

HOW DOES THE COURT FACTOR DOMESTIC VIOLENCE INTO A PR&R ACTION?						COMMENTS
<u>STATE</u> <u>RB?</u>	<u>PRESUMPTION OF SHARED PR&R?</u> <u>(PRE-DV INQUIRY)</u>	<u>DOMESTIC VIOLENCE & BIF</u>	<u>HOW IS DV PROVEN TO TRIGGER THE PRESUMPTION?</u>	<u>EVIDENCE NECESSARY TO REBUT?</u>	<u>FRIENDLY PARENT PROVISION ?</u>	<u>OTHER VARIABLES/FACTORS/REQUIREMENTS</u>
<u>AL</u> <u>yes</u>	Ala. Code § 30-3-152 (if requested by both parties)	* even if no presumption invoked, DV is a BI factor (one of 5) and it is something the courts shall consider when making a custody determination * if both have abused, need to find out who was the perpetrator (case law)	* only need one instance of DV * judge must take into account what effect DV had on the children * best interest of the child to reside with the parent who is not a perpetrator of DV in the location of that parent's choice, within or outside the state.		Yes - applies regarding joint	
<u>AK</u> <u>yes</u>		* DV is listed as a BI factor (one of 9)	*any evidence of DV, child abuse, or child neglect in the custodial household or a history of violence between the parents		Yes	*if DV found, abuser gets only supervised visitation and must attend a BIP
<u>AZ</u> <u>yes</u>		* even if no presumption invoked, evidence of DV is considered contrary to the child's BI and court required to consider it	* prev. court findings, med and police rpts, school records, witnesses * JC shall not be granted if the court finds that there is significant DV or if the court finds by a preponderance of the evidence that there has been significant DV	* BIP program, rehab, parenting classes	Yes	* presumption does not apply if both parents have committed acts of violence
<u>AK</u>		* even if no presumption invoked, if one party has committed an act of DV, then the court must consider evidence of it when looking at the child's BI	*preponderance of the evidence standard		Yes	
<u>CA</u> <u>yes</u>	Cal. Family Code § 3080 (where parents have agreed or agree in open court)	* even if no presumption invoked, DV is a BI factor (one of 5) for the court to consider	*RP if DV found within the past 5 years * lists kind of evidence to prove DV	*preponderance of the evidence *BI child, BIP, rehab, complied with parole/prob terms,	Yes-- prohibits using friendly parent preference to rebut the presumption	* written findings and reasons when court grants abusive parent sole or JC

HOW DOES THE COURT FACTOR DOMESTIC VIOLENCE INTO A PR&R ACTION?						COMMENTS
<u>STATE</u> RB?	<u>PRESUMPTION OF SHARED PR&R?</u> <u>(PRE-DV INQUIRY)</u>	<u>DOMESTIC VIOLENCE & BIF</u>	<u>HOW IS DV PROVEN TO TRIGGER THE PREMSUMPTION?</u>	<u>EVIDENCE NECESSARY TO REBUT?</u>	<u>FRIENDLY PARENT PROVISION ?</u>	<u>OTHER VARIABLES/FAC TORS/REQUIREM ENTS</u>

CO no		<ul style="list-style-type: none"> * DV is listed as a BI factor (one of 11) * needs to be supported by credible evidence * if credible evidence of DV (statute refers to it as "spouse abuse"), then it is not in the child's BI to grant JC over the objection of the other party unless the court finds that they can make joint decisions in a safe manner with no physical confrontations 			Yes	
CT no	Conn. Gen. Stat. Ann. § 46b-56a (where parents have agreed or agree in open court)	* no custody statute referring to domestic violence - court just looks to the child's best interests				
<u>DE</u> <u>yes</u>		* even if no presumption invoked, DV is one of 7 BI factors for the court to consider.	* court shall consider any evidence of DV as it is a relevant factor	* no further DV, BIP program, rehab, BI of child to grant custody to batterer or any judicial findings of extraordinary circumstances		<ul style="list-style-type: none"> * rebuttable presumption that no child shall reside with a DV perpetrator * if both parties are alleged violent, the case is referred to a Delaware agency for investigation and presentation to the court and then the court makes a custody decision that is in the child's BI

How does the court factor domestic violence into a PR&R action?						COMMENTS
STATE RB?	<u>PRESUMPTION OF SHARED PR&R?</u> <u>(PRE-DV INQUIRY)</u>	<u>DOMESTIC VIOLENCE & BIF</u>	<u>HOW IS DV PROVEN TO TRIGGER THE PRESUMPTION?</u>	<u>EVIDENCE NECESSARY TO REBUT?</u>	<u>FRIENDLY PARENT PROVISION ?</u>	<u>OTHER VARIABLES/FAC TORS/REQUIREMENTS</u>
<u>DC</u> <u>yes</u>	D.C. Code § 16-914	* even if no presumption invoked, DV is listed as a BI factor (one of 17)	preponderance of the evidence standard		Yes	* written findings why it's in the child's BI if court grants the abuser custody of the child
<u>FL</u> <u>yes</u>	Fla. Stat. Ann. § 61.13 (the court shall order the parental responsibility for a minor child be shared by both parents)	* even if no presumption invoked, any evidence of DV shall be considered evidence of detriment to the child	* evidence that one party has been convicted of a felony of 3rd degree or higher with regard to DV or meets other statutory criteria listed in 39.806(1)(d) (related to parent incarceration)		Yes-- with regard to joint custody	
GA no		* court shall consider evidence of DV (also referred to as "family violence" in the statute)				
<u>HI</u> <u>yes</u>		* lists related things to take into account when looking at DV	*any evidence of family violence	*evidence that detriment to child does not exist		
<u>ID</u> <u>yes</u>	Idaho Code § 32-717B	* even if no presumption invoked, evidence of DV is listed as a BI factor (one of 7)	*Habitual perpetrator of DV	* rebut presumption with a preponderance of the evidence	Yes—with regard to joint custody	whether or not the child actually saw DV does not matter
IL no		* DV is a BI factor (one of 8) - physical violence or threat of violence or the occurrence of "ongoing abuse" * so long as DV is not found (defined under ILDVA of 1986), maximum involvement by both parents is in the child's best interests - this does NOT mean presumption for JC			Yes)	
<u>IN</u> <u>yes</u>	IC 31-17-2-8.3	* DV is a BI factor (one of 8) -	*conviction of DV that was seen by child creates a RP that requires visits be supervised for at least 1 year and not more than 2 years following the crime			

HOW DOES THE COURT FACTOR DOMESTIC VIOLENCE INTO A PR&R ACTION?						COMMENTS
STATE RB?	<u>PRESUMPTION OF SHARED PR&R?</u> <u>(PRE-DV INQUIRY)</u>	<u>DOMESTIC VIOLENCE & BIF</u>	<u>HOW IS DV PROVEN TO TRIGGER THE PREMSUMPTION?</u>	<u>EVIDENCE NECESSARY TO REBUT?</u>	<u>FRIENDLY PARENT PROVISION ?</u>	<u>OTHER VARIABLES/FAC TORS/REQUIREM ENTS</u>
<u>IA</u> <u>yes</u>		* even if no presumption invoked, evidence of DV is a BI factor (one of 10)	history of DV * lists the kind of evidence that can be used to show a history of DV		Yes-- does not apply if DV exists	
KS no		* DV is a BI factor (one of 7) - evidence of spousal abuse			Yes	
KY no		* DV is a BI factor (one of 9) - information, records, and evidence of DV				
<u>LA</u> <u>yes</u>	La. Civ. Code Ann. art. 132 (the court shall award custody to the parents jointly in the absence of an agreement, or if the agreement is not in the child's BI); La. R. 16 Dist. Ct. Rule 28.2 (form stating and noting that joint custody is presumed)		History of perpetrating DV * presumption raised if there is one incident of DV that resulted in serious bodily injury or more than one incident of DV	* preponderance of the evidence standard *BIP, rehab, best interest of the child	Yes--with regard to joint custody	*if both parties are violent, custody awarded to the party least likely to continue the violence *specifically sets aside sexual abuse
ME no	Me. Rev. Stat. tit. 19-A §1653 (the court shall make an award of shared parental rights where the parties have agreed or so agree in open court)	* DV is a BI factor (one of 17) - existence of DV and how it affects the child's safety and emotional well-being			Yes	*Legislative findings that (B) domestic abuse creates an unhealthy environment for children, and (C) continuing contact with both parents, achieved by awarding shared PR & R, is in the public interest
MD no		* evidence of DV shall be looked at by the court in a custody hearing				

HOW DOES THE COURT FACTOR DOMESTIC VIOLENCE INTO A PR&R ACTION?						COMMENTS
<u>STATE</u> <u>RB?</u>	<u>PRESUMPTION OF SHARED PR&R?</u> <u>(PRE-DV INQUIRY)</u>	<u>DOMESTIC VIOLENCE & BIF</u>	<u>HOW IS DV PROVEN TO TRIGGER THE PREMSUMPTION?</u>	<u>EVIDENCE NECESSARY TO REBUT?</u>	<u>FRIENDLY PARENT PROVISION ?</u>	<u>OTHER VARIABLES/FAC TORS/REQUIREM ENTS</u>
<u>MA</u> <u>yes</u>		* even if no presumption invoked, the court shall look at evidence of past or present DV as a factor that is contrary to the child's BI	* presumption is raised if there is a pattern of DV or a serious incident of DV - preponderance of the evidence standard *bodily injury, fear of injury, sexual abuse	* rebut with preponderance of the evidence		
<u>MI</u> <u>no</u>		* DV is a BI factor (one of 12)			Yes	* Does not matter whether DV is directed at or witnessed by child
<u>MN</u> <u>yes</u>	Minn. Stat. § 518.17 (presumption that joint legal custody is in the child's BI if requested by either or both parents	* even if no presumption invoked, DV is a BI factor (one of 12)			Yes-- does not apply if DV exists	
<u>MS</u> <u>yes</u>	Miss. Code Ann. § 93-5-24 (where both parties have agreed)		* presumption raised if D has a history of perpetrating DV (statute refers to it as "family violence") (need an incident that resulted in serious bodily harm or a pattern of DV) - preponderance of the evidence standard	* BI of the child, BIP, rehab, parenting classes, compliance with prob/parole		* written findings to document how and why the presumption was or was not triggered * if both parents have a history of perpetrating DV, custody goes to the party least likely to continue to perpetrate DV

How does the court factor domestic violence into a PR&R action?						COMMENTS
STATE RB?	<u>PRESUMPTION OF SHARED PR&R?</u> <u>(PRE-DV INQUIRY)</u>	<u>DOMESTIC VIOLENCE & BIF</u>	<u>HOW IS DV PROVEN TO TRIGGER THE PRESUMPTION?</u>	<u>EVIDENCE NECESSARY TO REBUT?</u>	<u>FRIENDLY PARENT PROVISION ?</u>	<u>OTHER VARIABLES/FAC TORS/REQUIREM ENTS</u>
<u>MO</u> <u>yes</u>		* even if no presumption invoked, DV is listed as a BI factor (one of 8) - pattern of DV			Yes	* if evidence of both parties committing DV, presumption does not apply and court should apply the BI factors listed in referenced statute * written findings of fact if court finds that custody to the abusive parent is in the child's BI
MO no		* DV is a BI factors (one of 13)			Yes-- EXCEPT if DV	
NB no		* DV is listed as a BI factor (one of 4) - credible evidence of DV			Yes	
<u>NV</u> <u>yes</u>	Nev. Rev. Stat. § 125.490 (where parents have agreed or so agree in open court)	* even if no presumption invoked , DV still listed as one of 3 BI factors	* presumption raised if one party has engaged in one or more acts of DV- clear and convincing evidence standard * written findings of fact to support presumption being raised and findings that the custody and visitation determination adequately protect both the child and P * presumption against custody and visitation if party is convicted of 1st degree murder of child's other parent			* if both parties have committed acts of DV, determine the primary aggressor - if not possible to determine this then presumption applies to both parties
NH no	N.H. Rev. Stat. Ann. § 458:17 (presumption regarding joint legal custody where the parents have agreed or agree in open court)	* DV is a factor that is considered harmful to the child and courts shall consider it				* written findings regarding decision if the court still finds that JC is appropriate when DV is present

HOW DOES THE COURT FACTOR DOMESTIC VIOLENCE INTO A PR&R ACTION?						COMMENTS
<u>STATE</u> RB?	<u>PRESUMPTION OF SHARED PR&R?</u> <u>(PRE-DV INQUIRY)</u>	<u>DOMESTIC VIOLENCE & BIF</u>	<u>HOW IS DV PROVEN TO TRIGGER THE PREMSUMPTION?</u>	<u>EVIDENCE NECESSARY TO REBUT?</u>	<u>FRIENDLY PARENT PROVISION ?</u>	<u>OTHER VARIABLES/FAC TORS/REQUIREM ENTS</u>
NJ no		* DV is a BI factor for the court to consider (one of 13) - history of DV, if any, and the safety of the child and parent from physical abuse by the other parent			Yes-- does not apply if DV exists	
NM no	N.M. Stat. Ann. § 40-4-9.1	* DV is a BI factor for the court to consider (one of 9) - need to engage in one or more acts of DV * if the court finds that DV has occurred the court shall set forth findings that the custody and visitation orders will adequately protect the child and victim			Yes-- with regard to joint custody	
NY no		* DV is a factor the court shall consider - act of DV against the party making the allegation or a family or household member of either party * how DV affects the child's BI along with other facts and circumstances the court deems relevant * prove DV with a preponderance of the evidence				
NC no		* DV is a factor the court shall consider along with all other relevant factors *any order for custody shall contain findings of fact that the order is in the child's BI				

How does the court factor domestic violence into a PR&R action?						COMMENTS
<u>STATE</u> RB?	<u>PRESUMPTION OF SHARED PR&R?</u> <u>(PRE-DV INQUIRY)</u>	<u>DOMESTIC VIOLENCE & BIF</u>	<u>HOW IS DV PROVEN TO TRIGGER THE PREMSUMPTION?</u>	<u>EVIDENCE NECESSARY TO REBUT?</u>	<u>FRIENDLY PARENT PROVISION ?</u>	<u>OTHER VARIABLES/FAC TORS/REQUIREM ENTS</u>
<u>ND</u> <u>yes</u>	N.D. Cent Code § 14-09-06.2	* even if no presumption invoked, DV is a BI factor (one of 13)	*evidence must be credible that DV has occurred AND (1) a serious instance that resulted in serious bodily harm or where a dangerous weapon was used or (2) a pattern of DV within a reasonable time close to the proceeding - * evidence of other DV proceedings are relevant	* presumption can be rebutted with clear and convincing evidence that shows it's in the child's BI to have the party participate in the child's life		* court must make findings of fact that show that the custody arrangement chosen protects the child's BI
OH no		* DV is a BI factor (one of 15) - a history of or potential for DV or whether the party has been convicted or pleaded guilty to a DV violation to the victim who was or is a household member			Yes	
<u>OK</u> <u>yes</u>	Okla. Stat. Ann. tit. 43 § 110.1 (shared parenting will be ordered if requested by a parent, unless the court finds shared parenting to be detrimental to the child)	* even if no presumption invoked, the court must consider evidence of DV	*preponderance of the evidence *conviction of DV must have occurred in the last 5 years			Statute appears to have ambiguity (109.3 requires lower standard for RP than 112.2)
<u>OR</u> <u>yes</u>	Or. Rev. Stat. § 107.137	* even if no presumption invoked, DV still a BI factor (one of 6)			Yes – unless evid. of DV	
PA no		* DV (past or present) is a factor, along with other relevant factors, that the court shall consider *convictions of aggravated assault and other listed crimes must be considered by the court			Yes	* if parent has been convicted of 1st degree murder of the child's other parent, the convicted parent shall not be awarded custody, partial custody, or visitation subject to the wishes of the child if child is of a suitable age

HOW DOES THE COURT FACTOR DOMESTIC VIOLENCE INTO A PR&R ACTION?						COMMENTS
<u>STATE</u> RB?	<u>PRESUMPTION OF SHARED PR&R?</u> <u>(PRE-DV INQUIRY)</u>	<u>DOMESTIC VIOLENCE & BIF</u>	<u>HOW IS DV PROVEN TO TRIGGER THE PRESUMPTION?</u>	<u>EVIDENCE NECESSARY TO REBUT?</u>	<u>FRIENDLY PARENT PROVISION ?</u>	<u>OTHER VARIABLES/FACTORS/REQUIREMENTS</u>
RI no		* DV is a factor that the court shall consider when making custody decisions and any grant of custody shall be made to protect the child and abused parent from harm * shall also consider the perpetrator's history of physical harm, bodily injury or assault to another person				
SC no		* DV is a factor that the court shall consider when making a custody decision.				* primary aggressor evidence is relevant
<u>SD</u> <u>yes</u>	S.D. Codified Laws § 25-4-45.5		*conviction of DV or assault against a family or household member *history of DV * conviction of a parent for the death of another parent (exception of vehicular homicide) creates a rebuttable presumption as well			
<u>TN</u> <u>yes</u>	Tenn. Code Ann. § 36-6-101 (where parents have agreed or so agree in open court)	* DV is a BI factor (one of 10) - evidence of physical or emotional abuse to the other parent or to any other person			Yes	
<u>TX</u> <u>yes</u>	Tex. Fam. Code §153.131 (three versions of the RP-custody ,access to child, unsupervised visitation)		* No JC if credible evidence of history or pattern of past or present abuse *No access to child if preponderance of evid shows history DV within 2 years *No unsupervised visitation if sexual abuse-PFA is credible evid	* BIP, rehab, exchange arrangements	Yes--with regard to joint custody	(three versions of the RP-custody, access to child, visitation JC presumed-IF a finding of DV, then JC presumption removed
UT no		* DV is a BI factor for the courts to consider (one of 10)	any history of or potential for DV - (statute refers to DV as "spouse abuse") *prove DV with a preponderance of the evidence		Yes	

How does the court factor domestic violence into a PR&R action?						COMMENTS
STATE RB?	<u>PRESUMPTION OF SHARED PR&R?</u> <u>(PRE-DV INQUIRY)</u>	<u>DOMESTIC VIOLENCE & BIF</u>	<u>HOW IS DV PROVEN TO TRIGGER THE PREMSUMPTION?</u>	<u>EVIDENCE NECESSARY TO REBUT?</u>	<u>FRIENDLY PARENT PROVISION ?</u>	<u>OTHER VARIABLES/FAC TORS/REQUIREM ENTS</u>
VT no		* DV is a BI factor for the courts to consider (one of 9) - evidence of DV, also impact of DV on the child and between the child and perpetrator			Yes-- does not apply where there would be "real harm"	
VA no		* DV is a BI factor for the courts to consider (one of 10) - any history of			Yes-- does not apply if there is a history of DV	
WA no						* no JC (statute refers to it as "mutual decision making parenting plan") and no other forum for resolving the dispute besides the court if there is evidence that one party has a history of DV
WV no	W. Va. Code § 48-9-207 (the court shall presume that an allocation of decision-making responsibility to both parents jointly is in the child's BI if each of the child's legal parents has been exercising a reasonable share of parenting functions.	* court must have an evidentiary hearing if there is credible evidence that DV occurred * once evidence of credible abuse victim will receive assistance in the form of help complying with statute mandates, referral to safe shelter, counseling, safety planning and information about impact of DV on children and civil and criminal remedies * if DV is found to have occurred, appropriate protective measures must be taken				Presumption of JC overcome if history of DV

How does the court factor domestic violence into a PR&R action?						COMMENTS
STATE RB?	<u>PRESUMPTION OF SHARED PR&R?</u> <u>(PRE-DV INQUIRY)</u>	<u>DOMESTIC VIOLENCE & BIF</u>	<u>HOW IS DV PROVEN TO TRIGGER THE PREMSUMPTION?</u>	<u>EVIDENCE NECESSARY TO REBUT?</u>	<u>FRIENDLY PARENT PROVISION ?</u>	<u>OTHER VARIABLES/FAC TORS/REQUIREM ENTS</u>
<u>WI</u> yes	Wis. Stat. Ann. § 767.24 (the court shall presume joint legal custody is in the child's BI; but exception where evidence of interspousal battery or DV.)	* even if no presumption invoked, DV is still a BI factor	* prove one engaged in a pattern or serious incident of DV - preponderance of the evidence standard	* lists kinds of evidence to rebut presumption - preponderance of the evidence standard	Yes-- only applies if one is unreasonabl y interfering with child's relationship with the other party	* determine primary aggressor - if none, presumption doesn't apply - lists factors to determine primary aggressor * written findings when presumption is raised as to whether presumption rebutted, what rebutted it, and why order is in child's BI
WY no		* court shall consider evidence of DV - evidence of spouse abuse - as contrary to the child's BI * party applying for custody order shall notify the court of any known protection or custody orders issued on behalf of the parties from any other court			Yes	
<u>NCJFCJ Model Code on Domestic and Family Violence</u> yes	*A determination by the court that domestic or family violence has occurred raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence.		*By determination of the Court *No factors listed	*None listed		

HOW DOES THE COURT FACTOR DOMESTIC VIOLENCE INTO A PR&R ACTION?						COMMENTS
<u>STATE</u> RB?	<u>PRESUMPTION OF SHARED PR&R?</u> <u>(PRE-DV INQUIRY)</u>	<u>DOMESTIC VIOLENCE & BIF</u>	<u>HOW IS DV PROVEN TO TRIGGER THE PREMSUMPTION?</u>	<u>EVIDENCE NECESSARY TO REBUT?</u>	<u>FRIENDLY PARENT PROVISION ?</u>	<u>OTHER VARIABLES/FAC TORS/REQUIREM ENTS</u>

Brief Tally

24 STATES PLUS DISTRICT OF COLUMBIA HAVE REBUTTABLE PRESUMPTIONS IN THE STATUTES

22 STATES HAVE A PRESUMPTION OF JC OR SHARED PR&R *BEFORE* A DV INQUIRY IS MADE

6 STATES REQUIRE THE COURT TO ISSUE WRITTEN FINDINGS WHEN ABUSE IS A FACTOR IN CUSTODY DETERMINATIONS

31 STATES HAVE A FRIENDLY PARENT PROVISION IN THE STATUTE

LEGEND:

BIF: BEST INTEREST FACTOR

BIC: BEST INTEREST OF THE CHILD

BIP: BATTERERS INTERVENTION PROGRAM

DV: DOMESTIC VIOLENCE

JC: JOINT CUSTODY (SYNONYMOUS WITH SHARED PARENTAL RIGHTS AND RESPONSIBILITIES FOR THE PURPOSES OF THIS INQUIRY)

RP: REBUTTABLE PRESUMPTION (AGAINST JC IN CASES OF DV)