

## **DOMESTIC VIOLENCE**

Family Law

### **DV Has Multiple Statutory Frameworks**

- Criminal Law (Penal Code)
- Family/Civil Law (Family Code)
- Juvenile Law (Welfare & Institutions Code)

### **The Violence Against Women Act (VAWA)**

- Started the development of a nationwide body of laws in 1994 by providing 1.6 billion toward investigation and prosecution of violent crimes against women; and created the concept of civil redress in cases that were not criminally prosecuted.

### **Domestic Violence Criminal and Civil**

Criminal-Penal Codes  
(PC) 273.5, 273.6, 646.9

Civil (Family Law)-FC  
6200 et. seq.

### **The California Domestic Violence Prevention Act**

- Enacted in 1993 (AB 1500) and reorganized in 1994 at the time of the adoption of the Family Code.
- Revised prior language to include abuse of children within definition of Domestic Violence (DV); and eliminated duplicate term definitions in other codes (CCP, EC, PC, W & I).

### **DV Actions require existence of a Relationship**

- Both the Criminal and Civil statutory schemes require the existence of a "relationship" between the victim and the perpetrator, as defined by Family Code (FC) 6211.
- If no relationship under FC 6211, then will fall under other Crim. or Civil remedy statutes-not DV.

### FC 6211-DV is abuse perpetrated against any of the following:

- (a) A spouse or former spouse
- (b) A cohabitant or former cohabitant
- (c) Person perp dated, or is dating
- (d) Person with whom perp had child
- (e) Child of a Party
- (f) Any other person related to the perp within the second degree of consanguinity.

### What is "Abuse"-cont.

- FC 6320 behavior that can be enjoined
- Molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, destroying personal property, contacting either directly or indirectly, by mail or otherwise, coming within a specified distance, disturbing the peace

### No 6211 Relationship? Now What?

- If facts don't fall within FC 6211, no DV. But, will fall under...
- Other Crim Statutes (Assault/battery, trespass, disturbing the peace, etc.);
- \* Other Civil remedy statutes (Civil Harassment, Workplace Violence, Elder Abuse, School Violence).

### "Abuse"-cont.

- Definition of "Abuse" under FC 6203 is very broad, and **does not require physical injury.**
- Standard is not "recent" acts of abuse, but "past act or acts of abuse". FC 6300, 6306.

### What is "Abuse"

- FC 6203 says that "Abuse" is:
- Intentionally or recklessly causing or attempting bodily injury;
- Sexual assault;
- Placing a person in reasonable apprehension of imminent serious bodily injury to self or another;
- Any behavior that could be enjoined under FC 6320.

### The Usual "Steps" in Domestic Violence (DV)

- Police at scene request Emergency Protective Order (EPO) from On Duty Magistrate-if issued, good for 5 Court days or 7 calendar days, whichever comes sooner-then expires.
- Standard is "**reasonable grounds to believe** immediate and present danger exists." FC 6250.

### DV Steps-cont.

- Perp may or may not have been arrested. Either way, Prosecutor may wait to decide re Crim charges. Victim can seek Temp. Restraining Orders (TRO) from Family Court under Domestic Violence Prevention Act (DVPA) even if Criminal charges are pursued. Victim can obtain multiple types of Restraining Orders in DV.

### The Request For Order-DV 100

- The operative Pleading for the TRO request and the Hearing. It is the "Complaint", the allegations of which the responding party must answer.
- MP need not provide home address; and failure to provide mailing address does not invalidate orders or enforcement. FC 6225.

### DV Steps-Temporary Restraining Orders

- Good for 21 to 25 days. Then a Hearing must be held. FC 242. May be issued for less, but not more unless reissued for good cause;
- Must grant or deny on same day that application is made unless too late in day to permit effective review. FC 6326.

### Request For DV Orders-cont.

- Name and descriptive info of person from whom protection is sought is required, otherwise, law enforcement cannot enter the DV Orders into the CLETS System (California Law Enforcement Telecommunications System).

### DV Steps-TRO's

- Made ex parte.
- May be issued with or without notice. FC 6300.
- Standard is "**reasonable proof** of a past act or acts of abuse". FC 6300.
- Once issued, all DV Orders are enforceable in every State. FC 6400 et. seq. (Uniform Interstate Enforcement of Dom. Viol. Prot. Orders Act).

### Request For DV Orders-cont.

- CLETS is a statewide system which allows an individual's criminal history to be accessed. All DV Orders, whether criminal or civil, must, by federal and state law, be entered into CLETS. FC 6380(b).

**Request For DV Orders-cont.**

- MP may request protection for others without a showing under FC 6211 (relationship) for them if they are:
  - Family or household members (the Court will generally only grant protection if they live with the MP);
  - Pets

**Request For DV Orders-cont.**

- Under CCP 372(b)(1), a minor over 12 can seek a Protective Order without a Guardian Ad Litem (GAL) being appointed. Court has discretion to appoint once Request For Order is made, but appointment cannot delay the proceedings.

**Request For DV Orders-cont.**

- Relationship to the Respondent requires a MP to allege showing under FC 6211. FC 6205, 6209, and 6210 define "affinity", "cohabitant", and "dating". "Dating" is defined by the Code and case law as more than one date and as "frequent, intimate associations primarily characterized by the expectation of affection or sex."

**Request For DV Orders-cont.**

- Parties must inform the Court of other cases/proceedings affecting custody of children. FC 6323(a)(1).
- Criminal Protective Order will supersede a Family Law DVPA Order when the two are in conflict.
- If there's an open Juvenile Court case, Family Court has no jurisdiction over the kids; and cannot issue orders.

**Request For DV Orders-cont.**

- Pure roommates are not covered under FC 6211.
- Any relative outside of the 2<sup>nd</sup> degree of Consanguinity is not covered (i.e.: cousin, aunt, uncle, niece, nephew).
- A child's ex step-parent is not covered.
- M/Party's Husband/Wife's ex is not covered. (Other spouse's former spouse)

**Request For DV Orders-cont.**

- If kids are involved, and there are Family Law cases pending, or existing orders in, other counties or states, there may be a venue or jurisdiction question which may need to be resolved under the UCCJEA (Uniform Child Custody Jurisdiction and Enforcement Act); and Protection Orders may need to be issued under Emergency Jurisdiction. FC 3424.

**Request For DV Orders-cont.**

- Stay Away Orders-more than 100 yards creates Constitutional issues re travel, etc.
- MP often wants stay away for other peoples' work, res, cars, school. Unnecessary if stay away order re person of MP is issued.

**Request For DV Orders-cont.**

- Spousal Support Orders cannot be made ex parte. Are heard at the noticed Hearing if requested in the moving papers. FC 6341.
- Attorneys fees cannot be awarded ex parte. Request can be heard at the noticed Hearing if made in the moving papers. FC 6344.

**Request For DV Orders-cont.**

- Move Out Order is allowed ex parte if:
  - MP has right to possession under "color of law"; and
  - Party to be excluded has assaulted or threatened MP or MP's child; and
  - Physical or emotional abuse will result if respondent is not removed.
- FC 6321.

**Request For DV Orders-cont.**

- Ownership, possession or access re firearms and ammunition is prohibited while a protective Order is in effect under many State and Federal statutes. FC 6389, Penal Code 12021. Order is effective upon issuance of an EPO, TRO, OAH, or CPO.

**Request For DV Orders-cont.**

- Custody, Visitation and Support
- Child Support orders cannot be made ex parte. FC 6341. Must be requested in the DV Order Request (DV 100) and heard at the noticed Hearing.
- Custody/visitation orders, if granted ex parte, must be specific. No orders can issue if Paternity not previously established. FC 6323.

**Request For DV Orders-cont.**

- Mutual DV Orders cannot be issued unless each Party specifically requests orders against the other, and the Court makes findings that both are primary aggressors and neither acted in self defense. Monterroso v. Moran (2006) 135 Cal. App. 4<sup>th</sup> 732.

### Request For DV Orders-cont.

- Even if denied, a jurisdictionally adequate Request for DV Restraining Orders requires that the Petitioner receive a Hearing unless the Petitioner waives that right. Nakamura v Parker (2007) 156 Cal. App. 4<sup>th</sup> 327.

### The DV Hearing-cont.

- To issue orders, Court must find:
  - That DV occurred w/n the meaning of FC 6203 and 6320;
  - That the MP was the victim;
  - That the RP was the perpetrator;
  - That the DV did not occur in self defense.

### The DV Hearing

- 21 to 25 days after TRO request. Moving Party (MP) entitled to Hearing regardless of whether or not TRO granted, unless Hearing is waived in writing using Form DV-112. FC 6320.5(b)(c).
- Responding Party (RP) entitled to continuance at 1<sup>st</sup> Hearing as a matter of right if notice inadequate. Ross v. Figueroa (2006) 139 Cal. App. 4<sup>th</sup> 856.

### The DV Hearing-cont.

- Once DV "Finding" is made, Court can issue Restraining Orders After Hearing (OAH) for up to 5 years initially, renewable by MP if renewal is requested before expiration of the initial orders, and reasonable apprehension of future abuse is shown. FC 6345; Ritchie v. Konrad (2004) 115 Cal. App. 4<sup>th</sup> 1275.

### The DV Hearing-cont.

- Full blown evidentiary hearing. Court also required to consider: Crim. history of RP (FC 6306); history of abuse of child (FC 3011), which can include written reports, etc.; and history of abuse by RP upon MP (FC 6300).

### The DV Hearing-cont.

- Court can issue orders made in TRO and custody, visitation, support, orders; exclusive use/possession orders; orders to attend classes (Batterers Intervention Program (BIP), Anger Management, Parenting classes); orders prohibiting consumption of drugs/alcohol; and orders for drug or alcohol testing.

### Effects of DV "Finding"

- Immediately after a "finding" of DV, MP and RP are provided copies of the OAH in Court (unless RP failed to appear, in which case RP will have to be served); if RP is present, Review Hearing is set to ensure enrollment in BIP and compliance with Orders; and the OAH are input into the CLETS system.

### Ramifications of a DV "Finding"- cont.

- Exception to Firearms prohibition under FC 6389(h) [firearm is a condition of employment, employer unable to reassign R/P, firearm only in R/P possession during work, and psych eval for peace officer as prerequisite] is not an exception under VAWA.

### Ramifications of DV Finding on Restrained Party

- In CLETS for years, so when a prospective employer runs a criminal history search, even though no criminal conviction, will show DV "Finding";
- Presumption of no child custody. FC 3044.

### Ramifications of a DV "Finding"- cont.

- Presumption that an abusive spouse shall not be entitled to receive spousal/partner support from the victim spouse. FC 4320(i), (m); FC 4325.

### Ramifications of DV "Finding"- cont.

- Effectively (though not statutorily) prevented from becoming a Doctor, Lawyer, Police Officer, Firefighter, Bus Driver, Airline Pilot, Security Guard, Teacher, Military Officer, etc.
- Cannot own/possess any firearm or ammunition under State DVPA (FC 6389) and Federal VAWA for duration of OAH.

### No DV Finding

- If the Court makes a finding that no DV occurred, it has no jurisdiction under the DV case to issue any orders; unless the Parties wish to stipulate to the entry of specific orders.

### On Expiration of the OAH

- Once the OAH have expired, if not renewed, all protective and other orders contained therein expire; except for custody, visitation, and support orders which survive the expiration of the OAH and remain effective until expiration by their own terms or further Court order. FC 6340(a).

### If Criminal Conviction

- Unless a felony, will virtually always result in Probationary Order.
- Probation will include a Criminal Protective Order (CPO).
- Terms of the CPO will **always** trump all other DV orders in conflict (Family, Juvenile, Probate) if they are **more** restrictive.

### Criminal Domestic Violence (DV)

Can be charged and convicted as Misdemeanor or Felony

Upon conviction of a crime involving a victim who fits FC 6211 definition, if granted probation, Court **shall** include, in probation orders, conditions set forth in PC 1203.097.

### When Probation Granted in Crim DV Conviction The Court Shall Impose the Following Terms:

- A Criminal Protective Order
- Require notice to the Victim of case disposition
- Impose several \$ fines
- Order successful completion of a 1 yr. Batterers Intervention Program.  
PC 1203.097

### Criminal DV

- Prosecutorial Discretion
- Requires Beyond Reasonable Doubt standard of proof
- Because of Reas. Doubt Std., requires demonstrable evidence of abuse
- Victims often recant/refuse to testify
- Only 15% of all DV cases prosecuted criminally.

### Burdens of Proof

- Reasonable Grounds To Believe-EPO
- Reasonable Proof-TRO
- Preponderance Of The Evidence-OAH
- Clear and Convincing-Civil Harassment
- Beyond A Reasonable Doubt-Crim-(CPO)



### **“Domestic Violence” Need Not Be About “Violence”**

- As we’ve discussed, FL Domestic Violence is defined as “Abuse”, which has a very broad definition under FC 6203 and 6320.
- As such, violence is only a symptom of what we call “Domestic Violence” as the Law defines that term; and may not be present in all DV situations.

### **Power & Control-cont.**

- When Abuser sees Power/Control slipping, panics, becomes desperate to regain control, and may ultimately resort to violence as last resort.
- Appears as a loss of self-control and may therefore look like event is Anger based as opposed to Power/Control based.
- Very important to understand Hx.

### **DV Not Always About “Violence”**

- Virtually all DV cases break down into two distinct bases-Anger, and/or Power/Control. Cases can, and often do have elements of both dynamics.
- Diagnosing a case, based on an assessment of the facts, is essential to determining which of these dynamics is driving the situation.

### **Anger**

- Opposite of Power/Control-not planned-spur of the moment, visceral and reactionary; Anger is a *loss* of control, not the *exercise of* control;
- Very often accompanied by physical violence;
- Usually situational, although there may be a history of visceral violent reaction to various situations.

### **Power & Control**

- Often involves no physical violence;
- Perpetrator maintains control over finances, who victim can see, where victim can go, who victim can talk to;
- Follows/has victim followed, or stalks;
- Uses threat of violence, guilt, money as control methods;
- Long pattern/history of this conduct showing planning/premeditation.

### **Why Do Some Victims Abandon Their Request For DV Orders?**

- Reasons for Victim reluctance, refusal to follow thru after EPO or TRO:
  - Fear of retaliation
  - Unwilling to face perpetrator
  - Shame/guilt
  - No resources to stay away
  - Children pressures/fear for their safety

### **Why Do Some Victims Abandon Request-cont.**

- Parental/Cultural pressures
- Denial, withdrawal, emotional mood swings (trauma symptoms)
- Uncertainty of the Judicial process

### **The Victim's Reality-cont.**

- Belief that the System will not stop abuse or protect victim because of: Past abuse, perp statements and actions, prior attempts at System solutions.
- \* Victim's reality is day to day; they look for an immediate effect on their safety and children's safety.

### **The Victim's Reality**

- Perp may be:
- Living with victim
- Familiar with victim's routine
- Has ongoing access to victim
- Maintaining power/control thru various methods
- Has children with victim

### **Victims in Court**

- Lack of Confidence in the Court System
- Procedural delay
- Complexity
- Misinformation
- Failure of System response re violations of Orders

### **The Victim's Reality-cont.**

- Victim is often economically dependent on abuser
- Victim may lack employment skills
- Is unable to retain counsel
- Has no housing other than with abuser
- Fears loss of community or family support
- Previous isolation thru power/control dynamic vitiates outside support now

### **DV as a Tactic**

- Given the severe ramifications of a DV "Finding", a request for DV Restraining Orders is sometimes used as a sword; i.e. if there is a "Finding" of DV, there is an automatic presumption of no custody of children, no spousal support to R/P, no firearms (if police or Security Guard-fatal to employment/career).

### **Diagnosing The Problem**

- Is it DV? A Judge hearing the case has extremely broad discretion under the DVPA to determine whether or not a given fact situation rises to the level of DV requiring a DV Finding. Even if the facts fit within the definition of "Abuse" under FC 6203 and 6320 the situation might not rise to the level of a DV finding.

### **DV Lethality Factors in Risk Assessment**

- Recent Separation from abuser
- Obsession over victim
- Depression/mental illness of abuser
- Abuser has extensive Hx of DV or use of other types of violence
- Risks taken by abuser are escalating
- Violence perpetrated by abuser is escalating

### **Diagnosing the Problem-cont.**

- Is this a "situational" DV?
- Hx of relationship and ages of the Parties?
- Hx of DV before subject incident?
- Any alleged physical abuse? Type?
- Perpetrator conduct proactive or reactive?
- Children present?

### **DV Lethality Factors-cont.**

- Victim is pregnant
- Abuser threatens homicide or suicide
- Abuser has attempted suicide
- Abuser possesses or has access to weapons
- Stalking of victim
- Abuser has Hx of sexual violence
- Drug/Alcohol issues

### **Diagnosing the Problem-cont.**

- Victim deprived of outside contact during incident (i.e. cell phone taken away or destroyed; prevented from contacting police or neighbor or relative).
- Any of the lethality factors present?

### **DV Lethality Factors-cont.**

- Abuser has Hx of rage or anti-social behavior
- Abuser Hx of DV in family of origin
- Abuser has Hx of animal cruelty
- Abuser is living with children who are not his own
- Abuser is unemployed

### DV Lethality Factors-cont.

- Hx of abuser seizing/destroying victim's cell phone
- Hx of actual or attempted choking
- Desperation of Abuser in conduct
- Abuser's conduct demonstrates absence of recognition of consequences for actions

### Cycle of Violence-Tension Period

- May last weeks or months;
- Stress builds, communication begins to break down;
- Victim senses danger-tries to avoid;
- Minor abuse or violent episodes;
- Family denies/minimizes as defenses, blames external factors;
- Hopes things will somehow change.

### Escalation of Abuser Risk Taking or Abuse Level

- In 2005 a Federally funded study ranked the levels of abuse in order to determine the levels increased abuse.

Intimate Partner Violence Risk Assessment Validation Study Final Report (2005) Drs. Roehl, O'Sullivan, Webster, and Campbell.

### Cycle of Violence-Crisis Period

- May last 2 hours to several days;
- Anxiety extremely high;
- Major uncontrolled violence occurs; explosive and unpredictable;
- May result in serious injury or death;
- Abuser blames victim;
- Victim accommodates to survive; believes escape futile, but may try temporarily; isolates emotionally.

### Escalation of Abuse-cont.

- Report risk rank from low to high risk:
- Verbal abuse
- Psych abuse/harassment (control)
- Stalking/Threats
- Physical abuse:Low (grab, slap, bruise); Med (kick, slam to wall); High (choke, forced sex, serious injury-fx bones);Very High (weapons, life-threatening injury)

### Cycle of Violence-Calm Period

- May last for days or months;
- Family in shock; then glad its over;
- Abuser remorseful-seeks forgiveness;
- Victim worn down-accepts promises;
- Kids now caretakers to keep the peace;
- Family welcomes this Stage-believes will not reoccur-in denial.

### Cycle of Violence-Phases of Physical Abuse

- Phase 1 (during Tension Period): Verbal abuse, hitting, throwing objects, threats, arguing, blaming;
- Phase 2 (during Tension Period): Pushing, grabbing, restraining;
- Phase 3: (during Tension Period): Slapping, pinching, kicking, hair pulling;

### 3 Types of Batterers

- Not to be confused with “Bases of Abuse” (i.e. Power/Control vs. Anger)
- **Antisocial Batterer (20%)**
  - Severe/escalating phys., sexual & emotional abuse of partner;
  - No remorse, blames others, will not accept responsibility;
  - Power/Control severe & obvious;
  - Likely abused as a child;

### Cycle of Violence-Phases of Physical Abuse-cont.

- Phase 4 (during Crisis Period): Hitting, choking, beating objects, sexual assault or sex by intimidation, may involve use or threat of use of weapons, property damage, unbridled use of force;
- Phase 5 (during Calm Period): Denies and rationalizes violence; apologizes and promises not to repeat.

### 3 Types of Batterers-cont.

- **Antisocial Batterer-cont.**
  - Doesn't learn to tolerate others;
  - Dismisses attachments/relationships;
  - Substance abuse probable;
  - Hx of violence & volatile relationships;
  - Conservative sex role attitudes;
  - High probability of arrest record;
  - Less amenable to treatment/therapy.

### Cycle of Violence-Phases of Physical Abuse-cont.

- Phase 5-cont.: Sobriety or Counseling Syndromes
- Where drugs/alcohol involved-drinking caused the problem-Perp will never drink again; and/or
- Promises to go to counseling and violence will never happen again. [Statistics show 1% go voluntarily]

### 3 Types of Batterers-cont.

- **The “Ordinary” Batterer (50%)**
  - Prior arrests and treatment less likely;
  - Severity of psych or sexual abuse to victim less;
  - Less likely to have been abused as a child;
  - More middle class;
  - Least likely to abuse own children;
  - More liberal attitudes towards women.

### 3 Types of Batterers-cont.

#### ■ The “Enmeshed” Batterer

- Little physical abuse to partner, no physical child abuse;
- Dependent on the relationship-can't live w/o him/her;
- Dangerous when partner leaves-separation rage/terror;
- Sometimes involves substance abuse;
- Depression/Suicide threats or ideation

### Effects of DV on Victim

- Post Traumatic Stress Symptoms (PTS): trouble sleeping, flashbacks, disassociation; avoidance of stimuli associated with the event; hypervigilance; self medication thru substance abuse; stress related physical symptoms; skewed view of abuser;

### Characteristics of Battered Women

- Low self esteem; suffers guilt;
- Traditional sex role stereotypes; uses sex to establish intimacy;
- Dependent economically and/or emotionally;
- Socially isolated;
- Believes DV Myths-expects and accepts responsibility for abuse

### Effects of DV on Victim-cont.

- PTS Symptoms-cont.  
Impaired relationships with others; impaired value system-meanings of love, commitment and safety are skewed; increased thoughts of suicide; impaired short and long term memory; depression, anxiety, irritability.

### Characteristics of Battered Women-cont.

- Believes that no one can help her resolve situation;
- Fears change, but hopes for change;
- Accepts fate/situation to protect children

### Effects of DV on Children

- A Child's observation of abuse against a parent is considered abuse of the Child under the DVPA. FC 3011.
- In those cases in which the parents claimed that the child never heard DV (arguing, phys. abuse, threats) those children (now adults in the study) reported in 85% of the cases reviewed that they knew what was happening.

Univ's of Texas and Ariz. (2008)

### Effects of DV on Children [U.S. Dept. Health]

- High rate of internalization: depression, anxiety, social withdrawal;
- Lower self-esteem and self-efficacy;
- Low social competence-fewer interests or social activities;
- Higher rate of externalizing behavior (acting out)-aggressiveness, hyperactivity, anger mngmt problems;

### DV Myths

#### \* 90-95% of DV is Men against Women

Fact: Nat'l Institute of Justice, DOJ, and CDC estimates 1.5 million women and 835,000 men are DV victims each year. Men were DV victims 38% of the time per major U.S., Canada and Great Britain studies.

### Effects of DV on Children-cont.

- Irritability, agitation, trouble concentrating, exaggerated/startled responses;
- Truancy, poor grades, suspensions, expulsions, behavioral problems;
- Physical problems-asthma, muscle and stomach problems;

### DV Myths-cont.

#### \* In some States, Men have a right to discipline their partners for misbehaving; and Battering is not a crime.

- Fact: DV is a crime in every State in the U.S.

### Effects of DV on Children-cont.

- Higher propensity for violent behavior;
- Greater incidences of suicide attempts;
- Greater likelihood of committing sexual assault crimes; abusing drugs or alcohol;
- Regressive behavior-bedwetting, thumb sucking;
- Guilt, fear, confusion, depression.

### DV Myths-cont.

#### \* DV by Women against Men is not serious.

- Fact: Per the DOJ/CDC National Violence Against Women 2000 survey, 10.8% of women vs. 4.1% of men used a knife on their victim. 21.6% of male victims were threatened with a knife; 12.7% of women victims were threatened with a knife.

### DV Myths-cont.

\* **Almost all of physical/violent DV by Women is in self-defense.**

- Fact: DOJ/CDC survey of 1,000 women showed 20% had initiated the violence.
- Of those, reason for the violence: 44% wanted to gain Partner's attention; 43% felt Partner not listening; 38% felt Partner verbally abusive.

### Warning Signs of an Abuser-cont.

- Threatens violence, then dismisses threat as not meaning it or "everyone talks like that";
- Sudden mood swings;
- Admits prior DV but insists not their fault.

### Warning Signs of an Abuser

- Pushes for exclusive commitment immediately;
- Excessively jealous/possessive;
- Controlling-interrogates intensely;
- Unrealistic expectations –expects perfect Partner to meet every need;
- Isolates-may deprive of a phone or car;
- Blames others for problems/mistakes;
- Cruel to animals and/or children;

### Why Victims Stay

- Economic dependence;
- For the children-need other parent;
- Family Pressure to stay together;
- Fear of being alone;
- Loyalty-this is a sickness, "I'd stay if he had cancer wouldn't I";
- Feels sorry for Abuser-bad childhood;
- Rescue complex-Abuser can be saved;

### Warning Signs of an Abuser-cont.

- Others are responsible for Abuser's feelings ("You make me angry" vs. "I am angry");
- Easily insulted (claims "hurt" when really "mad");
- Use of force during sex:
- Degrades, criticizes;
- Rigid view of gender roles;

### Why Victims Stay-cont.

- Fear Abuser will commit suicide;
- Denial-"He/She is not so bad";
- Love-very loving when not abusive;
- Duty-'till death do us part;
- Guilt-victim is the cause of problems;
- Responsibility-up to victim to work things out;
- Shame/Humiliation/Embarrassment



### Why Victims Stay-cont.

- Security-believes that they can live “happily ever after”;
- Identity-needs Partner to be complete;
- For Protection of children;
- Afraid-threat to kill if victim leaves;
- Low Self Esteem-Will never find anyone better;
- Gender conditioned-that’s how they are.

### FC 3044 Presumption-cont.

- Applies when “Finding” of DV has occurred within the last 5 years that Party seeking custody has committed a DV crime against another falling under FC 6211, or has committed DV under the DVPA . FC 3044(d).
- If Presumption not rebutted, sole physical and legal custody must be awarded to other parent.

### The FC 3044 Presumption

- Rebuttable Presumption that upon DV Finding, award of sole or joint physical or legal custody of a child to the perpetrator is detrimental to the best interests of the Child under FC 3011. Presumption may only be rebutted by a preponderance of the evidence. FC 3044 (a).

### The 3044 Presumption-cont.

- In determining whether Presumption is rebutted, Court *shall* consider:
- Child’s best interests [but frequent and continuing contact preference under FC 3040 *may not* be used to rebut];
- Perp successful completion of BIP, Parenting Class, Drug/Alcohol counseling/classes;

### FC 3044 Presumption-cont.

- Applies to someone who has been found to have “perpetrated domestic violence” defined as having been found by the Court to have intentionally or recklessly caused, or attempted to cause: bodily inj, sex assault, victim in reas. apprehension of imminent serious bodily injury to victim or another, threatening, harassing, striking, disturbing the peace

### 3044 Presumption Rebuttal-cont.

- Complied w/probation/parole terms;
  - Complied w/ROAH terms;
  - Committed any further DV acts;
- FC 3044 (b).
- But best interests of the Child is always the ultimate default standard, as defined by FC 3011.

