

## Domestic Violence: A Necessary Recap of the Basics

October is Domestic Violence Awareness Month. In spite of the help and information available to victims of domestic violence, and the increased awareness by law enforcement about what abuse looks like and how to address it, domestic violence still exists and has not disappeared. Therefore, what many already know about this topic and the legal remedies available bears repeating.

If this information causes even one victim to seek a way out of an abusive relationship, then the repetition is invaluable.

Acts of domestic violence do not always look the way one might expect, and its victims do not, either. Family law attorneys see abuse in all forms - physical, emotional and financial - and encounter victims from every race, ethnicity, gender, sexual orientation and socioeconomic group. At its core, domestic violence is an abuse of power in an intimate relationship.

In the media, domestic violence is generally portrayed as physical abuse. In reality, however, domestic abuse takes on more subtle forms just as often. For example, stalking or harassment using technology or social media can also be forms of domestic violence. All domestic abuse creates a power imbalance between the abuser and the victim, which can have a long-term adverse impact on everyone living in the same household as the abuser. That is especially true for children who witness domestic violence.



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### *Physical Abuse*

Physical abuse does not always cause black eyes and bruises. Many abusers seek to maintain control over their victims long-term, and any obvious physical signs of abuse on a victim may prevent this goal. For example, pinning a victim in place, or placing hands around a victim's neck, is abuse, even if these acts leave no physical evidence. Any physical

interaction which causes physical harm, or causes a victim to feel threat of physical harm, is abuse. In a family law proceeding, these actions are a basis for a victim to seek and obtain an order of protection against an abuser. A judge can issue an order of protection without prior notice to the abuser where the victim can show that notice would place her in

in danger of further harm. Orders of protection entered in one state are enforceable in other states. A lack of physical evidence does not mean that abuse did not occur, and credible allegations of abuse can lead to serious consequences for an abuser.

### *Emotional Abuse*

Berating and name-calling are also forms of abuse, particularly if these behaviors occur repeatedly. Other forms of emotional abuse are threats of harm to the victim or someone she cares about.

“Acts of domestic violence do not always look the way one might expect, and its victims do not either.”

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Schiller DuCanto & Fleck  
Congratulates

Anita Ventrelli

on being selected as one of  
Corporate Counsel's

2018

National Women in Law honorees

# Domestic Violence: A Necessary Recap of the Basics (continued from Page 1)

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By: Jessica Bank Interlandi

Emotional abuse can be insidious; a victim may not realize she is a victim until a family member, friend or attorney highlights the abuse. Victims of emotional abuse are often reticent to report it, even though courts can issue orders of protection based on credible claims of emotional abuse.

## *Financial Abuse*

A less-obvious form of domestic abuse is financial abuse. Financial abuse can be hard to define: it is not budgeting, or disagreements about when and how much money should be spent. It is not partners insisting on separate accounts or separate income tax returns. It is, however, the systematic and repeated withholding of financial information by a spouse, or measures taken to significantly control a victim's access to funds. Victims of financial abuse may also be subject to abuse in its other, more "visible" forms. Victims of long-term financial abuse sometimes come to believe that their partner is entitled to the funds and to withholding information. Financial abuse can be a means for a partner to prevent a victim from leaving a relationship. Abuse is about control, and withholding financial information or funds is a means for an abuser to achieve control. In a divorce proceeding, there are many ways to address this form of abuse—courts can award support and attorney's fees, and can require an abuser to turn over financial information. Penalties for failure to follow a court order can be severe, and can include time in jail.

## *Abusers Repent*

Repentance for bad acts can be as much a part of the abuser's profile as the abuse itself. The technical term for this is the "Cycle of Abuse" or "Cycle of Domestic Violence." It looks like intervals on a bar graph—escalations of abusive behaviors, followed by periods of remorse, apology and even kindness by the abuser to his victim. This is how control is exercised, how an abuser makes peace with his actions and keeps a victim in the relationship. It is easy for a victim to be lulled into feeling as if the abuser has changed for good. The triggers that exist in the mind of the abuser are still present, however. Once set off, the cycle of abuse and repentance begins again. It rarely stops or gets better until the victim leaves.

The cycle of domestic abuse often causes victims to feel that the repercussions of "outing" their abuser outweighs the potential benefit of seeking help. Most professionals and organizations that help victims of domestic violence maintain strict confidentiality with victims, including attorneys and shelters. One important resource is the State of Illinois Domestic Violence Helpline, which may be reached at 1(877) 863-6338. In addition, the Illinois Department of Human Services (IDHS) website includes a list of domestic violence agencies by city. If you are being abused, or are the loved one of someone suffering abuse, consult with a professional or an organization to help find a path out of the cycle of domestic violence.

# Domestic Violence Protections

Domestic Violence impacts thousands of families each year, regardless of race, socioeconomic status, religious beliefs or sexual orientation. While social media has helped bring attention to issues of sexual violence (#MeToo Movement), workplace harassment (#TimesUp) and domestic violence survivors (#SurvivorSpeaks), it bears repeating that a "hashtag" is not enough to protect victims; instead, several laws provide the necessary protection.

In Illinois, domestic violence is a crime where the offender and the victim have a specific relationship. The Illinois Domestic Violence Act (750 ILCS 60/101 et al.) includes "family members" or "household members" as persons subject to protection under that Act, including individuals who are married, divorced or separated spouses; those in a current or former dating relationship; those who are parents or stepparents and children or stepchildren; unmarried parents who have children together; family relatives by blood; relatives by blood through a child; current or former roommates; and caregivers and disabled or elderly adults. Any person who hits, chokes, kicks, threatens, harasses, or interferes with the personal liberty of another family member or household member has committed "abuse" under the Act. The Act helps victims of domestic violence to obtain protection from the offender including, but not limited to, an Order of Protection, exclusive possession of a residence and the safeguarding of his or her children.

One of the most confusing things about domestic violence actions is the difference between a civil action and a criminal action. In domestic violence cases, it is very possible that both a civil and criminal case may occur at the same time as the result of the same violent act. In a civil domestic violence action, the victim asks the Court for protection from the abusive person, and does not request that the offender be sent to jail for committing the violent act. However, if the abuser violates the civil order of protection, the abuser may then be jailed for the violation. In a civil case, it is the victim who brings the case against the abuser and (in most instances), the victim retains the right to withdraw the case against the abuser. In Illinois, orders of protection are under the civil law system.

Specifically, an order of protection is a court order which restricts someone who has abused a family or household member. Such order may prohibit the abuser from continuing threats and abuse; order the abuser to stay away from the victim and other protected persons; prohibit the abuser from taking or hiding children; require the abuser to turn over weapons to local law enforcement; and/or prohibit the abuser from any other actions necessary to prevent further harm. An order of protection can be obtained by contacting a domestic violence program or by retaining an attorney.



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Even if a victim does not pursue an order of protection, she or he may still petition the court to have the abuser forcibly removed from the residence where both the victim and abuser reside. Illinois law provides for the court to forcibly remove a person from the parties' residence in cases where domestic violence is present and to provide for the exclusive possession of the residence to the victim. In a divorce action, to forcibly remove a spouse from the house, a party must file either a Petition for Exclusive Possession under Section 701 of the Illinois Marriage and Dissolution of Marriage Act, or a Petition for Order of Protection under the Domestic Violence Act. The ability to seek exclusive possession is available to all domestic violence victims irrespective of whether they are married to the abuser or not. Specifically, exclusive possession is a remedy available in any case where the risk of future abuse outweighs the hardship the abuser experiences in being forced from the residence. In Illinois, exclusive possession does not affect title or dictate who will ultimately be awarded the home upon entry of a divorce judgment, although it does impact other issues, such as temporary living arrangements, parenting matters and support.

The protections provided under an order of protection are not nullified if the victim moves or travels out of state, as that order can be enforced so long as it remains valid. The federal Violence Against Women Act mandates that all valid orders of protection granted in the United States receive "full faith and credit" in all state and tribal courts within the US, including US territories. This means that each state must enforce an out-of-state order of protection in the same way it enforces its own orders. Thus, if the abuser follows the victim out of the "issuing state" and attempts to harm the victim, he or she will be punished according to the laws of whatever state the abuser and victim are located in at the time the order is violated. An order of protection is valid anywhere in the United States so long as: (1) it was issued to prevent violent or threatening acts, harassing behavior, sexual violence or to restrain the abuser from contacting or coming within a certain proximity of the victim; (2) the court that issued the order had jurisdiction over the parties and the case; and (3) the abuser received notice of the order and had an opportunity to go to court to tell his / her side of the story.

Similarly, issues relating to children including, but not limited to, naming them as protected persons in an order of protection and designating the temporary or permanent custodian for the children (i.e. allocating

decision-making rights and parenting time to one or both parents), can be addressed by the court even in domestic violence cases. The law also provides that if a person is convicted of a domestic violence crime, he or she cannot possess a firearm. The Domestic Violence Offender Gun Ban states that anyone who has been convicted of misdemeanor domestic violence or is the subject of an order of protection for domestic abuse cannot own, use, ship, or transport any firearms or ammunition.

The violation of a civil order of protection or a domestic violence case which also involves the violation of a criminal law such as murder, theft, unlawful possession of a controlled substance or firearm, are handled as criminal matters. In a criminal case, the prosecutor (also called the State's Attorney) has control over whether the charges against the abuser proceed forward or are withdrawn. Thus, in a criminal action, it is no longer the victim who pursues the case, but rather the County / State who brings the legal action against the abuser. Even if a victim decides to withdraw his or her civil order of protection, if there has been a violation of the order of protection or other criminal-related matters, the prosecutor may still move forward with the case.

In sum, domestic violence is a crime and must be immediately addressed to prevent further harm to the victim and to protect children from the cycle of violence. There is no shame in getting the help needed, as domestic violence impacts every community. A key way to combat domestic violence is to report the abuse and let the law provide the protections necessary to keep a victim safe, so as to allow more #survivorspeak.

# 'Monitoring' Another Via Social Media May Bring Felony Stalking Charges

Republished from the Chicago Daily Law Bulletin

Under the Illinois Domestic Violence Act (750 ILCS 60/101 et. seq.), a civil order of protection is available to victims "abused" by persons with whom they have a dating, familial or household relationship. "Abuse," in turn, is defined as "physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation." If warranted by the facts, these civil protections may be invoked in conjunction with divorce proceedings commenced pursuant to the Illinois Marriage and Dissolution of Marriage Act.

Notably, one of the stated remedies that may be included in a civil order of protection is to prohibit the stalking of

the victim, as defined in Section 12-7.3 of the Criminal Code (720 ILCS 5/12-7.3) where such stalking has occurred or "otherwise appears likely to occur if not prohibited." In *People v. Gauger*, 2018 IL App (2d) 150488, our Appellate Court provides a vivid warning of how a party's use of social media to keep tabs on a former spouse may result in a

criminal felony charge of stalking by way of "monitoring" her activities.

First, a bit of background. In the more than 25 years since the criminal offense of stalking was first enacted in 1992, the General Assembly has amended these provisions several times, resulting in an expansion of the definition of this crime. Originally, stalking required an intentional threat of a violent crime combined with multiple acts of following or surveillance in furtherance of that threat. Although that threat-focused definition has been retained in one subsection, new subsections have been added over the years to include additional conduct from which the threat requirement has been eliminated.

At the same time, numerous societal changes have occurred, including the creation and proliferation of social media platforms such as Facebook, Twitter and the like, where personal

information regarding the activities, acquaintances and location of a party are documented on a regular basis. Statistics show that social media has increased the amount of stalking, as a party can now be victimized by being followed and harassed from afar, without the stalker being physically present.

This was the case in *Gauger*, where the parties had been married and had two children together. Crystal Carswell had an active civil order of protection against her former husband when she discovered he had engaged in numerous fictitious activities involving her on Facebook, including that he had reactivated her old account which he then used to issue new "friend" requests to



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third-parties in her name, as well as creating a false account in the name of one of her friends and then using that account to send Carswell social invitations and messages. Ultimately, police discovered images on Gauger's computer of Carswell's Facebook posts, photos of Carswell and the parties' children taken from her Facebook page, and emails pertaining to Carswell and her family. After at first denying any involvement, Gauger then admitted to using the fake Facebook accounts to obtain photos and to "access" Carswell's homepage, although he denied sending her any messages.

Gauger was charged and found guilty of violating an order of protection (720 ILCS 5/12-3.4(a)), stalking and aggravated stalking (720 ILCS 12-7.4(a)(3)). The trial court specifically found that the evidence "overwhelmingly establishe[d] that the defendant directly or indirectly through third persons monitored and communicated to or about Ms. Carswell through his Internet activities," and ultimately sentenced Gauger to five years' imprisonment.

On appeal, Gauger alleged that because his conviction was based on his Facebook messages to Carswell, it was dependent on him having "communicated to or about" her, and, therefore, was invalid due to the Illinois Supreme Court's recent decision in *People v. Relerford*, 2017 IL 121094.

In *Relerford*, the Court held that this specific provision was overbroad and impermissibly infringed upon speech protected by the First Amendment, and therefore struck that phrase from the statute.

However, the trial court had also found that Gauger had "monitored" Carswell through his fictitious Facebook activities. To convict him of stalking, the State had to prove Gauger knowingly engaged "in a course of conduct directed at" Carswell that he knew or should have known would cause a reasonable person to "fear for his or her safety" or "suffer other emotional distress." 720 ILCS 12-7.3(a)(1), (a)(2). In turn, the statute defines a "course of conduct" as "2 or more acts, including but not limited to acts in which a defendant directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, engages in other non-consensual contact, or interferes with or damages a person's property or pet. A course of conduct may include contact via electronic communications." 720 ILCS 12-7.3(c)(1). Stalking becomes aggravated stalking if the defendant, as here, violates an order of protection. 720 ILCS 12-7.4(a)(3).

The Appellate Court rejected Gauger's reliance on *Relerford*, noting that the "monitoring" provision of the stalking statute was unaffected by that decision. Acknowledging the statute does not define "monitoring," the Appellate Court relied on the dictionary definition of that term: "to watch, keep track of, or check usu[ally] for a special purpose." The Court held that the evidence showed that Gauger created at least one fictitious Facebook account posing as Carswell's friend, and downloaded pictures of her and her family to his own computer, along with information about her that was not available to the general public. The Court concluded that "[t]his course of conduct satisfies that definition," and it was reasonable for the trial court to find that Gauger "knew or should have known that this course of conduct would cause a reasonable person to suffer other emotional distress."

The lesson of *Gauger* is that conduct involving social media can result in criminal prosecution for felony stalking by way of "monitoring" another through on-line sources. Accordingly, clients must be fully advised of these proscriptions and the potential serious consequences.

## IN THE NEWS

Claire McKenzie was featured in a roundtable discussion for Crain's Chicago titled "Family Law: What Divorcing Couples Should Know About Tax Law Changes."

Erika Wyatt's blog "U.S. to Deny Visas to Unmarried Same-Sex Partners of Diplomats" was published on our Family Law Topics Blog.

Jessica Bank Interlandi was interviewed on WBEZ for the segment "Why is the US So Behind on Protection for Women?" She was also profiled in the Chicago Daily Law Bulletin for "Law Firm Leaders: Domestic violence damage too often family law concern."

Michele M. Jochner was selected as the Chair of the Dean's Advisory Council for DePaul University College of Law.

Eric Schulman spoke at Divorce Math: Understanding the Finances of Divorce on October 4th hosted by the Lilac Tree.

Karen Pinkert-Lieb was named one of the Top 10 Women Lawyer in Illinois in All Areas of Law by Leading Lawyers Network.

Schiller DuCanto & Fleck had 29 lawyers who were named to Best Lawyers in America 2019.

Schiller DuCanto & Fleck LLP was ranked as a Tier 1 Family Law firm in Chicago by Best Lawyers in America 2018.

Carlton R. Marcyan's blog "Good News For Collaborative Process in Illinois" was published on our Family Law Topics Blog. He also presented "Bitcoin, Cryptocurrency - New Hiding Places for Money in Divorce Cases" at The Missouri Bar/Missouri Judicial Conference Annual Meeting on September 28, 2018.

Adam Miel Zebelian was elected as Secretary of the Lesbian and Gay Bar Association of Chicago.

Jason N. Sposeep spoke at The Collaborative Law Institute of Illinois' Basic Interdisciplinary Collaborative Practice Training on September 28, 2019.

Anita Ventrelli presented Resolution 102A during the American Bar Association House of Delegates meeting on August 6, 2018.

Congratulations to  
all of our 2018  
Race Judicata  
participants!



The materials contained in this Newsletter are intended for general informational purposes only and not to be construed as legal advice or opinion.

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