

North Carolina, Domestic Violence, Custody, and the Courts
Part 2 of a 6 part series

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The Effects of Domestic Violence on Children

According to the Childhood Domestic Violence Association, approximately five million children witness domestic violence every year. Children from homes with domestic violence are much more likely to experience psychological problems, both in the short-term and in the long-term. Living with domestic violence significantly alters a child's DNA, aging them 7 to 10 years. Those who grow up with domestic violence are six times more likely to commit suicide and 50% more likely to abuse drugs and alcohol, and children of domestic violence are three times more likely to repeat the pattern later in life. For more information and statistics on how domestic violence can impact children visit <https://cdv.org/what-is-cdv/the-impact/>.

Many parents stay in a domestic violence relationship because they feel that their children need to grow up in a two-parent household or that they need to stay to protect their children from the abuser. There are many reasons why parents stay in domestic violence relationships and the choice to leave is a difficult and scary one. However, understanding the devastating effects of exposure to domestic violence can help inform the best choice of action to take. A primary reason that parents stay is that they don't know the legal options that are available to them and they don't know how to protect their children. This article aims to provide an outline of the custody options that are available to concerned parents when domestic violence is at the core.

Legal Options for Custody in Domestic Violence Situations

North Carolina's primary custody laws are contained within N.C. General Statute Chapter 50. This statute allows any person to file an action for custody. You may hear lawyers refer to custody lawsuits as a "Chapter 50 action." That is the term that is used to distinguish a general custody lawsuit from a custody order under N.C. General Statute Chapter 50B, also referred to as a "50B" or a "DVPO." In North Carolina, you can also petition the court for custody when you file for a Domestic Violence Protective Order under N.C. General Statute Chapter 50B. Having a discussion about custody when domestic violence is involved can be complicated when it comes to truly knowing your options, so I am going to refer to a general custody action as a Chapter 50 action and a custody petition by and through a Domestic Violence Protective Order as a 50B custody order. There are distinctions and reasons why you would want one versus the other.

What to Consider about Domestic Violence Protective Orders and Custody

Domestic Violence Protective Orders (DVPO) are very powerful and come with the immediate power of arrest if they are violated. (Note: DVPO's can only be violated by the Defendant. If you are the Plaintiff and you contact the Defendant, you cannot be arrested but contacting the Defendant would not be a recommended course of action). DVPO's also come with provisions for **no contact**. Once filed and granted, the other parent can have no contact with you and sometimes can have no contact with the children. What does no contact mean? It means no phone calls, no text messages, no posts on your social media, no sending of cards or letters

through the mail, no contacting your friends or family to communicate messages to you and certainly no personal contact by coming to where you are. Most applicants see this as welcome relief but when bills suddenly become due or the car breaks down, the no contact provisions can seem overwhelming. Additionally, no contact may apply to the children. This can be very confusing to children who saw mom or dad the day before; children may feel abandoned or unloved and/or like they have done something wrong. It really is as if the other parent doesn't exist anymore, so it is important to keep this in mind as we explore the options for custody. With severe abuse and alienation, an absolute bar to contact may be the safest way to protect you and your children, but with other forms of abuse there may be other options to explore.

Custody under a Domestic Violence Protective Order (50B) with the Children as Parties

There are two ways to seek custody of your children through the filing of a Domestic Violence Protective Order. First, you must determine whether your children have been direct victims of domestic violence. For example, has the other parent threatened them, put their hands on them in an inappropriate way, acted cruel, reckless or neglectful to the children, etc. If the children are in direct harm from the other parent, then you may want to consider filing for a Domestic Violence Protective Order and filing as a guardian on behalf of your children. Your children would then become parties and have all the same protections under the Order as you would. Their names would be listed with yours on the first page of the DVPO. The other parent would not be allowed to have any contact with you or your children and would not be entitled to any custody. In fact, even if the other parent filed a Chapter 50 custody action later, the judge would have to set aside your DVPO before the judge would have jurisdiction to enter a Chapter 50 custody order.

Having your children as parties to the DVPO provides enormous protection to you and them. Additionally, DVPOs can be renewed every year so long as you file to renew before the DVPO expires. The DVPO can be renewed for up to a period of two years at a time, thus, continuously providing protection to you and your children. This is the most absolute form of protection and creates no custody schedules for the Defendant to abuse in the future.

Custody under a Domestic Violence Protective Order (50B) included as a Custody Addendum

As part of your petition for a Domestic Violence Protective Order you can also request temporary custody of your children. You become the sole petitioner in this case but are seeking custody of the minor children. The judge will first have a hearing on domestic violence. If the judge determines that domestic violence does exist, and warrants the entry of a protective order, there will be a second part to the hearing, which will determine custody. Custody will then be entered in an order as an addendum to the DVPO. The custody order can last anywhere between six (6) months to one (1) year. Anyone can file to renew a DVPO before its expiration, and the DVPO can be renewed for up to two (2) years at a time for good cause shown. Unfortunately, the custody provisions in a DVPO cannot extend beyond one year and will expire even if the DVPO is renewed. If children need additional protections, then it may be best to file the DVPO with the children as parties as discussed in the paragraph above rather than asking the court to enter a custody addendum.

Anyone can ask the court for supervised visitation, public visits, or limited time with no overnights. The court can also put in provisions for limited contact. For example, contact may be allowed only via text or email as it relates to the children. It is uncommon to see judges enter 50/50 custody orders where there is severe domestic violence. Unfortunately, abusers will use the children to try to get the petitioner to dismiss the DVPO and will threaten that they are going to take 50/50 custody if the petitioner doesn't do what they want. Dismissing a protective order provides no protection to you or your children and is not recommended.

Custody under a Chapter 50 Custody Order with No Contact Provisions

Many times, as a defensive maneuver, the abuser will file a Chapter 50 custody lawsuit soon after they have been served with the Domestic Violence Protective Order. This ensures them that they will get in front of a domestic court judge to request a better custody order than what they have under the DVPO. Once a custody order is entered in domestic court under Chapter 50, the terms of that custody order will replace the custody addendum to the DVPO. Both parents can agree to the terms in a custody order and include no contact provisions, which is a consent order. The no contact provisions in a Chapter 50 Consent Order come with the power of contempt but do not come with the power of immediate arrest for violation like a DVPO does.

Court orders come with the power of contempt and the authority of the court behind them to ensure that parents do what the court requires them to. Sometimes, it may be recommended that you file for custody before your DVPO expires to ensure you have continued protection for your children. That being said, this can also work against the victim parent when they are forced to send their children into a potentially dangerous situation. If the abuser is not requesting custody, is not attempting to see the children or threatening you, it might be best not to file for custody at all, so you aren't stuck in a position where you are forced by the court to relinquish your children to the other parent when it wasn't an issue in the first place. If custody is not at issue, then don't make it one, as you can do more harm to your children than you intend.

Mediation and other Agreements

Many times, the abuser begs to settle in mediation or through a settlement agreement rather than through prosecution of the Domestic Violence Protective Order. They may request a continuance in hopes that you will be too afraid to come to court or get frustrated with the process and agree to a settlement. Sometimes a settlement is necessary in cases where there is extreme financial dependence on the abuser. Unfortunately, judges rarely order support as part of the DVPO, so a victim finds themselves in a home with no money, no support, no contact and no power, which can be a frightening prospect. Having a DVPO gives one enormous leverage to bargain for support, the house, and other resources on an immediate basis that would otherwise not be possible. The point is to keep the DVPO in place if you can, so you can negotiate a position that is good for you and your children. Once you dismiss your DVPO, you will most likely lose all negotiating power.

What is the difference between the DVPO, a consent order, and other agreements? A Domestic Violence Protective Order has the most power because it comes with the immediate power of arrest; however, it has limitations in that DVPOs rarely award support even though one may receive the house and the car as part of the order. A consent order is a court order and comes with the power of contempt, which has the possibility of arrest at some point in the future for

non-compliance, although it is not immediate. Consent orders allow for a lot of flexibility as one can bargain for child support, spousal support, equitable distribution, no contact and limited custody within a couple weeks of negotiating. One can achieve very quick resolution through negotiation of a consent order versus full-fledged litigation, which can drag on for months or years, and is extremely costly financially and emotionally.

Finally, one can reach settlement through an agreement or contract. These agreements are called many things: a mediation agreement; separation agreement; settlement agreement; parenting agreement, etc. If the document is entitled contract or agreement, it is considered a legally binding contract in the state of North Carolina, and you will be stuck with whatever you sign even if there is domestic violence. Agreements or contracts require voluntary consent. No one can force you to sign on the dotted line, and if you are given a deadline you have an opportunity to pass. The benefits to contracts are that they provide a lot of flexibility and allow you to bargain for support, custody and property in a very short time frame. Negotiating agreements are usually much more cost effective than going through a lawsuit; however, agreements do not have the power of arrest or the power of contempt. If the other party refuses to abide by the agreement law enforcement will usually not get involved to help.

It is never advisable to enter into an agreement or contract in lieu of a DVPO unless you have legal counsel that you trust as the consequences can be severe. There are pros and cons of all the options, but these matters can be complicated. Every case is different and requires complex analysis. Please seek some legal advice before making long lasting decisions that could have serious consequences for both you and your children.

Child Protective Services

North Carolina is a mandatory reporting state, which means that in any case, in which a person files for a Domestic Violence Protective Order or a custody lawsuit and alleges domestic violence against the children or in which the children have been witnesses, Child Protective Services (CPS) will automatically be contacted. If you file a DVPO or a custody lawsuit and allege abuse on the part of the children, CPS will contact you. The best course of action when contacted by CPS is to be as compliant as possible and not argumentative. Be mindful that CPS has the power to intervene and remove your children from the home. So long as you are following CPS recommendations whether there is a lawsuit pending or not, you and your children should be safe.

CPS can place restrictions on custody and limit one parent's access to the children. CPS can require parents to undergo evaluations and counseling or take classes on parenting or anger management. The key is to be compliant with whatever CPS says because the agency has power beyond the authority of the court in that they have the power to take your children away from you. I will talk more about CPS in a future article. Be mindful that CPS will likely be involved at some point, so it is important to use them as your ally, especially if they believe that custody with the abusive parent should be restricted. Having CPS involved with your family can be scary and the decisions daunting. It is best to seek professional advice to help you make the best decisions possible regarding your children when life seems to be falling in around you. You can obtain more information at our website at www.lesnik-law.com. We also offer free initial consultations and are happy to help you or find someone who can.

