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Advanced Famil Law

July 29-30, 2021

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ADVANCED FAMILY LAW (SOUTH)

July 29-30, 2021

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ADVANCED FAMILY LAW (SOUTH)



Agenda

July 29, 2021

- 2:00 P.M. Human Trafficking and Family Law
- Honorable Kimberly S. Dowling and Tracy McDaniel
- 3:00 P.M. Refreshment Break**
- 3:15 P.M. Dealing with Domestic Violence
*- Caryn Burton with panelists Honorable Kimberly S. Dowling,
Honorable William J. Hughes, Melissa G. Arvin, Tracy McDaniel
and Michael Jenuwine*
- 5:15 P.M. Adjourn Day One
- 5:30 P.M. Hosted Reception**
- 7:30 P.M. Free Time

July 30, 2021

- 8:30 A.M. Continental Breakfast
- 9:00 A.M. An Examination Civil Protective Orders
- Honorable Andrew R. Bloch, Honorable Andre B. Gammage
- 10:00 A.M. Coffee Break**
- 10:15 A.M. Evidentiary Issues in Family Law
*- Honorable Vicki Carmichael, Honorable Kimberly S. Dowling
Honorable William J. Hughes, Honorable Peter D. Nugent*
- 12:15 P.M. Adjourn**

July 29-30, 2021

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July 29-30, 2021

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Hon. Kimberly S. Dowling

Delaware County Circuit Court, Muncie



Judge Dowling completed her undergraduate degree at the University of Denver in 1981. She graduated from the University of Colorado Law School in 1984. She currently lives in Daleville, Ind.

Judge Dowling served as Master Commissioner in Superior Court 3 from 1996 to 1998. She was also Commissioner for Title IV-D Court from 1998 to 2000.

Organizations

- Delaware Co. Bar Association, president (2010)
- Prevent Child Abuse Council, Delaware Co., member (2010-present)
- Indiana State Bar Association Board of Governors (2011-13)
- Judges and Lawyers Assistance Program, 2007 to present
- Judicial Conference of Indiana, Board of Directors, 2006 to present
- Civil Jury Instructions Committee
- Strategic Planning Committee

Hon. Andrew Bloch

Magistrate, Hamilton County Superior Court, Noblesville



Andrew R. Bloch serves as Magistrate for the Hamilton Superior Court, where he hears a variety of family, civil, and criminal matters. He is a Certified Family Law Specialist (Family Law Certification Board), Registered Family Law Mediator, Trained Family Law Arbitrator, Trained Guardian Ad Litem, and Trained in Collaborative Family Law (CIACP). He received his B.S.B.A. in Information Systems from Xavier University and his J.D. from the Indiana School of Law – Indianapolis (n/k/a Robert McKinney School of Law), where he was also awarded the Norman Lefstein Award of Excellence. Drew was named a "Super Lawyer" for 2019 as well as a "Rising Star" in the area of Family Law in 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, and 2018, as published in Indianapolis Monthly. He is a member of the Domestic Relations Committee, as appointed by the Indiana Supreme Court, Hamilton County Bar Association; Indianapolis Bar Association (Family Law Executive Committee); and Indiana State Bar Association (Family Law Executive Committee). Drew is a Co-Chair of the current Indiana State Bar Summer Study Committee of Presumptive Joint Physical Custody. He previously served as a member of the American Bar Association (Chair of the Bankruptcy Committee - Family Law Section). As well as a member of the Muncie Bar Association (Executive Committee) and a former member of the Ratliff-Cox Inns of Court.

Drew serves as Secretary on the Board of the Indiana Continuing Legal Education Forum (ICLEF) and is a four-time chair of the Advanced Family Law (South) Program. Drew is a sought-after presenter for a number of organizations and a featured speaker on a variety of Family Law topics across the state of Indiana. Formerly, as a Partner at Cross, Pennamped, Woolsey & Glazier, P.C., he devoted 100% of his practice to family law matters including mediation, arbitration, trial work, and appeals. Before joining Cross, Pennamped, Woolsey & Glazier, P.C. Drew served as a Commissioner in the Marion Circuit Court – Paternity Division, hearing custody, visitation, and child support cases. He also served as Judge Pro Tem in Hamilton, Delaware, and Marion County in a variety of family law, civil, and criminal matters.

In addition to his service on the Board at ICLEF, Drew served as the Indianapolis Alumni Chapter President for Xavier University for six years. He is a member of the Lew Hirt Society at Xavier University. He also served as a Board Member on multiple charter school board across the state of Indiana and has lectured on Open Door Law in Indiana.

Hon. Vicki L. Carmichael

Judge, Clark Circuit Court 4, Jeffersonville



On January 1, 2007, *Judge Carmichael* began her service as Judge of Clark Circuit Court No. 4 (formerly Superior Court No. 1). The Clark Circuit Court handles a general jurisdiction caseload and all of the juvenile matters for Clark County, including delinquency and CHINS cases. The Court also has a major felony docket and a civil docket. She implemented a Family Court Project, an Attendance Court Project and began a Family Treatment Drug Court focusing on addressing substance abuse issues of parents. Prior to her election to Superior Court, Judge Carmichael served as Judge of Jeffersonville City Court from January 1, 2000 until December 31, 2006. In that position, she presided over criminal misdemeanors and traffic infractions. She started many new programs for alcohol related offenses, including an Alcohol Court, a Victim Impact Panel, an Alcohol Awareness Program and a Defensive Driving Class. She also started the use of the Ignition Interlock Device for drunk drivers in Clark County.

Before her full-time judge's position, Judge Carmichael maintained a private practice in Jeffersonville, where she focused on family law issues, including divorces, child support matters and child custody cases. She was a family law mediator in Indiana before taking the bench. Judge Carmichael was appointed as the first full-time Public Defender for Clark County in January 1989. She served as the Chief Public Defender and later as an Assistant Public Defender for twelve years. As Chief Public Defender, she had a trial caseload, including a capital murder case, and perfected all of the indigent appeals for the County.

Judge Carmichael also teaches numerous classes at Ivy Tech Community College in the Criminal Justice program at the Sellersburg, Indiana campus. Some of Ms. Carmichael's civic interests and activities include speaking to Government classes in the Clark County Schools, participating in the Clark-Floyd County Pro Bono Project, volunteering with the American Cancer Society, the American Red Cross, Rotary Club and holding the position of past chair of the Leadership Southern Indiana program.

Hon. Andre B. Gammage,

Magistrate, St. Joseph County Circuit Court, South Bend



Magistrate Gammage is a graduate Valparaiso University and Valparaiso University School of Law School. Gammage began his legal career as a St. Joseph County Deputy Prosecuting Attorney. He later became Staff Attorney for the South Bend Human Rights Commission and Administrative Law Judge for the City of South Bend. Thereafter, Gammage entered private practice and became the managing partner at Berger and Gammage Law Office where he focused on criminal defense and tried cases in both State and Federal Courts.

Gammage has served as Magistrate in the St. Joseph Circuit Court, 60th Judicial Circuit of Indiana since 2013. His docket includes criminal matters and a full civil docket of matters tried to bench and jury. Gammage also presides over the Protective Order Court in St. Joseph County and has done so since its inception in 2014, addressing over one thousand protective orders each year.

Gammage is a former member of the Domestic Relations Committee and a current member of the Judicial Education Committee. Gammage's other activities include Adjunct Professor, University of Notre Dame School of Law; Faculty, National Judicial College of Juvenile and Family Court Judges; Trustee, Macedonia Baptist Church; Board Member, YMCA of Greater Michiana; and Moderator, South Bend Group Violence Initiative.

Hon. William J. Hughes

Judge, Hamilton Superior Court, Noblesville



William J. Hughes is a judge for the Hamilton County Superior Court in Hamilton County, Indiana. He has served as a judge for the court since July 1988 and is currently the longest serving judge in Hamilton County.

Hughes was re-elected to the Hamilton County Superior Court on November 4, 2014, for a term that expires on December 31, 2020

Hon. Peter D. Nugent

Judge, Johnson County Superior 2, Franklin

Education:

B.S. Indiana University – Bloomington - Business/Accounting, 1984

J.D. The John Marshall Law School – Chicago, 1987

Experience:

Deputy Prosecutor – Marion County Prosecutor’s Office, 1987- 1990

Public Defender – Marion County, 1990-1996

Public Defender – Johnson County, 1996-2002

Private Practice (Thomas & Nugent) 1990-2017

Judge, Johnson Superior Court 2, 2017-present

Activities:

State of Indiana Public Defender Commission 2007-2012

State of Indiana Ethics Commission 2012-2017

Counsel – Indiana Statehouse Republican Caucus 2008-2017

American Inn of Court

Lawyer’s Club - Indianapolis

Melissa G. Arvin

Family Violence resource Attorney, IOCS, Indianapolis

Melissa Arvin is the Family Violence Resource Attorney at the Indiana Office of Court Services for the Supreme Court and assists Indiana courts with training and projects related to family violence issues. Melissa left the Marion County Prosecutor's Office in 2020 after nearly 20 years as a prosecutor. As a prosecutor, Melissa handled cases related to domestic violence, sexual violence and child abuse and conducted extensive trainings on those subjects for law enforcement, prosecutors, court appointed special advocates and judges.

Caryn Burton,
Indiana Coalition Against Domestic Violence, Indianapolis



Dr. Michael J. Jenuwine, J.D., Ph.D.

University of Notre Dame Law School, Notre Dame



University of Notre Dame Law School, Notre Dame
Forensic & Clinical Psychology, LLC, South Bend

Michael Jenuwine has been on the faculty of the Notre Dame Law School since 2005. He is licensed as both an attorney and a clinical psychologist, and directs the Notre Dame Applied Mediation Clinic, supervising student mediators in civil and domestic relations cases from Indiana and Michigan courts. He earned his B.S. from the University of Michigan in 1988, his A.M. in Educational Psychology from the University of Chicago in 1990, his J.D. from Loyola University Chicago in 2000, and his Ph.D. in Psychology-Human Development from the University of Chicago in 2000. While at Loyola, he was a Civitas Child law Fellow and earned a certificate in Child and Family Law. He teaches courses at Notre Dame Law School in professional responsibility, dispute resolution, mediation, negotiation, animal law, and mental health law.

Dr. Jenuwine has a private practice where he conducts forensic psychological evaluations in civil and criminal cases in Indiana and Michigan, and also conducts mediations, custody evaluations, and serves as a parenting coordinator & guardian ad litem. Dr. Jenuwine was appointed to the Indiana State Board of Law Examiners in 2012, and has research interests in professional responsibility, family law, child advocacy, mental health law, and interdisciplinary legal practice. He is also a National Certified Guardian, actively involved in research on adult guardianships, and has served on the Indiana State Adult Guardianship Taskforce since 2008.

Tracy McDaniel, MSW LCSW
Indianapolis



Tracy McDaniel started Tracy McDaniel Consultations, LLC in 2020 and is the Founder and previous CEO of Restored Inc. Ms. McDaniel consults to formulate statewide strategies to address domestic human trafficking through victim services, law enforcement coordination, and prevention. She partners with the Indiana state government, local, state and federal law enforcement agencies, non-profit leaders, and community members to provide victim and outreach services. She develops trainings for youth, professionals, and provides public awareness. Ms. McDaniel is a participant in the Indiana Supreme Court Court CSEC committee, and actively participates in recovery operations with law enforcement. Ms. McDaniel is a forensic and clinical interviewer. Ms. McDaniel is a Licensed Clinical Social Worker and splits her time between private practice and consultations.

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Tracy R. McDaniel, MSW, LCSW**

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Section Three

**Civil Protective Orders..... Honorable Andrew R. Bloch
Honorable Andre B. Gammage**

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Section Four

**Evidentiary Issues in Family Law..... Honorable Vicki L. Carmichael
Honorable Kimberly S. Dowling
Honorable William J. Hughes
Honorable Peter D. Nugent**

Section One

Innocence Lost: CSEC Identification and Tools

Honorable Kimberly S. Dowling
Delaware County Circuit Court 2
Muncie, Indiana

Tracy R. McDaniel, MSW, LCSW
Tracy McDaniel Consultations, LLC
Carmel, Indiana

Section One

Innocence Lost: CSEC

**Identification and Tools..... Honorable Kimberly S. Dowling
Tracy R. McDaniel, MSW, LCSW**

PowerPoint Presentation



Innocence Lost: CSEC Identification and Tools

Kimberly S. Dowling, Judge Delaware
Circuit 2

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Tracy McDaniel, MSW, LCSW,
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What is Human Trafficking?

- **Sex Trafficking:** When a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; **or**
- **Labor Trafficking:** The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

What does that really mean?

- A person using **force, fraud, or coercion** against another person to cause them to **work** or engage in **commercial sex**.
- A person causing a **minor** to engage in **commercial sex**.



Indiana Law IC 35-42-3.5-1.1

A person who knowingly or intentionally uses force, threat of force, coercion, or fraud to recruit, entice harbor or transport an individual with the intent of causing the individual to:



Indiana Law IC 35-42-3.5-1.1

- (1) Marry another person;**
- (2) Engage in prostitution; or**
- (3) Participate in sexual conduct;**

Commits promotion of human sexual trafficking, a Level 4 felony

IC 35-42-3.5-1.1 (continued)

Trafficking:

- Prosecutors don't have to prove force when a **minor under the age of 18** is being trafficked (Level 3 Felony)
- **Any individual** can be guilty of committing trafficking of a child; no specific relationship required
- **Restitution** is available to trafficking victims
- Trafficking victims may also have a **civil cause** of action to recover other damages from the trafficker

A Growing Problem

Human Trafficking is tied as the **SECOND LARGEST** and **FASTEST** growing criminal industry in the world, just behind the drug trade.

\$150 billion dollars generated annually by the human trafficking industry.



A Growing Problem Affecting Youth

- **1.6 MILLION CHILDREN ARE RUNAWAYS EACH YEAR**
- **12-14 is the average age of entry into commercial sex in the U.S.**
- **83% of sex trafficking victims found in the U.S. were U.S. citizens, according to one Justice Department study.**
- **Average age in Indiana went from 16 to 14 in a little over 2 years.**

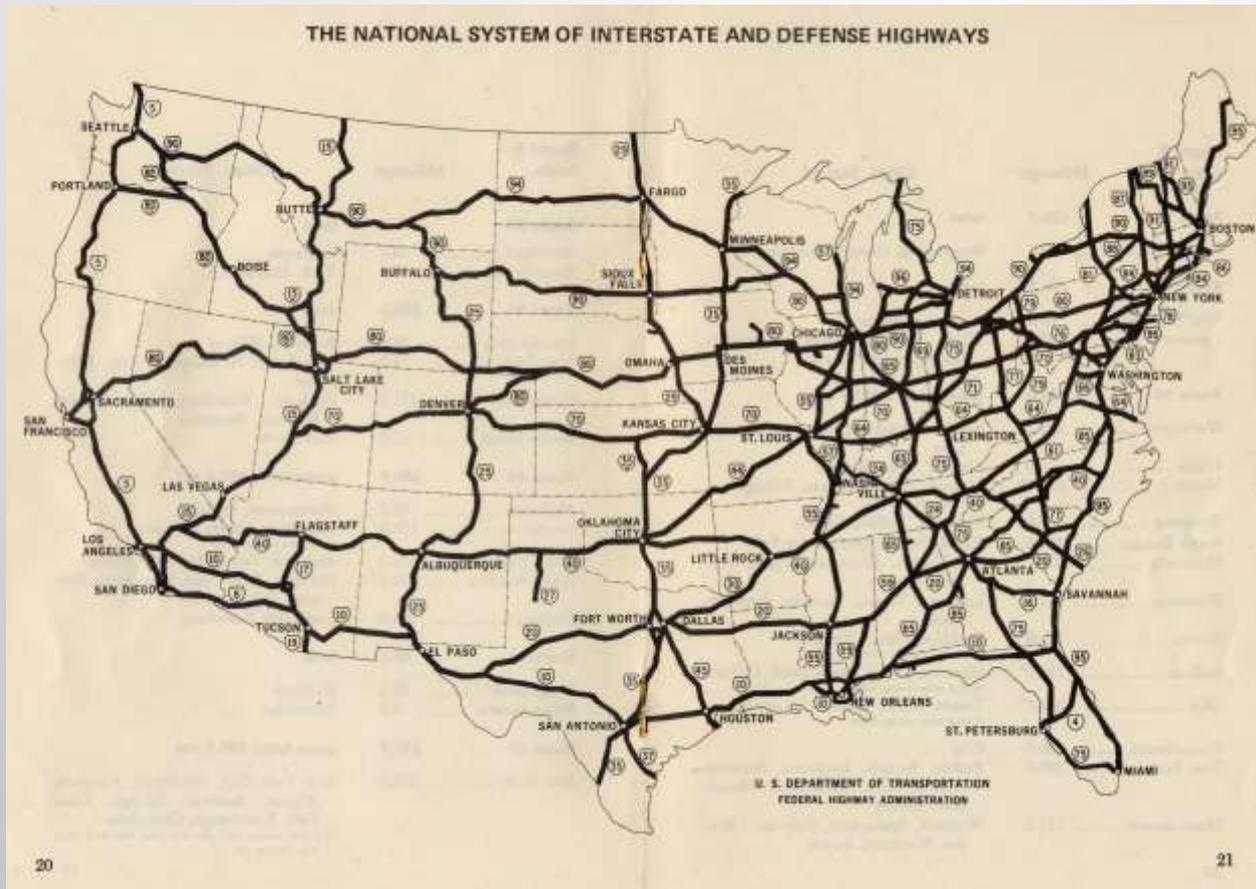
A Growing Problem Affecting Youth

- **1 IN 3 ARE RECRUITED WITHIN 48 HOURS**
- **80% OF VICTIMS HAVE BEEN INVOLVED WITH DCS**
- **50% OF VICTIMS HAVE BEEN INVOLVED WITH THE FOSTER CARE SYSTEM**
- **100,000 to 300,000 U.S. children** are victims of commercial sexual trafficking each year, according to the National Center for Missing and Exploited Children. (based on voluntary reports of prostitution charges)

Where Does it Happen?



Where Does it Happen?



CAVEAT

**Victims
do NOT
self
identify**

CSEC MYTHS

- Children choose to enter the sex trade
- Only girls are trafficked
- Children involved are promiscuous and want to have sex
- This is not happening in the U.S.
- Victims could escape if they wanted to
- Victims will generally disclose exploitation



Myths

Who is involved in trafficking?

- ✧ The **trafficker** benefits by compelling the labor or services of another.
- ✧ The **recruiter** gains the victim's trust and then sells them for labor or to a pimp. Sometimes this is a "boyfriend", a neighbor, or even a family member.
- ✧ The **victim** is forced, defrauded, or coerced into providing labor or services, or is under 18 and being used in the sex trade.
- ✧ The **consumer** funds the human trafficking industry by purchasing goods and services. Often s/he is unaware that someone is suffering

The Trafficker

✧ The trafficker will likely be in a **lucrative business enterprise** as the heart of human trafficking is exploiting cheap labor.

✧ The trafficker may be part of a **larger organized crime ring**, or may be **profiting independently**.

✧ Benefits through **Financial Gain, Power and/or Control**

Pimp Control: Recruitment

- Online /Facebook, KIK, SnapChat, Instagram,
- Gang
- Rural
- Familial, Foster Care
- Truck Stops
- Online Dating Apps (Plenty of Fish, Skout, Tinder, SugarDaddy)
- Survival
- Romeo
- Gorilla Pimps
- Strip Clubs
- Online Advertisement
- Model/Music Videos
- Track/Blade
- Street

Pimp Control “Direct Quote”

You’ll start to dress her, think for her, own her. If you and your victim are sexually active, slow it down. After sex, take her shopping for one item. Hair and/or nails is fine. She’ll develop a feeling of accomplishment. The shopping after a month will be replaced with cash. The love making turns to raw sex. She’ll start to crave intimacy and be willing to get back into your good graces. After you have broken her spirit, she has no sense of self value. Now pimp, put a price tag on the item you have manufactured.”

The Pimp Game: An Instructional Manual (Royal, 1998)

Victimology

The logo for 'VictIM' is displayed in a black rectangular box. The word 'VictIM' is written in a white, bold, sans-serif font. The letters 'V', 'I', 'M', and the final 'I' are significantly larger than the letters 'i', 'c', and 't'. The letters are arranged in a slightly staggered, blocky fashion.

Some risk factors for youth include:

- ✧ History of childhood abuse, family conflict/violence
- ✧ Prior involvement in child welfare system
- ✧ Poverty
- ✧ Homelessness
- ✧ A need to be loved
- ✧ Feel misunderstood or that parents don't care
- ✧ Want independence and will test boundaries/take risks
- ✧ Are attracted to consumer goods

How CSEC Correlates with Sexual Abuse

Similarities

- Caretaker Dominance
- Grooming
- Vulnerable Youth
- Secrecy
- Isolation
- Survival (food, shelter, clothing)
- Fear, Anxiety
- Hopelessness; despair
- Gifts
- Shame/ Embarrassment

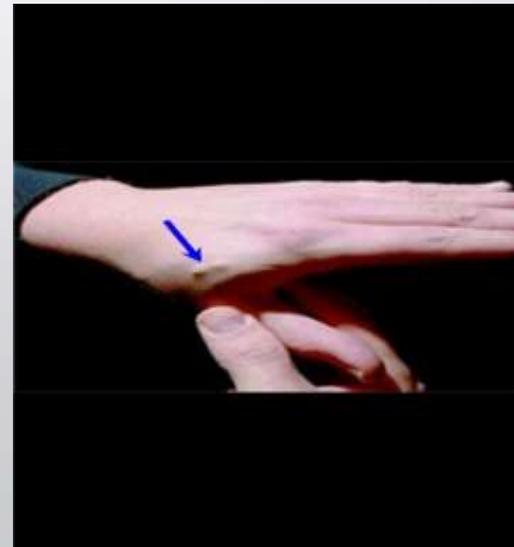
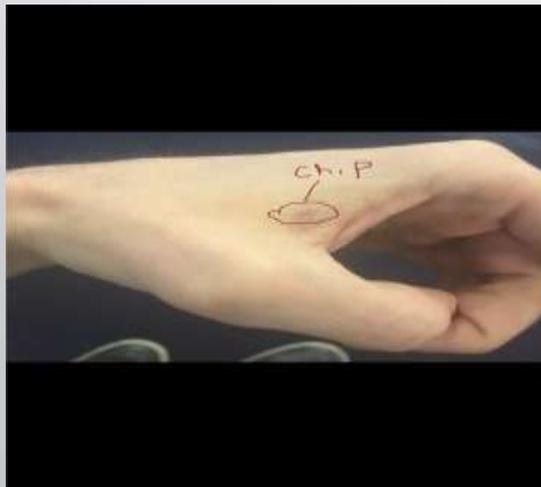
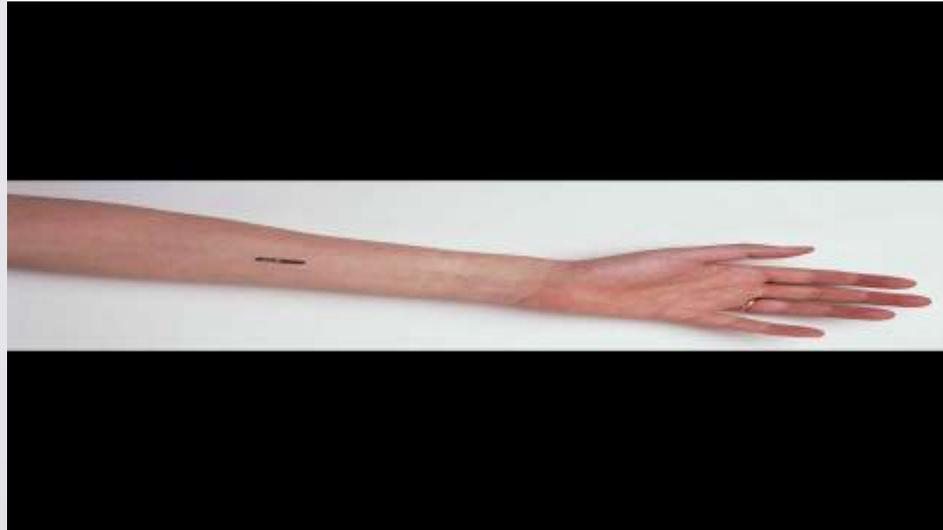
Differences

- Payments
- Streetwise
- “proud of involvement in ”in the life”
(glamorize)
- Lack of resources
- Stigmatization
- Multiple Men/Women

Identification: Health Indicators

- ✧ Neglected healthcare needs
- ✧ Signs of physical abuse
 - ✧ Bruises
 - ✧ Black Eyes
 - ✧ Burns
 - ✧ Cuts
 - ✧ Broken teeth
 - ✧ Multiple scars
- ✧ Malnourishment
- ✧ Evidence of trauma
- ✧ Poor Dental Hygiene
- ✧ Frequent or Multiple STDs or pregnancies
- ✧ Branding-
Tattoos
Tracking Chips

Tracking Chips



Identification: Mental Health Indicators

- Symptoms of psychological trauma
- Extreme sadness and hopelessness
- Risks for suicide, memory loss, and presenting as withdrawn
- Difficulty concentrating, demonstrations of aggression / anger
- Trauma bonds
- PTSD
- Anxiety and mood disorders, panic attacks
- Substance-related disorders

Red Flags

- False identification
- Branding/tattoos (names, numbers, dollar signs, emblems @ neck, chest, fingers, lower back)
- Inappropriate clothing for occasion/time of year
- Appearance of malnutrition



Red Flags

- Frequent runaway, past or current homelessness
- Gang affiliation
- Current/prior suspected prostitution Youth is unfamiliar with the area
- Youth is submissive or fearful—not speaking for him/herself

Red Flags

- Youth acknowledges exchanging sex for money/goods
- Youth is advertised on skipthegames
- Adult other than parent speaking for youth and is controlling
- Older male in company of female/male but not related, identified as “boyfriend”
- Someone other than youth has control of his/her identification
- Youth was recovered at a hotel
- Prolonged period of absence from home without explanation/runaway from foster care

CHALLENGES IN THE JUVENILE SYSTEM

- Do we detain?
- Victim vs. Prostitute
- What about a victim who recruits?
- Quick indicator tools
- How do we get kids to testify in adult court?
 - They are recovering from trauma
 - They don't do a good job of following a timeline
 - If they are detained, they must go to court in jumpsuit and shackles



MORE CHALLENGES

- **Children in the Foster Care System are Conditioned for Trafficking:**
 - **Money is provided to Caregivers in Foster Care**
 - **Kids are Used to Being a “Paycheck”**
 - **The Money is for the Foster Parent’s Personal Use**
 - **Equates to Earning for the Exploiter**
 - **Foster Kids are Used to being Placed in Numerous Places**
 - **Children in the System Do Not Learn to Reconcile after an argument**
 - **They don’t establish relationships**
 - **They are accustomed to being isolated**

CHALLENGES IN LEGISLATION

- **CHINS STATUTE-** Covered under section 3.5
 - **Reality of what we are seeing**
 - DCS has filed only 22 petitions filed as 3.5's since the statute was passed
 - **Why?**
 - Investigative/proof reasons
 - Number of cases
- DCS screening out/dual status

CHALLENGES IN LEGISLATION

- **I.C. 35-42-3.5-1-1.1**
 - **A TRAFFICKER FACES A MAXIMUM OF 3-16 YEARS (level 3 juvenile)**
 - **PURCHASERS FACE ONLY 1-6 YEARS (level 5 felony)**

CHALLENGES IN LEGISLATION

- **I.C. 35-45-4-2**
 - **AGE FOR PROSTITUTION WAS NEUTRAL**
 - **JUVENILES CAN NO LONGER BE CHARGED WITH PROSTITUTION**
 - **IT IS STILL CONTROVERSIAL**

LEGISLATION EFFECTIVE 7/1/18

- **Definition of trafficking expanded**
- **Trafficking added to felony murder**



LEGISLATION EFFECTIVE 7/1/18

- **35-42-3.5-1-labor trafficking**
- **35-42-3.5-1.1-adult sex trafficking**
- **35-42-3.5-1.2-juvenile sex trafficking**
- **35-42-3.5-1.4-purchasing**

LEGISLATION EFFECTIVE 7/1/18

- **I.C. 35-42-4-4 Child Exploitation**
- **I.C. 35-45-1-5 Maintaining Common Nuisance**

The Commercial Sexual Exploitation of Children Committee

- **Sub-committee to Juvenile Justice and Cross System Youth Task Force on the Commission on Children**

Current Efforts

- Juvenile Probation Screener
- Quick Indicator Tools
 - Healthcare/EMS
 - Law Enforcement
- Pilot Counties

**If you believe someone is a
victim of Human
Trafficking:**

In emergency situations:

Call 911

Call the Department of Child
Services Hotline

1-800-800-5556

National Human Trafficking
Resource Center Hotline **1-888-373-
7888**

or send a text to **BeFree (233733)**

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Section Two

Dealing with Domestic Violence

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Section Two

**Dealing with Domestic Violence..... Caryn C. Burton
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Honorable William J. Hughes
Melissa Arvin
Dr. Michael J. Jenuwine, J.D., Ph.D.**

Differentiation Among Types of Intimate Partner Violence: Research Update and
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DIFFERENTIATION AMONG TYPES OF INTIMATE PARTNER VIOLENCE: RESEARCH UPDATE AND IMPLICATIONS FOR INTERVENTIONS

Joan B. Kelly
Michael P. Johnson

A growing body of empirical research has demonstrated that intimate partner violence is not a unitary phenomenon and that types of domestic violence can be differentiated with respect to partner dynamics, context, and consequences. Four patterns of violence are described: Coercive Controlling Violence, Violent Resistance, Situational Couple Violence, and Separation-Instigated Violence. The controversial matter of gender symmetry and asymmetry in intimate partner violence is discussed in terms of sampling differences and methodological limitations. Implications of differentiation among types of domestic violence include the need for improved screening measures and procedures in civil, family, and criminal court and the possibility of better decision making, appropriate sanctions, and more effective treatment programs tailored to the characteristics of different types of partner violence. In family court, reliable differentiation should provide the basis for determining what safeguards are necessary and what types of parenting plans are appropriate to ensure healthy outcomes for children and parent-child relationships.

Keywords: *domestic violence; differentiation among types of intimate partner violence; coercive controlling violence; situational couple violence; gender and violence; implications for interventions and family court*

INTRODUCTION

When violence between intimate partners emerged as a recognizable issue in our society in the mid-1970s (Straus, Gelles, & Steinmetz, 1981; Walker, 1979), empirical knowledge of this social, psychological, and legal phenomenon was very limited. As advocates for women organized shelters across the nation to provide safety and assistance for abused women, clinical information emerged that described patterns of severe physical and emotional abuse. The victims were most notably described by Walker (1979) and others as “battered women,” and the male perpetrators were labeled “batterers.” This early and important recognition and conceptualization of intimate partner violence has guided policy, law, education, and interventions to date. The term “domestic violence” was adopted by women’s advocates to emphasize the risk to women within their own family and household, and over time the term became synonymous with battering. Family sociologists also studied violence in families and between intimate partners in the 1970s and 1980s, typically in large nationally representative samples, and this information diverged significantly from shelter, hospital, and police data with respect to incidence, perpetrators, severity, and

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context. In particular, large-scale studies seemed to indicate that women were as violent as men in intimate relationships (Archer, 2000). Domestic violence advocates and service providers largely ignored or strongly rejected these studies because they were so at odds with their experiences in the shelters, hospitals, and courts. Advocates also feared that what they viewed as misinformation (that women were as violent as men) would dilute society's focus on and funding of services and education for battered women (Pleck, Pleck, Grossman, & Bart, 1978). Thus, until recently, the two groups most concerned with intimate partner violence, feminist activists/practitioners and family sociologists, have rarely intersected, and misunderstanding and acrimonious debate have interfered with a more constructive and unified approach to what remains a serious societal problem for intimate partners and their children.

Over the past decade, a growing body of empirical research has convincingly demonstrated the existence of different types or patterns of intimate partner violence (Graham-Kevan & Archer, 2003; Holtzworth-Munroe, Meehan, Herron, Rehman, & Stuart, 2000; Johnson, 1995, 2006; Johnson & Ferraro, 2000; Johnston & Campbell, 1993; Leone, Johnson, Cohan, Lloyd, 2004). This information has far-reaching implications for court processes, treatment, educational programs for professionals, and for social and legal policy. Among some social scientists, it is no longer considered scientifically or ethically acceptable to speak of domestic violence without specifying the type of partner violence to which one refers (Johnson, 2005a). Among women's advocates, as well, there are those who recognize that long-term adherence to the conviction that all domestic violence is battering has hindered the development of more sophisticated assessment protocols and treatment programs that may identify and address problems of violence for both men and women more effectively (Pence & Dasgupta, 2006).

This article first discusses the value of differentiation among types of intimate partner violence, concerns raised by advocates about such differentiation, and the various terminologies used under the canopy of domestic violence. It then describes the underlying reasons for the confusion and heated controversy regarding gender and violence and focuses on empirical research that supports differentiation among four types of intimate partner violence (Coercive Controlling Violence, Violent Resistance, Situational Couple Violence, and Separation-Instigated Violence). The ongoing controversy regarding the prevalence of female violence will be considered in these contexts. A fifth type of violence, Mutual Violent Control (between two coercive controlling violent partners), has been described by Johnson (2006), but little is known about its frequency, features, and consequences, and it will not be described here. Implications of the overall body of knowledge are discussed, in particular the need to rethink current one-size-fits-all policies, and the need for more sophisticated assessment and treatment interventions utilized by criminal, civil, and family courts. There is consideration as well of the meaning of violence differentiation research for custody and access disputes, parenting plans, and parent-child relationships, and whether violence is likely to continue or cease after parents separate and divorce.

POTENTIAL VALUE OF DIFFERENTIATION

The value of differentiating among types of domestic violence is that appropriate screening instruments and processes can be developed that more accurately describe the central dynamics of the partner violence, the context, and the consequences. This can lead to better

decision making, appropriate sanctions, and more effective treatment programs tailored to the different characteristics of partner violence. In family court, reliable differentiation of intimate partner violence is expected to provide a firmer foundation for determining whether parent–child contact is appropriate, what safeguards are necessary, and what type of parenting plans are likely to promote healthy outcomes for children and parent–child relationships (Jaffe, Johnston, Crookes, & Bala, 2008). It is possible, as well, that increased understanding and acceptance of differentiation among types of domestic violence by the broad spectrum of service providers, evaluators, academics, and policy makers will diminish the current turf and gender wars and lead to more effective partnerships and policies that share the common goal of reducing violence and its destructive effects on families.

Although social scientists understand that humans and their circumstances are inherently messy and that there will always be individuals, couples, and situations that do not fit into major identified patterns, this fundamental understanding can sometimes be lost in the translation to practice. Thus, a central concern of women’s advocates is that research differentiating among types of intimate partner violence will lead to the reification or misapplication of typologies and that battering will, as a result, be missed—with potentially lethal results. Advocates also fear that typical information available to the court for decision making is too limited to make effective distinctions and that effective screening processes and appropriate assessment tools are not available or in place.

TYPES AND TERMINOLOGIES: SEARCHING FOR ACCURATE DESCRIPTORS

When practitioners, researchers, and policy makers gather together, the term domestic violence has been observed to mean different things to different participants. On the one hand, gender-neutral laws have been enacted that identify any act of violence by one partner against another as domestic violence and, for many social scientists as well, the term refers to any violence between intimate partners. On the other hand, for many in the field, domestic violence describes a coercive pattern of men’s physical violence, intimidation, and control of their female partners (i.e., battering). The terms domestic violence and battering have been used interchangeably by women’s advocates, domestic violence educators, and service providers for three decades, based on their belief that all incidents of domestic violence involve male battering.

We will use the term Coercive Controlling Violence for such a pattern of emotionally abusive intimidation, coercion, and control coupled with physical violence against partners. This pattern is familiar to many readers through the Power and Control Wheel (Pence & Paymar, 1993) (see Figure 1), a model that is used extensively in women’s shelters and support groups. Many women’s advocates use the term domestic violence for this pattern. For example, the National Domestic Violence Hotline (USA) defines domestic violence as follows: “Domestic violence can be defined as a pattern of behavior in any relationship that is used to gain or maintain power and control over an intimate partner” (http://www.ndvh.org/educate/what_is_dv.html). This is probably the pattern that comes to mind for most people when they hear terms such as wife beating, battering, spousal abuse, or domestic violence. In one of the early typologies of intimate partner violence, Johnson (1995) used the term Patriarchal Terrorism for this pattern. This label was later changed to “Intimate Terrorism” in recognition that not all coercive control was rooted in patriarchal

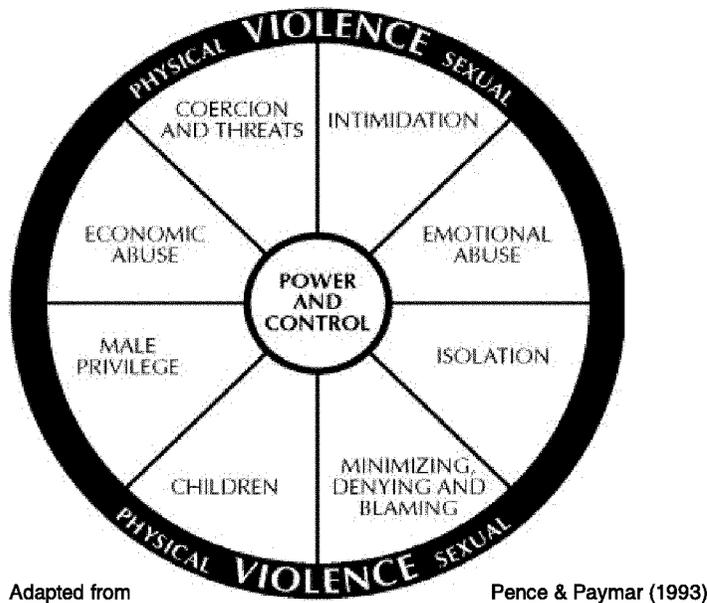


Figure 1 The Power and Control Wheel.

structures and attitudes, nor perpetrated exclusively by men (see Johnson, 2006, p. 1015, note 2, for larger discussion). In a discussion of domestic violence terminology at the Wingspread Conference (2007)¹, some participants expressed reluctance to adopt or use the term Intimate Terrorism in courts, and in this and a companion article, the term Coercive Controlling Violence has been adopted (Jaffe et al., 2008).

Violent Resistance (to a violent, coercively controlling partner) has been described elsewhere as Female Resistance, Resistive/Reactive Violence, and, of course, Self-Defense (Pence & Dasgupta, 2006). Until recently, many women's advocates and clinical researchers have characterized all violence perpetrated by women in intimate relationships as female resistance (e.g., Walker, 1984; Yllö & Bograd, 1988). They have been reluctant to acknowledge that some women's violence occurs in the context of nonviolent partners or in mutual violence that does not have coercive control as a central dynamic. The term Violent Resistance posits the reality that both women and men may, in attempts to get the violence to stop or to stand up for themselves, react violently to their partners who have a pattern of Coercive Controlling Violence.

Johnson's term, Situational Couple Violence, is used here to identify the type of partner violence that does not have its basis in the dynamic of power and control (Johnson & Leone, 2005). Johnson (1995) originally used the term Common Couple Violence, but abandoned it because many readers reacted to it as minimizing the dangers of such violence. This violence is similar to Male-Controlling Interactive Violence (described by Johnston & Campbell, 1993) and Conflict Motivated Violence (Ellis & Stuckless, 1996; Ellis, Stuckless, & Wight, 2006).

To describe violence that first occurs in the relationship at separation, the term Separation-Instigated Violence is used. Johnston and Campbell (1993) called it Separation-Engendered Violence, but some participants in the Wingspread Conference felt that "engendered" might

be confusing in an area in which the role of gender is central to some explanations of intimate partner violence. It is important to differentiate this type of violence from *continuing* violence that occurs in the context of a separation. It is often the case that Situational Couple Violence continues through the separation process and that Coercive Controlling Violence may continue or even escalate to homicidal levels when the perpetrator feels his control is threatened by separation.

Until recently, regardless of the label used, the majority of research on domestic violence has focused on male violence and the women victims of this violence. The results of large survey studies were used to point to the prevalence and consequences of intimate partner violence. However, research methodologies have not, by and large, asked the questions that might distinguish among types of intimate partner violence. The original and revised Conflict Tactics Scales (CTS; Straus, 1979; Straus, Hamby, Boney-McCoy, & Sugarman, 1996) have been the most common research measures of domestic violence, and the 1996 version includes separate measures of psychological dimensions (cursing, demeaning, isolating, coercion, threats, stalking, etc.), physical violence (slapping, shoving, kicking, biting, choking, mutilation, etc.), sexual violence (raped, forced unwanted sexual behaviors), and financial control (controlling purchases, withholding funds, etc.). The most common use of these scales, however, has been to identify specific violent acts rather than more general patterns of behavior, and the physical violence items of the CTS are still the most widely used approach to assessing levels of domestic violence.

CONTROVERSIES REGARDING VIOLENCE AND GENDER

For over two decades, considerable controversy has centered on whether it is primarily men who are violent in intimate relationships or whether there is gender symmetry in perpetrating violence. Proponents of both viewpoints cite multiple empirical studies to support their views and argue from different perspectives (e.g., see Archer, 2000; Dutton, 2005; Holtzworth-Munroe, 2005; Johnson, 2001, 2005a, 2006; Kline, 2003; Straus, 1999). More recently, efforts have been made to build bridges between the research and interpretations of the feminist sociologists and the family violence researchers, including family sociologists (e.g., Anderson, 1997). These two viewpoints can be reconciled largely by an examination of the samples and measures used to collect the contradictory data and the recognition that different types of intimate partner violence exist in our society and are represented in these different samples. Johnston and Campbell (1993) and Johnson (1995) argued that domestic violence was not a unitary phenomenon and that different types of partner violence were apparent in different contexts, samples, and methodologies. This observation was also made by Straus (1993, 1999), who asserted that researchers were studying different populations and that most likely these different forms of violence had different etiologies and gender patterns. Other researchers (e.g., Holtzworth-Munroe & Stuart, 1994; Babcock, Green, Webb, & Yerington, 2005) have come to a similar conclusion.

Based on hundreds of studies, it is quite apparent that both men and women are violent in intimate partner relationships. There is gender symmetry in some types of intimate partner violence, and in some relationships women are more frequently the aggressors than their partners, including with their nonviolent partners. It is also the case that men and women are injured and experience fear in situations where the violence is frequent and severe, although the extent of symmetry in severity of injuries and fear is disputed based on different studies.

Data in samples obtained primarily from women's shelters, court-mandated treatment programs, police reports, and emergency rooms are more likely to report the type of physical and emotional violence that we are calling Coercive Controlling Violence. It is characterized by power and control and more often results in injuries to women. In these samples, the violence is asymmetric and perpetrated largely by men against their partners, although critics argue that coercively controlling violent women are either ignored, not recognized, infrequently arrested, or not ordered to treatment programs (Dutton, 2005).

In contrast, large-scale survey research, using community or national samples, reports gender symmetry in the initiation and participation of men and women in partner violence. This violence is not based on a relationship dynamic of coercion and control, is less severe, and mostly arises from conflicts and arguments between the partners (Johnson, 2006). These partners are most likely involved in Situational Couple Violence; are less likely to need the services of hospitals, police, and shelters; and therefore are a relatively small minority of individuals in studies using shelter and agency samples. However, Situational Couple Violence is generally more common than Coercive Controlling Violence and therefore dominates the violence in large survey samples. Incidence of Coercive Controlling Violence may be further lowered in surveys due to a high refusal rate among such partners, because both perpetrator and victim are reluctant to admit the violence for fear of discovery or retribution (for a larger discussion of this sampling issue, see Johnson, 2006).

Using a 1970s data set and a control tactics scale to distinguish controlling violence from noncontrolling violence, Johnson (2006) found that 89% of the violence in a survey sample was Situational Couple Violence and 11% was Coercive Controlling Violence. The Situational Couple Violence was roughly gender symmetric. In contrast, in the court sample, only 29% of the violence was Situational Couple Violence, and 68% was Coercive Controlling Violence which was largely male perpetrated. Similarly, in the shelter sample, 19% of the violence was Situational Couple Violence and 79% was Coercive Controlling Violence, which again was largely male perpetrated.

Thus, when family sociologists and/or advocates for men claim that domestic violence is perpetrated equally by men and women, referring to the data from large survey studies, they are describing Situational Couple Violence, not Coercive Controlling Violence. As will be discussed, these two types of violence differ in significant ways, including causes, participation, consequences to participants, and forms of intervention required.

COERCIVE CONTROLLING VIOLENCE

Researchers identify Coercive Controlling Violence by the pattern of power and control in which it is embedded (Johnson, 2008; Graham-Kevan & Archer, 2003). The Power and Control Wheel (see Figure 1) provides a useful graphical representation of the major forms of control that constitute Coercive Controlling Violence: intimidation; emotional abuse; isolation; minimizing, denying, and blaming; use of children; asserting male privilege; economic abuse; and coercion and threats (Pence & Paymar, 1993). Abusers do not necessarily use all of these tactics, but they do use a combination of the ones that they feel are most likely to work for them. Because these nonviolent control tactics may be effective without the use of violence (especially if there has been a history of violence in the past), Coercive Controlling Violence does not necessarily manifest itself in high levels of violence. In fact, Johnson (2008) has recently argued for the recognition of "incipient" Coercive Controlling Violence (cases in which there is a clear pattern of power and control

but not yet any physical violence), and Stark (2007) has argued, even more dramatically, that the focus in the law should shift from the violence itself to the coercive control as a “liberty crime.”

Coercive Controlling Violence is the type of intimate partner violence encountered most frequently in agency settings, such as law enforcement, the courts (criminal, civil, and family), shelters, and hospitals. Johnson, using Frieze’s Pittsburgh data, found that 68% of women who filed for Protection from Abuse orders and 79% of women who contacted shelters were experiencing Coercive Controlling Violence (Frieze & Browne, 1989; Johnson, 2006). This predominance of Coercive Controlling Violence in agencies probably accounts for the tendency of agency-based women’s advocates to see all domestic violence as Coercive Controlling Violence, but it is important to note that a great many cases even in these agency contexts involve Situational Couple Violence (29% and 19% in the courts and shelters, respectively, for the Pittsburgh data).

In heterosexual relationships, Coercive Controlling Violence is perpetrated primarily by men. For example, Johnson (2006) found that 97% of the Coercive Controlling Violence in the Pittsburgh sample was male-perpetrated. Graham-Kevan and Archer (2003) report that 87% of the Coercive Controlling Violence in their British sample was male-perpetrated. The combination of this gender pattern in Coercive Controlling Violence with the predominance of Coercive Controlling Violence in agency settings accounts for the consistent finding in law enforcement, shelter, and hospital data that intimate partner violence is primarily male-perpetrated (Dobash, Dobash, Wilson, & Daly, 1992). However, it is important not to ignore female-perpetrated Coercive Controlling Violence. Although it may represent only one-seventh or so of such violence (if you accept Graham-Kevan and Archer’s numbers, or 3% if you accept Johnson’s numbers), it is necessary that we recognize it for what it is when we make decisions about interventions.

While there is very little systematic research on women’s Coercive Controlling Violence, there are a few qualitative studies that clearly identify it in both same-sex (Renzetti, 1992) and heterosexual relationships (Hines, Brown, & Dunning, 2007; Migliaccio, 2002). For example, Hines et al. (2007) found that 95% of the men calling the Domestic Abuse Helpline for Men reported that their partners tried to control them. And the tactics used by these women included all of the tactics identified in the Power and Control Wheel (with “use of the system” substituted for “assertion of male privilege”). Renzetti’s (1992) findings for lesbian relationships are similar, with the addition of some control tactics that are unique to same-sex relationships, such as threats of outing. Because of the paucity of research on women’s Coercive Controlling Violence, the quantitative data reviewed next will focus on men.

Although Coercive Controlling Violence does not *always* involve frequent and/or severe violence, on average its violence is more frequent and severe than other types of intimate partner violence. For example, for the male perpetrators in the Pittsburgh data, the median number of violent incidents was 18. In 76% of the cases of Coercive Controlling Violence the violence had escalated over time, and 76% of the cases involved severe violence (Johnson, 2006). The combination of these higher levels of violence with the pattern of coercive control that defines Coercive Controlling Violence produces a highly negative impact on victims.

A number of recent studies considering injuries resulting from different types of partner violence show a high likelihood that a victim will be injured or even severely injured by men’s Coercive Controlling Violence (Johnson, 2008; Johnson & Leone, 2000; Leone, Johnson, Cohan, & Lloyd, 2004). For example, Johnson (2008) reports that 88% of women experiencing Coercive Controlling Violence in the Pittsburgh study had been injured in the

most violent incident and 67% had been severely injured. Using data on only one incident (the most recent), Johnson and Leone (2000) found that 32% of women experiencing Coercive Controlling Violence in the National Violence Against Women Survey (NVAWS) had been injured, 5% severely. Campbell and Soeken (1999) report in their literature review that nearly half of physically abused women also report forced sex and others report abusive sex. In addition to the injuries produced directly by abusive and violent sex, there is increased risk of sexually transmitted diseases, including HIV, and abused women who have been sexually assaulted report higher incidence of gynecological problems (Campbell & Soeken, 1999).

It is well established that homicide rates are higher for women who have separated from their partners than for women in intact relationships (Hotton, 2001; Wilson & Daly, 1993), and this heightened risk of homicide following a separation is not found for men (Johnson & Hotton, 2003). Thus, in the family courts, one major concern is the potential for further injury—or death.

Research on dangerousness and lethality has established that for violent male partners control issues are an important predictor of continued or increased violence. The question addressed in this research is: Given the fact that a woman has already been attacked by her intimate partner, what predicts the likelihood that she will be attacked again or even killed? One of the major predictors of continued violence is the presence of the controlling behaviors that define Coercive Controlling Violence. For example, one study comparing victims of intimate partner femicide with a control group of nonlethally abused women found that 66% of the femicide victims had high scores on a scale of partner's controlling behaviors, compared with 24% of the abused control group (Campbell et al., 2003). A qualitative study of 30 women who had survived an attempted intimate femicide found that 83% "described examples of their partners using stalking, extreme jealousy, social isolation, physical limitations, or threats of violence" as a means of controlling them (Nicolaidis et al., 2003, p. 790). It is also important to note that, although 10 of these women had no history of repeated physical abuse by their partners, 8 of those 10 did have partners who *had* been controlling. It is clear that coercive control must be considered a major risk factor for continued or increased violence.

It is not unusual for victims of Coercive Controlling Violence to report that the psychological impact of their experience is worse than the physical effects. The major psychological effects of Coercive Controlling Violence are fear and anxiety, loss of self-esteem, depression, and posttraumatic stress. The fear and anxiety are well documented in many qualitative studies of Coercive Controlling Violence (e.g., Kirkwood, 1993; Dobash & Dobash, 1979; Ferraro, 2006), and quantitative studies confirm that fear and anxiety are frequent consequences of intimate partner violence (Sackett & Saunders, 1999; Sutherland, Bybee, & Sullivan, 1998).

There is considerable evidence establishing the effects of Coercive Controlling Violence on self-esteem, much of it derived from the qualitative data collected from women using the services of shelters. Kirkwood devotes large parts of her research report to issues of self-esteem, reporting that "all of the women expressed the view that their self-esteem was eroded as a result of the continual physical and emotional abuse by their partners" (Kirkwood, 1993, p. 68). Chang (1996) saw this loss of self-esteem as so central to the experience of psychological abuse that she used a quote from one of her respondents as the title of her book, *I Just Lost Myself*.

Depression is considered by many to be the most prevalent psychological effect of Coercive Controlling Violence. Golding's (1999) analysis of the results from 18 studies of

battering and depression found that the average prevalence of depression among battered women was 48%. However, because none of these studies distinguished between Coercive Controlling Violence and other types of partner violence, this number most certainly understates the effects of Coercive Controlling Violence. When Golding separated out studies done with shelter samples (likely to be dominated by Coercive Controlling Violence), the average prevalence of depression was 61%.

Nightmares, flashbacks, avoidance of reminders of the event, and hyperarousal (i.e., the major symptoms of posttraumatic stress syndrome) have more recently been recognized as consequences of domestic violence. In a study of survivors of domestic violence who were receiving services from shelters or other agencies, 60% of the women met criteria for a diagnosis of posttraumatic stress syndrome (Saunders, 1994). Johnson and Leone (2000), using the NVAWS data, found that victims of Coercive Controlling Violence were twice as likely as victims of Situational Couple Violence to score above the median on a scale of posttraumatic stress symptoms.

VIOLENT RESISTANCE

The research on intimate partner violence has clearly indicated that many women resist Coercive Controlling Violence with violence of their own. For example, Pagelow's (1981) early study of women who had sought help in shelters in Florida and California found that 71% had responded to abuse with violence of their own. Although in the early literature such violence was generally referred to as "self-defense," we prefer the term Violent Resistance because self-defense is a legal concept that has very specific meanings that are subject to change as the law changes and because there are varieties of violent resistance that have little to do with these legal meanings of self-defense (Johnson, 2008).

Nevertheless, much Violent Resistance does meet at least the common-sense definition of self-defense: violence that takes place as an immediate reaction to an assault and that is intended primarily to protect oneself or others from injury. This was the largest category of violence identified by Miller (2005) in a qualitative study of 95 women who had been court mandated into a female offenders program after arrest for domestic violence. Miller classified an incident as "defensive behavior," which constituted 65% of her cases, if the woman had been responding to an initial harm or a threat to her or her children.

Much of women's Violent Resistance does not lead to encounters with law enforcement because it is so short-lived. For many violent resisters, the resort to self-protective violence may be almost automatic and surfaces almost as soon as the coercively controlling and violent partner begins to use physical violence himself. But in heterosexual relationships, most women find out quickly that responding with violence is ineffective and may even make matters worse (Pagelow, 1981, p. 67). National Crime Victimization Survey data indicate that women who defend themselves against attacks from their intimate partners are twice as likely to sustain injury as those who do not (Bachman & Carmody, 1994). Although there is little data on men's Violent Resistance, one study substantiated its possible existence. In that study of men calling an abuse hotline, the following comment was reported: "I tried to fight her off, but she was too strong" (Hines, Brown, & Dunning, 2007, p. 66).

The Violent Resistance that gets the most media attention is that of women who murder their abusive partners. The U.S. Department of Justice reports that, in 2004, 385 women murdered their intimate partners (Fox & Zawitz, 2006). Although some of these murders may have involved Situational Couple Violence that escalated to a homicide, most are

committed by women who feel trapped in a relationship with a coercively controlling and violent partner. In comparing women who killed their partners with a sample of other women who were in abusive relationships, Browne (1987) found that there was little *about the women* that distinguished them from those who had not murdered their partners. What distinguished the two groups was found in the behavior of the abuser. Women who killed their abusers were more likely to have experienced frequent attacks, severe injuries, sexual abuse, and death threats against themselves or others. They were caught in a web of abuse that seemed to be out of control. Seventy-six percent of Browne's homicide group reported having been raped, 40% often. Sixty-two percent reported being forced or urged to engage in other sexual acts that they found abusive or unnatural, one-fifth saying this was a frequent occurrence. For many of these women, the most severe incidents took place when they threatened or tried to leave their partner. Another major factor that distinguished the homicide group from women who had not killed their abusive partners is that many of them had either attempted or seriously considered suicide. These women felt that they could no longer survive in this relationship and that leaving safely was also impossible. These findings are confirmed in a recent study of women on trial for, or convicted of, attacking their intimate partners (Ferraro, 2006).

The dominant image of women who kill their partners presented by the media is one in which a desperate woman plans the murder of a brutal husband in his sleep or at some other time when she can catch him unawares. In reality, most of these homicides take place while a violent or threatening incident is occurring (Browne, Williams, & Dutton, 1999, p. 158). Although a few of Browne's (1987) cases involve a plot to murder the abuser, or a wait following an assault for an opportunity to attack safely, the vast majority took place in the midst of yet another brutal attack (see also Ferraro, 2006). A few were women using lethal violence in reaction to a direct threat to their child.

SITUATIONAL COUPLE VIOLENCE

Situational Couple Violence is the most common type of physical aggression in the general population of married spouses and cohabiting partners, and is perpetrated by both men and women. It is not a more minor version of Coercive Controlling Violence; rather, it is a different type of intimate partner violence with different causes and consequences. Situational Couple Violence is not embedded in a relationship-wide pattern of power, coercion, and control (Johnson & Leone, 2005). Generally, Situational Couple Violence results from situations or arguments between partners that escalate on occasion into physical violence. One or both partners appear to have poor ability to manage their conflicts and/or poor control of anger (Ellis & Stuckless, 1996; Johnson, 1995, 2006; Johnston & Campbell, 1993). Most often, Situational Couple Violence has a lower per-couple frequency of occurrence (Johnson & Leone, 2005) and more often involves minor forms of violence (pushing, shoving, grabbing, etc.) when compared to Coercive Controlling Violence. Fear of the partner is not characteristic of women or men in Situational Couple Violence, whether perpetrator, mutual combatant, or victim. Unlike the misogynistic attitudes toward women characteristic of men who use Coercive Controlling Violence, men who are involved in Situational Couple Violence do not differ from nonviolent men on measures of misogyny (Holtzworth-Munroe et al., 2000).

Some verbally aggressive behaviors (cursing, yelling, and name calling) reported in Situational Couple Violence are similar to the emotional abuse of Coercive Controlling

Violence, and jealousy may also exist as a recurrent theme in Situational Couple Violence, with accusations of infidelity expressed in conflicts. However, the violence and emotional abuse of Situational Couple Violence are not accompanied by a chronic pattern of controlling, intimidating, or stalking behaviors (Leone et al., 2004). Babcock et al. (2004) identified one group of men in batterer treatment groups and a community sample that appears to be men involved in Situational Couple Violence (the “family-only” group). These men had low scores on a scale that assessed violence to control, violence out of jealousy, and violence following verbal abuse compared to two other groups that appeared to be involved in Coercive Controlling Violence. Their reported violence was less severe and less frequent compared to the other two groups. Significantly, the men engaged in Situational Couple Violence did not differ from the nonviolent control group on measures of borderline and antisocial personalities or general violence outside of the family.

Situational Couple Violence is initiated at similar rates by men and women, as measured by large survey studies and community samples. Using the Conflict Tactics Scales, Straus and Gelles (1992) found male rates of violence toward a partner of 12.2% and female rates of 12.4%. In a Canadian survey of cohabiting and married respondents, males reported 1-year rates of husband-to-wife violence of 12.9% and female respondents reported wife-to-husband violence of 12.5% (Kwong, Bartholomew, & Dutton, 1999).

In the Canadian survey, men’s and women’s rates for each of nine specific types of violence were similar except for “slapping” and “kicked/bit/hit,” where significantly more women than men reported perpetrating these acts. More than half of those reporting any violence in the past year reported violence perpetrated by both partners (62% men, 52% women). Eighteen percent of men and 35% of women reported female-only violence, and 20% of men and 13% of women reported male-only violence. The majority of violence reported did not result in injury to either men or women. The incidence of severe husband-to-wife violence reported by males and females was 2.2% and 2.8%, and wife-to-husband severe violence was 4.8% as reported by males and 4.5% as reported by females. Injuries were reported by a small number of both men and women (Kwong et al., 1999).

In samples of teenagers and young adults (dating, cohabiting, married), rates of physical violence toward partners are considerably higher than in general survey populations, and several studies find females more frequently violent than males. Magdol et al. (1997) reported that women perpetrated violence 37.2% of the time toward their partners and men 21.8% in a community-representative sample of young adults. In a sample of antisocial aggressive teenagers and young adults, women acknowledged higher rates of perpetration of violence than men (43% vs. 34%) (Capaldi & Owen, 2001). Douglas and Straus (2006) found that, among dating couples in 17 countries, females assaulted their partners more often than did males (30.0% vs. 24.2%).

Situational Couple Violence is less likely to escalate over time than Coercive Controlling Violence, sometimes stops altogether, and is more likely to stop after separation (Babcock et al., 2004; Johnson & Ferraro, 2000; Johnson & Leone, 2005; Johnston & Campbell, 1993). It may involve one isolated incident, be sporadic, or be regularly occurring. The time frame can involve the past only, throughout the relationship, or only currently (e.g., in the several months prior to separation). Using the NVAWS data, 99% of the women experiencing Situational Couple Violence reported no violence in the past 12 months (vs. 78% of the Coercive Controlling Violence group) (Johnson & Leone (2005). While more minor forms of violence are typical of Situational Couple Violence, it can escalate into more severe assaults with serious injuries. Thirty-two percent of perpetrators (men in the NVAWS data set) had committed at least one act of severe violence (Johnson & Leone, 2005). Comparable

data were not available for women. Severe violence in Situational Couple Violence is particularly likely when violence occurs more frequently (daily or weekly). With a community sample of at-risk teenagers or young adults, frequent and bidirectional physical aggression was associated with higher scores on antisocial behavior by both men and women, and women were at much greater risk for injuries than the men (Capaldi & Owen, 2001). When violence was frequent and injuries were sustained, both men and women were more likely to be fearful of each other. However, this study lacked dyadic measures of power and control, so it is not possible to determine if this was Situational or Coercive Controlling Violence, or a combination of both.

Situational Couple Violence results for women in fewer health problems, physician visits, and psychological symptoms, less missed work, and less use of painkillers, compared to women who are victims of Coercive Controlling Violence (Johnson & Leone, 2005). A large representative study in New Zealand found that depression and suicidal ideation were related to higher levels of partner violence victimization in both men and women. Thus one would expect to see more severe health and psychological symptoms in Situational Couple Violence that is very frequent (Magdol et al., 1997).

Overall, these and other survey data support claims that women both initiate violence and participate in mutual violence and that, particularly in teenage and young adult samples, women perpetrate violence against their partners more frequently than do the men. Based on knowledge available, this gender symmetry is associated primarily with Situational Couple Violence and not Coercive Controlling Violence. It is hoped that future research will enable clearer distinctions between violence that arises primarily from partner conflicts in contrast to violence that is embedded in patterns of coercion and control.

SEPARATION-INSTIGATED VIOLENCE

Of special relevance to those working with separating and divorcing families is violence instigated by the separation where there was no prior history of violence in the intimate partner relationship or in other settings (Johnston & Campbell, 1993; Kelly, 1982; Wallerstein & Kelly, 1980). Seen symmetrically in both men and women, these are unexpected and uncharacteristic acts of violence perpetrated by a partner with a history of civilized and contained behavior. Therefore, this is not Coercive Controlling Violence as neither partner reported being intimidated, fearful, or controlled by the other during the marriage. Separation-Instigated Violence is triggered by experiences such as a traumatic separation (e.g., the home emptied and the children taken when the parent is at work), public humiliation of a prominent professional or political figure by a process server, allegations of child or sexual abuse, or the discovery of a lover in the partner's bed. The violence represents an atypical and serious loss of psychological control (sometimes described as "just going nuts"), is typically limited to one or two episodes at the beginning of or during the separation period, and ranges from mild to more severe forms of violence.

Separation-Instigated Violence is more likely to be perpetrated by the partner who is being left and is shocked by the divorce action. Incidents include sudden lashing out, throwing objects at the partner, destroying property (cherished pictures/heirlooms, throwing clothes into the street), brandishing a weapon, and sideswiping or ramming the partner's car or that of his/her lover. Separation-Instigated Violence is unlikely to occur again and protection orders result in compliance. In Johnston and Campbell's (1993) sample of 140 high-conflict custody-disputing parents, 21% of the parents reported Separation-Instigated

Violence. Another study (not restricted to custody-disputing families) indicated that 14% of violence reported began only after separation, although there was no assessment of whether violence with coercion and control had characterized the prior intimate partner relationship (Statistics Canada, 2001).

For professionals in family court or the private sector, it is critical to use assessment instruments that ask discerning questions to distinguish Separation-Instigated Violence from the chronic patterns of emotional abuse and intimidation of Coercive Controlling Violence. A partner's decision to leave may unleash potentially lethal rage, harassment, and stalking in borderline/dysphoric men with a history of Coercive Controlling Violence, where jealousy, impulsivity, and high dependence on the partner are central (Babcock et al., 2004; Dutton, 2007; Holtzworth-Munroe et al., 2000; Jacobson & Gottman, 1998). Unlike perpetrators of Coercive Controlling Violence, men and women perpetrating Separation-Instigated Violence are more likely to acknowledge their violence rather than use denial and are often embarrassed and ashamed of their behaviors. Some have been caring, involved parents during the marital relationship, with good parent-child relationships. Their partners (and often the children) are stunned and frightened by the unaccustomed violence, which sometimes leads to a new image of the former partner as scary or dangerous. Trust and cooperation regarding the children become very difficult, at least in the shorter term (Johnston & Campbell, 1993).

INTIMATE PARTNER VIOLENCE IN CUSTODY AND ACCESS DISPUTES

The research discussed above has not focused specifically on intimate partner violence reported by parents with custody and access disputes. Because there is little research regarding this population, it is not known if the frequency, severity, context, or type of violence observed in custody-disputing parents is more similar to that seen in large-scale surveys (i.e., Situational Couple Violence) or the Coercive Controlling Violence more characteristic of shelter and police samples. However, the number of family law cases in which domestic violence allegations are made is quite high, and multiple and mutual allegations (e.g., substance abuse, child abuse, neglect) are common. In a California Family Court study of cases with custody and access disputes entering mandated (and early) custody mediation, intimate partner violence was reported by at least one parent in 76% of the 2,500 cases (Center for Families, Children, and Courts, 2002). Most of the violence did not occur in the prior 6 months. In 47% of the cases, neither parent had raised the issue of violence before or during mediation (either in separate screening interviews or separate sessions), suggesting that Situation Couple Violence was characteristic of some partners, may have occurred only in the past or episodically during the relationships, may have been mutual, and was not deemed important enough to be an issue in their mediated discussions about the children. It is also possible that victims of Coercive Controlling Violence were fearful of raising the history of violence, even in a separate session (it should be noted that parents are mandated to attend one session, and those unable to reach agreement then move into litigated and judicial processes). Further research will be needed to clarify what types of violence are characteristic or predominant in child custody disputes.

In two Australian samples of parents with custody or access disputes, 48–55% of cases (general litigants sample) and 63–79% (judicial determination sample) contained allegations of partner violence. Approximately half of the allegations in the general litigants sample and 60% of the judicially determined sample were of a particularly serious nature.

Allegations of child abuse were less than half that number, but allegations of child abuse were almost always accompanied by allegations of spousal violence (Moloney, Smyth, Weston, Richardson, Ou, & Gray, 2007). In a California sample of parents disputing custody or access who were undergoing child custody evaluations, domestic violence was substantiated for 74% of the mothers' allegations against fathers and 50% of fathers' allegations against mothers. More child abuse allegations by fathers against mothers were substantiated (46%) than allegations by mothers substantiated against fathers (26%), and in 24% of cases, child abuse allegations were substantiated for both mother and father within the same family (Johnston, Lee, Olesen, & Walters, 2005). Interpretation of research findings to date is confounded by different samples, measures, and legal definitions of domestic violence and child abuse, but it is clear that the percentage of parents reporting intimate partner violence and child abuse is higher among separating and divorcing parents than in the general population.

Only one study (comprising two samples) to date has differentiated among types of intimate partner violence in custody and access disputes (Johnston & Campbell, 1993). In this extremely high-conflict group of parents who were chronically relitigating parenting and access disputes, three fourths of the separating/divorcing couples had a history of violence. Twenty-six percent were not violent, 10% involved minor violence, 23% moderate, and 41% severe violence. Men and women were mostly in agreement about who perpetrated minor acts of violence and women's moderate acts of violence, but substantial gender disagreement existed about severe violence perpetrated by men, with women reporting substantially more severe violence from their partners than the men reported. Except for cuts sustained by both genders, women's injuries were more frequent and severe than men's. Johnston and Campbell (1993) identified five categories of intimate partner violence: male battering (what we are calling Coercive Controlling Violence), female initiated violence, male-controlling interactive violence (similar to Situational Couple Violence), separation-engendered violence, and violence that arises from mental illness, in particular, the disordered thinking of psychotic and paranoid disorders. In this small group (5%) are individuals who often do not repeat their violence if they are treated with medication. Situational Couple Violence (20% of all couples) and Separation-Instigated Violence with no prior history of violence (21% of all couples) were most common and generally involved less serious violence. Johnston notes that these findings should not be generalized to the larger divorcing population of parents or even parents disputing custody because of the chronic history of repeated litigation and continuing high conflict between these parents and the size of the sample.

INTIMATE PARTNER VIOLENCE AND CHILDREN'S ADJUSTMENT

The effects of intimate partner violence on children's adjustment have also been well documented (Bancroft & Silverman, 2004; Graham-Bermann & Edleson, 2001; Fantuzzo & Mohr, 1999; Holtzworth-Munroe, Smutzler, & Sandin, 1997; Jaffe, Baker, & Cunningham, 2004; Wolak & Finkelhor, 1998). Violence has an independent effect on children's adjustment and is significantly more potent than high levels of marital conflict (McNeal & Amato, 1998). Much of this research has not differentiated among types of partner violence when describing the outcomes for children and has been conducted in samples of children whose mothers were in shelters where Coercive Controlling Violence was more likely to predominate. Behavioral, cognitive, and emotional problems include

aggression, conduct disorders, delinquency, truancy, school failure, anger, depression, anxiety, and low self-esteem. Interpersonal problems include poor social skills, peer rejection, problems with authority figures and parents, and an inability to empathize with others. Preschool children traumatized by the earlier battering of their mothers had pervasive negative effects on their development, including significant delays and insecure or disorganized attachments (Lieberman & Van Horn, 1998). School-age children repeatedly exposed to violence are more likely to develop posttraumatic stress disorders, particularly when combined with other risk factors of child abuse, poverty, and the psychiatric illness of one or both parents (Ayoub, Deutsch, & Maraganore, 1999; Kilpatrick & Williams, 1997). Threats to use or use of guns and knives is associated with more behavioral symptoms in 8–12-year-olds, when compared to youngsters where there was intimate partner violence without knives and guns (Jouriles et al., 1998). There are also higher rates of both child abuse and sibling violence in violent, compared to nonviolent, high-conflict marriages.

Further research that differentiates among types of violence is likely to demonstrate that children's exposure to Coercive Controlling Violence, as compared to Situational Couple Violence or Separation-Instigated Violence, is associated with the most severe and extensive adjustment problems in children. Early support for this was provided by Johnston (1995) who reported that boys experiencing Coercive Controlling Violence were significantly more symptomatic than boys in families with Situational Couple Violence, and boys in families with Separation-Instigated Violence, or no violence, were least symptomatic.

IMPLICATIONS FOR INTERVENTIONS

BATTERER INTERVENTION PROGRAMS

Batterer programs come in many forms but the general experience with them is that they have minimal success. For example, one recent review of experimental and quasi-experimental studies of the effectiveness of such programs estimates that with treatment 40% of participants are successfully nonviolent; without treatment 35% are nonviolent (Babcock et al., 2004). Unfortunately, studies of program effectiveness do not, in general, make any distinctions among types of violence or types of so-called batterers. It is possible that treatment programs are generally effective with some participants (such as those involved in Situational Couple Violence), but not with others (such as those involved in Coercive Controlling Violence). Another possibility is that different types of intervention work for different types of violent men or women. Although very little research has been done on this issue to date, there is already some evidence for differential effectiveness. For example, one recent study of almost 200 men court mandated to an intervention program found that men involved in Situational Couple Violence were the most likely (77%) to complete the program, with two groups involving Coercive Controlling Violence falling far behind them at 38% and 9% completion (Eckhardt, Holtzworth-Munroe, Norlander, Sibley, & Cahill, in press). Another study found that, in a 15-month follow-up, only 21% of men involved in Situational Couple Violence were reported by their partners to have committed further abuse, compared with 42% and 44% of the two groups of Coercive Controlling Violence (Clements et al., 2002).

This research suggests that tailoring interventions to the type of violence in which the participants are engaged may greatly improve the effectiveness of interventions. In fact,

existing versions of so-called batterer intervention programs are already well-suited to differentiating among types of intimate partner violence. The feminist psycho-educational model that is the most common approach is quite clearly based on an understanding of intimate partner violence as Coercive Controlling Violence (Pence & Paymar, 1993). The approach involves group sessions in which facilitators conduct consciousness-raising exercises that explicate the Power and Control Wheel, explore the destructiveness of such authoritarian relationships, and challenge men's assumptions that they have the right to control their partners. Participants are then encouraged to approach their relationships in a more egalitarian frame of mind.

Some men report that they are insulted by these feminist programs that assume that they are determined to completely control their partner's life (Raab, 2000). If, in fact, they are involved in Situational Couple Violence and not Coercive Controlling Violence, then the second major type of batterer program, cognitive behavioral groups, may be what they need. Cognitive behavioral groups focus on interpersonal skills needed to prevent arguments from escalating to verbal aggression and ultimately to violence. These groups teach anger management techniques, some of which are interpersonal (such as timeouts), others cognitive (such as avoiding negative attributions about their partner's behavior). They also do exercises designed to develop their members' communication skills and ability to assert themselves without becoming aggressive. Although these are techniques that are also used by marriage counselors in the context of couples counseling, couple approaches are almost never recommended for batterer programs because of the threat they might pose to victims of Coercive Controlling Violence. Thus, these techniques are typically used with groups composed only of violent men or women, without their partners.

One relatively new development in intervention is a consequence of dramatic increases in the number of arrests of women for intimate partner violence in jurisdictions that have implemented mandated arrest policies. Although on the surface many of these groups appear to function much like the groups for men, research into how they actually function suggests that at least some of them assume that many of their participants are involved in Violent Resistance (Miller, 2005). They function much like the support groups for victims of Coercive Controlling Violence that are found in shelters, encouraging the development of safety plans and providing skills for coping with their partners' violence within the relationship. This focus does not address those women who have perpetrated Situational Couple Violence, where cognitive behavioral approaches might be more effective.

Given that these different approaches appear to be targeted to the major types of intimate partner violence, it seems reasonable to develop an effective triage system by which different types of violent men and women would be provided different types of interventions. It may be useful to differentiate even more finely. For example, for some men and women involved in Situational Couple Violence, the problem is poor communication skills, impulsivity, and high levels of anger, while for others it may be alcohol abuse. Similarly, for some involved in Coercive Controlling Violence the problem is rooted in severe personality disorders or mental illness and may call for the inclusion of a more psychodynamic approach to treatment. For others the problem is one of a deeply ingrained antisocial or misogynistic attitude that would be more responsive to a feminist psycho-educational approach. In all cases, of course, holding violent men and women accountable for their violent behavior in the criminal justice system and family courts provides essential motivation for change. Many perpetrators and victims would benefit if all courts mandated and implemented reporting requirements regarding attendance and completion of violence and substance abuse treatment programs.

IMPLICATIONS FOR MEDIATION

Advocates for abused women have long been opposed to the use of custody and divorce mediation, whether voluntary or mandated. Their criticism is based on the view that power imbalances created by violence cannot be remedied regardless of the skill of the mediator and that abused women will not be able to speak to their own or their children's interests out of fear, intimidation, and low self-esteem (Grillo, 1991; Schulman & Woods, 1983). Despite this opposition, many jurisdictions in the United States have implemented custody mediation programs and mandates. In contrast, others have passed legislation automatically excluding mediation for custody disputes where domestic violence occurred at any point in the marriage or separation.

Court-based mediation programs have become increasingly responsive to the legitimate challenges and questions raised by women's advocates and incorporated a variety of new screening and service procedures to protect the victims of partner violence, including separate sessions, different arrival and departure times, metal detectors, referrals to appropriate treatment agencies, presence of support persons, and monitoring of no-contact orders. Empirical research indicates that mediation has certain advantages for women when compared to the adversarial process (Ellis & Stuckless, 1996), and women report high levels of satisfaction with mediation where there was physical or emotional abuse during marriage or separation (Davies, Ralph, Hawton, & Craig, 1995; Depner, Cannata, & Ricci, 1994). It has been noted that the adversarial system often fails to protect victims of Coercive Controlling Violence and that, when mediation is provided in safe settings, victims of intimate partner violence may have more opportunities to be heard and feel empowered with respect to addressing the needs of their children (see Newmark, Harrell, & Salem, 1995).

The research that supports differentiation among types of domestic violence provides valuable indicators for the use of mediation in custody and access disputes. In order to benefit from the identification of different patterns of partner violence, it is imperative that screening instruments have questions that identify not only intensity of conflict, frequency, recency, severity, and perpetrator(s) of violence, but also patterns of control, emotional abuse and intimidation, context of violence, extent of injuries, criminal records, and assessment of fear. Screening instruments should be focused on risk assessment (e.g., DOVE scale; Ellis, Stuckless, & Wight, 2006), be gender neutral in choice of language, and include questions about both partners' violence to be answered by both partners.

Based on the research descriptions of different types of partner violence (and the reported experiences of many mediators in family courts), it is likely that the majority of parents who have a history of Situational Couple Violence are not only capable of mediating, but can do so safely and productively with appropriate safeguards. These men and women appear to be quite willing to express their opinions, differences, and entitlements, often vigorously (Ellis & Stuckless, 1996; Johnston & Campbell, 1993). It is also likely that parents with Separation-Instigated Violence will benefit from mediation, again, with appropriate safeguards and referrals to counseling for the violent partner to help restabilize psychological equilibrium. What is needed, in addition to appropriate screening, are mediators whose domestic violence training has included attention to differentiation among types of intimate partner violence (rather than an exclusive focus on battering and the Power and Control Wheel). A model of mediator behavior that employs good conflict management skills to contain parent anger and rules describing contained and civilized communications between the parties is also essential. It is anticipated that, with Situational Couple and Separation-Instigated Violence, parents would engage in mediation with protection

orders in place and that transfers of the children between parents would take place in either neutral and public settings or using supervised exchanges until there was no further risk of violence.

The use of custody mediation where Coercive Controlling Violence has been identified is more problematic. When screening indicates fear for one's safety, a history of serious assaults and injuries, police intervention, or severe emotional abuse, including control and intimidation, alternatives to mediation should be considered. If both parties prefer that mediation proceeds, it should be in caucus, with separately scheduled times, a support person present, and protection orders in place. This increases opportunities to discuss safety planning, what type of parenting plans and legal decision making will protect the parent and children (e.g., supervised access and exchanges, no contact), and referrals to appropriate treatment interventions and educational programs for both parents (see Jaffe et al., 2008).

IMPLICATIONS FOR FAMILY COURT

INTIMATE PARTNER VIOLENCE AND CHILD ABUSE

Although intimate partner violence is often an issue even in divorces that do not involve children, the major policy concerns regarding such violence in family courts have focused on matters of child custody and access. The central policy question is most often "Should any parent who has been violent toward his or her partner have unsupervised access to or custody of his or her children?" Behind this view of the issue are two concerns: (1) What is the impact of intimate partner violence on children in cases in which neither parent is violent toward the children? and (2) What is the likelihood that someone who is violent toward his or her partner will also be violent toward the children? From our perspective, the answer to both questions is that it depends upon what type of violence you are talking about.

What is generally unstated in the arguments about the link between intimate partner violence and child abuse is that authors are generally referring to Coercive Controlling Violence, not Situational Couple Violence, without so specifying. Studies seem to show that the risk of child abuse in the context of Coercive Controlling Violence is very high (Appel & Holden, 1998). However, the extent to which there is or is not a link between Situational Couple Violence and child abuse (as opposed to child hitting/slapping/showing that does not rise to the legal threshold of abuse) is still unknown. It seems likely that the sampling biases of various studies account for the different estimates of the overlap between intimate partner violence and child abuse—from 6% to 100% according to one discussion of that literature (Appel & Holden, 1998). It may be that the lower 6% findings involve Situational Couple Violence, Separation-Instigated Violence, or Violent Resistance, while the 100% findings involve Coercive Controlling Violence. If research establishes that Violent Resistance and Situational Couple Violence are not strongly linked to the risk of child abuse, then the courts and child protective services will have additional support for the usefulness of making such distinctions in deliberations about child custody in specific cases (Jaffe et al., 2005; Johnston, 2006; Johnston & Kelly, 2004; Johnston et al., 2005; Ver Steegh, 2005). It should be pointed out that the detrimental effects of high levels of parent conflict during marriage and after separation, independent of partner violence, on quality of parenting and children's adjustment have been well established (see Kelly, 2000 for a review).

CHILD CUSTODY ASSESSMENTS

It is important that child custody assessments be conducted carefully, with an underlying empirical basis for conclusions and recommendations whenever possible. Allegations and evidence of women's violence, as well as men's, must be treated seriously and investigated rigorously. Most importantly, distinctions should be made among types of violence whenever possible. Custody assessors must hold multiple hypotheses when conducting an evaluation (Austin, 2001). Allegations of intimate partner violence, child abuse, neglect, and substance abuse are often very challenging, both professionally and personally. Gendered assumptions, inadequate training, and incomplete or biased social science data can interfere with the full development of the information necessary to protect children and parent(s) and to develop appropriate parenting plans and treatment interventions.

In cases in which there is a custody battle between a violent, coercively controlling parent and a partner who is resisting with violence, the primary risk to the children is most likely the parent perpetrating Coercive Controlling Violence. In such cases, it is likely that the Violent Resistant parent needs not only safe custody and access arrangements, but also relevant parent education to restore appropriate parenting practices. In cases in which the violent relationship between the parents involves Situational Couple Violence or Separation-Instigated Violence, there may not be increased risk to children in all cases, particularly if either type of violence is singular and mild. If the Situational Couple Violence is chronic or severe, what is needed is a more nuanced analysis of the situational causes of the violence and whether it is only one or both of the parents who escalate to physical aggression. If one partner has an anger management problem, then he or she is the parent most at risk for child abuse. If the problem is one of couple communication or chronic conflict over one or several relationship issues, generalization to child abuse is unlikely.

The issues are complicated and differ depending on the type of violence, but one thing is clear: The assessment of the violence must include information about its role in the relationship between the contesting parties. A narrow focus on acts of violence will not do. There is a need to err on the side of safety in these matters, particularly when information about the parents' violence is limited and the court's response is inadequate because of lack of appropriate personnel and screening procedures. Once sufficient court resources are invested in individual cases, more nuanced responses can be considered.

Jaffe and his colleagues (2008) suggest an approach that combines attention to types of violence with other information. They recommend an assessment in terms of potency (severity of the violence), pattern (essentially a differentiation among types), and primary perpetrator. Their discussion makes it clear that some courts are already recognizing a variety of nuanced choices regarding child custody. They distinguish among five different possible outcomes: co-parenting generally involving joint custody in which both parents are involved in making cooperative decisions about the child's welfare; parallel parenting with both parents involved, but arrangements designed to minimize contact and conflict between the parents; supervised exchanges of the child from parent to parent in a manner that minimizes the potential for parental conflict or violence; supervised access, when one or both parents pose a temporary danger to the child, provided under direct supervision in specialized centers and/or by trained personnel with the hope that the conditions that led to supervised access will be resolved and the parent can proceed to a more normal parent-child relationship. In the most serious cases, in which a parent poses an ongoing risk to the child, all contact with the child would be prohibited.

CONCLUSION

Current research provides considerable support for differentiating among types of intimate partner violence, and such differentiations should provide benefits to those required to make recommendations and decisions about custody and parenting plans, treatment programs, and legal sanctions. As indicated, there is a need for continuing research on partner violence that will expand and refine our understanding of these men and women who engage in violence within the family. Among other things, little is known about the precipitants of female violence, the types of emotional abuse and violent acts they perpetrate, and the impact on children's adjustment, particularly with emotionally abusive, controlling women who are violent with their nonviolent partners. The significant role of substance abuse in intimate partner violence has been observed, but not with respect to differentiation among types of violence. Treatment programs that focus on the causes and contexts of different types of violence are more likely than one-size-fits-all approaches to address the major issues underlying the violence and, therefore, to develop recommendations that achieve more positive results.

NOTE

1. Wingspread Custody and Domestic Violence Conference. Cosponsored by the Association of Family and Conciliation Courts and the National Council of Juvenile and Family Court Judges. February 15–17, 2007.

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Abuse Issues and Parenting

Examining Intimate Partner Violence Types in a Diverse Sample of Court-Referred Parenting Dyads

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Typology systems hold promise to improve IPV treatment outcomes. Holtzworth-Munroe and Stuart's (1994) typology was investigated using cluster analysis to categorize IPV behaviors among 112 partner-violent dyads. IPV types were compared on individual [convictions, physical assault, injury] and dyadic behaviors [symmetry, directionality, and co-occurrence of types]. As hypothesized, three-cluster solutions (Family-Only [FO], Borderline/Dysphoric [B/D], and Generally-Violent/Antisocial [GV/A]) were best-fitting across genders, with no ethnic differences. As hypothesized, FO, B/D, and GV/A subtypes had the lowest, intermediate, and highest rates of self-reported IPV and convictions, respectively. Typology group detected gender differences in predicted directions, mutual violence was the most common IPV type, and partners were most likely to have matching subtypes. Results support assessment at the individual dyadic level.

KEYWORDS *domestic violence, gender symmetry, Hispanic, intimate partner violence, typology*

Millions of Americans experience intimate partner violence (IPV) each year, with more than one in three women and one in four men experiencing IPV in their lifetime (Black et al., 2011). Not only does IPV result in physical injuries, it also leads to serious and sometimes more insidious psychological consequences, including depression, suicidality, substance use, and post-traumatic

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stress (Golding, 1999). Partner violence is detrimental not only to the involved partners, but to the exposed family members as well. For example, one in 15 children is exposed to IPV each year (Hamby, Finkelhor, Turner, & Ormrod, 2011), and children who have witnessed domestic violence are reported to exhibit increased levels of internalizing and externalizing behavior problems compared to normative samples (El-Sheikh, Cummings, Kouros, Elmore-Staton, & Buckhalt, 2008).

Despite IPV remaining a pervasive societal issue (e.g., Black et al., 2011; Whitaker, Haileyesus, Swahn, & Saltzman, 2007), treatment studies of IPV prevention show little or no impact over control conditions (e.g., Eckhardt et al., 2013). Furthermore, few studies have investigated IPV among cultural minorities (Friend, Langhinrichsen-Rohling, & Eichold, 2011). This paucity of research is troubling as racial/ethnic minorities are disproportionately overrepresented in both the adult and the juvenile justice systems (e.g., Braithwaite, Conerly, Robillard, Stephens, & Woodring, 2003; Feldstein Ewing, Venner, Mead, & Bryan, 2011). Research also suggests that cultural minorities report higher rates of IPV (Field & Caetano, 2004; Friend et al., 2011), with Hispanics reporting rates 1.5–2.4 times greater than Caucasians (Straus & Smith, 1990). A few studies have focused on IPV in Hispanic men (Baker, Perilla, & Norris, 2001; Welland & Ribner, 2010); preliminary research indicates that among Hispanic fathers, IPV perpetration was associated with lower self-reported parenting competence and fewer reported social supports regarding parenting than Latino mothers (Baker et al., 2001). In a qualitative study of Latino male IPV perpetrators, support for mainstream (e.g., witness to IPV in childhood) and culture-specific (e.g., traditional gender roles, *machismo*) variables were associated with IPV perpetration (Welland & Ribner, 2010). To our knowledge, no studies have explicitly examined IPV types among Hispanic dyads.

Types of IPV, Gender Symmetry, and Directionality of Violence

Historically, IPV perpetration has been viewed as a unidirectional phenomenon, with male partners viewed as perpetrators and female partners viewed as victims/survivors (e.g., Dobash, Dobash, Wilson, & Daly, 1992). Based on this conceptualization, the predominant IPV treatment, the *Duluth model* (Pence & Paymar, 1993), is dedicated to increasing male offenders' awareness of power differentials and promoting development of non-violent coping skills (Babcock, Green, & Robie, 2004). In contrast, evaluated female interventions primarily focus on the provision of shelter programs, supportive counseling, and/or police outreach (Stover, Meadows, & Kaufman, 2009). In terms of outcomes, these male and female treatments have a modest impact, with, at best, an average 33% rate of IPV recidivism at 6 months (Babcock et al., 2004; Stover et al., 2009). One proposed explanation for these modest outcomes is that the existing IPV treatments tend to be "one-size-fits-all" conceptualizations of IPV (e.g., Kelly & Johnson, 2008).

Using an epidemiological study with 895 divorcing couples court-mandated to participate in mediation, recent research supports the use of IPV differentiation among justice-involved parents (Beck, Anderson, O'Hara, & Benjamin, 2013). Moreover, research shows that differentiation among IPV has clinical implications, with some types of IPV showing more frequent and severe violence, poorer treatment response, and more co-parenting difficulties (Eckhardt, Holtzworth-Munroe, Norlander, Sibley, & Cahill, 2008; Hardesty, Khaw, Chung, & Martin, 2008; Holtzworth-Munroe, Meehan, Herron, Rehman, & Stuart, 2000, 2003). Clinicians, courts, and legal enforcement are eager for approaches to help differentiate IPV types, guide treatment and justice decisions, and improve interventions (e.g., Ver Steegh & Dalton, 2008).

A key variable highlighted in examinations of IPV is whether the violence is symmetrical or asymmetrical, which establishes whether men or women are more frequent and/or severe users of relationship violence. Traditionally, IPV has been viewed as an asymmetrical phenomenon (e.g., *Duluth model*), in that a disproportionate number of acts are committed by one partner, usually the male partner. Men have been found to often use more severe forms of IPV, such as sexual coercion (Ansara & Hindin, 2009; Swan & Snow, 2002). However, preliminary research shows gender symmetry across other forms of severe violence, including hitting, kicking, choking, slamming against a wall, burning, and using a knife/gun (Straus, 2008). In fact, many studies now support gender symmetry in showing that the rate of psychologically aggressive and violent acts perpetrated by women upon their male and/or female partners is equal to or higher than the rate of acts perpetrated by men, particularly among less severe samples, such as community, college, and nontreatment seeking samples (e.g., Archer, 2000; Kulkin, Williams, Borne, de la Bretonne, & Laurendine, 2007; Swan & Snow, 2002; Whitaker et al., 2007).

A related, but not synonymous, construct is IPV directionality (i.e., male-perpetrated, female-perpetrated, or mutually-perpetrated). Directionality of violence varies in prevalence across ethnicities, is associated with important IPV outcomes, such as the violence frequency and severity, and has unique IPV predictors (Caetano, Ramisetty-Mikler, & Field, 2005; Langhinrichsen-Rohling, Misra, Selwyn, & Rohling, 2012; Melander, Noel, & Tyler, 2010). Just as research shows that some IPV is asymmetrical, studies indicate that IPV can be unidirectional, as either male-perpetrated or female-perpetrated (Caetano et al., 2005; Whitaker et al., 2007). Male-perpetrated IPV frequently results in more injury (Archer, 2000), and rates of male-perpetrated IPV remain high in justice and military samples (Langhinrichsen-Rohling, Selwyn, & Rohling, 2012). In contrast, recent research points to the presence of primary female aggressors (Graham-Kevan & Archer, 2008; Hines & Douglas, 2010; Straus, 2008), with some studies showing that the rate of female-perpetrated unidirectional violence may have been underestimated among epidemiological, community, and educational samples (Langhinrichsen-Rohling et al., 2012).

More commonly, though, IPV occurs in the context of a dyadic relationship in which both partners become mutually aggressive as conflict escalates (Langhinrichsen-Rohling et al., 2012). Mutually-violent relationships may or may not be symmetrical in IPV frequency, severity, and injury. Bidirectional or mutual IPV relationships are often characterized by an absence or reduced presence of coercive control, different violence motives, less fear and intimidation, and less severe and less frequent IPV (Caetano et al., 2005; Graham-Kevan & Archer, 2008; Kelly & Johnson, 2008; Johnson, 2006; 2011; Rosen, Stith, Few, Daly, & Tritt, 2005; Straus, 2008; Whitaker et al., 2007). In a review of seven epidemiological studies with over 80,000 participants across educational, clinical, and justice settings, Lanhinrichsen-Rohling et al. (2012) found that bidirectional violence occurred in 57.9% of all violent relationships (male-to-female unidirectional: 13.8%; female-to-male unidirectional: 28.3%), and that bidirectional violence was common across all settings (rates ranging from 39.3% to 70.6%). Contrary to previous findings suggesting higher rates only among community samples (Caetano et al., 2005; Johnson, 2006), this meta-analysis showed bidirectional violence was the most prevalent IPV type even in clinical and justice settings. Given the disparate findings regarding the prevalence of bidirectional violence among justice-involved samples, additional research identifying effective ways to differentiate among male and female offenders is needed.

Types of Intimately Violent Men

Research indicates that IPV offender typologies have successfully differentiated partner-violent men on frequency and intensity of IPV, generality of violence outside the relationship, and personality disorder traits (Gottman, Jacobson, Rushe, & Short, 1995; Holtzworth-Munroe & Stuart, 1994; Tweed & Dutton, 1998). One of the most prominent of these typologies, Holtzworth-Munroe and Stuart (1994), identified three types of intimately-violent men. The first group, Family-Only (FO) men, exhibited violence only within the intimate relationship and had the lowest levels of IPV and general violence. FO men tend to have low rates of substance abuse, less severe experiences of abuse and neglect during childhood, and are less likely to endorse hostile attitudes toward women (Holtzworth-Munroe & Stuart, 1994). FO men on average do not show elevations above a base rate score of 60 on Millon Clinical Multiaxial Inventory (MCMI) scales (Waltz, Babcock, Jacobsen, & Gottman, 2000).

The second group, Borderline/Dysphoric (B/D) men, had moderate to high levels of IPV severity and general violence, as well as elevated borderline traits (e.g., emotional lability). B/D men tend to have high interpersonal dependency, high anger, symptoms of depression/anxiety, low self-esteem, suicidal ideation, and a fearful attachment background (Holtzworth-Munroe & Stuart, 1994). Their interpersonal relationships are characterized by fears of

rejection and abandonment, and the men will frequently endorse items such as, "I worry about being left alone" and "I will do something desperate to prevent abandonment" (Holtzworth-Munroe et al., 2000). They typically have clinical significant elevations (75 or higher) on MCMI scales measuring borderline traits (see Waltz et al., 2000).

The third group, Generally-Violent/Antisocial (GV/A) men, had the highest rates of IPV severity and general violence, as well as the most severe antisocial traits. GV/A men tend to endorse high levels of criminal behavior, drug/alcohol dependence, poor empathy, and dismissive attachment (Holtzworth-Munroe & Stuart, 1994). They tend to have more previous convictions than other groups, and often endorse items such as, "I have done impulsive things that got me in trouble" and "Punishment doesn't stop me from getting in trouble" (Holtzworth-Munroe et al., 2000). These men typically have elevations on the Antisocial MCMI scale suggestive of a personality disorder (i.e., above a base rate score of 100; Waltz et al., 2000).

The three IPV offender groups have been found to differ in theoretically predicted ways on verbal aggression, attitudes condoning violence, negative attitudes toward women, psychological control, and substance use (Delsol, Margolin, & John, 2003; Holtzworth-Munroe et al., 2000, 2003). Preliminary evidence suggests that this three offender typology holds for many variables, such as continued IPV and generality of violence over 18-month to 3-year timeframes (Holtzworth-Munroe et al., 2003). This typology also predicts IPV treatment completion and recidivism over 18 months to 4.5 years (Eckhardt et al., 2008; Huss & Ralston, 2008; Langhinrichsen-Rohling, Huss, & Ramsey, 2000). Moreover, preliminary evidence suggests that tailoring interventions to typology can improve treatment outcomes (Eckhardt et al., 2008). Although this three offender typology has been found in court, prison, and community male samples (Cunha & Abrunhosa Goncalves, 2013; Eckhardt et al., 2008; Huss & Ralston, 2008; Monson & Langhinrichsen-Rohling, 2002; Waltz et al., 2000), questions remain about its generalizability to other groups, particularly Hispanic samples and women who perpetrate IPV.

Types of Intimately Violent Women

Theoretical attempts to identify types of intimately-violent women are emerging in hopes of creating gender-specific models of IPV (Weston, Marshall, & Coker, 2007; Swan & Snow, 2006). Various explanations have been posited for women's use of partner violence, ranging from motivations that are thought to be largely unique to female IPV (e.g., self-defense) to those similar to those asserted for men that align theoretically with Holtzworth-Munroe and Stuart's (1994) male subtypes (e.g., dominance of partner, expression of anger; Graham-Kevan & Archer, 2008). For example, Babcock, Miller, and Siard (2003) found that many women report perpetrating IPV in response to provocation by the partner or as a poorly controlled

expression of anger, similar to the FO subtype. Women also report using IPV due to generally poor emotional regulation, mental health problems, or to get their partner's attention (like the B/D subtype; Babcock et al., 2003; Weston et al., 2007). Studies have also shown women use unidirectional violence (Langhinrichsen-Rohling et al., 2012), are at times primary aggressors with proactive motives for aggression (Hines & Douglas, 2010; Straus, 2008), and endorse instrumental attempts to coerce, punish, or retaliate against one's partner (akin to the GV/A subtype; Graham-Kevan & Archer, 2005; 2008; Hettrich & O'Leary, 2007).

With two noted exceptions (i.e., Babcock et al., 2003; Monson & Langhinrichsen-Rohling, 2002), published studies investigating the fit of male typologies with women is scarce, and to our knowledge none exist among female Hispanic populations. The two existing studies suggest utility of male typologies to characterize female IPV. In a sample of predominantly Caucasian women arrested for domestic violence, Babcock et al. (2003) found that women fitting the GV/A subtype initiate more IPV for purposes of control, perpetrate more physically assaultive acts, and inflict more injury than women matching the FO subtype. Similarly, in a sample of violent individuals currently dating, a three-type solution similar to the Holtzworth-Munroe classification was found to characterize violent women (relationship-only, borderline/dysphoric, and histrionic/preoccupied types; Monson & Langhinrichsen-Rohling, 2002). Therefore, preliminary evidence suggests partner-violent women may also be heterogeneous and that male typologies may be helpful in the differentiation of female IPV. The dearth of literature, coupled with research indicating that female IPV patterns may be characterized by even more variation and heterogeneity than male partner violence (Ansara & Hindin, 2009), highlights the critical need for research within this population.

Current Study

Despite a foundation of empirical support for the utility of the Holtzworth-Munroe typology among male offenders and preliminary data for its use among female perpetrators, no published studies have examined this typology in a sample of couples or among a primarily Hispanic population. Research among this population is critical as preliminary research supports both mainstream and culture-specific variables contribution to IPV, as well as some clinically meaningful differences (Welland & Ribner, 2010). For example, research evaluating ethnic differences in the prevalence rates of unidirectional and mutual violence, shows that Hispanic samples generally have lower rates of mutual violence than Caucasians or African Americans (Caetano et al., 2005; Langhinrichsen-Rohling et al., 2012). However, there are no published studies to-date examining the fit of IPV typologies among Hispanic samples. The current study's first aim was to address this gap by investigating the utility of the Holtzworth-Munroe and Stuart's (1994)

typology in a court-referred sample of ethnically-diverse men and women. Although there is preliminary evidence that gender-specific and culture-specific variables are important IPV considerations, research also supports the utility of mainstream variables among women and ethnic minorities (Babcock et al., 2003; Welland & Ribner, 2010; Weston et al., 2007). As such, we hypothesized that the Holtzworth-Munroe and Stuart's (1994) typology would be identified across all ethnicities and both genders, with three clusters (FO, B/D, GV/A) being the best fit for all participants. Consistent with previous literature, we anticipated that FO groups would have the lowest rates of IPV behaviors (as measured by reported physical assault, injury and IPV convictions), B/D groups would have intermediate rates, and GV/A groups would have the highest rates.

Similarly, theoretical assertions have been made about the relationship of this typology to types of IPV, but there are no empirical investigations of symmetry, directionality and the FO, B/D, and GV/A subtypes. This study's incorporation of information from both partners allows for individual (e.g., personality traits) as well as dyadic variables to be considered, which is critical among understudied IPV populations (Capaldi & Kim, 2007). Therefore, a second aim of this study was to investigate three dyadic variables in IPV including symmetry, directionality, and within-couple co-occurrence of types and how these variables relate to the FO, B/D, and GV/A types. First, consistent with literature suggesting gender symmetry is most common among less severe IPV samples that resemble the FO subtype, it was anticipated that women in an FO subtype would show equivalent or greater perpetrated physical assault and injury than men in an FO subtype. In contrast, we predicted that men in B/D and GV/A subtypes would show greater perpetrated physical assault and injury than women in these subtypes. Second, consistent with previous research (i.e., Lanhinrichsen-Rohling et al., 2012), we predicted that mutual violence would be the most common type of violence within this overall sample; however, after taking into account subtype, mutual violence would be most prevalent only among the FO typology groups, whereas male-perpetrated unidirectional violence would be most evident in the B/D and GV/A subtypes. Finally, we conducted an exploratory investigation of co-occurrence of types within parenting dyads to elucidate whether: a) parents were more likely to have been in a relationship with a parent of a similar subtype; and b) certain combinations of parent subtypes differentially place dyads at risk of IPV.

METHOD

Participants

The current study was part of a larger domestic violence intervention study (Wray, Hoyt, & Gerstle, 2013). Participants were court-referred following

family court proceedings (i.e., protective order hearing, mediation, custody hearing) in which there was evidence of IPV. Both parties in the case ('dyad') were referred for potential participation and had to meet eligibility criteria for the intervention study (e.g., court-referred, English proficient, and parent to at least one child). Participants were recruited during their initial appointment for an IPV treatment program ($n = 518$). Potential participants were informed that they could have their data included in a study aimed at evaluating and improving IPV treatments wherein their clinical data and publically-accessible court records would be examined for research purposes. During the consent process, participants were informed that allowing their data to be used for research required no additional time commitment, that participation was completely voluntary, and that participation in no way influenced their treatment or court outcomes. Because no additional time beyond standard assessment and treatment procedures was required, participants were not financially compensated for their involvement in this study. Of the original 518 potential participants, 421 consented to have their data used for research (Figure 1).

Following the study aims, analyses for the current study were limited to dyads who endorsed at least one physical assault or injurious behavior within the parenting relationship (either self- or partner-report on the Conflict Tactics Scale – Revised; Straus, Hamby, Boney-McCoy, & Sugarman, 1996). Note that a single incident of physical assault or injury reported by either

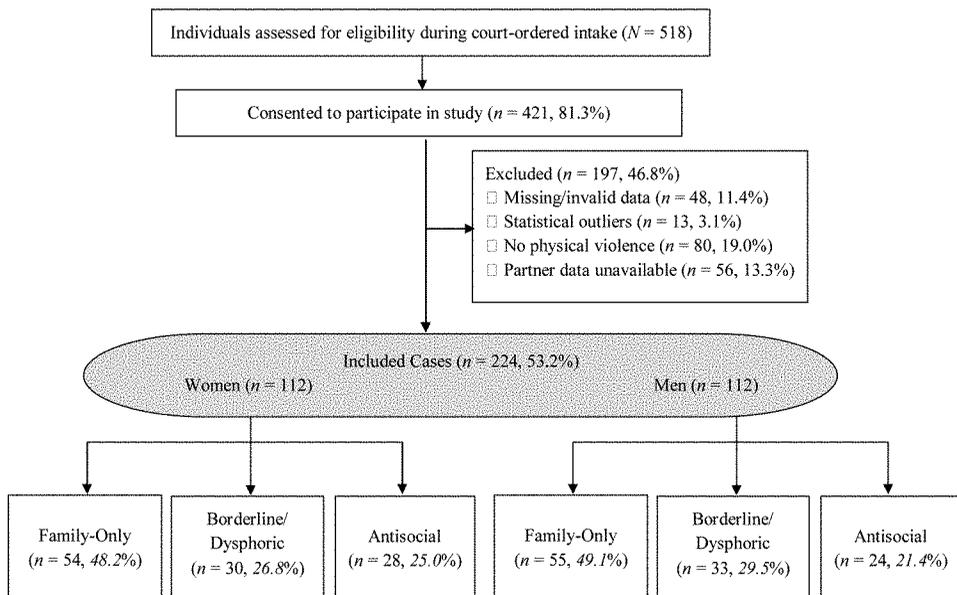


FIGURE 1 Study attrition flow diagram. *Note.* Percentages in italics represent the proportion of cases of the given subtype out of the available cases.

partner was the minimum standard for inclusion. The final sample for this study therefore consisted of 112 dyads (112 men and 112 women) after excluding participants for missing or invalid data ($n=48$), for an absence of physical assault or injury in their relationship ($n=80$), and if data was unavailable from their partner (either did not complete the initial assessment or did not consent for their data to be used for research; $n=56$). We also excluded 13 participants due to multivariate outliers (Figure 1).

Participants were an average of 28.8 years of age ($SD=6.6$). Sixty-five percent of participants ($n=145$) described their ethnicity as Hispanic, 22% ($n=50$) as Caucasian, 5% ($n=10$) as American Indian/Alaska Native (AIAN), 3% ($n=7$) as African American, 2% ($n=4$) as Asian American/Pacific Islander (AAPI), and 3% ($n=8$) as multi-ethnic/other (Table 1). Participants had an average of 13.0 years of education ($SD=1.6$) and had known their partner for an average of 7.6 years ($SD=5.4$). The majority reported household income under \$30,000 (73.2%, $n=164$). A large proportion of

TABLE 1 Participant Sociodemographic Data

	Demographic comparisons – Men typology group			F/ χ^2	η_p^2
	FO ($n=55$)	B/D ($n=33$)	GV/A ($n=24$)		
Age (SD)	30.9 (6.4) ^a	26.9 (5.5) ^b	30.9 (6.9) ^a	4.57*	.08
Ethnicity (%)					
Hispanic	73	76	67	1.07	
Caucasian	15	9	17		
Other	12	15	16		
African American	2	6	8		
American Indian	4	0	0		
Asian American	0	6	4		
Multi-ethnic/Other	6	3	4		
Education (SD)	13.0 (1.6)	12.5 (1.5)	12.4 (1.2)	2.13	.04
	Demographic comparisons – Women typology group			F/ χ^2	η_p^2
	FO ($n=54$)	B/D ($n=30$)	GV/A ($n=28$)		
Age (SD)	28.5 (6.4)	27.5 (8.0)	26.8 (5.3)	.69	.01
Ethnicity (%)					
Hispanic	54	53	68	3.16	
Caucasian	35	37	18		
Other	11	10	14		
African American	2	0	4		
American Indian	7	3	10		
Asian American	0	3	0		
Multi-Ethnic/Other	2	4	0		
Education (SD)	13.5 (1.6)	13.3 (1.5)	13.0 (1.8)	.95	.02

Note. Values presented are M (SD). Means with different subscripts are significantly different using the Bonferroni correction.

* $p < .05$. ** $p < .01$.

participants were never married to their partners (39.3% $n = 88$), with smaller percentages separated (23.2%, $n = 52$), divorced (22.3%, $n = 50$), and married (15.2%, $n = 34$) as identified by self-report (Table 1). Groups based on marital status (never married, married, separated, divorced) did not differ significantly on any IPV related variables, including reports by both partners and conviction data, $F(3, 108) = .31-2.23, ns$.

Procedure

Measures were administered by psychology doctoral students during the program intake. Conviction data were collected by undergraduate research assistants from publically accessible court records and coded into intimate partner violence and general violence categories as described in detail below. All conviction data was coded utilizing a coding manual developed and overseen by the first author, which is available upon request (see Wray et al., 2013 for details).

Measures

INTIMATE PARTNER VIOLENCE

The Conflict Tactics Scale-Revised (CTS-2; Straus et al., 1996) is a reliable and valid measure of IPV. This 39-item, Likert-scaled measure assesses the frequency of violent acts in the past year by both the participant and their partner (for a total of 78 items). Participants choose from the following response categories: (1) *once*, (2) *twice*, (3) *three to five times*, (4) *six to ten times*, (5) *eleven to twenty times*, (6) *more than 20 times*, (7) *not in the past year, but it happened before*, and (8) *never*. Similar to previous typology work (e.g., Huss & Ralston, 2008), two of the five subscales that measure physical IPV, the Physical Assault and Injury subscales, were used to determine past year frequency and severity of IPV. An additional index of violence directionality (i.e., male-perpetrated, female-perpetrated, and mutual violence) was computed based on non-endorsement of violence on self-report CTS-2 scales. Specifically, a couple was classified as mutual violence if both partners endorsed IPV perpetration, or into one of the unidirectional categories if they did not.

PSYCHOPATHOLOGY

Similar to other evaluations conducted with IPV samples (e.g., Holtzworth-Munroe et al., 2003), we administered the Millon Clinical Multiaxial Inventory-Third Edition (MCMI-III; Millon, Davis, & Millon, 1997), a 175-item, true-false, self-report inventory designed to evaluate psychological disorders. As with previous IPV typologies, we used scores from the Borderline,

Antisocial, and Dependent scales (e.g., Holtzworth-Munroe et al., 2000). The MCMI and its later versions have shown adequate reliability and validity in several IPV samples (e.g., Craig, 2003; Gondolf, 1999). Based on guidelines for profile validity (Millon et al., 1997), participants were excluded for scores outside established validity parameters (i.e., Disclosure score < 34 with no clinical scales above 59, Disclosure score > 178). Two participants were excluded based on this criterion.

GENERALITY OF VIOLENCE

Like Holtzworth-Munroe et al. (1994, 2000, 2003), we included a measure of general violence. In order to assess generality of violence, the number of violent convictions not involving intimate partners were collected and totaled into a single general violence measure. To ensure that the general violence data were not contaminated by partner violence, violent charges that were related to IPV (e.g., battery against a household member) were excluded and included in the IPV conviction outcome data. Using the Cormier–Lang System for Quantifying Criminal History (e.g., Quinsey, Harris, Rice, & Cormier, 1998), the following convictions (deferred and guilty verdicts) were included in the general violence variable: assault/battery, aggravated assault/battery with a deadly weapon, assaulting an officer, child abuse, kidnapping, homicide/murder, public affray, robbery, and sexual abuse/rape. Only convictions that occurred prior to baseline were included. Note that the general violence variable was not limited to a specific number of years during collection. In order to control for this, supplementary analyses were performed co-varying age. These results showed no significant changes; as such, the non-adjusted variable was retained for analyses.

IPV CONVICTIONS

The IPV court convictions were collected for all participants to assess the number of IPV convictions accrued prior to baseline. Specifically, we obtained IPV court convictions (i.e., assault or battery against a household member and violation of an order of protection) through public court records and coded these data into a single IPV-related variable. Any other convictions that were part of an IPV-related case were also included (e.g., false imprisonment, prevention or obstruction of sending a message, trespassing when associated with a battery/assault against a household member).

RESULTS

Analytic Plan

We used cluster analysis to classify participants into typology groups. The goal of cluster analysis is to classify individuals into subgroups based on a

multivariate consideration of several variables, such as history of violent behavior, personality factors, or attitudes toward violence. Statistically, cluster analysis leverages heterogeneity relevant variables in order to classify these individuals into subgroups relevant to a particular construct (Clatworthy, Buick, Hankins, Weinman, & Horne, 2005). Thus, individuals within subgroups can be assumed to be maximally similar to one another, while being maximally different from individuals classified into other subgroups. Indeed, there has been a call for greater use of such methods in violence research as a means for greater complexity in predicting violent behavior (see Swartout & Swartout, 2012).

To create the typology groups, we utilized scores from the Borderline, Anti-social, and Dependent scales of the MCMI-III, the physical violence subscales of the CTS-2, and the generality of violence variable (e.g., Holtzworth-Munroe et al., 2000; Huss & Langhinrichsen-Rohling, 2006; Huss & Ralston, 2008). Based on published guidelines (Clatworthy et al., 2005), we first utilized a two-step cluster analysis to determine what number of clusters best accounted for variance in the typology subscales, with the best-fitting solution then specifying the number of clusters and providing initial cluster centers in a K-means cluster analysis. Participant cluster groups were then compared on each of the variables used to create the typology and IPV-related convictions. Groups were compared using a univariate ANOVA, with follow-up contrasts utilizing the Bonferroni correction. Additional analyses compared gender differences in CTS-2 scores utilizing a paired-samples *t*-tests for gender-only comparisons and independent samples *t*-tests for comparisons of typology groups between men and women. For within couple analyses, an aggregate CTS-2 score based on all scales from both men and women in each couple was computed to compare typology co-occurrence.

Male Typology Findings

TYPOLOGY

Examination of Akaike's information criterion (AIC) values indicated that a three-cluster solution (AIC = 325.04) was the best-fitting model for men, with the greatest distance ratio (2.23). The AIC values significantly increased for a two-cluster solution (AIC = 381.62) and did not significantly decrease for four- (312.97) or five- (312.87) cluster solutions. Model validation statistics showed good fit of data for the three-cluster solution, with a significant test of covariance inequality between the clusters (Box's $M = 598.48$, $p < .001$), and a significant ratio of variance between versus within clusters (Wilks' $\lambda = .087$, $p < .001$). Consistent with Holtzworth-Munroe et al. (1994; 2000; 2003), three distinct typology groups resulted from this analysis: (a) FO subtype, characterized by relatively low scores across all measured constructs; (b) B/D subtype, characterized by high scores on both the Borderline and Dependent MCMI-III scales as well as moderate levels of IPV and general

violence convictions; and (c) GV/A subtype, characterized by high scores on the Antisocial MCMI-III scale and higher levels of IPV and general violence convictions (Table 1). In terms of demographics, only age significantly differed by subtype, with B/D men significantly younger than the other typologies.

INTIMATE PARTNER VIOLENCE CONVICTIONS

As an alternative objective measure of IPV, univariate ANOVA was used to compare male typology groups on the number of IPV convictions prior to program referral when controlling for age (Table 2). Follow-up *t*-test contrasts utilized the Bonferroni correction. Consistent with hypotheses, the GV/A subtype had significantly greater convictions than the other two subtypes. The FO and B/D subtypes did not significantly differ in IPV convictions.

Female Typology Findings

TYPOLOGY

Consistent with our hypotheses, examination of Akaike’s information criterion (AIC) values indicated that a three-cluster solution (AIC = 305.72)

TABLE 2 Gender Comparisons Within Each Typology Group

	Typology group			F/ χ^2	η_p^2	β
	Men Women	FO (<i>n</i> = 55) (<i>n</i> = 54)	B/D (<i>n</i> = 33) (<i>n</i> = 30)			
CTS-2						
PA		1.49 (2.03) ^b 3.25 (5.76) ^{bi}	3.97 (4.31) ^b 6.23 (8.28) ^{ab}	12.96 (10.81) ^a 8.70 (11.92) ^a	34.54** 3.99*	.390 .070
INJ		.15 (.45) ^b .73 (1.34) [†]	.61 (1.17) ^b .96 (3.56)	5.58 (7.19) ^{ai} 1.21 (2.82)	23.08** .19	.300 .004
MCMI-III						
BOR		8.55 (9.21) ^c 7.61 (9.74) ^c	57.12 (19.37) ^a 48.23 (24.24) ^a	32.00 (29.75) ^b 29.75 (21.99) ^b	78.21** 51.28**	.590 .490
DEP		34.85 (21.17) ^{bi} 24.39 (13.91) ^c	60.88 (20.57) ^a 75.53 (11.70) ^{ai}	35.54 (24.96) ^b 31.75 (14.49) ^b	16.25** 145.04**	.230 .730
ANT		23.96 (12.62) ^{ci} 16.93 (12.52) ^c	47.88 (25.15) ^b 51.17 (19.74) ^b	62.55 (14.66) ^a 60.14 (10.65) ^{ai}	58.80** 102.86**	.520 .650
VIOLENCE		.04 (.19) ^b .00 (.00)	.09 (.29) ^b .00 (.00)	1.08 (1.72) ^{ai} .03 (.18)	14.99** 1.38	.220 .030
Convictions		.58 (.90) ^{bi} .07 (.33) ^b	.62 (1.3) ^{bi} .07 (.26) ^b	1.8 (2.2) ^{ai} .33 (.71) ^a	6.13** 3.59*	.100 .060

Note. Values presented are *M* (*SD*), with values for the men’s groups presented above values for the women’s groups in each category. Means with different subscripts are significantly different using the Bonferroni correction. PA = Perpetrated Physical Assault; INJ = Perpetrated Injury; BOR = Borderline scale; DEP = Dependant scale; ANT = Antisocial scale; VIOLENCE = Prior arrests for general violence. Values in bold represent scores characteristic of the given typology group. β = regression parameter for gender differences in model. Typology group comparisons: **p* < .05. ***p* < .01; Gender differences within typology group: †*p* < .05, ‡*p* < .01; ^cComparison controls for age. β = parameter estimate.

was the best-fitting model for women as well, with the greatest distance ratio (2.09). AIC values increased for a two-cluster (351.79) solution and did not significantly decrease for four-cluster (AIC = 295.35), and five-cluster (AIC = 291.66) solutions. Model validation statistics showed good fit of data for the three-cluster solution, with a significant test of covariance inequality between the three clusters (Box's $M = 120.79$, $p < .001$), and a significant ratio of variance between versus within clusters (Wilks' $\lambda = .103$, $p < .001$). Three distinct typology groups resulted from this analysis: (a) FO subtype, characterized by relatively low scores across all measured constructs; (b) B/D subtype, characterized by higher scores on both the Borderline and Dependent MCMI-III scales and moderate levels of IPV; and (c) GV/A subtype, characterized by high scores on the Antisocial MCMI-III scale, moderate levels of IPV, and violence convictions (Table 2). There were no significant demographic differences between female typology groups.

INTIMATE PARTNER VIOLENCE CONVICTIONS

Similar to the analyses employed for men, univariate ANOVA was used to compare female typology groups on the number of IPV convictions prior to program referral when controlling for age (Table 2). Follow-up t -test contrasts utilized the Bonferroni correction. Results from this comparison again indicated that the GV/A subtype had significantly greater convictions than the other two subtypes. The FO and B/D subtypes did not significantly differ in IPV convictions.

Ethnicity Comparisons

As detailed in Table 1, ethnicity did not significantly differ between types for men or women, $\chi^2(10, N = 112) = 8.65\text{--}8.69$, ns . Consistent with our hypotheses, three-cluster solutions were the best fitting model in this ethnically-diverse sample of men and women, with general breakdowns of types consistent with previous research (Holtzworth-Munroe & Stuart, 1994). Specifically, for men, 49% were classified as FO, 37% as B/D, and 14% as GV/A; for women, 52% were classified as FO, 24% as B/D, and 24% as GV/A.

Symmetry and Directionality

To investigate the second study aim, we compared women's and men's self-report on the CTS-2 taking into account typology group. Similarly to previous research, a direct comparison of men's and women's scores on the CTS-2 independent of typology group was not significant, $t = 1.06\text{--}1.09$, ns , although men tended to endorse slightly less perpetrated physical assault ($M = 4.5$, $SD = 6.6$) and somewhat greater perpetrated injury ($M = 1.5$,

$SD = 4.0$) than women ($M = 5.4$, $SD = 8.6$ and $M = 1.0$, $SD = 2.9$, respectively). Significant differences emerged when taking typology into account (Table 2). As anticipated, FO women endorsed significantly greater physical assault, $t(107) = 2.14$, $p < .05$ and injury perpetration than FO men, $t(107) = 3.04$, $p < .01$. Also consistent with hypotheses, within the GV/A group, men endorsed significantly greater injury perpetration than women, $t(50) = 2.96$, $p < .01$. There was no difference in physical assault perpetration in the GV/A groups, $t(50) = 1.3$, *ns*. Contrary to our hypothesis, men and women in the B/D typology groups did not significantly differ on self-reported physical assault or injury perpetration, $t < 1$.

To examine directionality, we utilized contingency tables overlapping typology groups with directionality groups (i.e., men-to-women IPV dyads, women-to-men IPV dyads, and mutual IPV dyads; see Table 3). Overall, 30% of the dyads were classified as men-to-women IPV, 22% were classified as women-to-men IPV, and 48% were classified as mutual IPV. Mutual violence was most common across all typology groups, $\chi^2(2, N = 112) = 10.95$, $p < .01$. Contrary to hypotheses anticipating that mutual violence would be most pronounced within the FO group and unidirectional violence would be most prevalent in B/D and GV/A groups, there were no significant interactions between typology groups and directionality of violence for either gender's typology group, $\chi^2(4, N = 112) = 2.74$ – 4.91 , *ns*. Furthermore, significant average CTS score differences between directionality groups were identified for physical assault, $F(2, 109) = 9.48$ – 9.95 , $p < .01$, $\eta_p^2 = .15$, but not for injury perpetration, $F(2, 109) = 2.17$ – 2.86 , *ns*, $\eta_p^2 = .05$. For men's

TABLE 3 Co-occurrence of Typology Groups with Directionality of Violence

Men	Women	CTS-2 Total		Directionality	
		Combined IPV M (<i>SD</i>)	Men to women (%)	Women to men (%)	Mutual (%)
FO	FO	44.1 (33.0)	13	8	11
	B/D	73.0 (66.5)	2	3	4
	GV/A	43.7 (27.4)	2	3	4
Total			17	14	19
BD	FO	54.5 (56.6)	3	1	6
	B/D	82.2 (110.6)	2	2	6
	GV/A	67.9 (96.5)	3	1	3
Total			8	4	15
GV/A	FO	59.3 (43.1)	1	1	4
	B/D	123.4 (83.1) [‡]	2	2	3
	GV/A	158.4 (76.1) [‡]	2	1	7
Total			5	4	14

[‡] = significantly greater reported violence than any other typology combination. Cell groups significantly differ in report of overall IPV, $F(8, 103) = 2.91$.

$\eta_p^2 = .18$.

$p < .01$.

physical assault, the mutual group ($M=7.0$, $SD=7.4$) showed significantly greater perpetration than the men-to-women group ($M=3.4$, $SD=7.3$). For women's physical assault perpetration, the mutual group ($M=7.4$, $SD=8.4$) did not significantly differ from the women-to-men group ($M=7.7$, $SD=11.3$).

In order to further examine the utility of typology and directionality to explain variance in IPV behaviors, the coefficient of determination models using each of these as predictor variables of CTS-2 total scores (summed across genders and subscales) was compared. A model using only directionality accounted for 10.8% of the variance in total CTS-2 scores for each dyad, $F(2, 109)=5.10$, $p<.01$. The addition of the men's typology significantly improved the model's ability to account for variance in total CTS-2 scores, $F(4, 105)=9.53$, $p<.01$, accounting for 18.4% of the variance. Similarly, addition of the women's typology groups significantly improved a directionality-only model, $F(4, 105)=6.68$, $p<.01$ accounting for 15.3% of the variance. A combined model utilizing directionality, as well as both typology groups, accounted for a substantial proportion of the overall variance in CTS-2 scores, $F(26, 85)=2.03$, $p<.01$, with 38.3% of the variance. These findings indicate that a combined model, taking both individual and dyadic factors into account, may best account for variance in a total IPV behavior.

Co-Occurrence of Typologies Within Dyads

Finally, exploratory analyses examined the overlap of men's and women's typologies within dyads. A significant relationship of typology group within dyads was identified, $\chi^2(4, N=112)=14.85$, $p<.01$. The most likely combinations were matching subtypes (i.e., FO man with FO woman, 47.3%; B/D man with B/D woman, 26.0%; GV/A man with GV/A woman, 26.8%; Table 3). Comparison of all co-occurring subtypes showed that two subtype pairs exhibited significantly greater IPV than all other subtype co-occurrences (B/D woman with a GV/A man; GV/A woman with a GV/A man; see Table 3).

DISCUSSION

The current study sought to replicate and extend the use of an offender typology (Holtzworth-Munroe et al., 2000, 2003, 1994) to characterize IPV behaviors with ethnically-diverse, court-referred parenting dyads. This study validates preliminary findings showing support for the use of IPV types among justice-involved parents (Beck et al., 2013). First, prior research suggests that men who engage in IPV are not a homogeneous group (Kelly & Johnson, 2008). Rather, they vary across a number of clinically-relevant

dimensions (e.g., frequency and severity of IPV, generality of violence, personality traits; Holtzworth-Munroe & Stuart, 1994; Tweed & Dutton, 1998), which has implications for increasing treatment effectiveness. Second, preliminary data suggest that typologies may be useful in identifying clinically-meaningful differences among partner-violent women, though this area has yet to be fully explored.

In accordance with prior work (Babcock et al., 2003; Holtzworth-Munroe & Stuart, 1994; 2000; 2003), data from this study support a three-type, clinically-relevant typology of IPV behaviors across a predominantly Hispanic sample of partner-violent men and women. For men, the GV/A and B/D groups had greater IPV than FO men, with the GV/A group being the most violent, having the highest rates of physically assaultive and injurious behaviors, and having the greatest number of IPV convictions. Akin to the pattern found among men, the typology system created three distinct female types that correlated with IPV convictions for women. Specifically, GV/A and B/D women had greater rates of physical assault than FO women, with GV/A women also having the highest number of IPV convictions. Although significantly different rates of physical assault across typology subtypes and female injury rates trended in predicted directions, women's use of injurious behaviors did not significantly differ by typology group. This finding highlights the need to supplement existing IPV measures with more sensitive measures of female IPV. It is also consistent with previous research showing that, although women commit equal or more acts of IPV, their partner violence often results in less injury and other negative outcomes than male-perpetrated IPV (e.g., Archer, 2000; Caldwell, Swan, & Woodbrown, 2012).

Second, this study aimed to evaluate whether an offender typology can differentiate gender patterns in a theoretically-consistent manner and if using subtypes provided additional information on symmetry and directionality. Consistent with study hypotheses expecting equivalent or higher rates of female-perpetrated IPV among the FO group, findings showed that FO females perpetrated more IPV than FO males. This finding is consistent with previous research showing that, among some samples, female IPV is either *equal to or higher* than male IPV (Archer, 2000; Kulkin et al., 2007; Swan & Snow, 2002; Whitaker et al., 2007). Unexpectedly, gender symmetry also emerged among the B/D group and held across measures of frequency and injury resulting from IPV. This result is consistent with recent data suggesting women sometimes equally resort to severe forms of violence that may result in more injury (Straus, 2008). Partially-supporting our hypotheses, male-perpetrated IPV resulted in significantly more injury in the GV/A group, despite gender symmetry in physical assault.

This study furthermore showed the prevalence of mutual violence among Hispanic samples, which have been shown to have lower rates of mutual violence than Caucasians or African Americans (Caetano et al., 2005;

Langhinrichsen-Rohling et al., 2012). As anticipated, bidirectional violence was the most common type of violence within this sample of court-referred men and women and further supports recent findings that mutual violence is common among justice-involved samples. Indeed, mutual violence was associated with high levels of IPV behaviors, suggesting that all IPV types must be treated with care and minimizing mutual violence as a less severe form of IPV may be detrimental (e.g., Meier, 2015). In contrast to our hypothesis, bidirectional violence was the most common across subtypes. This finding should be interpreted with caution, as this study excluded any dyads in which only one partner's data was available, potentially selecting for more mutually-violent dyads.

Lastly, the current study investigated the relevance of a typology system at the dyadic level. Recent IPV models of mutual violence theorize that partner violence is often the product of a dyadic relationship and that individual variables alone have largely failed to distinguish violent and non-violent couples (e.g., Caetano et al., 2005; Johnson, 2011; Whitaker et al., 2007). In order to effectively intervene, these approaches highlight the importance of understanding both partners' individual characteristics, as well as the way in which these individual factors interact within the relationship (Capaldi & Kim, 2007; Katerndahl, Burge, Ferrer, Becho, & Wood, 2012). This study is the first to employ such a systems-level approach to established IPV typologies. Results indicated that contrary to the "opposites-attract" adage, partners with matching subtypes were the most likely pairing. This finding is consistent with mate selection literature that emphasizes the importance of similarity preferences (Buston & Emlen, 2003). Findings were consistent with relationship aggression studies showing that reciprocity is one of the best predictors of IPV (Graham-Kevan & Archer, 2005). The "likes attract" finding has important clinical implications, as dyads involving a GV/A man and a GV/A or B/D woman were the most volatile and violent pairings and likely represent the highest risk for IPV perpetration and victimization. Similarly, when one partner of the couple presents with characteristics of a particular subtype, it is highly possible that his/her partner has similar characteristics. Early identification of such pairings would inform clinicians that these couples may need a higher level of resources and would help direct subsequent interventions and legal sanctions aimed at preventing future IPV.

Limitations and Future Research Directions

This study has a number of strengths, including the investigation of typologies in partner-violent parenting dyads, the assessment of IPV-related injury, the examination of symmetry and directionality, and the use of self-, partner-report, and externally-valid conviction measures—all within an ethnically diverse sample. However, the data should be considered in light of

the following limitations. First, although the current study utilized self-report and convictions as behavioral measures, both measures have limitations. Self-reported IPV is often minimized, and conviction data often capture only the most extreme incidents. Thus, both methods likely underestimate the overall prevalence of total IPV incidents. These limitations are tempered by the inclusion of self- and partner-report, but remain important considerations. Second, a 3-cluster solution was best-fitting across ethnicity and gender, and our female sample had similar rates to proposed guidelines (FO ~ 50%, B/D ~ 25%, GV/A ~ 25%). However, our male sample (FO = 49%, B/D = 37%, GV/A = 14%) had slightly higher rates of B/D than theorized. This finding indicates the importance of examining other factors that may relate to IPV among Hispanic participants in order to better guide the tailoring of IPV treatment for this population. Finally, information about many important relationship variables was unavailable (e.g., relationship satisfaction if couples were still romantically involved, measures of other important IPV characteristics, such as psychological abuse and coercive control).

These limitations suggest several directions for future research. First, a comprehensive assessment that utilizes multiple measures of IPV, including more sensitive measures of female IPV and its consequences, may improve our ability to understand existing gender differences and more effectively intervene. Second, use of typologies with partner-violent women remains in its infancy. Additional questions remain regarding how key characteristics, such as depression, trauma exposure, substance use, education levels and motives, will contribute to IPV types (e.g., Melander et al., 2010; Weston et al., 2007). Similarly, although typologies have shown clinical utility with men, little is known about whether female typologies will predict recidivism or treatment outcome variables. Third, use of alternative personality instruments to the MCMI may serve to cross-validate and expand current typologies (e.g., Personality Assessment Inventory; Chambers & Wilson, 2007). Fourth, future research utilizing measurement of cultural variables with a larger sample could further determine the typology's fit across ethnic groups and allow for assessment of individual (e.g., acculturation stress, *machismo*) and dyadic (e.g., homogenous/ heterogeneous ethnicities within couple) cultural variables relationship to IPV (Caetano et al., 2005; Welland & Ribner, 2010). Finally, many clinically meaningful relationship variables were not included in this study; incorporating data such as, relationship satisfaction/stress, and verbal aggression could provide additional information regarding the multi-faceted relationship dynamics that impact IPV. Calls have been made to supplement quantitative data with qualitative data in order to fully understand the complexity and heterogeneity of IPV, suggesting the future promise of multi-method assessment of both individual and dyadic characteristics (Katerndahl et al., 2012).

Clinical and Policy Implications

These data indicate that assessment consistent with the Holtzworth-Munroe's model (e.g., personality traits, severity of IPV, presence of general violence) and measurement of dyadic factors like symmetry and directionality may efficiently inform on-the-ground clinicians about which men and women are most likely to commit IPV, as well as who may be most likely to inflict injury. This knowledge can help alert clinicians that individuals fitting the B/D and GV/A subtypes may need additional treatment to improve IPV outcomes. For example, treatment could be tailored with interventions addressing antisocial, dependent, and borderline personality traits (e.g., Delsol et al., 2003; Holtzworth-Munroe et al., 2000, 2003). Additionally, the use of typologies may assist in identifying patterns of gender differences, as well as classify high-risk couples through assessment at the dyadic level. This study's finding that mutual IPV was associated with high levels of physical assault and injury suggest that all types of IPV are in need of intervention, even if the interventions differ in their approach.

This study highlights that, although typologies may be helpful in characterizing IPV among women, we have much left to learn about the progression of IPV for women. Given the overwhelming predominance of mutual violence within community samples (rates ranging from 75–90%; Ansara & Hindin, 2010; Johnson, 2006), the baseline prevalence of IPV in both genders in our sample, and recent research suggesting that interventions that treat both partners of mutually-violent dyads may improve outcomes (Wray et al., 2013), these findings underscore the importance of continuing to evaluate the nature of IPV among women in order to guide more effective treatment for female offenders. Consistent with research suggesting thorough assessment with individualized treatment recommendations improves IPV outcomes (Wray et al., 2013), this study supports heterogeneity in IPV, even among court-referred offenders. Finally, this study highlights the utility of individual and dyadic factors in the understanding of IPV and underlines the importance of gathering clinical information from both parties to support a thorough understanding of the partner violence within that relationship. A comprehensive understanding of IPV is critical within court custody and other legal proceedings as these decisions have long-lasting impact on the parents, children, and families.

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Section Three

Civil Protective Orders

Honorable Andrew R. Bloch

Magistrate - Hamilton County Superior Court
Noblesville, Indiana

Honorable Andre B. Gammage

Magistrate - St. Joseph County Circuit Court
South Bend, Indiana

Section Three

Civil Protective Orders..... Honorable Andrew R. Bloch Honorable Andre B. Gammage

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Introduction

The following materials are a discussion of the “Petition for an Order of Protection and Request for Hearing” -Rev. by Ind. Office Ct. Serv 7/19. A copy of the Petition is at the back of these materials and the relevant portions have been inserted into these materials. There are two kinds of Petitions. One allows a person to seek protection for himself or herself. The second allows a person to seek protection on behalf of a child. This Discussion will focus on the former request, while touching on the latter.

Only a court of record as defined by *Ind. Code. 34-26-5-4*, can issue an Order for Protection. If a Magistrate is assigned to a Court of Record, he or she may issue a final protective order without it being countersigned by a Judge¹.

Who Should File:

The Protective Order statute was passed to promote the protection and safety of all victims of domestic and family violence, sexual assault, stalking, harassment, and to prevent future acts against victims. If the Petitioner is filing a request for Protective Order for themselves, they **must** fall into one of these four categories.

1. I am filing this Petition for myself:

- a. I am or have been a victim of domestic or family violence;
- b. I am or have been a victim of a sex offense;
- c. I am or have been a victim of stalking;
- d. I am or have been a victim of repeated acts of harassment.

Domestic or Family Violence under the statute is one of the following **committed by a family**

or household member:

¹ It is worth noting that as of July 1, 2019, the Indiana General Assembly removed the requirement that most Orders issued by Magistrates be signed by a Judge. Commissioners and Referees still require a countersignature.

1. Attempting to cause, or threatening to cause, or causing physical harm to another family member;
2. Placing a family or household member in fear of physical harm; and or
3. Causing a family or household member to involuntarily engage in sexual activity by force, threat of force, or duress.

A family or household member is defined as “those who dwell under the same roof and compose a family. The term is said to be synonymous with family, but broader, in that it includes servants or attendants; all of whom are under one domestic head. It is not restricted to relatives by blood or marriage.” *Rzeszutek v. Beck*, 649 N.E.2d 673 (Ind. App. 1995) citing *AllState Insurance Co., v. Neumann*, 435 N.E.2d 591 (Ind. App. 1982). A family or household member can be an adult or a child. *Rzeszutek v. Beck*, 649 N.E.2d 673 (Ind. App. 1995).

If the Petitioner is not a family or household member, they may not seek relief under Category A. Unlike A, Categories B, C, & D, do not require the alleged perpetrator to be a household or family member. A family or household member is still eligible to be selected for categories B, C, & D as well.

Sex offense means one of the following crimes under *Ind. Code 24-42-4*:

1. Rape;
2. Criminal Deviate Conduct;
3. Child Molesting;
4. Child Exploitation;
5. Vicarious Sexual Gratification;
6. Child Solicitation;
7. Child Seduction;
8. Sexual Conduct in the Presence of a Minor;
9. Inappropriate communication with a child;
10. Sexual Battery; or
11. Sexual misconduct with a minor.

A Respondent need not be a family or household member under this subsection. **Andrews v. Ivie, 2011 WL 3918164.**

It is not necessary for criminal charges to be filed in order for a Protection Order to be granted. Many times, there has been no report to law enforcement at all.

You may also see things that at first glance feel as if they should be a sex crime or sexual activity. The power to enter a protective order under this section is strictly limited to the crimes defined under **Ind. Code § 24-42-2**. The disclosure of intimate photos or videos to third persons or the threat to do so, is not specifically a crime under this statute and therefore is not a sex offense. Though, in the right fact patterns these acts could constitute harassment against a Petitioner that is an adult or could be construed as a method of grooming for future sexual activity against a Petitioner, who is a minor.

Stalking is a knowing or intentional course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to be afraid, intimidated, or threatened. Stalking and Harassment claims do not require the accused be a household or family member. Acts of stalking and/or harassment are repeated or continuing impermissible contact that would cause a reasonable person to suffer emotional distress and that actually causes the victim to suffer emotional distress. Stalking and Harassment does not include statutory or constitutionally protected activity. Examples of stalking or harassment include:

- Repeated emails;
- Repeated phone calls;
- Repeated texts;
- Repeated contact on social media;
- Repeated appearances at someone's home;

- Repeated appearances at someone’s employer;
- Repeated appearance at someone’s school;
- Repeatedly driving by someone’s home;
- Repeatedly sending letters;
- Repeatedly tracking the whereabouts of someone;

Remember, “impermissible contact” is defined as following or pursuing the victim; communicating with the victim in person, in writing, by telephone, by telegraph, or through electronic means; or posting on social media, if the post is directed toward the victim or refers to the victim directly or indirectly. **I.C. § 35-45-10-3.**

Who is the Respondent?

2. The Respondent’s relationship to me is:

- a. the Respondent is my family or household member (*check only the line which best applies*):
- the Respondent is my spouse;
 - the Respondent used to be my spouse;
 - the Respondent and I resided together in an intimate relationship;
 - the Respondent and I have a child in common;
 - the Respondent and I are dating, or have dated, each other;
 - the Respondent and I are, or have been, engaged in a sexual relationship;
 - the Respondent and I are related by blood or adoption. The Respondent is my _____;
 - the Respondent and I are, or used to be, related by marriage. The Respondent is my _____;
 - the Respondent is, or used to be, my guardian;
 - the Respondent is, or used to be, my ward;
 - the Respondent is, or used to be, my custodian;
 - the Respondent is, or used to be, my foster parent; or,
 - I am a minor child of a person in one of the types of relationships described above.
 - I have adopted the child of the respondent.

A petition may name more than one respondent, but each respondent requires a separate petition and separate cause number. The Court should issue a separate Order for each Respondent, and the Orders for each Respondent may differ based on the allegations alleged and the facts proven.

If the Respondent does not fit into one of these categories, then a request for protective order based on domestic or family violence is not permitted. Many Petitioners will select the domestic or family violence allegation and do not demonstrate any relationship to the party. The most common example is someone filling out the protective order request against a neighbor but alleging domestic violence. As you see from the materials, the neighbor likely is not a family household member.

You might ask how it is possible for someone to incorrectly fill out a protective order? As of July 1, 2020, Request for Civil Protective Orders are available online. Before that time, many counties had agencies or other persons who assisted in the completion of the request for civil protective order. With the forms now being able to be completed online, many are foregoing coming to the courthouse of agency and completing the forms on their own.

What if Petitioner and Respondent are not related?

If Respondent is not a family or household member as indicated above, but Respondent has committed stalking, a sex offense, or repeated acts of harassment (check only the line below which best applies):

b. ___ the Respondent has committed stalking against me.
c. ___ the Respondent has committed a sex offense against me.
d. ___ the Respondent has committed repeated acts of harassment against me.

Where can I find the Respondent?

A person seeking a Protective Order must provide the Court with Respondent's: Name, DOB or SS#,

and an address. Why information is important?

Once granted, a protective order does not become effective against the Respondent until a copy of the Order of Protection has been served upon him or her. If the Petitioner does not provide identifying information or an address, it can be difficult for the Respondent to be served. A respondent who has not been served with the Order cannot be found to be in violation of the order, at least civilly. Because many of the forms are completed by pro se individuals, important information is left out intentionally, omitted on accident, or simply not known to the Petitioner at the time of filing.

Why is it filed here?

<p>3. <i>This case is filed in this county because:</i></p> <p>_____ a. the Respondent lives in this county.</p> <p>_____ b. the incident(s) of domestic or family violence, stalking, sex offense, or harassment happened in this county.</p> <p>_____ c. I live in this county.</p>

Venue is proper in the county where the Petitioner resides permanently or temporarily, where the Respondent resides, or where the domestic/family violence occurred.

There is no minimum residence requirement which is contrary to our dissolution statutes.

People can be passing through the state and be eligible to apply for a protective order. As noted previously, any Court of record in Indiana, can issue a protective order. As a result, there are only three cases that deal with the transfer of a Protective Order proceeding from one Court to another. Two of these cases is highlighted in the case law portion of these materials. *((R.W. v. J.W., 160 N.E.3d 195 (Ind. Ct. App. 2020) and Sims v. Lopez, 885 N.E.2d 15 (Ind. Ct. App. 2008))*.

Will it Stay?

<p>4. Please list all cases (divorce, protection orders, paternity, guardianship, criminal, juvenile, civil) involving the Respondent, yourself, or a child you have with the Respondent (<i>attach additional sheets of paper if necessary</i>):</p> <table><thead><tr><th>Case Name</th><th>Case Number</th><th>County & State</th></tr></thead><tbody><tr><td>_____</td><td>_____</td><td>_____</td></tr><tr><td>_____</td><td>_____</td><td>_____</td></tr><tr><td>_____</td><td>_____</td><td>_____</td></tr><tr><td>_____</td><td>_____</td><td>_____</td></tr></tbody></table> <p>_____ Continued on Attachment 4a.</p>	Case Name	Case Number	County & State	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
Case Name	Case Number	County & State													
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Reasons the Protective Order may be transferred to another Court:

- a. If the parties are parents of an unemancipated child, with a final paternity decree. Ind. Code. 31-14-16-1.
- b. If the parties are involved in a dissolution of marriage or legal separation. Ind. Code. 31-15-4-1(b) and Ind. Code. 31-15-5-1.
- c. If the Petitioner has a pending case involving the Respondent or a child of the Respondent. Ind. Code 34-26-5-6(4).
- d. If a Petition seeks relief against an unemancipated minor, it may be filed in any Court. The matter may be transferred to a Juvenile Court with jurisdiction over the minor (Ind. Code. 34-26-5-2(d)).
- e. The Petitioner seeks an order controlling the conduct of a person in relation to a child who is the subject of a juvenile proceeding, so the hearing, should be held in juvenile court. Ind. Code. 31-32-13-1(1).
- f. The Petition alleges repeated acts of harassment and another court exercises jurisdiction over an action that relates to the subject matter of the requested civil order for protection. Ind. Code. 34-26-5-4(d).
- g. Other Reasons for transfer, including local rules.

A protection order is an action that is in addition too, not instead of another action. It is improper for a Court to deny a Protective Order because a dissolution action or paternity action is pending in another Court, or a "No Contact" Order has been entered in a criminal case. Even if the relief requested is the same relief requested in the dissolution or paternity action or it is relief that could be requested in an as of yet filed dissolution or paternity action.

Finally, be aware of that sometimes the Petitioner does not inform the Court of other pending actions. Many times, litigants do not know the cause numbers for other actions, or do not understand the importance of notifying the Court of other proceedings. It is worth checking Odyssey and with your client to make sure no other action is pending, or that the requested order will not conflict with another Court's jurisdiction or Order.

7. The Respondent has committed the following act(s) of domestic or family violence, stalking, sex offense, or harassment (*check those which apply*):

- the Respondent attempted to cause physical harm to me;
- the Respondent threatened to cause physical harm to me;
- the Respondent did cause physical harm to me;
- the Respondent placed me in fear of physical harm;
- the Respondent caused me to involuntarily engage in sexual activity by force, threat of force, or duress;
- the Respondent committed stalking against me;
- the Respondent committed a sex offense against me;
- the Respondent committed an act of animal cruelty by beating, torturing, mutilating, or killing a vertebrate animal without justification with an intent to threaten, intimidate, coerce, harass or terrorize a family or household member;
- the Respondent committed repeated acts of harassment against me.

8. Describe what happened in each of the above incidents including the date(s), place(s) and witnesses to each incident (*attach additional sheets of paper if necessary*):

Date of Incident #1: _____

Place of Incident: _____

Description of Incident:

List the names of all of the people who were present during the incident. You must include your own name if you were present:

Continued on Attachment 8a.

These sections contain the substance of the allegations against the Respondent. Pay attention to what is checked, and how the allegations are described. They should match. Indiana is a notice pleading state. The Petition need only state a brief clear statement of the claim, showing that Petitioner is entitled to the relief requested. *Trail v. Boys and Girls Clubs*, 845 N.E.2d 130, 135 (Ind 2006). The relief that is requested must be supported by the allegations contained in the Petition.

9. I am asking the Court to order the following relief (*check all which apply*):

NOTE: The following requested relief may be granted immediately by the Judge without a hearing. However, if the petition is based on harassment alone, the relief may be granted ONLY after notice to the Respondent and after a hearing to be held within thirty (30) days.

Prohibit the Respondent from committing, or threatening to commit, acts of domestic or family violence, stalking, or sex offenses against me;

Prohibit the Respondent from committing, or threatening to commit, acts of domestic or family violence, stalking, or sex offenses against my family or household members, whose names are:

_____;

Prohibit the Respondent from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with me;

Order the Respondent to stay away from my residence, school, place of employment, or other place, which is the _____, located at:

_____;

Order the Respondent to stay away from the following location(s) frequented by my family or household member(s), which may include a residence, school, or place of employment: _____

Oftentimes, the relief requested does not match the allegations contained in the petition. In these cases, the Court can do one of three things. The Court can grant relief for the allegations that support the request, hold an ex parte hearing with the Petitioner to determine what the allegations are, or deny the request. Keep in mind that. A trial court cannot avoid an evidentiary hearing simply by stating that it accepts as true the allegations in the petition for an order for protection and rule on a

paper record—whether for or against the petition—without a hearing if the minimum requirements of notice pleading are met. *K.B. v. B.B.*, 2021 W.L. 1826880 (Ind. App. 2021).

Not all requests are equal. Some can be granted Ex Parte. Some can be granted Ex Parte but required a hearing within thirty days. Others cannot be granted Ex parte and require a hearing.

Be aware that after the issuance of an Ex Parte Protective Order, the Respondent has thirty days from the date of service of the Protective Order to request a hearing, or the Order becomes permanent for the duration of the Order.

Relief that can be Granted Immediately but requires a follow up hearing:

NOTE: The following requested relief may be granted immediately by the Judge, but the Court must hold a hearing within thirty (30) days. If the petition is based on harassment alone, the relief may be granted ONLY after notice to the Respondent and after a hearing to be held within thirty (30) days.

- ___ Evict the Respondent from my residence, which is located at: _____;
- ___ Order the Respondent to give me the possession and use of the following:
 - ___ The residence located at: _____;
 - ___ An automobile/other motor vehicle described as: _____;
 - _____;
 - ___ Other necessary personal items, described as: _____;
 - _____;
 - _____;
- ___ Prohibit Respondent from removing, transferring, injuring, concealing, harming, attacking, mistreating, threatening to harm, or otherwise disposing of the animal(s) listed below.

<i>Example</i>	<i>Name:</i>	<i>Max</i>
	<i>Age/Type:</i>	<i>9 year old dog</i>
	<i>Size /Breed:</i>	<i>Large 55 pound black lab</i>
	<i>Color/Description:</i>	<i>Black hair, pink collar</i>

Relief that can only be granted after a hearing:

NOTE: The following requested relief may be granted ONLY after notice to the Respondent and after a hearing to be held within thirty (30) days:

- Specify the arrangements for parenting time with our minor child(ren);
- Require that parenting time be supervised by a third party;
- Deny the Respondent parenting time;
- Order the Respondent to pay my attorney fees;
- Order the Respondent to pay rent for my residence;
- Order the Respondent to make payment on a mortgage for my residence;
- Order the Respondent to pay child support for our minor child(ren);
- Order the Respondent to pay support/maintenance for me;
- Order the Respondent to reimburse me for expenses related to the domestic or family violence, stalking, sex offense, or harassment as follows:

- Order the Respondent to surrender the following firearm(s), ammunition, or deadly weapon(s) to a specified law enforcement agency (***list each item below and attach an additional sheet of paper if necessary:***)

Be cautious of protective order requests and hearings that request things like child support, parenting time provisions, temporary support and other relief that is traditionally determined in a provisional dissolution or paternity hearing.

The rules of evidence and the burden of proof are unchanged in a protective order proceeding with respect to what must be established. For example, you must still establish what the best interests of the child are if a modification of parenting time is requested in the Petition. Often times, petitions will request supervised parenting time, or a total of restriction of parenting time. You must treat these requests just as you would in a dissolution or paternity setting. Parenting time in Indiana is a precious privilege. ***Duncan v, Duncan***, 843 N.E.2d 966, 969 (Ind. Ct. App. 2006), ***trans denied***. A Court may only restrict parenting time upon a showing that parenting time would endanger the children’s physical health or emotional development. ***D.B. v. M.B.V.***, 913 N.E. 2d 1271 (Ind Ct. App. 2009). The Court must make these same findings if parenting time is requested to be supervised or restricted in a protective order setting.

The Petition Must be Verified

I affirm, under the penalties for perjury, that the foregoing representations are true:	
a.	on the basis of my own personal knowledge.
b.	on the basis that I have been informed and believe that the facts stated are true. (NOTE: If this Petition is made solely on the basis of Petitioner’s information and belief, Petitioner must attach affidavits by one or more persons who have personal knowledge of the facts stated.)
DATE: _____	_____
	PETITIONER (Signature)

	PETITIONER (Type or print name)

The petition must be verified by the Petitioner and in cases where the petition relies on information outside the personal knowledge of the Petitioner, affidavits and supporting evidence must be attached to the petition.

Brady Disqualification

The phrase, **Brady disqualified** is a reference to the **Brady** Handgun Violence Prevention Act, which states in pertinent part that any person who is subject to a court order that “restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person” is prohibited from possessing a firearm. **18 U.S.C. § 922(g)(8).**

18 U.S.C. § 921(a)(32) defines “intimate partner” as “the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.” Id.

If a Court makes a determination that the parties fall under **18 U.S.C. § 921(a)(32)**, the Court can order the Respondent to relinquish possession of all firearms and ammunition. Each county has a different procedure for the Respondent to turn over their firearms and ammunition under this subsection. Once a Respondent receives notice of the disqualification and has an opportunity to be heard, it is a violation to possess, purchase or receive a firearm.

Considerations for Protective Orders filed on behalf of Children.

Generally, only a parent or guardian can file a request for a protective order for a minor child. In some limited circumstances the Department of Child Services (Foster Parent), a school, or some other entity may file a Petition. Grandparents, Aunts, and Uncles who are not legal guardians of the child do not seem to have standing.

The major difference in a Protective Order Request for a child you will note is the addition of the added allegation of: A course of conduct involving repeated or continuing contact with the child that is intended to prepare or condition the child for sexual activity (as defined under **Ind. Code. 35-42-4-13**. Sexual activity means sexual intercourse, other sexual conduct (listed in **Ind. Code. 35-31.5-2-221.5**), or the fondling or touching of the buttocks, genitals, or female breasts. It can also include a person at least eighteen years of age who knowingly or intentionally communicates with an individual whom the person believes to be a child less than fourteen concerning sexual activity with the intent to gratify their sexual desires, or the person commits inappropriate communication with a child.

Finally, make sure that you know the age of the Petitioner and Respondent. If the either Petitioner or Respondent is under the age of eighteen the protective order may need to be transferred to juvenile court.

Cases involving children as the protected person are often difficult because the evidence to sustain the allegation often involves the introduction of child testimony or medical/mental health records. Once again, the rules of evidence apply in protective order proceedings.

Motion to Dismiss, filed by Petitioner or Oral Motion in Court.

If the Petitioner, after filing the Petition for Protective Order, requests a dismissal of the Protective Order by verified pleading and/or under oath at hearing, **the Court shall dismiss the Order.**

Case Review

General:

Threat must be present and credible to sustain a request for a protective order. ***S.H. v. D.W., 139 N.E.3d 214 (Ind 2020).***

Children exposed to domestic violence are more likely to suffer significant psychological and developmental issues. ***S.H. v. D.W., 139 N.E.3d 214 (Ind 2020).***

To obtain an order of protection, the petitioner must establish at least one of the allegations in the petition by a preponderance of the evidence. ***M.R. v. B.C., 120 N.E.3d 220 (Ind. App. 2019).***

Because a protective order is in the nature of an injunction, in granting a protective order a trial court must sua sponte make special findings of fact and conclusions thereon; when the trial court has made such findings, however, the statutory language under review imposes no additional obligation to enter a particular finding to support a non-standard duration. ***H.H. v. S.H., 157 N.E.3d 1237 (Ind. App 2020).***

Court is not required to make specific findings when denying a request for a protective order. ***Costello v. Zollman, 51 N.E.3d 361 (Ind. App. 2016).***

To obtain an order of protection under the Civil Protection Order Act (CPOA), the petitioner must establish by a preponderance of the evidence at least one of the allegations in the petition. ***Mysliwy v. Mysliwy, 953 N.E.2d 1072 (Ind. Ct. App. 2011), transfer denied 962 N.E.2d 653.***

Hearing on wife's petition for protective order against husband did not meet the minimum statutory requirements for such a hearing, where wife was not afforded opportunity to testify, present evidence, or call witnesses. ***N.E. v. L.W., 130 N.E.3d 102 (Ind. App. 2019).***

Female petitioner had standing to seek a protection order; although male respondent was neither family nor household member of petitioner, petitioner alleged that she was victim of stalking, and there was no requirement that alleged stalking be committed by family or household member, since, for purposes of Civil Protection Order Act (CPOA), stalking and sex offenses need not have been committed by family or household member to constitute “domestic or family violence.” ***Parkhurst v. Van Winkle, App.2003, 786 N.E.2d 1159.***

Testimony of single witness is sufficient to sustain conviction even when that witness is victim. ***Waldon v. State, App.1997, 684 N.E.2d 206, transfer denied 690 N.E.2d 1184.***

The term repeated in the Civil Protective Order Act means more than once. ***Maurer v. Cobb-Maurer, 994 N.E.2d 753 (Ind. App. 2013).***

The term “repeated” in Indiana’s anti-stalking laws prohibiting repeated harassment and repeated or continuous impermissible contact means more than once. ***Mysliwy v. Mysliwy, App.2011, 953 N.E.2d 1072, transfer denied 962 N.E.2d 653.***

The minimum requirements for a hearing under the CPOA include the opportunity to testify, as well as call and cross-examine witnesses. A trial court errs if it issues a protective order absent these safeguards. ***N.E. v. L.W., 130 N.E.3d 102 (Ind. App. 2019).***

A trial court cannot avoid an evidentiary hearing simply by stating that it accepts as true the allegations in the petition for an order for protection and rule on a paper record—whether for or against the petition—without a hearing if the minimum requirements of notice pleading are met. ***K.B. v. B.B., 2021 W.L. 1826880 (Ind. App. 2021).*** ***K.B. v. B.B., 2021 W.L. 1826880 (Ind. App. 2021)***

Protective orders issued under the Indiana Civil Protection Order Act have presumptive two-year terms. ***S.H. v. D.W., 139 N.E.3d 214 (Ind 2020).***

Statement made by former husband in front of former wife, four children, and police officer, that former wife “had no morals, and it’s too bad you can’t shoot people that don’t have morals,” constituted an act of domestic or family violence against a family or household member, sufficient to justify issuance of an order for protection for wife; while the statement may have been directed to the officer, the statement was made for former wife to hear and, thus, in effect was directed to her, and wife interpreted the statement as a threat of physical harm, and it placed her in fear of physical harm. ***Solms v. Solms, App.2012, 982 N.E.2d***

Standard of Review:

Two-tiered standard of review. Does the evidence support the findings, and second, whether the findings support the order. ***R.H. v. S.W. 142 N.E.3d 1010 (Ind. App. 2020).***

When considering the sufficiency of the evidence supporting a decision to issue or modify a protective order, the reviewing court does not reweigh the evidence or judge the credibility of witnesses; the reviewing court looks only to the evidence of probative value and reasonable

inferences that support the trial court's judgment. ***S.H. v. D.W.*, App.2018, 114 N.E.3d 898, transfer granted, opinion vacated, in rap 58(b) 123 N.E.3d 143, vacated 139 N.E.3d 214**

Generally, a trial court has discretion to grant protective relief according to the terms of the Civil Protection Order Act (CPOA). ***N.E. v. L.W.*, App.2019, 130 N.E.3d 102.**

The party appealing a protective order against domestic violence must establish that the trial court's findings are clearly erroneous; findings are clearly erroneous when a review of the record leaves a reviewing court firmly convinced that a mistake has been made. ***Fox v. Bonam*, App.2015, 45 N.E.3d 794.**

Improperly granted protective order may pose a considerable threat to the Respondent's liberty. ***Barger v. Barger*, 887 N.E.2d 990,994 (Ind Ct. App. 2008).**

Standing:

Grandmother was not "another representative" of her grandson and, therefore, lacked standing under the Civil Protection Order Act (CPOA) to file petition for protective order on behalf of grandson against his mother. ***C.H. v. A.R.*, App.2017, 72 N.E.3d 996**

Evidence:

There are no relaxed rules of evidence in Protective Order proceedings. This includes child hearsay. The parties to a protective order have the right to present evidence and cross-examine witnesses. ***Essan v. Bower*, 790 N.E.2d 148 (Ind. Ct. App 2003).** The Court can limit cross-examination.

Stalking/Harassment:

Evidence was insufficient to sustain protective order where attorney for Petitioner claimed there were multiple threatening emails, but Petitioner admitted only one email. Petitioner did not testify to additional emails or that she asked Respondent to stop sending emails. ***Maurer v. Cobb-Maurer*, 994 N.E.2d 753 (Ind. App. 2013).**

Petitioner did not establish that respondent, a woman who was not a member of petitioner's family of household, "stalked" her, so as to warrant protective order against respondent under the Civil Protection Order Act (CPOA), although the parties had two verbal and physical confrontations in public park that occurred three months apart, respondent sprayed mace at petitioner, and petitioner did not thereafter go to the park for two months; there was no evidence that respondent went to the park to look for petitioner, and petitioner verbally initiated each encounter. ***Tisdial v. Young*, 925 N.E.2d 783 (Ind. App. 2010).**

Venue and Transfer:

Former Wife's Ex Parte Petition filed in Lake County should have been transferred to St. Joseph County or LaPorte County where Former Wife has pending cases against Former Husband and her current Husband. *Sims v. Lopez, 885 N.E.2d 15 (Ind. Ct. App. 2008)*

Extensions:

Evidence was insufficient to support the issuance of a five-year extension of protective order against former husband; the court extended the order based on the information contained in the original application for the protective order and the fact that prior extensions of the order had previously been granted, but no evidence was presented that indicated an order was necessary to bring about a cessation of domestic violence or the threat of such violence. *J.K. v. T.C. 25 N.E.3d 179 (Ind. App. 2015).*

Extension periods should be reasonable and based on evidence. *A.N. v. K.G., 10 N.E.3d 1270 (Ind. App. 2014).*

Entering one protective order does not, by itself, justify entering a second order, or renewing or extending the first order. *S.H. v. D.W., 139 N.E.3d 214 (Ind 2020).*

Remedies:

Appropriate remedies for violation of protection order are either a contempt order or modification of the protective order to prohibit the respondent from approaching or entering certain locations where the petitioner may be found. *Young v. Young, 81 N.E.3d 250 (Ind. App. 2017).*

Under State law, violating a protective order punishable by confinement in jail, prison, or fine. *Ind. Code 34-26-5-3(c).*

A violation of a protective order subjects the offender to criminal prosecution for criminal stalking and invasion of privacy under *Ind. Code 35-45-10-5* and *Ind. Code 35-46-1-15.1*.

Under federal law, once a protective order has been entered against the Respondent, he/she may commit a crime if he/she buys, receives, or possesses a firearm. *18 U.S.C. §§922(g), 2261, 2262.*

Remoteness:

Whether a prior domestic violence incident is remote in time is probative, though not determinative, of whether a threat of harm currently exists to justify the issuing of a protective order. *S.H. v. D.W., 139 N.E.3d 214 (Ind 2020).*

A trial court can consider the remoteness of incidents in determining whether a protection order against domestic violence is warranted, but that remoteness cannot be the sole reason for denial of a protection order. *Fox v. Bonam, App.2015, 45 N.E.3d 794.*

Other:

Evidence differs at hearing from allegations in petition. ***Garmeme v. LeMasters, 743 N.E.2d 782 (Ind. Ct. App. 2001).***

Protective Order separating adult from her parents and siblings does not violate right to privacy or family integrity. ***Rzeszutek v. Beck, 649 N.E.2d 673 (Ind. Ct. App. 1995).***

Ex-girlfriend's testimony regarding incident during which ex-boyfriend allegedly yelled and swore at her and briefly grabbed her wrist when she tried to get away was insufficient to support issuance of order for protection against ex-boyfriend based on incident of domestic or family violence; incident occurred ten months before ex-girlfriend filed for protective order, and parties immediately reconciled following incident. ***R.H. v. S.W. 142 N.E.3d 1010 (Ind. App. 2020).***

Evidence was insufficient to establish domestic or family violence that would support protective order against husband under Civil Protection Order Act (CPOA); although husband physically touched wife on one occasion, there was no indication that touching was violent, and trial court characterized evidence as showing harassment rather than threat of harm. ***Maurer v. Cobb-Maurer, 994 N.E.2d 753 (Ind. App. 2013).***

For purposes of orders of protection, the mere sight of a gun is sufficient to provoke a fearful response from the average citizen. ***S.B. v. Seymour Community Schools, App.2018, 97 N.E.3d 288, rehearing denied, transfer denied 111 N.E.3d 197.***

Ex-girlfriend's testimony regarding incident during which ex-boyfriend allegedly followed her in his car on one occasion while she was driving to work was insufficient to support issuance of order for protection against ex-boyfriend based on stalking; record did not show that ex-girlfriend suffered any emotional distress from incident or that there were any additional incidents of alleged stalking. ***R.H. v. S.W., App.2020, 142 N.E.3d 1010.***

Damage done by petitioner's ex-husband to her house while she was out of town for work, including damage to her furnace, bathtub drain pipe, couch, carpet, and clothing, constituted a single occurrence, not a continuous act of harassment required to find stalking, as ground for issuance of order for protection under the Civil Protection Order Act (CPOA), even though there already was a previous, two-year-old, protection order in place. ***Mysliwy v. Mysliwy, App.2011, 953 N.E.2d 1072, transfer denied 962 N.E.2d 653.***

Husband was not required to be present at hearing for trial court to grant wife's request that husband be evicted from her home; statute governing ex parte protective relief allowed court to grant such relief immediately and without notice or hearing, and statute listing relief trial court could grant in ex parte order for protection included removing and excluding a respondent from residence of petitioner. ***N.E. v. L.W., App.2019, 130 N.E.3d 102.***

Self-serving statements are insufficient to prove their repressed memory claims, and it is undisputed that there is no expert opinion evidence in the record generally supporting the scientific validity of the repressed memory phenomenon and specifically supporting the conclusion that sons suffered from repressed memories caused by the molestation. ***LaCava v. LaCava***, 907 N.E.2d 154 (Ind. Ct. App. 2009).

5th Amendment Considerations:

“Although the refusal to testify in a civil case cannot be used against the one asserting the privilege in a subsequent criminal proceeding, the privilege against self-incrimination does not prohibit the trier of fact in a civil case from drawing adverse inferences from a witness'[s] refusal to testify.” ***Hardiman v. Cozmanoff***, 4 N.E.3d 1148, 1151 (Ind. 2014) (quoting ***Gash v. Kohm***, 476 N.E.2d 910, 913 (Ind. Ct. App. 1985)).

SCENARIOS

Scenario One

Jane and Jon previously dated each other for six months. They were both eighteen at the time the alleged incident took place.

Jane believes that Jon raped her after a night of drinking and smoking marijuana. Along with filing a police report, Jane takes to social media to tell her side of the story. On Instagram, she posts a declaration "Jon Raped Me, just thought you should know", the next night she posts the same message. She continues to post details about the rape on Instagram. She does not tag Jon in the posts nor does she answer any of the comments to the threads each time she posts it.

Jon files a request for Protective Order on the basis that Jane is harassing him and stalking him.

You represent Jane at the hearing, what are some of your defenses?

Scenario Two

Jane and Jon previously dated each other for six months. They were both eighteen at the time the alleged incident took place.

Jane believes that Jon raped her after a night of drinking and smoking marijuana. Along with filing a police report, Jane takes to social media to tell her side of the story. On Instagram, she posts a declaration "Jon Raped Me, just thought you should know" and includes a picture of him, the next night she posts the same message on Instagram. She continues to post details about the rape on Instagram for several weeks. She does not tag Jon in the posts nor does she answer any of the comments to the threads each time she posts it.

You represent Jane at the hearing, what are some of your defenses?

Scenario 3

Jane and Jon previously dated each other for six months. They were both eighteen at the time the alleged incident took place.

Jane believes that Jon raped her after a night of drinking and smoking marijuana. Along with filing a police report, Jane takes to social media to tell her side of the story. On Instagram, she posts a declaration "Jon Raped Me, just thought you should know" emblazoned across a picture of him. She tags Jon's Instagram username so that all of his followers can see. Furthermore, she leaves the comments on and encourages people to share the post and make their own posts about Jon as well as contacting their high school and Jon's employer. The next night she posts the same message on Instagram as the night before. She again engages commenters and encourages them to share her post and contact various entities. Jane continues to post details about the rape on Instagram, tagging Jon for several weeks. She responds to most comments

encouraging commenters to share her posts, contact Jon, and contact his school and employers.

Jon files a request for Protective Order on the basis that Jane is harassing him and stalking him.

You represent Jane at the hearing, what are some of your defenses?

Scenario 4

Kyle and Kim reside together in an intimate relationship.

Kyle alleges that Kim called the police and forced him to be admitted to a Mental Health Institution. Kyle states in his petition that the only problem he has is sleep and depression and that Kim is not sexually intimate with him on a frequent basis. Kyle alleges he was given medication, but he still cannot sleep. The Judge sets the request for hearing. At hearing, Kyle states he still wants to reside with Kim, but that he wants an order preventing Kim from harassing him (i.e.: calling the police or mental health crisis hotlines).

You represent Kim at the hearing, what are your defenses?

Assume the same facts but that they occur multiple times as above.

You represent Kim at the hearing, what are your defenses?

Scenario 5

Ryan and Rhianna previously dated. They have one child in common, Rowland. Rhianna is remarried to Roy. Rhianna and Roy attend Rowland's baseball game and take him for ice cream afterwards. Ryan attends the game as well. He is high on cocaine. Ryan also appears at the ice cream parlor. Ryan walks up behind Rhianna, grabs her by the shoulder and kisses her on the mouth. Roy, Rowland, Rhianna, and the employee of the Ice Cream parlor witness the event.

Rhianna requests a protective order to prevent domestic or family violence, to prevent a sex offense, stalking, and repeated acts of harassment.

You represent Ryan, what are your defenses?

Scenario 6

Sally receives an Ex Parte Order of Protection against Sam. Three weeks after the Court enters the Order, the Court receives an unsigned Motion to Dismiss that seems to have been filed by Sally.

You are the Court, what do you do?

Scenario 7

Kallie and Kristopher are neighbors with Jim and Pam. Unbeknown to Pam and Kristopher, Kallie and Jim engage in a three-year affair. Pam learns of the information and shares her

evidence with Kristopher. The next morning, Kristopher confronts Jim in Jim's driveway. Angry words and threats are exchanged before Jim goes inside his own home.

Jim and Pam seek a Civil Protective Order based on Harassment against Kallie and Kristopher. What are the issues?

Same facts as above, except that Kristopher and Kallie continue to yell and scream at Pam and Jim several times per day over several days,

ADDENDUM

- I. Civil Protective Order Petition
- II. Civil Protective Order Petition on behalf of a Child
- III. K.B. v. B.B.
- IV. R.W. v. J.W.

STATE OF INDIANA) IN THE _____ COURT _____
) SS: (_____ DIVISION, ROOM _____)
 COUNTY OF _____)
 CASE NO. _____

_____,)
 Petitioner (Your Name))
 vs.)
 _____,)
 Respondent (Person to be Restrained))

PETITION FOR AN ORDER FOR PROTECTION AND REQUEST FOR A HEARING—Filed by Person Seeking Protection

IMPORTANT: This is a public document and a copy of it will be placed in the Court’s file. A copy may also be sent to the Respondent. (Check those which apply)

1. I am filing this Petition for myself:

- a. I am or have been a victim of domestic or family violence;
- b. I am or have been a victim of a sex offense;
- c. I am or have been a victim of stalking;
- d. I am or have been a victim of repeated acts of harassment.

2. The Respondent’s relationship to me is:

- a. the Respondent is my family or household member (*check only the line which best applies*):
 - the Respondent is my spouse;
 - the Respondent used to be my spouse;
 - the Respondent and I resided together in an intimate relationship;
 - the Respondent and I have a child in common;
 - the Respondent and I are dating, or have dated, each other;
 - the Respondent and I are, or have been, engaged in a sexual relationship;
 - the Respondent and I are related by blood or adoption. The Respondent is my _____;
 - the Respondent and I are, or used to be, related by marriage. The Respondent is my _____;
 - the Respondent is, or used to be, my guardian;
 - the Respondent is, or used to be, my ward;
 - the Respondent is, or used to be, my custodian;
 - the Respondent is, or used to be, my foster parent; or,
 - I am a minor child of a person in one of the types of relationships described above.

___ I have adopted the child of the respondent.

If Respondent is not a family or household member as indicated above, but Respondent has committed stalking, a sex offense, or repeated acts of harassment (check only the line below which best applies):

- b. ___ the Respondent has committed stalking against me.
- c. ___ the Respondent has committed a sex offense against me.
- d. ___ the Respondent has committed repeated acts of harassment against me.

3. How old is the Respondent? _____ years old.

4. Please list all cases (divorce, protection orders, paternity, guardianship, criminal, juvenile, civil) involving the Respondent, yourself, or a child you have with the Respondent (attach additional sheets of paper if necessary):

Case Name	Case Number	County & State

___ **Continued on Attachment 4a.**

5. This case is filed in this county because:

- ___ a. the Respondent lives in this county.
- ___ b. the incident(s) of domestic or family violence, stalking, sex offense, or harassment happened in this county.
- ___ c. I live in this county.

6. If you are not represented by an attorney, fill in your public mailing address:

This address will not be kept secret, so you should use a mailing address that you feel comfortable having public. The address you place on the Confidential Form, PO-0104 will be kept confidential. If the Court grants the order, you may be eligible to obtain a confidential address through the Attorney General’s Address Confidentiality Program (ACP). Email the ACP at: confidential@atg.state.in.us to get information on how to participate in that program.

7. The Respondent has committed the following act(s) of domestic or family violence, stalking, sex offense, or harassment (check those which apply):

- ___ the Respondent attempted to cause physical harm to me;
- ___ the Respondent threatened to cause physical harm to me;
- ___ the Respondent did cause physical harm to me;

- ___ the Respondent placed me in fear of physical harm;
- ___ the Respondent caused me to involuntarily engage in sexual activity by force, threat of force, or duress;
- ___ the Respondent committed stalking against me;
- ___ the Respondent committed a sex offense against me;
- ___ the Respondent committed an act of animal cruelty by beating, torturing, mutilating, or killing a vertebrate animal without justification with an intent to threaten, intimidate, coerce, harass or terrorize a family or household member;
- ___ the Respondent committed repeated acts of harassment against me.

8. Describe what happened in each of the above incidents including the date(s), place(s) and witnesses to each incident (*attach additional sheets of paper if necessary*):

Date of Incident #1: _____

Place of Incident: _____

Description of Incident:

List the names of all of the people who were present during the incident. You must include your own name if you were present:

Date of Incident #2: _____

Place of Incident: _____

Description of Incident:

List the names of all of the people who were present during the incident. You must include your own name if you were present:

Date of Incident #3: _____

Place of Incident: _____

Description of Incident:

List the names of all of the people who were present during the incident. You must include your own name if you were present:

_____ Continued on Attachment 8a.

9. I am asking the Court to order the following relief (*check all which apply*):

NOTE: The following requested relief may be granted immediately by the Judge without a hearing. However, if the petition is based on harassment alone, the relief may be granted ONLY after notice to the Respondent and after a hearing to be held within thirty (30) days.

___ Prohibit the Respondent from committing, or threatening to commit, acts of domestic or family violence, stalking, or sex offenses against me;

___ Prohibit the Respondent from committing, or threatening to commit, acts of domestic or family violence, stalking, or sex offenses against my family or household members, whose names are:

_____;

___ Prohibit the Respondent from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with me;

___ Order the Respondent to stay away from my residence, school, place of employment, or other place, which is the _____, located at:

_____;

___ Order the Respondent to stay away from the following location(s) frequented by my family or household member(s), which may include a residence, school, or place of employment: _____

_____.

Please complete:

Please list all owners or lease signers at my residence: _____

_____.

NOTE: The following requested relief may be granted immediately by the Judge, but the Court must hold a hearing within thirty (30) days. If the petition is based on harassment alone, the relief may be granted ONLY after notice to the Respondent and after a hearing to be held within thirty (30) days.

___ Evict the Respondent from my residence, which is located at:

_____;

___ Order the Respondent to give me the possession and use of the following:

___ The residence located at: _____;

___ An automobile/other motor vehicle described as: _____;

_____;

___ Other necessary personal items, described as: _____

_____.

_____;
___ Prohibit Respondent from removing, transferring, injuring, concealing, harming, attacking, mistreating, threatening to harm, or otherwise disposing of the animal(s) listed below.

Example *Name:* *Max*
 Age/Type: *9 year old dog*
 Size /Breed: *Large 55 pound black lab*
 Color/Description: *Black hair, pink collar*

Animal 1 Name: _____
 Age/Type: _____
 Size/Breed: _____
 Color/Description: _____

Animal 2 Name: _____
 Age/Type: _____
 Size/Breed: _____
 Color/Description: _____

Additional animals listed on Attachment 9(a).

___ Order that I will have the exclusive possession, care, custody, or control of an animal(s) owned, possessed, kept, or cared for by myself, the Respondent, a minor child of myself or the Respondent, or any other family or household member listed below.

Animal 1 Name: _____
 Age/Type: _____
 Size/Breed: _____
 Color/Description: _____

Animal 2 Name: _____
 Age/Type: _____
 Size/Breed: _____
 Color/Description: _____

Additional animals listed on Attachment 9(a).

___ Order the following additional relief necessary to provide for my safety and welfare and the safety and welfare of my family or household members:

_____.

NOTE: The following requested relief may be granted ONLY after notice to the Respondent and after a hearing to be held within thirty (30) days:

- ___ Specify the arrangements for parenting time with our minor child(ren);
- ___ Require that parenting time be supervised by a third party;
- ___ Deny the Respondent parenting time;
- ___ Order the Respondent to pay my attorney fees;
- ___ Order the Respondent to pay rent for my residence;
- ___ Order the Respondent to make payment on a mortgage for my residence;
- ___ Order the Respondent to pay child support for our minor child(ren);
- ___ Order the Respondent to pay support/maintenance for me;
- ___ Order the Respondent to reimburse me for expenses related to the domestic or family violence, stalking, sex offense, or harassment as follows:

(specify the amount for each expense and bring documentation of the expense with you to Court for the Hearing):

- ___ Medical expenses: \$ _____
- ___ Counseling: \$ _____
- ___ Shelter: \$ _____
- ___ Repair or replacement of damaged property: \$ _____
- ___ Other costs or fees I have as a result of bringing this case: \$ _____

- ___ Prohibit the Respondent from using or possessing a firearm, ammunition, or deadly weapon;
- ___ Order the Respondent to surrender the following firearm(s), ammunition, or deadly weapon(s) to a specified law enforcement agency ***(list each item below and attach an additional sheet of paper if necessary):***

 _____;

___ **Continued on Attachment 9(b).**

- ___ Order a wireless service provider to transfer to me the right to continued use of, and financial responsibility for, the following telephone number(s) used by me or by a minor child in my custody:

Telephone Number and User: _____
 Wireless Service Provider: _____
 Current Account Holder: _____

Telephone Number and User: _____
 Wireless Service Provider: _____

Current Account Holder: _____
Additional telephone numbers listed on Attachment 9(c)

NOTE: A wireless service provider's normal requirements for setting up a new cellular telephone account still apply. You should consider whether you will be able to set up an account in your own name and whether you will be able to pay for the account.

10. Number of pages attached: _____

By filing this Petition, I am respectfully requesting that the Court immediately issue an Ex Parte Order for Protection. I understand that, if I have asked the Court for any of the following:

- evicting the Respondent from my/our home;
- giving me the possession of personal property;
- giving me possession of an animal;
- prohibiting Respondent from taking action against an animal;
- establishing rules for child parenting time;
- requiring the Respondent to pay fees, expenses, or child support;
- forbidding the Respondent from possessing a firearm, ammunition, or a deadly weapon;
- ordering the Respondent to surrender firearm(s), ammunition, or deadly weapons, or,
- allowing me or a child to continue to use a telephone number for which I will be financially responsible;

I must also ask the Court to set a date for a Hearing within thirty (30) days of today's date.

I understand that if my petition is based on harassment alone, the Court may grant relief ONLY after notice to the Respondent and after a hearing to be held within thirty (30) days.

I understand that if a Hearing is set, and if I fail to appear for the Hearing, the Court may terminate the Ex Parte Order and/or dismiss the case.

I affirm, under the penalties for perjury, that the foregoing representations are true:

- a. on the basis of my own personal knowledge.
- b. on the basis that I have been informed and believe that the facts stated are true. (*NOTE: If this Petition is made solely on the basis of Petitioner's information and belief, Petitioner must attach affidavits by one or more persons who have personal knowledge of the facts stated.*)

DATE: _____

PETITIONER (Signature)

PETITIONER (Type or print name)

STATE OF INDIANA) IN THE _____ COURT _____
) SS: (_____ DIVISION, ROOM _____)
 COUNTY OF _____)
 CASE NO. _____

 Name of Minor Child, Petitioner)
 _____,)
 By Child's Next Friend, (**Your Name**))
 vs.)
 _____,)
 Respondent (**Person to be Restrained**))

PETITION FOR AN ORDER FOR PROTECTION AND REQUEST FOR A HEARING—Filed on Behalf of a Child

IMPORTANT: This is a public document and a copy of it will be placed in the Court's file. A copy may also be sent to the Respondent.
(Check those which apply)

1. I am filing this Petition for a child. The child who needs protection is or has been a victim of domestic or family violence, a sex offense, stalking, a course of conduct involving repeated or continuing contact with the child that is intended to prepare or condition the child for sexual activity (as defined in Ind. Code § 35-42-4-13), or repeated acts of harassment, and I am that person's:

- parent
- guardian
- other representative (*describe:* _____).

2. What is the Respondent's relationship to the child who needs protection?

a. The Respondent is a family or household member (*check only the line which best applies*):

- the Respondent is, or used to be my spouse and the child lived with us;
- the Respondent and I resided together in an intimate relationship and the child lived with us;
- the Respondent is a parent of the child;
- the Respondent is, or used to, date the child;
- the Respondent is, or has been, engaged in a sexual relationship with the child;
- the Respondent and the child who needs protection have a child in common;
- the Respondent and the child are related by blood or adoption. The Respondent is the child's _____;
- the Respondent and the child are, or used to be, related by marriage. The Respondent is the child's _____;

- the Respondent is, or used to be, the child's guardian;
- the Respondent is, or used to be, the child's custodian;
- the Respondent is, or used to be, the child's foster parent;
- the child who needs protection is a minor child of someone in one of the types of relationships described above.

If Respondent is not a family or household member as indicated above, but Respondent has committed stalking, a sex offense, sex grooming, or repeated acts of harassment (check only the line below which best applies):

- a. the Respondent has committed stalking against the child who needs protection.
- b. the Respondent has committed a sex offense against the child who needs protection.
- c. the Respondent engaged in a course of conduct involving repeated or continuing contact with a child that is intended to prepare or condition a child for sexual activity (as defined by Ind. Code § 35-42-4-13).
- d. the Respondent committed repeated acts of harassment against the child.

3. How old is the Respondent? _____ years old.

4. Please list all cases (divorce, protection orders, paternity, guardianship, criminal, juvenile, civil) involving the Respondent, or the Child you have with the Respondent (*attach additional sheets of paper if necessary*):

Case Name	Case Number	County & State

Continued on Attachment 4a.

5. This case is filed in this county because:

- a. the Respondent lives in this county.
- b. the incident(s) of domestic or family violence, stalking, sex offense, sex grooming, or harassment happened in this county.
- c. the child who needs protection lives in this county.
- d. the child's next friend lives in this county.

6. If you are not represented by an attorney, fill in your public mailing address:

This address will not be kept secret, so you should use a mailing address that you feel comfortable having public. If the Court grants the order, you may be eligible to obtain a confidential address through the Attorney General's Address Confidentiality Program (ACP). Email the ACP at: confidential@atg.state.in.us

to get information on how to participate in that program.

7. The Respondent has committed the following act(s) of domestic or family violence, stalking, sex offense, sex grooming, or harassment (*check those which apply*):

- the Respondent attempted to cause physical harm to the child who needs protection;
- the Respondent threatened to cause physical harm to the child who needs protection;
- the Respondent did cause physical harm to the child who needs protection;
- the Respondent placed the child who needs protection in fear of physical harm;
- the Respondent caused the child who needs protection to involuntarily engage in sexual activity by force, threat of force, or duress;
- the Respondent committed stalking against the child who needs protection;
- the Respondent committed a sex offense against the child who needs protection.
- the Respondent committed an act of animal cruelty by beating, torturing, mutilating, or killing a vertebrate animal without justification with an intent to threaten, intimidate, coerce, harass or terrorize a family or household member.
- the Respondent has engaged in a course of conduct involving repeated or continuing contact with a child that is intended to prepare or condition a child for sexual activity (as defined in Ind. Code § 35-42-4-13).
- the Respondent committed repeated acts of harassment against the child.

8. Describe what happened in each of the above incidents including the date(s), place(s) and witnesses to each incident (*attach additional sheets of paper if necessary*):

Date of Incident #1: _____

Place of Incident: _____

Description of Incident:

List the names of all of the people who were present during the incident. You must include your own name if you were present:

Date of Incident #2: _____

Place of Incident: _____

Description of Incident:

List the names of all of the people who were present during the incident. You must include your own name if you were present:

Date of Incident #3: _____

Place of Incident: _____

Description of Incident:

List the names of all of the people who were present during the incident. You must include your own name if you were present:

_____ Continued on Attachment 8a.

9. I am asking the Court to order the following relief (*check all which apply*):

NOTE: *The following requested relief may be granted immediately by the Judge without a hearing. However, if the petition is based on harassment alone, the relief may be granted ONLY after notice to the Respondent and after a hearing to be held within thirty (30) days.*

___ Prohibit the Respondent from committing, or threatening to commit, acts of domestic or family violence, stalking, sex offenses against the child, or a course of conduct involving repeated or continuing contact with the child that is intended to prepare or condition the child for sexual activity and who needs protection;

___ Prohibit the Respondent from committing, or threatening to commit, acts of domestic or family violence, stalking, or sex offenses against the family or household members of the child who needs protection. Their names are:

_____;

___ Prohibit the Respondent from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with the child who needs protection;

___ Order the Respondent to stay away from the child's residence, school, place of employment, or other place, which is the _____, located at: _____;

___ Order the Respondent to stay away from the following location(s) frequented by the family or household member(s) of the child, which may include a residence, school, or place of employment:

_____;

Please complete:

Please list all owners or lease signers at the Child's residence:

_____.

NOTE: The following requested relief may be granted immediately by the Judge, but the Court must hold a hearing within thirty (30) days. If the petition is based on harassment alone, the relief may be granted ONLY after notice to the Respondent and after a hearing to be held within thirty (30) days.

___ Evict the Respondent from the child's residence,
which is located at: _____;

___ Order the Respondent to give the child the possession and use of
the following:

___ The residence located at: _____;

___ An automobile/other motor vehicle described as: _____
_____;

___ Other necessary personal items, described as: _____
_____;

___ Prohibit Respondent from removing, transferring, injuring, concealing,
harming, attacking, mistreating, threatening to harm, or otherwise disposing
of the animal(s) listed below.

<u>Example</u>	<u>Name:</u>	<u>Max</u>
	<u>Age/Type:</u>	<u>9 year old dog</u>
	<u>Size /Breed:</u>	<u>Large 55 pound black lab</u>
	<u>Description:</u>	<u>Black hair, pink collar</u>

Animal 1	Name: _____
	Age/Type: _____
	Size/Breed: _____
	Description: _____

Animal 2	Name: _____
	Age/Type: _____
	Size/Breed: _____
	Description: _____

Additional animals listed on Attachment 9(a).

___ Order that I will have the exclusive possession, care, custody, or control of an
animal(s) owned, possessed, kept, or cared for by myself, the Respondent, a
minor child of myself or the Respondent, or any other family or household
member listed below.

Animal 1 Name: _____
Age/Type: _____
Size/Breed: _____
Description: _____

Animal 2 Name: _____
Age/Type: _____
Size/Breed: _____
Description: _____

Additional animals listed on Attachment 9(a).

___ Order the following additional relief necessary to provide for the child's safety and welfare and the safety and welfare of the child's family or household members:

_____.

NOTE: The following requested relief may be granted ONLY after notice to the Respondent and after a hearing to be held within thirty (30) days:

- ___ Specify the arrangements for parenting time;
- ___ Require that parenting time be supervised by a third party;
- ___ Deny the Respondent parenting time;
- ___ Order the Respondent to pay the Petitioner's or child's attorney fees;
- ___ Order the Respondent to pay rent for the child's residence;
- ___ Order the Respondent to make payment on a mortgage for the child's residence;
- ___ Order the Respondent to pay support for the child, or for minor child(ren) in common with the child who needs protection;
- ___ Order the Respondent to reimburse the Petitioner and/or the child who needs protection for expenses related to the domestic or family violence, stalking, sex offense, sex grooming or harassment as follows

(specify the amount for each expense and bring documentation of the expense with you to Court for the Hearing):

___ Medical expenses: \$ _____
___ Counseling: \$ _____
___ Shelter: \$ _____
___ Repair or replacement of
damaged property: \$ _____
___ Other costs or fees the Petitioner or child
has as a result of bringing this case: \$ _____

- ___ Prohibit the Respondent from using or possessing a firearm, ammunition, or deadly weapon;
- ___ Order the Respondent to surrender the following firearm(s), ammunition, or deadly weapon(s) to a specified law enforcement agency (**list each item**

below and attach an additional sheet of paper if necessary):

_____;

_____ **Continued on Attachment 9b.**

_____ Order a wireless service provider to transfer to me the right to continued use of, and financial responsibility for, the following telephone number(s) used by a minor child in my custody:

Telephone Number and User: _____
Wireless Service Provider: _____
Current Account Holder: _____

Telephone Number and User: _____
Wireless Service Provider: _____
Current Account Holder: _____

Additional telephone numbers listed on Attachment 9(c)

NOTE: A wireless service provider's normal requirements for setting up a new cellular telephone account still apply. You should consider whether you will be able to set up an account in your own name and whether you will be able to pay for the account.

10. Number of pages attached: _____

By filing this Petition, I am respectfully requesting that the Court immediately issue an Ex Parte Order for Protection. I understand that, if I have asked for relief from the Court regarding any of the following:

- evicting the Respondent from the child's home;
- giving the child the possession of personal property;
- giving me possession of an animal;
- prohibiting Respondent from taking action against an animal;
- establishing rules for child parenting time;
- requiring the Respondent to pay fees, expenses, or child support;
- forbidding the Respondent from possessing a firearm, ammunition, or a deadly weapon;
- ordering the Respondent to surrender firearm(s), ammunition, or deadly weapons; or
- allowing me or a child in my custody to continue to use a telephone number that I will be financially responsible for;

I must also ask the Court to set a date for a Hearing within thirty (30) days of today's date.

I understand that if the petition is based on harassment alone, the Court may grant relief ONLY after notice to the Respondent and after a hearing to be held within thirty (30) days.

I understand that if a Hearing is set, and if I fail to appear for the Hearing, the Court may terminate the Ex Parte Order and/or dismiss the case.

I affirm, under the penalties for perjury, that the foregoing representations are true:

- a. on the basis of my own personal knowledge.
- b. on the basis that I have been informed and believe that the facts stated are true. *(NOTE: If this Petition is made solely on the basis of Petitioner's information and belief, Petitioner must attach affidavits by one or more persons who have personal knowledge of the facts stated.)*

DATE: _____

PETITIONER - Type or print name of child

Signature of child's next friend

168 N.E.3d 1048
 Court of Appeals of Indiana.

K.B., Appellant-Petitioner,
 v.
 B.B., Appellee-Respondent.

Court of Appeals Case No. 21A-PO-99
 |
 FILED May 7, 2021

Synopsis

Background: Petitioner filed an order for protection against neighbor alleging harassment and fear of physical harm. The Superior Court, Marion County, [Timothy Oakes, J.](#), dismissed the petition for failure to state a claim upon which relief can be granted without first holding an evidentiary hearing. Petitioner appealed.

[Holding:] The Court of Appeals, [Najam, J.](#), held that petition for order for protection included sufficient operative facts to state a claim and warrant a hearing.

Reversed and remanded.

Procedural Posture(s): On Appeal; Motion for Protective Order.

West Headnotes (6)

[1] Appeal and Error De novo review
 The appellate court's review of motions to dismiss for failure to state a claim is de novo.

[2] Protection of Endangered Persons Pleading, notice, and process
Protection of Endangered Persons Hearing and determination
 Petition for order for protection for harassment by neighbor included sufficient operative facts to state a claim and warrant hearing, although neighbor argued that none of the allegations in petition could demonstrate she was a threat to

petitioner's safety; petitioner was not required to prove allegations in her petition in order to be entitled to hearing, petitioner outlined several instances over the course of approximately 19 months that she claimed constituted harassment by neighbor, neighbor had become visibly angry and aggressive towards petitioner at a meeting, neighbor entered petitioner's home twice without permission, and petitioner alleged each of those instances made her feel "terrorized, frightened, intimidated, and threatened" and caused her "emotional distress." [Ind. Code Ann. §§ 34-26-5-9\(b\), 35-45-10-2.](#)

[3] Pleading Matters of Fact or Conclusions
Pleading Statement of cause of action in general

A plaintiff need not set out in precise detail the facts upon which the claim is based, but she must plead the operative facts necessary to set forth an actionable claim.

[4] Protection of Endangered Persons Fear and imminence of harm in general; threats

To obtain an order for protection, the petitioner must show that the respondent represents a credible threat to safety of the petitioner or a member of the petitioner's household.

[5] Evidence Extent of burden in general

Under notice pleading, a party is not required to prove her case by a preponderance of the evidence in her initial pleading. [Ind. R. Trial P. 8\(A\).](#)

[6] Protection of Endangered Persons Hearing and determination

A trial court cannot avoid an evidentiary hearing simply by stating that it accepts as true the allegations in the petition for an order for protection and rule on a paper record—whether for or against the petition—without a hearing if

the minimum requirements of notice pleading are met. [Ind. R. Trial P. 8\(A\)](#).

*1049 Appeal from the Marion Superior Court, The Honorable [Timothy W. Oakes](#), Judge, The Honorable [Caryl F. Dill](#), Magistrate, Trial Court Cause No. 49D02-2011-PO-41770

Attorneys and Law Firms

Attorney for Appellant: [Grace Atwater](#), Kammen & Moudy, Indianapolis, Indiana

Attorneys for Appellee: [Christopher N. Wahl](#), [Kye J. Steffey](#), [David J. Saferight](#), Steffey Wahl, LLC, Indianapolis, Indiana

[Najam](#), Judge.

Statement of the Case

[1] K.B. appeals the trial court's dismissal of her petition for an order for protection against B.B. K.B. raises one issue for our review, namely, whether the trial court erred when it dismissed her petition without first holding an evidentiary hearing.

[2] We reverse and remand for further proceedings.

Facts and Procedural History

[3] K.B. and B.B. live across the street from one another. On November 24, 2020, K.B. filed a petition for an order for protection against B.B. and a request for a hearing. In that petition, K.B. alleged that, between April 24, 2019, and November 22, 2020, B.B. had committed several acts against her that she contended constituted harassment and that placed her in fear of physical harm. *See* Appellant's App. Vol. 2 at 11. Specifically, K.B. alleged that B.B. had:

- become “visibly angry and aggressive” toward K.B. at a homeowner's association meeting in “retaliation” for her questions to him;
- placed a gargoyle statue on the roof of his house that faced K.B.'s house to “publicly intimidate” her in retaliation for her questions at the meeting;

- entered K.B.'s property without permission when K.B. was not present and “confront[ed]” a female contractor, which “aggressive behavior” by B.B. placed the contractor in fear such that she “retreated” into K.B.'s home;
- entered K.B.'s property a second time without permission when K.B. was not present and “approached” another contractor to “acquire information” about K.B., which caused the contractor to believe that B.B. was “obsessed” with K.B.;
- placed a “large red bow” on the gargoyle as an “escalation” of the gargoyle's original purpose to “intimidate and retaliate” against K.B.;
- sarcastically yelled: “Howdy neighbors! How are you DOOOOING?” to K.B. as she exited her car in her driveway; and
- “intentionally blocked” K.B.'s entry to her driveway for “at least five minutes” while a vehicle exited his driveway.

*1050 *Id.* 2 at 16-22. K.B. alleged that each of those incidents caused her to feel “terrorized, frightened, intimidated, and threatened” and caused her “emotional distress” such that she now “fear[s]” leaving her house. *Id.* at 15.

[4] The trial court did not hold a hearing on K.B.'s petition. Rather, the court dismissed K.B.'s petition *sua sponte*.¹ Thereafter, K.B. filed a motion to correct error in which she asserted that the trial court was required to hold a hearing on her petition because she had alleged “multiple instances” where B.B. had engaged in conduct that would cause a reasonable person to suffer emotional distress. *Id.* at 7. As such, K.B. maintained that she had alleged “facts sufficient to support her claim for relief.” *Id.* The trial court denied that motion on the ground that the alleged behavior, if true, did not “rise to the level of harassment[.]” *Id.* at 5. This appeal ensued.

Discussion and Decision

[1] [5] K.B. contends that the trial court erred when it dismissed her petition for an order for protection without a hearing. While B.B. did not file a motion to dismiss K.B.'s

petition, the court *sua sponte* dismissed the petition for failure to state a claim upon which relief can be granted. Our review of such dismissals is *de novo*. See *Jacob v. Vigh*, 147 N.E.3d 358, 360 (Ind. Ct. App. 2020).

[6] K.B. filed her petition for an order for protection against B.B. pursuant to the Indiana Civil Protection Order Act (“CPOA”). That act provides that “[a] person who is or has been subjected to harassment may file a petition for an order for protection against a person who has committed repeated acts of harassment against the petitioner.” [Ind. Code § 34-26-5-2\(b\) \(2020\)](#). At that point,

[i]f it appears from a petition for an order for protection ... that harassment has occurred, a court:

- (1) may not, without notice and a hearing, issue an order for protection ...; but
- (2) may, upon notice *and after a hearing*, whether or not a respondent appears, issue or modify an order for protection.

A court must hold a hearing under this subsection not later than thirty (30) days after the petition for an order for protection ... is filed.

[I.C. § 34-26-5-9\(b\)](#) (emphasis added).

[7] Other cases have addressed the adequacy of a hearing on a petition for an order for protection. See [Essany v. Bower](#), 790 N.E.2d 148, 153 (Ind. Ct. App. 2003) (holding that the trial court failed to hold an adequate hearing when it did not allow the petitioner to testify at the hearing or otherwise cross examine the respondent before dismissing the petition for an order for protection); see also [Maurer v. Maurer](#), 712 N.E.2d 990, 991 (Ind. Ct. App. 1999) (holding that the trial court erred when it refused to allow any evidence to be presented at the hearing on a petition for an order for protection). However, no case has addressed when a hearing is required under the CPOA.

[2] [8] On appeal, K.B. contends that the court erred when it dismissed her petition without a hearing because the CPOA “requires” a hearing and “entitle[s]” her to present evidence in support of her petition. Appellant’s Br. at 6. In response, B.B. *1051 asserts that the statute only requires a court to hold a hearing if the petition “alleges sufficient facts to support an appearance that harassment has occurred.” Appellee’s Br. at 9. In other words, the parties appear to agree that, if K.B. stated

a claim for harassment in her petition, she was entitled to a hearing.² Thus, to resolve this appeal, we must determine whether K.B. stated a claim of harassment. We hold that she did.³

[3] [9] It is well settled that Indiana is a notice pleading state. [Indiana Trial Rule 8\(A\)](#) “requires only ‘a short and plain statement of the claim showing that the pleader is entitled to relief.’ ” [Trail v. Boys and Girls Clubs](#), 845 N.E.2d 130, 135 (Ind. 2006). A plaintiff need not set out in precise detail the facts upon which the claim is based, but she must plead the operative facts necessary to set forth an actionable claim. See [id.](#)

[4] [10] K.B. asserts, and we agree, that her petition included sufficient operative facts to state a claim that B.B. had harassed her. “Harassment” is defined as “conduct directed toward a victim that includes but is not limited to repeated or continuing impermissible contact that would cause a reasonable person to suffer emotional distress and that actually causes the victim to suffer emotional distress.” [I.C. § 35-45-10-2](#).⁴ And “impermissible contact” is defined as following or pursuing the victim; communicating with the victim in person, in writing, by telephone, by telegraph, or through electronic means; or posting on social media, if the post is directed toward the victim or refers to the victim directly or indirectly. [I.C. § 35-45-10-3](#). Further, to obtain an order for protection, the petitioner must show that the respondent represents a credible threat to safety of the petitioner or a member of the petitioner’s household. [S.H. v. D.W.](#), 139 N.E.3d 214, 219 (Ind. 2020).

[11] In her petition, K.B. outlined several instances over the course of approximately nineteen months that she claimed constituted harassment by B.B. Most significantly, K.B. stated that B.B. had: become “visibly angry and aggressive” toward her at a meeting; entered K.B.’s property without permission and when she was not home and “confront[ed]” a contractor; entered K.B.’s property a second time without permission and when K.B. was not home and “approached” a contractor to “acquire information” about K.B.; sarcastically yelled at K.B. as she exited her car; and “intentionally blocked” K.B.’s access to her driveway. Appellant’s App. Vol. 2 at 16-22. And K.B. alleged that each of those instances made her feel “terrorized, frightened, intimidated, and threatened” and caused her “emotional distress” such that she now “fear[s]” leaving her house.” *Id.* at 15. We conclude that those

allegations stated a claim for harassment, which entitled K.B. to a hearing.

[12] Still, B.B. contends that “the conduct alleged in K.B.’s petition does not rise *1052 to the level of harassment under the CPOA as a matter of law.” Appellee’s Br. at 14. Specifically, B.B. maintains that “none of the allegations in K.B.’s [p]etition can support even a reasonable inference, much less demonstrate, that B.B. objectively poses a credible and present threat to K.B.’s safety.” *Id.* at 19. But the relevant question on appeal is not whether the allegations in K.B.’s petition actually demonstrate that B.B. had harassed her. Rather, the question is whether she alleged facts sufficient to state a claim that B.B. had harassed her. *See I.C. § 34-26-5-9(b)*.

[5] [6] [13] Indeed, under notice pleading, a party is not required to prove her case by a preponderance of the evidence in her initial pleading. In other words, K.B. was not required to prove the allegations in her petition in order to be entitled to a hearing. A trial court cannot avoid an evidentiary hearing simply by stating that it accepts as true the allegations in the petition for an order for protection and rule on a paper record—whether for or against the petition—without a hearing if the minimum requirements of notice pleading are met. And,

as discussed above, K.B. alleged sufficient facts to warrant a hearing.

[14] In sum, K.B.’s petition alleged that B.B. had engaged in continuing impermissible contact that placed her in fear of her safety and caused her to suffer emotional distress, which states a claim of harassment. *See I.C. § 35-45-10-2*; *see also S.H.*, 139 N.E.3d at 219. And, contrary to B.B.’s assertion on appeal, we cannot conclude, as a matter of law, that B.B.’s conduct as described by K.B. would not cause a reasonable person to suffer emotional distress. Accordingly, we hold that the trial court erred when it dismissed K.B.’s petition and did not hold a hearing at which K.B. could present evidence to support her claim.⁵ We therefore reverse the trial court’s judgment and remand with instructions for the court to hold a hearing on K.B.’s petition for an order for protection.

[15] Reversed and remanded for further proceedings.

Pyle, J., and Tavitas, J., concur.

All Citations

168 N.E.3d 1048

Footnotes

- 1 The trial court’s order dismissing K.B.’s petition stated that it “denied” the petition on the ground that she had not shown “by a preponderance of the evidence” that harassment had occurred. *Id.* at 4. However, the court did not hold a hearing to adjudicate her claim.
- 2 In her motion to correct error, K.B. specifically asserted that “nothing in the CPOA empowers a court to unilaterally determine that a petition for an order [for] protection should be denied, without a hearing, *where a petition sufficiently alleges facts supporting a valid claim for protection.*” Appellant’s App. Vol. 2 at 6 (emphasis added).
- 3 Because we hold that K.B.’s petition stated a claim that B.B. had harassed her, we need not decide whether, as K.B. contends, the CPOA always requires the court to hold an evidentiary hearing on a petition for an order for protection.
- 4 While not cited by either party, [Indiana Code Section 34-6-2-51.5](#) provides an almost identical definition of “harassment” that specifically applies to Indiana Code Chapter 34-26-5.
- 5 We express no opinion on the merits of K.B.’s allegations.

160 N.E.3d 195
Court of Appeals of Indiana.

R.W., Appellant-Respondent,
v.
J.W., Appellee-Petitioner.

Court of Appeals Case No. 19A-PO-2697

|
FILED November 13, 2020

Synopsis

Background: Former girlfriend petitioned for permanent protective order after former boyfriend harassed girlfriend and sent threatening emails and voice mails. The Superior Court, Porter County, Brian Hurley, J., granted permanent protective order and denied boyfriend's motion to dismiss petition. Boyfriend appealed.

Holdings: The Court of Appeals, [Friedlander](#), Senior Judge, held that:

[1] girlfriend did not violate statute imposing continuing duty of each party to inform court of certain matters at a hearing to obtain an order for protection;

[2] existence of an emergency order of protection issued in Illinois in favor of boyfriend did not require the trial court to transfer former girlfriend's petition for protective order to Illinois; and

[3] evidence of stalking and harassment was sufficient to support trial court's determination that girlfriend was entitled to order of protection against boyfriend.

Affirmed.

[Crone, J.](#), filed a concurring opinion.

Procedural Posture(s): On Appeal; Motion for Protective Order; Motion to Dismiss.

West Headnotes (6)

[1] **Protection of Endangered Persons**  [Hearing and determination](#)

Former girlfriend seeking permanent protection order against former boyfriend did not violate statute imposing continuing duty on each party to inform court of certain matters at a hearing to obtain an order for protection by failing to inform court of existing Illinois order of protection in favor of former boyfriend, even though girlfriend's petition indicated "NA" in the section of the petition asking for information regarding any other cases that she and former boyfriend had pending, where boyfriend's motion informed the court, and the matter was brought to the court's attention at the hearing. [Ind. Code Ann. § 34-26-5-5](#).

[2] **Judgment**  [Jurisdiction of cause of action](#)
Judgment  [Effect of Invalidity](#)

A judgment rendered by a court that lacks jurisdiction over the particular case is voidable and requires a timely objection or the lack of jurisdiction over the particular case is waived.

[1 Cases that cite this headnote](#)

[3] **Protection of Endangered Persons**  [Inter-Jurisdictional Issues](#)

Existence of an emergency order of protection issued in Illinois in favor of former boyfriend did not require the trial court to transfer former girlfriend's Indiana petition for protective order to Illinois under section of statute governing jurisdiction to issue a protective order; the Indiana legislature intended to consolidate Indiana actions between or involving the particular parties and provided for the transfer of actions between Indiana courts to meet that end, and legislature referred to action in other states in another section of statute. [Ind. Code Ann. § 34-26-5-6\(4\)](#).

[4] Protection of Endangered**Persons** 🔑 Weight and sufficiency

Evidence of stalking and harassment was sufficient to support trial court's determination that former girlfriend was entitled to order of protection against her former boyfriend; boyfriend asserted right to remain silent numerous times, and girlfriend presented evidence that boyfriend left a threatening voice mail for girlfriend, which made girlfriend feel threatened and terrified, that boyfriend made several attempts to contact girlfriend's husband, during a period of time where prior girlfriend was with boyfriend, and that prior girlfriend downloaded semi-nude and nude pictures of former girlfriend from boyfriend's password-protected phone and then sent them to former girlfriend and boyfriend with her own disparaging commentary about what was depicted. *U.S. Const. Amend. 5*;  *Ind. Code Ann. § 34-26-5-2*.

[5] Protection of Endangered**Persons** 🔑 Harassment, stalking, and surveillance

The term “repeated” in Indiana's anti-stalking laws means more than once.  *Ind. Code Ann. § 34-26-5-2*.

[6] Witnesses 🔑 Effect of refusal to answer

Although the refusal to testify in a civil case cannot be used against the one asserting the privilege in a subsequent criminal proceeding, the privilege against self-incrimination does not prohibit the trier of fact in a civil case from drawing adverse inferences from a witness's refusal to testify. *U.S. Const. Amend. 5*.

*196 Appeal from the Porter Superior Court, The Honorable Brian Hurley, Judge Pro Tempore, Trial Court Cause No. 64D05-1909-PO-8995

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Opinion

[Friedlander](#), Senior Judge.

[1] R.W. appeals from the entry of a permanent protective order against him, contending that the trial court erred by denying his motion to dismiss the petition for an order of protection filed by J.W., a woman with whom he was in a romantic relationship, and by finding that there was sufficient evidence to support the legal conclusion to issue the order. We affirm.

[2] R.W. raises the following issues for our review:

1. Did the existence of an emergency order of protection issued in Illinois in favor of R.W. require the trial court to transfer J.W.'s Indiana petition for protective order to Illinois under *Ind. Code § 34-26-5-6(4)* (2003)?

2. Was there sufficient evidence to sustain the trial court's findings of fact supporting its conclusion of law to enter the order of protection in favor of J.W. and against R.W.?

[3] J.W. is married and the mother of four boys. R.W. is a divorced father and was an anchorman at a Chicago news station. In March of 2019, R.W. contacted J.W. by private message, commenting “nice picture” through Instagram about a photo she had posted. *Tr. Vol. I*, p. 45. J.W. did not respond to the comment. He reached out to her again, inquiring if she knew two women with whom he was friends after noticing that they had two Instagram friends in common; one from St. Louis, and one from Virginia. She knew one of those friends, K.B., a resident of Virginia and flight attendant employed by United Airlines, through social media. R.W. told J.W. that he had recently broken up with K.B., who he described as “very jealous” and “cruel.” *Id.* 45-46. J.W. responded that there are always two sides to a story while she also expressed sympathy toward R.W. J.W. also informed him *197 that K.B. had blocked her from social media.

[4] On June 23, 2019, R.W. contacted J.W. stating, “You seem really wonderful. I know you're married.... I promise I can be trusted with your number. (smile emoji).” *Id.* at 47; Ex. 1, p. 9. J.W. gave her phone number to R.W.

[5] Within two days of receiving J.W.'s phone number, he began texting her, expressing a romantic and sexual interest in her, and he began quoting scripture. He stated “You're an amazing woman. There's something truly special about you. I want to find out more about you.... I adore you.” *Id.* at 47-48; Ex. 1, p. 14.

[6] The following is a sample of his overtures to J.W.:

I wish I could take you out. Give you the affection you're probably sorely missing. Physical, emotional, tell you how beautiful you are all the time. You have such a huge heart and have so much to give. Would you like that?

I am going to mercilessly flirt with you until you tell me yo[sic] stop! (devil emoji).

* * * *

Since my last breath up, I've been taking time and praying for God to bring someone into my life that would match my frequency and be able to go to new heights...in God's time of course. I hope you are that person, but I know I will have to be patient. In the meantime, I hope we can spend time getting to know one another. Having a relationship I've always dreamed of is worth waiting for. Heck, I've waited this long! (laughing emoji).

* * * *

You deserve to be happy. God wants us to be happy. Let me try. I believe there's a reason God connected us. If I got to hold you in my arms, you'd know what it feels like to be adored and wanted.

* * * *

I need you [J.W.].

Id. at 48-49; Ex. 2, pp. 19-23.

[7] In July, R.W. continued to quote scripture, but also sent to her a picture text of his genital area. He then made a request texting, “Now since I've been a good boy go take pics of that sexy body of yours later and send them to me so I can imagine

you're with me where you belong[.]” *Id.* at 224; Ex. 25, p. 217. J.W. sent intimate nude and semi-nude pictures to R.W. after his assurances.

[8] On July 12, 2019, the two met at a hotel in Chesterton, Indiana for a sexual encounter. Within a few days of the encounter with J.W., R.W. went on vacation with another woman, M.E., a television anchor working out of St. Louis. J.W. became aware of this and was upset. R.W. later explained to her that the vacation was taken for the purpose of breaking things off with M.E. so that he could be with J.W. At the end of July after J.W. and R.W. reconciled, they met again in Indiana for lunch. They later met at R.W.'s home in Chicago on August 22, 2019 for a sexual encounter.

[9] Meanwhile, on August 3, 2019, the relationship began to break down yet again. Starting then through August 6th, R.W. expressed concern about whether third parties knew about his relationship with J.W. They had disagreements about other women with whom R.W. was involved.

[10] Next, J.W. resumed communicating with K.B. The two discussed R.W. and his involvement with J.W., K.B., and other women. Around that time, on August 10, 2019, R.W. wanted to send a video he had of K.B., who was nude in the video, to a *198 surgeon she was dating. He asked J.W., “Do me a favor and go to [K.B.'s] page and screen grab the plastic surgeon. K.B. hooked me in sending my naked videos and pics ... she crossed the line but I followed. I think her guy needs to know.” Ex. 4, p. 101.

[11] Although J.W. advised him against that, R.W. suggested setting up another Instagram account to contact the surgeon through his office. R.W. threatened K.B. by email stating, “Keep in mind [K.B.] I still have all the texts you sent me and the naked video of you and I know the name of the plastic surgeon you're dating.” Ex. 5, p. 108. Preemptively, K.B. sent emails to her friends telling them that her Facebook account had been hacked and not to open a video attachment if they received a post from her. K.B.'s YouTube and Facebook accounts were hacked, and the video of K.B., who was nude in it, was posted and sent to all of K.B.'s friends.

[12] J.W. and K.B. exchanged emails on August 11, 2019 about K.B. reaching out to a man, B.O., with whom J.W. previously had a sexual relationship. J.W. then sent an email to R.W. accusing him of causing K.B. to reach out to B.O. J.W. also argued with R.W. about blocking her from social media. J.W. texted R.W. about text conversations between K.B. and

R.W. In those conversations, K.B. claimed that R.W. blocked J.W. from social media because she was too forward and had stalked him. K.B. sent the text conversations to J.W. R.W. claimed to J.W. that he was referring to another woman with the same first name and was talking about blocking her. By that time, it was apparent that K.B. and R.W. had renewed their relationship.

[13] J.W. told R.W. on August 12, 2019 to stay away from her and that she was going to report his behavior to the police. The two had exchanged and continued to exchange heated emails about each other, K.B., B.O. and others, arguing about hacking into or creating fake accounts on social media and reaching out to other persons about various relationships. J.W. confronted R.W. about having to change her “mommyof4boys” email account because R.W. had told K.B. that J.W., using that email account, was stalking him. Ex. 5, p. 103.

[14] J.W. shared some text exchanges between her and R.W. to K.B. R.W. learned about it and became upset. At one point, R.W. threatened J.W. that she would go to jail and lose her four sons. J.W.'s continued response to the repeated exchanges was to ask that R.W. and K.B. leave her alone and, if they did not, she would contact the police. An example of J.W.'s request was her email on August 17, 2019,

I want this behavior to stop
You know involving [K.B.] would be traumatic for me and she would be evil. You let it happen. Now, B.O. and K.B. are attacking me at every angle to make themselves look better and feel better... The verbal abuse and lies are so painful nobody should feel this. I don't want you to reply, you lost all your chances to fix this and be my friend... If you mention my name to [K.B.], [B.O.] or anyone for that matter or continue to harass me and slander my name; it will be used against you.

Ex. 6, p. 118.

[15] On August 23, 2019, R.W. left a voicemail message stating,

You're sharing our text messages, our private conversations with other people. This is illegal. I'm not [f**king] around with you anymore, [J.W.]. I am not saying a word about you to anyone. I am not talking to anyone about you. You, you are trying to on [sic] my reputation, and I have proof of that. Stand the [f**k] down now. Delete every one of those *199 [f**king] text messages. And if you—and I swear to [f**king] God I will sue you for everything for [f**king] with my reputation, sharing personal–personal conversations with other people. You are a sick [f**k], [J.W.] and you deserve to go to jail. And, I'm going to make sure that happens. How dare you.

Tr. Vol. I, p. 73. J.W. felt threatened and terrified by the message in the voicemail. R.W. then immediately made multiple attempts in a short period of time to contact J.W.'s husband by email and Instagram, indicating that he needed to talk with him about J.W.

[16] On August 24, 2019, R.W. sent an email to J.W. stating that K.B. “somehow was able to access my phone, she knew my old password and download[ed] all of the naked photos of you that you sent me. She's very upset that you contacted [a man] and [I] don't know what she's going to do with them. Sorry.” Ex. 7, p. 122. K.B. posted photographs of herself dated August 21, 2019 to August 28, 2019 in Chicago where R.W. worked and lived, depicting her at R.W.'s condo and at the Art Institute. R.W. was pictured by himself at the Art Institute during that same time period in a photograph he posted on social media.

[17] During this time, K.B. then began sending texts to J.W. stating,

Hi [J.W.]. I just heard someone say that they were sending these photos to your children's school. I'm very worried about you. Are you OK? Be more

careful when you send these photos out!!! I don't want your children and husband to see them.... I think a lot of your friends got a hold of them too. Are you ok??... I feel so bad for you!! Call the police. I'm very worried that these photos won't go through Valparaiso. I just don't want them to get in the hands of your children or husband.

Ex. 9, p. 133-34.

[18] On September 11, 2019 at 12:07 p.m., the Cook County, Illinois Court issued an emergency order of protection in favor of R.W. and against J.W. The persons sought to be protected in that order were R.W., K.B., and M.E., however, the order only applied to R.W. On September 11, 2019 at 12:14 p.m., K.B., sent an email to J.W. which contained an explicit photograph that J.W. had sent to R.W., with the comment, “Far from perfect! So gross[.]” *Id.* at 123-24. K.B. sent another email to J.W. saying, “Since you've been sleeping around on your husbands[sic], you've contracted herpes. If you don't tell him about your virus, I will. He has a right to know!!!” *Id.* at 124. K.B. wrote to J.W. in a further email, “Your husband has a right to know honey [t]hat you're exposing him to herpes.” *Id.* In yet another email, K.B. wrote to J.W. and cc'd R.W., “Do your children and husband know you send trashy photos of your infected vagina to men in who [sic] are in relationships. Geez. You're so desperate it's disgusting. Poor [M.E.] had no idea what a tramp you are. [B.O.] said, you have bad skin and your vagina looks like an old steak.” Ex. 11, p. 159. K.B. was in Chicago with R.W. at the time these emails were sent. A post on social media dated September 9, 2019, shows K.B. in Chicago after returning from Amsterdam. R.W. admitted that he saw the email.

[19] On September 19, 2019, J.W. filed an ex parte petition for order of protection and a hearing was set for October 17, 2019. On October 15, 2019, R.W. filed a motion to continue the hearing, which was granted causing the hearing to be reset to October 30, 2019. In that Motion, R.W. did not raise the issue he raises now, specifically that J.W. incorrectly filed her petition in *200 Indiana when she should have filed her petition in Illinois. Instead, R.W.'s attorney stated that he was unavailable for the hearing because he was in trial.

[20] Meanwhile, around October 1, 2019, J.W. found out that a Bumble¹ account was created using her email address.

R.W. previously had a Bumble account of his own. Bumble contacted J.W., advising her that she was “creating quite a buzz.” Ex. 17, p. 199. The subject line of the email from Bumble read, “[J.W.], You're Buzzworthy!” *Id.* Because J.W. did not have a Bumble account, she contacted Bumble and was able to log on to the account. In the “About me” section it shows “Tramp with herpes,” and in the “My work & education” section it shows “Prostitute at Home.” Ex. 16, p. 190. She was notified by Bumble that one of the posted pictures violated Bumble's guidelines and was taken down. One of the pictures was a picture only sent to R.W. and depicted J.W. wearing a shirt R.W. gave her. The hearing date for the Illinois protective order filed by R.W. was scheduled for October 2, 2019, the day after J.W. discovered the fake Bumble account.

[21] Two days prior to the Indiana hearing, R.W. filed a motion to dismiss claiming that the trial court needed to dismiss the matter because R.W. had a pending petition for order of protection against J.W. in Illinois where he is a resident. His argument continued by asserting that J.W.'s Indiana petition was required to be dismissed because pursuant to [Indiana Code § 34-26-5-6\(4\)](#), she needed to file it in Illinois. J.W. filed a response to both the motion for continuance and the motion to dismiss.

[22] An evidentiary hearing was held on October 30, 2019 and November 5, 2019. While being questioned during the hearing, R.W. asserted his Fifth Amendment right and refused to answer 32 questions. To briefly summarize, he invoked his Fifth Amendment right and refused to answer questions about his awareness and knowledge of K.B.'s acquisition of the nude photos of J.W. and her intentions to use them.

[23] J.W. filed a motion asking the trial court to find that R.W.'s Fifth Amendment invocation resulting in his refusal to answer questions in this civil action compelled the trial court to reach an adverse inference against R.W. as to those matters. After evidence was heard and submitted, the trial court issued a permanent order of protection in favor of J.W. on November 7, 2019 and entered findings of fact and conclusions thereon when it granted the order on November 8, 2019.

[24] Criminal charges were filed against K.B., and J.W. also requested a protective order against K.B. Appellant's App. Vol. II, pp. 9-10.

1.

[1] [2] [25] R.W. challenges the trial court's denial of his motion to dismiss J.W.'s petition. It is apparent from the motion that the relief sought was (1) dismissal as a sanction for violation of [Indiana Code section 34-26-5-5](#), or (2) transfer of the matter to the court in Illinois. The contents of the motion suggest a challenge to the trial court's jurisdiction over the particular case; i.e., the “trial court's right, authority, and power to decide a specific case within the class of cases over which a court has subject matter jurisdiction.” See *Kondamuri v. Kondamuri*, 799 N.E.2d 1153, 1156 (Ind. Ct. App. 2003), *trans. denied*. “A judgment rendered by a court *201 that lacks jurisdiction over the particular case is voidable and requires a timely objection or the lack of jurisdiction over the particular case is waived.” *Id.* at 1156-57.

[26] J.W. filed her petition for order of protection on September 19, 2019. After R.W.'s request for a continuance of the initial hearing date was granted, he “filed a Motion to Dismiss on October 28, 2019 indicating an existing *ex parte* Order of Protection had been issued for R.W. and against J.W. on September 11, 2019.” Appellant's Br. p. 4. In his motion, R.W. contended that J.W. ran afoul of the provisions of [Indiana Code section 34-26-5-5](#) (2002). See Appellant's App. Vol. II, p. 26.

[27] That section of the Indiana Code provides that,

At a hearing to obtain an order for protection, each party has a continuing duty to inform the court of:

- (1) each separate proceeding for an order for protection;
- (2) any civil litigation;
- (3) each proceeding in a family, domestic relations, or juvenile court; and
- (4) each criminal case;

involving a party or a child of a party. The information provided under this section must include the case name, the case number, and the county and state in which the proceeding is held, if that information is known by the party.

(Emphasis added).

[28] This challenge requires interpretation of this statute. “Our standard of review for the interpretation of statutes is *de novo*.” *Quinn v. State*, 45 N.E.3d 39, 44 (Ind. Ct. App. 2015). We will assume for the sake of argument that R.W.'s objection was timely despite his prior motion for continuance. Although it is correct that J.W.'s petition indicates “NA” in the section of the petition asking for information regarding any other cases which she and R.W. had pending, see Appellant's App. Vol. II, p. 16, the statute clearly states that *at a hearing*, the parties have a continuing duty to inform the court. R.W.'s motion informed the court, and the matter was brought to the court's attention at the hearing. Indeed, the record is not clear about whether J.W. had yet received service of the order granting R.W.'s Illinois emergency order of protection after the Porter County Sheriff received it on September 13, 2019, which was prior to the filing of her petition.

[29] Additionally, the existence of the Illinois proceeding initiated by R.W. between the two did not preclude J.W. from seeking her own order of protection in Indiana where she lived. See [N.E. v. L.W.](#), 130 N.E.3d 102 (Ind. Ct. App. 2019) (fact that husband was subject to no-contact order as to wife did not prohibit wife from seeking protection order against husband). Indiana Code subsections 34-26-5-6 (2) and (3) (2003) explicitly provide that “a petitioner is not barred from seeking an order because of another pending proceeding” and that “[a] court may not delay granting relief because another pending action exists between the petitioner and the respondent.”

[3] [30] R.W. further contends that,

The Porter Superior Court erred by failing to transfer J.W.'s Petition to the Illinois Circuit Court where an *ex parte* Order of Protection had already been issued prior to the Porter Superior Court's hearing on extending J.W.'s *ex parte* Order of Protection.

Appellant's Br. p. 9. R.W. cites [Indiana Code section 34-26-5-6\(4\)](#) in support of his argument.

[31] [Indiana Code section 34-26-5-6\(4\)](#) provides in pertinent part:

The following rules apply to an order for protection issued under this chapter:

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(4) If a person who petitions for an ex parte order for protection also has a pending case involving:

(A) the respondent; or

(B) a child of the petitioner and respondent;

the court that has been petitioned for relief shall immediately consider the ex parte petition and then transfer that matter to the court in which the other case is pending.

[32] Of the three reported cases analyzing this statute, only one, *Sims v. Lopez*, 885 N.E.2d 15 (Ind. Ct. App. 2008), involves the issue of transfer between courts. See also *S.H. v. D.W.*, 139 N.E.3d 214 (Ind. 2020) and *N.E.*, 130 N.E.3d 102. In *Sims*, the former wife's Lake County ex parte petition should have been transferred to either St. Joseph County or LaPorte County where the former husband's civil actions against her or her current husband were pending. Thus, it is apparent that in this subsection of the statute, the Indiana legislature intended to consolidate Indiana actions between or involving these particular parties and provided for the transfer of actions *between Indiana courts* to meet that end. See *Sims*, 885 N.E.2d at 17. This conclusion finds further support in the legislature's choice of specific language referring to actions in other states in another section. See *Ind. Code § 34-26-5-5* (continuing duty to notify court of case name, number, county and *state* involving pending litigation between parties).

[33] J.W., a Porter County resident, properly filed her petition with the trial court because *Indiana Code section 34-26-5-4* (2002) gives a court of record jurisdiction to issue a civil order for protection in the county in which the petitioner currently or temporarily resides. Thus, the trial court correctly denied R.W.'s motion to dismiss the petition and correctly retained jurisdiction over the matter instead of transferring it to Illinois.

2.

[4] [34] Next, R.W. contends that the trial court erred by finding and concluding that J.W. had established that an order

of protection was necessary. In particular, R.W. argues as follows:

The Court further noted in its Findings of Facts that “[s]omehow [K.B.] came into possession of the nude pictures of [J.W.]” that “[R.W.] asserted his Fifth Amendment privilege declining to respond to about as many questions as he agreed to answer,” that the questions to which he pleaded the Fifth “mostly involved his awareness or knowledge of [K.B.’s] acquisition of the nude photos and her intentions to use them,” and that “[t]here is no evidence [R.W.] tried to stop or block [K.B.’s] harassment or stalking behavior” regarding these photos.

In its Conclusions of Law, the Court stated that though a civil litigant may freely invoke their Fifth Amendment privilege, “he may not necessarily be shielded thereby from a negative inference of the fact finder for using the privilege[.] [T]aking into consideration the questions [R.W.] answered as well as those to which he declined to answer [on the basis that the answer might incriminate him,] the Court concludes that like [K.B.], [R.W.] was engaged in bringing harassment to bear on [J.W.]”

Appellant's Br. p. 9 (internal citations omitted) (quoting Appellant's App. Vol. II, pp. 11-12).

[35] The appropriate standard of review has been set forth in **203 C.S. v. T.K.*, 118 N.E.3d 78, 81 (Ind. Ct. App. 2019), which we reproduce here.

Protective orders are similar to injunctions, and therefore in granting an order the trial court must sua sponte make special findings of fact and conclusions thereon. We apply a two-tiered standard of review: we first determine whether the evidence supports the findings, and then we determine whether the findings support the order. In deference to the trial court's proximity to the issues, we disturb the order only where there is no evidence supporting the findings or the findings fail to support the order. We do not reweigh evidence or reassess witness credibility, and we consider

only the evidence favorable to the trial court's order. The party appealing the order must establish that the findings are clearly erroneous. Findings are clearly erroneous when a review of the record leaves us firmly convinced that a mistake has been made. We do not defer to conclusions of law, however, and evaluate them de novo.

(internal citations and quotations omitted).

[5] [36] Pursuant to the Indiana Civil Protection Act, *see* [Ind. Code § 34-26-5-2 \(2019\)](#), “(a) [a] person who is or has been a victim of domestic or family violence may file a petition for an order for protection against a: (2) person who has committed stalking; (b) [a] person who is or has been subjected to harassment may file a petition for an order for protection against a person who has committed repeated acts of harassment against the petitioner.” According to [Indiana Code section 34-6-2-34.5 \(2019\)](#) “domestic and family violence also includes stalking....” Stalking is defined as “a knowing or an intentional course of conduct involving *repeated or continuing* harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and that actually causes the victim to feel terrorized, frightened, intimidated, or threatened.” [Ind. Code § 34-45-10-1 \(1993\)](#) (emphasis added). “Harassment” is defined as “conduct directed toward a victim that includes but is not limited to repeated or continuous impermissible contact that would cause a reasonable person to suffer emotional distress and that actually causes the victim to suffer emotional distress.” [Ind. Code § 35-45-10-2 \(1993\)](#). “Impermissible contact” includes but is not limited to knowingly or intentionally following or pursuing the victim. [Ind. Code § 35-45-10-3 \(2019\)](#). “[T]he term ‘repeated’ in Indiana's anti-stalking laws means ‘more than once.’ ” [Johnson v. State, 721 N.E.2d 327, 332-333 \(Ind. Ct. App. 1999\)](#), *trans. denied*.

[37] To sum up the evidence before the trial court and in the words of the trial court, “[s]ome time between August 10th and September 11th the matter blew up and all of the parties involved, [K.B.], [R.W.] and [J.W.] were saying nasty things to each other, back and forth imploring the other to leave them alone.” Appellant's App. Vol. II, p. 10. The evidence and inferences therefrom supporting the issuance of the protective

order in favor of J.W. was that K.B. was with R.W. after his relationship with J.W. soured. When they were together, R.W. had shared with J.W. his plans to send the video of a nude K.B. to the man she was then dating. A part of the plan involved creating a new account on social media through which to reach that man at work. J.W. counseled against R.W.'s plan.

[38] R.W. left a threatening voicemail for J.W., which made J.W. feel threatened and terrified. R.W. made several attempts by various means to contact J.W.'s husband. During a period of time where K.B. was with R.W. in Chicago, she downloaded semi-nude and nude pictures of J.W. from R.W.'s password-protected phone. She *204 then sent them to J.W. and R.W. with her own disparaging commentary about what was depicted, further adding commentary purported to be from B.O.

[39] R.W. contacted J.W. to inform her that “somehow” K.B. had come into possession of those photographs. He did nothing to stop any action by K.B. despite this awareness. K.B. feigned sympathy for J.W., adding that she did not want those photographs to come into the hands of J.W.'s four young sons or husband or be disseminated to her children's school and through the City of Valparaiso even though “someone” had told her that those actions were a possibility.

[40] Just prior to the hearing set for the Illinois protective order, J.W. discovered that a Bumble account had been created with her email address containing pictures of her, one of which she had only sent to R.W. and the other of which had to be taken down from the account. The words used in that account to describe J.W. bore a striking similarity to the language used by K.B. when discussing her theory that J.W. had herpes and that her behavior was trashy or tramp-like.

[6] [41] At the hearing on J.W.'s protective order request, R.W. refused to answer 32 separate questions pertaining mostly to how K.B. came into possession of the pictures of J.W. that were meant only for R.W. and the creation and existence of the Bumble account, citing his Fifth Amendment privilege against self-incrimination. “Although the refusal to testify in a civil case cannot be used against the one asserting the privilege in a subsequent criminal proceeding, the privilege against self-incrimination does not prohibit the trier of fact in a civil case from drawing adverse inferences from a witness[s] refusal to testify.” *Hardiman v. Cozmanoff*, 4 N.E.3d 1148, 1151 (Ind. 2014) (quoting [Gash v. Kohm](#), 476 N.E.2d 910, 913 (Ind. Ct. App. 1985)).

[42] The trial court correctly found from the evidence and the inferences from the evidence that “there is no evidence that R.W. tried to stop or block [K.B.'s] harassment or stalking behavior utilizing or threatening to use the photos against [J.W.],” and correctly concluded that “like [K.B.], [R.W.] was engaged in bringing harassment to bear on [J.W.]” Appellant’s App. Vol. II, pp. 11-12. There was more than sufficient evidence to support the trial court’s findings of fact which, in turn, support the conclusions of law in favor of granting J.W.’s petition for a permanent protective order against R.W.

Conclusion

[43] For the reasons stated above, we conclude that the trial court did not err by failing to transfer J.W.’s petition to Illinois, and did not err by finding and concluding that sufficient evidence existed to support issuing a permanent order of protection in favor of J.W.

[44] Judgment affirmed.

[Mathias, J.](#), concurs.

[Crone, J.](#), concurs with separate opinion.

[Crone, Judge](#), concurring.

[45] I agree with the affirmance of the protective order against Rafer Weigel, but I write separately because I respectfully disagree with my colleagues’ decision to refer to Weigel by his initials instead of his name.

[46] No statute, court rule, or court policy entitles Weigel to anonymity. In fact, pursuant to the Rules on Access to Court

Records adopted by the Indiana Supreme Court, Weigel’s name is presumptively accessible to the public. *See* Ind. [Access to Court Records Rule 4\(A\)](#) (“A Court Record *205 is accessible to the public except as provided in Rule 5.”).² Some of the stated purposes of those rules are to “[c]ontribute to public safety” and “[p]romote governmental accountability and transparency[.]” Ind. [Access to Court Records Rule 1\(B\)](#). These overlap with the stated purposes of the Civil Protection Order Act, which was enacted by the Indiana General Assembly “to promote the: (1) protection and safety of all victims of domestic or family violence in a fair, prompt, and effective manner; (2) protection and safety of all victims of harassment in a fair, prompt, and effective manner; and (3) prevention of future domestic violence, family violence, and harassment.”

[47] As described in lurid detail above, Weigel threatened and publicly humiliated J.W., who sought and obtained a protective order against him. Weigel has challenged the sufficiency of the evidence supporting that order. If we had ruled in his favor, he could have petitioned to expunge all records relating to the protective order pursuant to Indiana Code Chapter 34-26-7.5. But since we have affirmed the trial court’s determination that Weigel harassed J.W., I can think of no principled reason why this Court should shield his identity from the public. Indeed, naming the perpetrator of such depraved acts could only contribute to public safety, promote governmental transparency and accountability (by this Court and by any law enforcement agency that might have occasion to enforce the protective order, respectively), and prevent future harassment of J.W. and others.

All Citations

160 N.E.3d 195

Footnotes

- 1 According to the provider, “Bumble is a social network that allows you to feel empowered while you make those connections, whether you’re dating, looking for friends, or growing your professional network.” *See*, www.bumble.com.
- 2 *See* Ind. [Access to Court Records Rule 3](#) (defining “Court Record” to include “Case Record,” which “means any document, information, data, or other item created, collected, received, or maintained by a Court, Court agency or Clerk of Court in connection with a particular case.”). Exceptions to the Rules’ presumption of public access to court records include “Case Records excluded from Public Access or declared confidential by Indiana statute or other court rule[.]” Ind. [Access to Court Records Rule 5\(B\)\(2\)](#). Certain case records in

protective order proceedings (including information regarding the petitioner/protected person) are excluded from public access pursuant to statute, but those records do not include the respondent's name.

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Section Four

Evidentiary Issues in Family Law

Panel

Honorable Vicki L. Carmichael
Clark Circuit Court No. 4
Jeffersonville, Indiana

Honorable Kimberly S. Dowling
Delaware County Circuit Court 2
Muncie, Indiana

Honorable William J. Hughes
Hamilton County Superior Court 3
Noblesville, Indiana

Honorable Peter D. Nugent
Johnson County Superior 2
Franklin, Indiana

Section Four

**Evidentiary Issues in Family Law..... Honorable Vicki L. Carmichael
Honorable Kimberly S. Dowling
Honorable William J. Hughes
Honorable Peter D. Nugent**

2021 ADVANCED
FAMILY LAW

EVIDENCE FOR ADVANCED FAMILY LAW

You Be the Judge

- ▶ You are the judge in a PO. 2 weeks ago, Wife filed for a PO, you granted it ex parte, and set it for hearing on Wife's request to evict Husband from the residence and for a weapon restriction. It is set for tomorrow morning, and in your queue you find a handwritten letter from a person claiming to be the Petitioner requesting that you dismiss the PO. What do you do? Select the best answer.

Do you?

- A. Send the letter to all parties and counsel of record?
- B. Deny the request because the letter is not verified?
- C. Order the Petitioner to appear and verify she sent the letter?
- D. Call the Petitioner and ask if she is the one who sent the letter?

You Be the Judge

- ▶ You are presiding at a preliminary hearing in a dissolution action. During the hearing you become aware that there is a PO proceeding in another court in your county. While your preliminary hearing is going on, you access the court file digitally on your laptop. You review the verified PO petition. The petition contains verified allegations made by the Petitioner that she recently removed a substantial sum of money from the joint savings account because Respondent threatened to close the savings account. May you take Judicial Notice of those allegations?



▶ A. YES

▶ B. NO

Further:

- ▶ Upon your review, you discover that a hearing was held at which both parties testified regarding an incident of domestic violence which occurred in front of the children. You have access to the recording of that hearing. May you take judicial notice of that information?



▶ A. YES

▶ B. NO

You Be the Judge

During a final hearing in a dissolution, Petitioner is self-represented and testifies that Husband made a threat in a text message sent to her. The message came from a phone number that she recognizes is used by Husband because 36 hours before this message the same number sent a message addressing her as “Sweet Pookie” which was a pet name Husband used for her. Husband also indicates that it is him sending the message. She then added that number to her phone contacts. Petitioner asks to read the text in open Court. Husband objects.

DO YOU:

- ▶ A. SUSTAIN THE OBJECTION
- ▶ B. OVERRULE THE OBJECTION

You Be the Judge

Assume now that you rule that the Petitioner cannot read the text into the record. She then asks to admit the text. How do you rule?

Do You:

- A. ADMIT THE TEXT
- B. EXCLUDE THE TEXT

You Be the Judge

During a Zoom audio/video hearing, suddenly the Respondent's video goes blank. You still have him on audio. Respondent can hear everything. Petitioner objects to the hearing continuing without Respondent appearing by video. How do you rule?

What do you Do?

- ▶ A. CONTINUE THE HEARING
- ▶ B. OVERRULE THE PETITIONER AND FINISH THE HEARING
- ▶ C. HAVE THE PETITIONER TURN OFF HER VIDEO AND DO EVERYTHING BY AUDIO

You Be the Judge

- ▶ Trial is occurring by Zoom video Conference. During the trial Petitioner calls Respondent to the Stand as his first witness.
- ▶ The Court notes that while Petitioner's counsel is questioning Respondent, Respondent's counsel appears to be vigorously typing on his computer.
- ▶ The Court notes that often the Respondent will delay for a period after each question until his counsel stops typing before answering the questions.

Do you?

- A. Send a private message to Petitioner's counsel to inquire if she has noticed anything unusual?
- B. Send your own text to Respondent's counsel asking what he is doing.
- C. Send a text to all participants regarding your concerns
- D. Invite the attorneys to a private breakout room for a brief sidebar?

YOU BE THE JUDGE

During a final hearing, Counsel for Wife asks Husband if he has ever engaged in sexual conduct which was viewable to the minor 14 yr old son. Husband denies this. In rebuttal, Counsel for Wife calls the minor son to testify and presents the son with a thumb drive marked as Exh X and lays the following foundation:

Thumb drive contains a recording of zoom video conference between H and his secretary. Son used a remote desktop software which he can remotely access w/o H's knowledge and eavesdrop on H's computer activities including Zoom. Son testifies it is accurate because he reviewed it and he observed the sexual activity while secretly accessing H's computer. How do you rule?

Do You?

- A. Admit the thumb drive
- B. Exclude the thumb drive
- C. Call DCS and exclude the thumb drive
- D. Call Adrienne Meiring

You Be the Judge

kd

You have received a Petition for Protective Order filed by the mother of three children. The Petition alleges that the children's father has molested at least one of the children. The Petition does not mention that DCS or law enforcement has been contacted. There is no mention of any investigation.

Do You:

- A. Grant the PO for the standard 2 years
- B. Deny the PO because there is no mention of any investigation
- C. Grant the PO and call DCS hotline
- D. Grant the PO, set a hearing and call DCS hotline

You Be the Judge

Another Judge in your county contacts you and states that they have received a Petition for Protective Order filed by a Mother on her own behalf against the girlfriend of her children's father. The paternity action between Mother and Father is in your court. That Judge asks if they should transfer the PO to your court.

Do You:

- A. Accept Transfer
- B. Deny Transfer

You Be the Judge

Parents are divorced and have two children. Parents agree to joint legal custody at the time of dissolution. Subsequently, Father's girlfriend finds pornographic websites during a search on Father's computer history, including of teen girls. Father has also taught the children that the world is flat, the moon landing was staged, and other conspiracy theories. Girlfriend notifies Mother, and Mother files for a Protective Order on behalf of the children against Father, and for supervised parenting time.

Do You:

- A. Grant the PO and Order Supervised Parenting Time
- B. Deny the PO and deny Supervised Parenting Time
- C. Grant the PO but Deny Supervised Parenting Time
- D. Deny the PO and Order Supervised Parenting Time

You Be the Judge

Parents are Divorced with three teenage children. Father has transitioned and now identifies as female. Mother files for supervised parenting time and protective orders on behalf of the children.

Do You:

- A. Grant the Protective Orders and Order supervised parenting time
- B. Deny the Protective Orders and deny the supervised parenting time

You Be the Judge

Parents were married for 25 years, and file for dissolution. Father has temporary custody of two teenage girls. Mother's parenting time has been reduced due to numerous contempt actions that includes not returning the children timely, allowing them to stay out until all hours of the night with boys Mother is unfamiliar with, bad mouthing Father, telling the girls that Father was having an affair. Now Mother files for protective order on behalf of the girls against Father and only alleges that Father has been abusive towards the girls without specificity.

Do You:

- A. Grant the Protective Order
- B. Deny the Protective Order
- C. Set a hearing

Same Facts But...

Same Facts but now Mother alleges that one of the girls has bruising on her arms in the shape of a hand, bruising on her back, and cigarette burns on her arm, and alleges that the child told her father did it.

Do You:

- A. Grant the PO
- B. Deny the PO
- C. Set a hearing

You Be the Judge

Mom and Dad are in a short term marriage. They have one young child. Both parents have some substance use history. DCS report is made, and they do hair follicle test on minor child which is positive for methamphetamine. Both parents file for PO on behalf of the child against the other parent.

Do You:

- A. Grant the PO against Mother
- B. Grant the PO against Father
- C. Grant both PO's and let DCS figure it out
- D. Deny both PO's and let DCS figure it out

You Be the Judge

Parents are in long term marriage, have 2 children. During Mom's parenting time, her boyfriend goes into one of the girl's bedrooms, gets in bed with her. No allegations of touching are made. Dad files PO against Mom and boyfriend.

Do You:

- A. Deny the PO against Mother, but grant against boyfriend
- B. Deny the PO against both
- C. Grant the PO against both
- D. Set a hearing

You Be the Judge

VC

16 yr old juvenile (Maria) is in the US undocumented. She was brought to US by her parents when she was 3 yrs old. Her father has returned to Mexico and has had no contact with her for several years. Mother was killed by an abusive boyfriend. Mother's abuser trafficked Maria. Maria ran from her trafficker and is living with relatives of Mother's. She now seeks Special Immigrant Juvenile Status (SIJS). A local family law attorney is representing her and asks you to grant the petition and make specific findings.

Do You:

- A. Grant the Petition and make specific findings
- B. Deny the Petition

You Be the Judge

John and Sally have been married for 10 years. They have 2 children, ages 5 & 7. Over the years, Sally has filed numerous police reports alleging physical abuse by John. John has 2 convictions for domestic battery on Sally. During the final hearing, Sally asks you to order John's parenting time be supervised. Her attorney offers the police reports into evidence arguing they show the children were present and the Court should consider the trauma. John's attorney objects.

Do You:

- A. Admit the Reports
- B. Exclude the Reports

Same facts but...

Sally is still asking for you to restrict John's parenting time. She asks the exchange of the children be done by someone other than her and that it take place at a public location. She wants the parenting time supervised by a third party, preferably by someone who understands the dangers of DV on children. Sally offers an expert witness on issue of childhood trauma. John's attorney objects to the expert testifying, arguing such testimony is irrelevant to the issue of parenting time and any adverse effect on the children can be cured through counseling.

Do You:

- A. Allow the Expert to testify
- B. Exclude the Expert

You Be the Judge

kd

Julie files for a Protective Order in Delaware County against her Father. She alleges that she is now 30 years of age, but that when she was a child her Father sold her for sex at parties to his friends, that he worships Satan and that he forced her to participate in satanic rituals, and that he stalks her through her employment. He sits outside her job waiting for her to come out of work; follows her home, and sits and watches her children outside her home. Father lives in Randolph county, and the trafficking occurred when she was a juvenile in New York. She alleges that Father has moved to Randolph county to stalk her. She further alleges that he has moved to other states where she has lived, and has committed the same behavior of waiting for her outside other jobs, with the same behavior.

Do You:

- A. Grant the PO and set a hearing
- B. Grant the PO for 2 years, no hearing
- C. Deny the PO-Father lives in a different county and the trafficking occurred in a different state

You Be the Judge

Kat and Bob have 3 children, paternity was established on each by affidavit. Kat now files for custody and support. Bob is also requesting custody. Both are self-represented. During the hearing you notice that Kat has a tattoo on her neck that says “daddy”. Kat testifies that Bob was her drug dealer when they were together, but Bob denies that. Your spidey senses are up. Do You:

Do You:

- A. Ask Kat if she is a victim of HT?
- B. Ask Kat if Bob was her trafficker
- C. Ask Bob if he trafficked Kat
- D. Don't ask questions of either
- E. Ask both if Bob was the trafficker

You Be the Judge

Jill and Ted are getting divorced. They both ask for temporary custody of their 16 yr old daughter. Both attorneys ask you to speak to the daughter. You do so on the record, outside presence of counsel and parties. Daughter has a tattoo of a \$ on her neck, you inquire and find out she has 2 cell phones, that her parents don't know about one of those cell phones. She tells you she likes to make money, she is her own boss and her parents don't care that she meets friends on the weekends. She denies trading sex for money.

Do You:

- A. Call the DCS hotline
- B. Call the lawyers back after the interview and tell them you suspect HT
- C. Contact law enforcement and report your suspicions
- D. A and B
- E. A, B and C

Same facts but...

Same facts but Jill and Ted don't have a lot of assets, they have mostly debts. Daughter comes into her interview, and is also wearing designer jeans, has her nails and hair done and is wearing diamond earrings. If you didn't suspect HT before, does this change your mind?



A. Yes

B. No

You Be the Judge

Deb files for a PO against her ex-husband. The description of events list one date, and the description says that the ex has contacted her numerous times by text and Facebook messenger, cursing at her, threatening to kick her a**, and that he will see her in Court.

Do You:

- A. Deny the PO
- B. Set it for Hearing
- C. Make an entry that Deb should file a Petition that is more specific

OPINION TESTIMONY

- ▶ Rationally based upon the perception of the witness AND
 - ▶ Helpful to a Clear Understanding AND
 - ▶ NOT based on scientific, technical, or other specialized knowledge within the Scope of Rule 702
- ▶ If scientific, technical, or other specialized knowledge will ASSIST AND
 - ▶ Witness qualified by knowledge, skill, experience, training, or education, AND
 - ▶ the testimony
 - ▶ (1) is based upon sufficient facts or data,
 - ▶ (2) is the product of reliable principles and methods, and
 - ▶ (3) witness has applied the principles and methods reliably to facts

LAY WITNESS

EXPERT WITNESS

Skilled Witness

- ▶ A “**skilled**” **witness** is defined as “a person with a degree of knowledge short of that sufficient to be declared an expert under Indiana Rule of Evidence 702, but somewhat beyond that possessed by the ordinary jurors.” *O'Neal v. State*, 716 N.E.2d 82, 88–9 (Ind.Ct.App.1999).
- ▶ A very smart witness but a witness who must testify from their own rationally based perceptions.

Rule 702

- ▶ (a) A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue
- ▶ (b) Expert scientific testimony is admissible only if the court is satisfied that the expert testimony rests upon reliable scientific principles

Opinion Procedure

- ▶ **Witness Classified and Qualified – Expert, Skilled or Lay**
- ▶ **Will witness be helpful**
- ▶ **No Tender, No Endorsement**
- ▶ **Admissibility of the opinion**
 - ▶ **Court must be satisfied that the “scientific principles upon which the expert testimony rests are reliable”**
 - ▶ ***Daubert* is helpful, but not controlling**
 - ▶ **“Reliability may be established by judicial notice or sufficient foundation to convince the trial court that the relevant scientific principles are reliable**

Expert Qualification

- ▶ A matter of Trial Court Discretion.
- ▶ The admissibility of expert testimony under Evid. R. **702** is a matter within the trial court's broad discretion and we will reverse such determinations only for an abuse of that discretion.
- ▶ *5200 Keystone Limited Realty, LLC, vs. Filmcraft Laboratories, INC.*, 30 N.E.3d 5 (Ind App 2015)

Hearsay Exceptions – 803(3)

- ▶ (3) Then-Existing Mental, Emotional, or Physical Condition
 - ▶ A Statement of the declarant's then-existing state of mind (such as motive, design, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of the declarant's will.

Hearsay Exceptions – 803(4)

Statement Made for Medical Diagnosis or Treatment

A Statement that:

- A) Is made by a person seeking medical diagnosis of treatment;
- B) Is made for—and is reasonably pertinent to—medical diagnosis or treatment; and
- C) Describes medical history; past or present symptoms, pain or sensations; their inception; or their general cause.

Hearsay Exceptions – 803(6)

- ▶ Records of a Regularly Conducted Activity-A record of an act, event, condition, opinion, or diagnosis if:
 - ▶ A) the record was made at or near the time by-or from information transmitted by-someone with knowledge;
 - ▶ The record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;
 - ▶ Making the record was a regular practice of that activity;
 - ▶ All of these are testified to by custodian or by certification complying with 902(11) or (12)
 - ▶ Neither the source or method indicate lack of trustworthiness

Hearsay Exceptions – 803(6)

- ▶ “Business” includes any:
 - ▶ Business
 - ▶ Institution
 - ▶ Association
 - ▶ Profession
 - ▶ Occupation
 - ▶ Calling of every kind
- ▶ Can be profit or non-profit

“Not Hearsay” – 801 (d) (2)

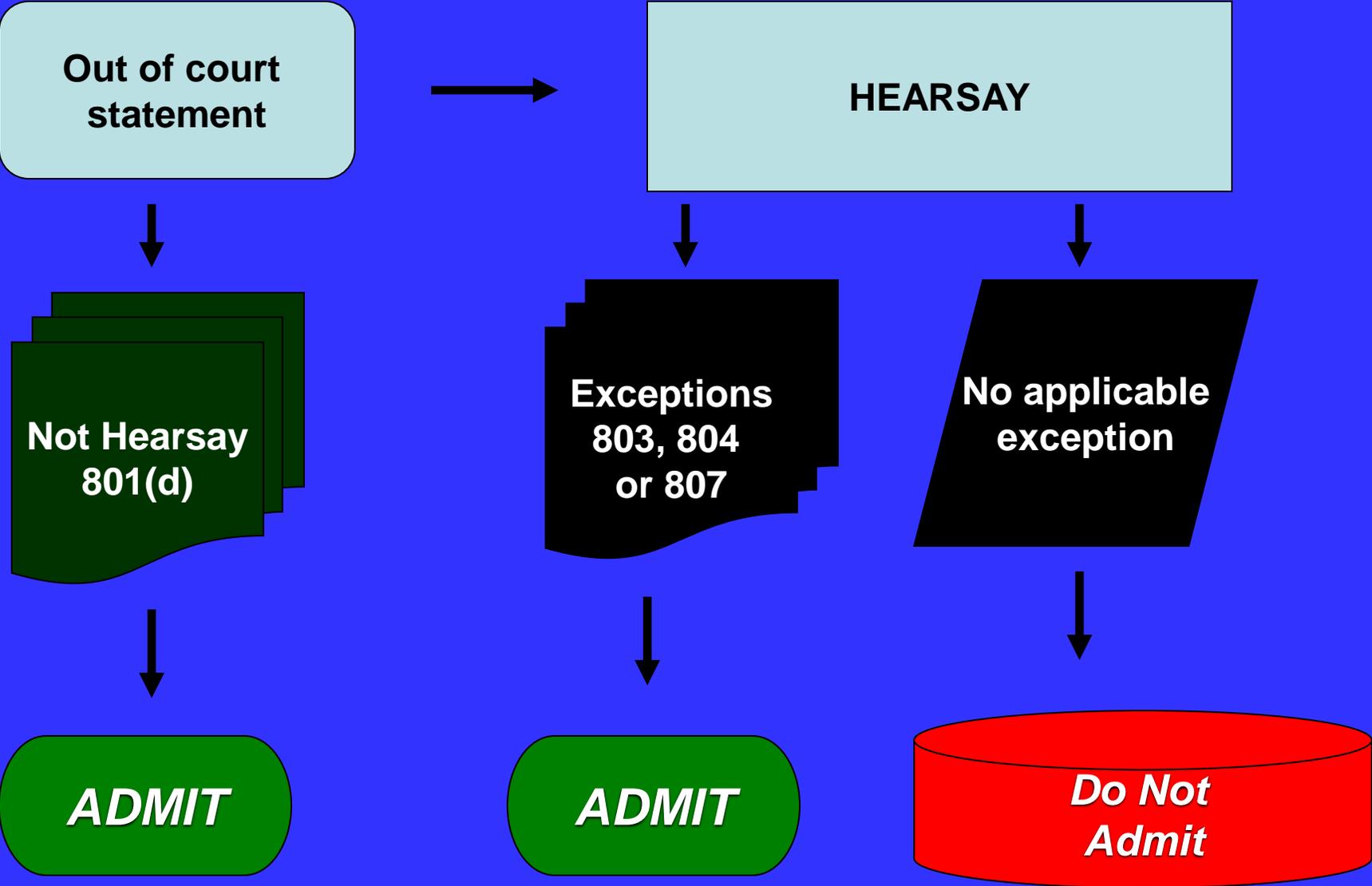
- ▶ Admission by party opponent
 - ▶ Out of court statement
 - ▶ Offered ***against a party***

AND

“Not Hearsay” – 801 (d) (2)

- ▶ (A) Party’s own statement
 - ▶ Individual or representative
- ▶ (B) Statement party has adopted
- ▶ (C) Statement party authorized
- ▶ (D) Statement by Agent or Servant
 - ▶ Within scope and during relationship
- ▶ (E) Statement by co-conspirator
 - ▶ During course to further conspiracy

Hearsay Analysis



RULE 703: Basis of Opinion

- ▶ Facts or Data Perceived by expert at or before hearing or trial
- ▶ Facts or Data Made Known to expert at or before hearing or trial
- ▶ If those underlying facts are reasonably relied upon by experts in the field, need not be admissible in evidence

IRE 703 versus FRE 703

- ▶ FRE contains more language than Indiana
- ▶ *Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion unless the court determines that their probative value in assisting the jury in evaluating the evidence substantially outweighs their prejudicial effect.*

Rule 705

- ▶ Unless the court orders otherwise, an expert may state an opinion and give the reasons for it without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross examination.

Hearsay on Direct Exam of Expert

- ▶ ...Hospital records may not be excluded as hearsay simply because they include opinions or diagnoses. But, and it is a substantial but, for medical opinions and diagnoses to be admitted into evidence, they must meet the requirements for expert opinions set forth in Evid. R. 702, *Schlott v Guinevere*, 697 N.E.2d 1273 (1998)
- ▶ A Chiropractor can not testify to the medical diagnosis contained in medical records he relied upon in making his admissible chiropractic opinion. *Faulkner v Markkay of Indiana*, 663 N.E.2d 798 (1996)

Hearsay on Direct Exam of Expert

- ▶ Reports compiled by a social services agency describing home visits and supervised visitations do not qualify as business records and thus are not admissible as an exception to the hearsay rule

In re The Matter of the Termination of the Parent-Child Relationship of ET and BT, 808 N.E.2d 639 (2004)

Rule 702

- ▶ (a) A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue
- ▶ (b) **Expert scientific testimony is admissible only if the court is satisfied that the expert testimony rests upon reliable scientific principles**

Standard for Expert Scientific Testimony: RELIABILITY

- ▶ Court must be satisfied that the “scientific principles upon which the expert testimony rests are reliable”
- ▶ *Daubert* is helpful, but not controlling
- ▶ “Reliability may be established by judicial notice or sufficient foundation to convince the trial court that the relevant scientific principles are reliable”

Case Law

- ▶ Thus, Rule 702 guides the admission of expert scientific testimony by requiring that trial courts be satisfied that expert opinions both assist the trier of fact and are based on reliable principles. *Sears Roebuck & Co. v. Manuilov*, 742 N.E.2d 453, 460 (Ind.2001)
- ▶ Admissibility under Rule 702 also depends on the reliability of the scientific principles Dr. Turner employed in forming his opinions. In making this determination, “the trial court must make a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and whether that reasoning or methodology properly can be applied to the facts in issue.” *Shafer & Freeman Lakes Envtl. Conservation Corp. v. Stichnoth*, 877 N.E.2d 475, 484 (Ind.Ct.App.2007)

More Case Law

- ▶ Once the admissibility of [expert's] testimony was established under Rule 702, “then the accuracy, consistency, and credibility of [his] opinions were properly left to vigorous cross-examination, presentation of contrary evidence, argument of counsel, and resolution by the trier of fact.” *Person v Shipley*, 962 N.E.2d 1192, (Ind. 2012), citing *Sears Roebuck*, 742 N.E.2d at 461.
- ▶ Moreover, we recently explained that “cross-examination permits the opposing party to expose dissimilarities between the actual evidence and the scientific theory. The dissimilarities go to the weight rather than to the admissibility of the evidence.” *Person*, *supra*, citing, *Turner v. State*, 953 N.E.2d 1039, 1051 (Ind. 2011)

Rule 704

- ▶ **(a) In General--Not Automatically Objectionable.** Testimony in the form of an opinion or inference otherwise admissible is not objectionable just because it embraces an ultimate issue.
- ▶ **(b) Exception.** Witnesses may not testify to opinions concerning intent, guilt, or innocence in a criminal case; the truth or falsity of allegations; whether a witness has testified truthfully; or legal conclusions.
- ▶ Issue: Does “not responding in a forthright and honest manner,” equal LYING?

Case Law

- ▶ Vouching testimony is generally prohibited. *Palilonis v. State*, Ind.App.2012, 970 N.E.2d 713
- ▶ The trial court's erroneous admission of improper vouching testimony was not harmless, during prosecution for felony child molestation; the testimony improperly allowed one witness to vouch for another witness's credibility, and it violated the rules of evidence by providing an opinion on the ultimate issue. *Hamilton v. State*, App.2015, 49 N.E.3d 554.

Case Law

- ▶ Testimony of child forensic interviewer who had interviewed alleged victim of child molestation, listing general signs of coaching in a child's testimony and stating that she did not observe any signs that victim had been coached, impermissibly vouched for victim's credibility; even though testimony was limited to observations of coaching indicators instead of an ultimate determination of whether victim was coached, such indirect vouching testimony was similar to testimony that the child witness was telling the truth, and testimony was not raised in response to defense questioning, or to rebut an express claim, that victim had been coached. *Sampson v. State*, 2015, 38 N.E.3d 985

Authentication

- ▶ 901 - State must establish that the email and texts are what they purport to be
- ▶ 901 (b) (4) – Distinctive Characteristics and the Like
- ▶ Subscribing Witness –
 - ▶ ISP
 - ▶ Police Officer
 - ▶ Record Technician
- ▶ Tamper Potential

Case Law

- ▶ Court properly admitted texts and emails without direct evidence of the ownership of the cell phone number or email address under IRE 901(b)(4)
- ▶ Foundation may be established by direct or circumstantial evidence
- ▶ *Pavlovich v State*, 6 NE 3d 969 (2014)

More Case Law

- ▶ *Lorraine v Markel Am. Ins. Co.*, 241 F.R.D. 534, 546 (D.Md 2007) – FRE 901 (b)(4) is the most frequently used rule to authenticate emails.

Case Law

- ▶ Other Ways used to Authenticate emails
 - ▶ Admission by author
 - ▶ Author observed writing
 - ▶ ISP business records – where access limited to author
 - ▶ Cell phone records – where access limited to author
 - ▶ Special information known by author
 - ▶ Response in particular way to indicate authorship
 - ▶ Other circumstances peculiar to facts of the case
 - ▶ *Tienda v State*, 358 SW3rd 633, (Tex Crim App 2012)

More On *Tienda*

- ▶ Held in general mere fact an email purports to come from a certain person's address or that a text came from a cell phone number assigned to a certain person, is without more, insufficient to authenticate a message as having been written by that person.

Yet More Case Law

- ▶ Emails were authenticated as coming from Defendant where:
 - ▶ Victim knew Defendant
 - ▶ Victim had communicated with Defendant by email
 - ▶ Defendant was responsive to Victim's email
 - ▶ Email had information known exclusively to Defendant
- ▶ Ultimate issue of author was for the trier of fact.
- ▶ *People v. Dorwin*, 828 N.E.2d. 341 (2005)

Yet More Case Law

- ▶ Emails were authenticated as coming from Defendant where:
 - ▶ Defendant in email indicated he would be at a specific place at a specific time and he was, and
 - ▶ In a second email Defendant gave a telephone number that Defendant answered when the police called the number.
- ▶ *Commonwealth v Amaral*, 941 N.E.2d. 1143 (2011)

Yet More Case Law

- ▶ Instant Messages were authenticated as coming from Defendant where:
 - ▶ Defendant referred to his name
 - ▶ Defendant made threats
 - ▶ Defendant discussed event related to matters about which the victim testified.
- ▶ *In Re F.P. 878 A.2d. 91*

Yet More Case Law

- ▶ Text Messages were authenticated as coming from Defendant where:
 - ▶ Stalking victim recognized number from which text message came as belonging to the Defendant
 - ▶ Stalking Victim also received voice mail messages from the phone number in which she recognized the Defendant's voice
- ▶ *Manuel v. State*, 357 S.W.3d 66 (Tex. App.2011)

Recent Case Law

- ▶ Trial Court admitted copies of Facebook conversations between M.T.V. (a juvenile) and his co-conspirators
- ▶ Conversations detailed plans to shoot a classmate at school
- ▶ M.T.V. admitted to law enforcement he had engaged in conversations with co-conspirators
- ▶ Facebook records contained that content
- ▶ The records were supported by affidavit from Facebook authenticating them
- ▶ Weren't hearsay b/c independent evidence established conspiracy

M.T.V. v. State, 66 N.E.3d 960 (Ind. Ct. App. 2016)

Emails and Text messages

- ▶ In his report the child custody expert opined, “ Numerous email and text messages submitted by both parties provide documentation of their difficulty in communication, and of their frequent and ineffective attempts to address the issues each has raised regarding their marital issues and regarding Jill.”

Rule 705

- ▶ Unless the court orders otherwise, an expert may state an opinion and give the reasons for it without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross examination.

Rules 401-403

- ▶ 401 – Defines relevancy
- ▶ 402 – Relevant is admissible
- ▶ 403 – Balance for unfair prejudice

Its All About Balance - 403

- ▶ May exclude RELEVANT evidence
- ▶ Probative value SUBSTANTIALLY outweighed by
 - ▶ Unfair prejudice
 - ▶ Confusion
 - ▶ Obfuscation
 - ▶ Delay
 - ▶ Waste
 - ▶ Cumulative

Balance

It may not be elegant or pretty but striking the balance is the key

