

## Domestic Violence in Custody Proceedings in the District of Columbia

When working with families of survivors of domestic violence, it is important to understand the legal remedies available for the family, the resources the court can provide the parties, and the strategic considerations when advocating for your client. The following items offer practitioners the opportunity to develop a foundation to better understand the interplay of domestic violence/intimate partner violence in custody proceedings.

A custody case can involve two parents or it may also involve a third party complainant and a parent.

### For Parent vs. Parent Custody Cases

Pursuant to [D.C. Code 16-914 \(B\)\(2\)](#), there shall be a rebuttable presumption that joint custody is in the best interest of the child or children, except in instances where a judicial officer has found by a preponderance of the evidence that an intrafamily offense as defined in § 16-1001(8).

Under [D.C. Code § 16-1001\(8\)](#) an “intrafamily offense” means interpersonal, intimate partner, or intrafamily violence. [Under DC Code § 16-1001\(9\)](#) “intrafamily violence” means an act punishable as a criminal offense that is committed or threatened to be committed by an offender upon a person to whom the offender is related by blood, adoption, legal custody, marriage, or domestic partnership, or with whom the offender has a child in common.

### For Parent vs. Third Party

Under [D.C. Code § 16-831.02](#) a third party may file a complaint for custody of a child or a motion to intervene in an existing action involving custody of the child.

Pursuant to [D.C. Code § 16-831.02 \(b\)\(1\)](#) at any time after the filing of a third-party complaint for custody or a motion to intervene, a parent may move to dismiss an action filed by a third party on the grounds that the third party has committed an intrafamily offense against the child, the child's parent, or any other member of the child's family, or that the third party does not meet the characteristics set forth in subsection (a) of this section.

### Court Resources

The D.C. Superior Court's [Domestic Violence Division](#) is located at 500 Indiana Avenue NW, Room 4510. The Domestic Violence Division handles request for Civil Protection Orders as well as cases alleging violation of protection orders and all misdemeanor criminal cases involving intrafamily offenses. The Domestic Violence Division can answer questions on [how to get a protection order](#).

[The Domestic Violence Intake Centers](#) are located at the Moultrie Courthouse at 500 Indiana Avenue, NW, Room 4550, Washington, DC 20001 and the United Medical Center at 1328 Southern Avenue, SE, Suite 311, Washington, DC 20032. The Intake Centers have representatives from the Court as well as the following organizations:



- [Office of the Attorney General for the District of Columbia](#) (including a child support enforcement officer)
- [DC Metropolitan Police Department](#)
- [SAFE \(Survivors and Advocates for Empowerment\)](#)
- [US Attorney's Office](#)
- [Legal Aid Society of DC](#)
- [AYUDA](#)
- [Bread for the City](#)
- [DC Volunteers Lawyers Project](#)
- [Wendt Center](#)

*The Center in the Moultrie Courthouse, 500 Indiana Avenue, NW, Room 4550*

The Intake Center in the Moultrie Courthouse handles all aspects of a case including requests for Temporary Protection Orders (TPO) (two week orders). The Center provides counseling, social services, and legal assistance to clients. TPO hearings requested in the Moultrie Courthouse are held in person before a judge.

*The Greater Southeast Intake Center in the United Medical Center, 1328 Southern Ave., SE, Medical Pavilion, Suite 311*

The Greater Southeast Intake Center handles initial filings for Civil Protection Orders (CPOs) and motions. Clients can request a TPO (two week order) in the Greater Southeast Intake Center and hearings are conducted via teleconferencing. The Center provides counseling, social services, and legal assistance to victims. To obtain a CPO (order that lasts one year), parties must go to the Moultrie Courthouse.

Through [Supportive Advocacy Services](#), DC SAFE provides court-based advocacy services for more than 6,000 survivors each year. The Supportive Advocacy Team is located in the Domestic Violence Intake Center (DVIC) at DC Superior Court and the DVIC Southeast Satellite (DVICSE) at United Medical Center. Advocates work with victims throughout their court case to ensure that the legal remedies they seek enhance their overall safety, and to provide resources, information and referrals as the survivor's situation changes over time. The [D.C. Superior Court Supervised Visitation Center](#) provides supervised visitation and exchange services primarily to court referred domestic violence cases.

## Additional Resources

The D.C. Superior Court issued a [Domestic Violence Case Management Plan](#) to inform the public and court staff regarding the specific procedures of the Domestic Violence Unit.

[Legal Resource Library](#) – DV LEAP is a nationally recognized resource for lawyers and survivors involved in domestic violence litigation or policy work. DV LEAP's library consists of:

- [Brief & Court Opinions](#)
- [Publications](#)
- [Case Digests](#)
- [Training Materials](#)
- [DV Organizations](#)
- [Custody Resources](#)

The [D.C. Coalition against Domestic Violence](#) , which offers support, services, education and advocacy, provides a list of [Legal Assistance](#) for survivors of domestic violence and publishes [Domestic Violence Laws in the District of Columbia](#).

[Victim Legal Network of DC](#) (VLNDC) is a network of legal service organizations in the D.C. that provides services to victims of crimes in D.C.

[Network for Victim Recovery of DC](#) (NVRDC) [Legal Clinic](#) provides free one-on-one legal advice to victims of crimes regarding the following areas:

- Crime Victim's Rights
- Civil Protection Orders
- Legal options under Title IX for university/college student survivors of sexual assault, intimate partner/dating violence, and stalking
- Rights for survivors of domestic violence seeking to break their lease; and
- Limited advice, information, and referrals related to being a crime victim in the District of Columbia.

The American Bar Association Commission on Domestic Violence and Sexual Violence (ABA) House of Delegates adopted the "black letter" law of [Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil Protection Order cases](#).

The [D.C. Bar Association](#) offers a list of [links for legal information](#) purposes.

## Domestic Violence in Neglect Proceedings in the District of Columbia

When court-appointed as a Guardian *ad litem* for a child that has alleged to have been affected by domestic violence, there are certain considerations when formulating a best interest determination for a child involved in neglect proceedings.

Children exposed to domestic violence may be alleged to be abused or neglected pursuant to different statutory provisions:

- [D.C. Code § 16-2301\(9\)\(A\)\(i\)](#): “the term ‘neglected child’ means a child who has been abandoned or abused by his or her parent, guardian, or custodian, or whose parent, guardian, or custodian has failed to make reasonable efforts to prevent the infliction of abuse upon the child. For the purposes of this sub-subparagraph, the term ‘reasonable efforts’ includes filing a petition for civil protection from intrafamily violence pursuant to section 16-1003.”
  - The Court of Appeals cases *In re L.D.H.*, 776 A.2d 570, (D.C. 2001) and *In re N.P.*, 822 A.2d 241 (D.C. 2005) make clear that when children are exposed to domestic violence and therefore suffered mental injury, such evidence can allow a court to find that the child experienced inflicted abuse pursuant to D.C. Code §16-2301 (23)(A)(i).
  - Pursuant to [D.C. Code § 16-2301\(b\)\(31\)](#), “the term ‘mental injury’ means harm to a child's psychological or intellectual functioning, which may be exhibited by severe anxiety, depression, withdrawal, or outwardly aggressive behavior, or a combination of those behaviors, and which may be demonstrated by a change in behavior, emotional response, or cognition.”
- [D.C. Code § 16-2301\(9\)\(A\)\(ii\)](#): “the term ‘neglected child’ means a child who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his or her physical, mental, or emotional health, and the deprivation is not due to the lack of financial means of his or her parent, guardian, or custodian.”

### Making Best Interest Determinations

In assessing the best interest of the child, the Guardian *ad litem* attorney should assess the impact of domestic violence on the children involved. This may include investigating the circumstances that led to the child being exposed to domestic violence and whether the child suffered mental injury as a result of being exposed to domestic violence.

In order to gather the information needed to make a best interest recommendation for a child exposed to domestic violence, the Guardian *ad litem* may want to interview all of the parties involved, including, but not limited to:

- The child(ren)
- The parents
- Family members
- Community members/familial supports
- Social workers
- School staff members
- Medical professionals

- Counselors involved with the family
- Law enforcement

The Guardian *ad litem* may also want to review records involving the family, including, but not limited to:

- Complaint filed by the District of Columbia
- Medical records
- Criminal and civil background checks (including whether any TPOs or CPOs have been filed)
- Social media

The Guardian *ad litem* should take into consideration the following things about survivors of domestic violence:

- Survivors of domestic violence often delay disclosures of certain violence in the home
- Depending on the survivor's cultural background, the survivor may not understand that certain acts are considered violence
- Survivors of domestic violence often recant their statements
- Survivors of domestic violence often appear, on the surface, to show affection towards the perpetrating parent for various complex reasons
- Survivors of domestic violence sometimes have a history of protective behaviors that can appear contrary to be contrary to the child's safety
- Offending parents will often file restraining orders and custody complaints in order to maintain control over the non-offending parent
- Offending parents will often be the person to initiate calls to the police or social services

## Assessing the Need to Remove a Child from their Home due to DV Allegations

Pursuant to [Super. Ct. Neg. R. 13](#), when CFSA moves the court to place a child in shelter care, the government shall have the burden of showing that shelter care is required under the criteria set for in [D.C. Code § 16-2310](#).

Under D.C. Code § 16-2310, a child shall not be placed in shelter care prior to a fact finding hearing or dispositional hearing unless it appears from available information that shelter care is required and that no alternative resources or arrangements are available to the family that would adequately safeguard the child without requiring removal.

When assessing whether the Guardian *ad litem* should support shelter care for a child, it is important to investigate whether a safety plan with the victim parent of domestic violence can help eliminate the risk of removing the child from the home. When determining whether a safety plan could be helpful, please refer back to the Safety Planning section of this Practice Kit.

## Practice Standards for Attorneys in Child Abuse and Neglect Proceedings

While keeping in mind the complexities involved in abuse and neglect cases involving allegations of domestic violence, it is paramount to ensure that the attorney's work is in compliance with the [Child Abuse and Neglect Attorney Practice Standards](#).