leave money, an extra set of keys, copies of important documents and extra clothes with someone you trust so you can leave quickly.
  - Determine who will let you stay with them or lend you money.
  - Keep important phone numbers close at hand, such as that of a local shelter.
  - Make a safety plan and review it regularly to plan the safest way to leave.
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### What you can do to help your children

Parents and children might continue to experience stress after divorce. In some situations, a final divorce does not mean abusive behaviors or violence have stopped. Look out for these symptoms of stress:

- Fear of closeness or difficulty trusting others
- Post-traumatic stress disorder, the signs of which include re-experiencing a traumatic event, feeling numb and constantly on edge
- Anxiety
- Low self-esteem
- Sleep problems
- Physical complaints, such as stomach or headaches
- Defiant or aggressive behavior, such as biting or hitting
- Delinquent behavior
- Problems at work or school
- Withdrawal or depression

Depending on the levels of violence witnessed or experienced, the custodial parent might want to consider getting their children proper counseling to help them cope with the effects of domestic violence and divorce. Here are some helpful age-appropriate strategies you can use as a parent:

- **Infants.** Maintain their normal, routine schedules. Continue reassuring them of your presence with affectionate care. Make sure their favorite toys or blankets are always within reach.
  - **Toddlers.** Arrive earlier than usual when you are separating, such as when dropping them off at day care. Reassure them of your presence with loving affection and that you will protect them from harm. Let them know you understand their distress by being patient and supportive of old and new behaviors, such as during toilet training.
  - **Preschool and early elementary.** Consistently remind them they are not responsible for the violence or abuse. Be sensitive to and discuss children's thoughts and feelings. Remind them that violence is not the proper way to handle issues with others. Reassure them that you will not hurt them and will not let anyone else hurt them.
  - **Preteen and adolescence.** Remain open to communication with them and reassure them of your presence with loving affection. Remind them that violence is not the proper way to handle issues with others. Maintain routines within the family, such as Sunday dinners, weeknight homework, or family-fun nights. Give them household chores and responsibilities if necessary, such as doing laundry and preparing meals, and show your appreciation for their doing these tasks.
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### Behaviors to avoid

Children can understand and interpret your behaviors more than you might think, so be aware of what you say and do. Here is a list of behaviors for parents to avoid:

- Saying bad things about the other parent, such as by calling them names or blaming them for things
  - Fighting or arguing with the other parent in person, over the phone or in other modes of communication
  - Confiding in your children, especially your teenagers
  - Making your children the middle-men and messengers between parents
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### *Types of court-ordered custody*

Legal custody is the right and obligation to make decisions about a child's upbringing, such as those regarding children's schooling, religion and medical care.

- Sole legal custody is an arrangement in which only one parent has decision-making rights, responsibilities and authority relating to the children.
- Joint legal custody means that the parents share the decision-making rights, responsibilities and authority relating to the children. This means parents must confer with each other in making decisions about their children.

Physical custody describes when a parent has the right to have their children with them.

- Sole physical custody means children reside with one parent, and the noncustodial parent might have specific visitation rights described in a court-ordered parenting plan.
- Joint physical custody means that each parent has significant — but not necessarily equal — periods of time during which the children reside with them. One parent's address is designated as the address of the children for mailing and educational purposes.

Courts prefer joint custody and always start from the position that joint physical and joint legal custody is preferable. Absent extreme circumstances, courts prefer to have both parents involved in decisions regarding the children. Proving domestic violence is present is one such extreme circumstance that can lead the court to grant sole custody. Individuals who have experienced abuse should consult an attorney about this.

### *Evidence of domestic violence*

If presented with evidence of domestic violence, courts must consider that evidence when making decisions involving custody or visitation. Missouri's custody statute is not particularly sensitive to domestic violence survivors in several respects. The statute includes language articulating that it is state policy to encourage both parents to participate in decisions affecting the health, education and welfare of the children, and to resolve disputes

involving their children amicably through alternative dispute resolution. Participating in joint decision-making or going to alternate dispute resolution such as mediation with an abusive parent might be traumatic or dangerous for survivors.

The custody statute also requires courts to determine custody arrangements to ensure both parents participate in such decisions. It requires that both parents have “frequent, continuing and meaningful contact” with their children so long as it is in the best interests of the children. To the court, survivors might appear to be noncooperative parents when in actuality they are being protective of their children. That is why it is so important in custody cases for attorneys to present strong evidence of domestic violence if survivors do not want abusers to have joint physical and legal custody.

If a court finds that domestic violence has occurred, it must make specific findings of fact to show that a court-ordered custody arrangement best protects the children and the victim of domestic violence from any further harm. The court can award custody to the parent who perpetrated domestic violence if it finds that is in the best interest of the children. If the court finds that a pattern of domestic violence has occurred and still awards custody to the abusive parent, it must issue findings of fact and conclusions of law explaining the award. If the judge does not make these findings, it would be an appealable issue.

## Parenting plans

During the custody case, survivors will have to develop a parenting plan. This document states the parents’ wishes regarding a specific written schedule detailing custody, visitation and residential time for each child with each parent, as well as times and places of transfer of the children. A parenting plan also includes suggested restrictions and limitations on access to other persons and reasons why, a specific written plan for legal custody, and the allocation of responsibility for paying the children’s expenses.

Be specific when drafting a parenting plan. Survivors know whether their former partners will cooperate or are just appearing cooperative during the divorce process. Get in writing any agreements made during divorce negotiations. When making these decisions, survivors are advised to think of future dealings with the other parent and the long-term well-being of their children. Survivors are encouraged to think of ways to limit contact with the other parent in the parenting plan, such as by requesting contact only through email or text, or by arranging custody exchanges in public places or at a police department.

If the parents are able to agree on issues contained in the parenting plan, they can submit a joint parenting plan. If the parents do not agree, then each parent submits their parenting plan to the court. The court then makes a determination about which parent’s plan is in the best interest of the children after listening to all of the evidence at trial and order that both parties follow that plan. The court can also reject both parties’ plans and order a parenting plan drafted by the court.

## Co-parenting after divorce

If a survivor has continued contact with the other parent as a result of a custody or visitation arrangement, they can consider the following ways to ensure the safety and well-being of themselves and their children:

- Recognize continued abuse and control attempts. If abuse continues, document it. Continue to document interactions with the former spouse as described above in the Safety issues section.
- Set boundaries. Change the locks if the former partner has a key, and decide who is and is not allowed to enter the house. Set and maintain expectations for the abuser to follow during visits with children. Refer to the parenting plan, if necessary, to focus on appropriate topics to discuss and methods of communication to use with your former partner. Coordinate the consequences of an abuser’s violation of the parenting plan with your attorney, such as suspending contact or filing a restraining order.
- Prioritize safety. Exchange children in a neutral public place or at a police department. Inform teachers and other care providers exactly who does and does not have access to your children.
- Foster positive adjustment for yourself and children. Build a strong support system for yourself by getting involved with others in the community and encourage your children to do the same.

## Conclusion

To seek help, individuals experiencing abuse can call the National Domestic Violence Hotline at 800-799-SAFE. To get more information or to find a local domestic violence program, call the Missouri Coalition Against Domestic and Sexual Violence at 573-634-4161. The coalition is not a direct service provider, but individuals can visit its website at <http://www.mocadsv.org>, and click on “Need Help?” for a map of local domestic violence programs across Missouri.

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This guide was originally authored by Kim Leon.

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