

SPECIAL REPORT

An Epidemic of Civil Rights Abuses: Ranking of States' Domestic Violence Laws



P.O. Box 1221
Rockville, MD 20849
www.saveservices.org

Passage of the Violence Against Women Act in 1994 spawned the enactment of 1,500 state-level laws.¹ Many of these laws have raised concerns about civil liberties violations of persons falsely accused of domestic violence. This case involving a sitting judge illustrates the problem:

Judge Rucker Smith of Sumter County, Georgia, had a 17-month romantic relationship with Rachel Oliver. During a visit to her home on July 31, 2005, he learned of her relationship with another man, at which point he announced, "I'm outta here." But as he tried to leave her home, an angered Oliver blocked him and bit his leg. When he managed to escape, the now-vindictive woman called the police. Judge Smith was charged with three counts of battery.

Following a short trial in May 2006, Judge Smith was acquitted. Speaking to the news media afterwards, he explained, "For someone to falsely accuse another out of anger and vengeance silences the voices of the many real victims."²

Laws that mandate arrest can lead to incidents like the following:

Former New England Patriots linebacker Ted Johnson was arrested on July 16, 2006 for allegedly assaulting his wife. But a week later, his wife had a different story to tell: "My husband, I adore him, and, it was my fault," explained Jackie Johnson. "It breaks my heart to think I would be responsible with one emotional, irresponsible call in destroying this beautiful man's reputation."

These violations of civil rights involve both civil and criminal law:

- Each year the 2–3 million temporary restraining orders (sometimes called protective orders) issued under civil law have the effect of summarily vacating the respondent from his (or her) home and severely restricting his contact with his children. Half of these restraining orders do not involve even an allegation of violence.³
- Forty-one states and the District of Columbia have enacted criminal laws that encourage or require the arrest of persons who allegedly engage in domestic violence or violate a restraining order.⁴ These laws pressure law enforcement personnel to make arrests for even minor offenses and to curtail traditional considerations of probable cause.

This Special Report identifies the states with laws that are most likely to violate the civil rights of persons accused of domestic violence.

Presentation of Findings

This Report features information compiled in previous RADAR Special Reports and from other documents. The information is presented in five tables.

AN EPIDEMIC OF CIVIL RIGHTS ABUSES:
RANKING OF STATES' DOMESTIC VIOLENCE LAWS

Table 1. Open-Ended Definitions of Domestic Violence

The information in this table comes from the RADAR Special Report, “Expanding Definitions of Domestic Violence, Vanishing Rule of Law,”⁵ which analyzes the civil definitions of domestic violence. The report probes whether the definition of assault includes psychological criteria such as fear, and if the statutory definition of domestic violence encompasses harassment and stalking, offenses that are vaguely-defined and difficult to refute.

The presence of such laws in each state is indicated in columns 1, 2, and 3. Two points are assigned for each type of law.

Table 2. Incentives to Make False Allegations

The RADAR Special Report, “Perverse Incentives, False Allegations, and Forgotten Children,”⁶ provides the information contained in Table 2. The Report summarizes the remedies that are allowable under civil domestic violence laws, as well as how allegations or findings of abuse are considered in child custody decisions.

Statutes that list from one to four remedies are assigned a value of 1 point, and statutes with five or more remedies are assigned 2 points (column 1). States that require courts to consider evidence of domestic violence as a best-interest consideration in child custody decisions are weighted with 1 point (column 2). States that view an allegation or finding of partner abuse as the basis for a rebuttable presumption against joint custody are assigned 2 points (column 3).

Table 3. Domestic Violence Arrest Laws

Pro-arrest and mandatory arrest laws violate civil liberties because they override constitutional considerations of probable cause. Primary aggressor laws, which rely on arbitrary criteria such as the person’s size and “likelihood of future violence” are tantamount to gender profiling.

The information on pro-arrest and mandatory arrest (columns 1 and 2) was obtained from a compilation by the Institute for Law and Justice.⁷ The information on mandatory arrest for violation of a restraining order (column 3) and primary aggressor laws (column 4) is based on information from an article by Hirschel and Buzawa.⁸

Pro-arrest laws count as 1 point (column 1). Because statutes on mandatory arrest for domestic violence (column 2), mandatory arrest for violation of a restraining order (column 3), and primary aggressor (column 4) represent greater infringements on persons’ civil liberties, each of these three laws is assigned 2 points.

Table 4. Harmfulness of Domestic Violence Laws, by State

The total points from Tables 1, 2, and 3 are listed in columns 1, 2, and 3, respectively. For each jurisdiction, these numbers are added together and entered in column 4. Each jurisdiction is then ranked from 1 to 51 (column 5) (the inclusion of the District of Columbia is the reason there are 51 entries). The states are listed in alphabetical order.

Table 5. Harmfulness of Domestic Violence Laws, by Rank

Using the information contained in Table 4, Table 5 organizes the order of the states by their ranking. The state with the most harmful DV laws (Alaska) is listed first; the state with the least harmful laws (Connecticut) appears last.

States Most Likely to Violate Civil Rights

Scores range from 2 to 15 (out of a possible range of 0 to 18), which reveals considerable variation in the states' domestic violence laws. Those states are categorized into five groups:

1. *Low Risk:* No states have scores of 0 or 1.
2. *Some Risk:* Six states—Connecticut, Hawaii, Idaho, Nebraska, Vermont, and Wyoming—have scores of 2 to 4, which means that their DV laws carry some risk of violating persons' civil rights.
3. *Moderate Risk:* Twelve states—Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maryland, Minnesota, Oklahoma, and Texas—have scores of 5 to 7, meaning that their DV laws have moderate risk of civil rights violations.
4. *High Risk:* Twenty-six jurisdictions—Alabama, Arizona, Colorado, District of Columbia, Iowa, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Montana, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Washington, Wisconsin, and West Virginia—have scores of 8 to 11, putting them in the high risk section.
5. *Extremely High Risk:* Seven states—Alaska, California, Missouri, New Hampshire, New Jersey, New York, and Virginia—have scores of 12 to 15, placing them in the extremely high risk category.

It should be noted that law enforcement practices, prosecution policies, and judicial discretion influence the ways in which a law is interpreted and applied. Thus, although a state may be listed in the moderate risk category here, judicial education programs, legislative initiatives, or other state-specific factors may, in actuality, cause that state to fall into a lower or higher risk group.

False Allegations End up Hurting Real Victims

State domestic violence laws represent a breach of rudimentary notions of respect for civil liberties, for the following six reasons:

1. Domestic violence laws are defined and interpreted so broadly that almost any action, verbal or physical, can be construed to fall within their purview.⁹
2. Judges typically accept the petitioner's allegations at face value without weighing the evidence or requiring any verification, especially if the petitioner makes claims like "I'm fearful for my safety." As one legal expert admitted, "With child abuse and spouse abuse you don't have to prove anything. You just have to accuse."¹⁰
3. Restraining orders are usually issued on an *ex parte* basis, which eliminates the ability of the respondent to refute the allegations at the time they are made.
4. In most states, only a preponderance of evidence—the weakest standard of proof—is needed to reach a finding in favor of the petitioner.
5. The consequences for the alleged abuser, especially loss of contact with his own children, are disproportionate to the nature of the offense and often devastating to the parent.
6. Thirty-three states now require arrest when a restraining order has been violated,¹¹ a policy that violates one of the bedrock principles of Anglo-American criminal law—that a jury trial must precede incarceration.

These civil rights violations are compounded when a restraining order that only alleges *partner* abuse is allowed to be introduced into a determination for child custody.

Many have observed that allegations of domestic violence are often made during a divorce proceeding in which there is no prior history of violence between the partners.^{12,13,14} "A significant percentage of domestic violence occurs during litigated divorces in families who never had a history of it," notes one divorce attorney.¹⁵

This concern has been expressed elsewhere:

- Elaine Epstein, former president of the Massachusetts Bar Association, once castigated her fellow attorneys, saying, "Everyone knows that restraining orders and orders to vacate are granted to virtually all who apply... In many cases, allegations of abuse are now used for tactical advantage."¹⁶
- A recent article in the *Illinois Bar Journal* referred to legal allegations of abuse as "part of the gamesmanship of divorce."¹⁷
- In California, the State Bar admits it is concerned that protective orders are "almost routinely issued by the court in family law proceedings even when there

SAVE: STOP ABUSIVE AND VIOLENT ENVIRONMENTS

is relatively meager evidence and usually without notice to the restrained person ... it is troubling that they appear to be sought more and more frequently for retaliation and litigation purposes.”¹⁸

This Special Report opened with the case of Judge Rucker Smith of Georgia, accused of assaulting his girlfriend and later acquitted by the jury. In his comments to media representatives, the judge voiced this concern: *“For someone to falsely accuse another out of anger and vengeance silences the voices of the many real victims.”*

So laws that promote the filing of false allegations and flood the system with minor complaints do not contribute to solving the problem of partner abuse. They only end up hurting the real victims of domestic violence.

AN EPIDEMIC OF CIVIL RIGHTS ABUSES:
RANKING OF STATES' DOMESTIC VIOLENCE LAWS

Table 1. Open-Ended Definitions of Domestic Violence

State	Definition of Assault Includes Emotional Criteria? (Yes = 2)	Definition of DV Includes Harassment? (Yes = 2)	Definition of DV Includes Stalking? (Yes = 2)	Total
Alabama		Yes	Yes	4
Alaska	Yes	Yes	Yes	6
Arizona		Yes	Yes	4
Arkansas	Yes			2
California	Yes	Yes		4
Colorado			Yes	2
Connecticut				0
Delaware	Yes			2
District of Columbia			Yes	2
Florida			Yes	2
Georgia			Yes	2
Hawaii	Yes			2
Idaho				0
Illinois		Yes		2
Indiana	Yes			2
Iowa			Yes	2
Kansas				0
Kentucky	Yes			2
Louisiana			Yes	2
Maine	Yes	Yes		4
Maryland	Yes			2
Massachusetts	Yes			2
Michigan	Yes	Yes	Yes	6
Minnesota	Yes			2
Mississippi	Yes			2
Missouri	Yes	Yes		4
Montana	Yes		Yes	4
Nebraska				0
Nevada		Yes	Yes	4
New Hampshire	Yes	Yes	Yes	6
New Jersey		Yes	Yes	4
New Mexico	Yes	Yes	Yes	6
New York		Yes	Yes	4
North Carolina	Yes	Yes	Yes	6
North Dakota	Yes		Yes	4

SAVE: STOP ABUSIVE AND VIOLENT ENVIRONMENTS

Ohio	Yes			2
Oklahoma		Yes	Yes	4
Oregon	Yes			2
Pennsylvania	Yes	Yes		4
Rhode Island	Yes			2
South Carolina				0
South Dakota	Yes			2
Tennessee	Yes			2
Texas	Yes			2
Utah	Yes			2
Vermont	Yes			2
Virginia	Yes		Yes	4
Washington	Yes		Yes	4
West Virginia	Yes	Yes		4
Wisconsin			Yes	2
Wyoming	Yes			2
TOTAL	32	17	22	

AN EPIDEMIC OF CIVIL RIGHTS ABUSES:
RANKING OF STATES' DOMESTIC VIOLENCE LAWS

Table 2. Incentives to Make False Allegations

State	Number of Remedies Allowable (1-4 = 1; ≥5 = 2)	Court Must Consider Evidence of DV/ Best Interest of the Child (Yes = 1)	Rebuttable Presumption Against Joint Custody (Yes = 2)	Total
Alabama	1		Yes	3
Alaska	7	Yes		3
Arizona	1		Yes	3
Arkansas	2		Yes	3
California	7		Yes	4
Colorado	1	Yes		2
Connecticut	0			0
Delaware	9		Yes	3
District of Columbia	2		Yes	4
Florida	0		Yes	2
Georgia	2	Yes		2
Hawaii	0		Yes	2
Idaho	1		Yes	3
Illinois	8	Yes		3
Indiana	7	Yes		3
Iowa	1		Yes	3
Kansas	3	Yes		2
Kentucky	0	Yes		1
Louisiana	3		Yes	3
Maine	6	Yes		3
Maryland	0	Yes		1
Massachusetts	9		Yes	4
Michigan	0	Yes		1
Minnesota	1		Yes	3
Mississippi	8		Yes	4
Missouri	7		Yes	4
Montana	2	Yes		2
Nebraska	1	Yes		2
Nevada	1		Yes	3
New Hampshire	8	Yes		3
New Jersey	14	Yes		3
New Mexico	5	Yes		3
New York	4	Yes		2
North Carolina	2	Yes		2

SAVE: STOP ABUSIVE AND VIOLENT ENVIRONMENTS

North Dakota	2		Yes	3
Ohio	4	Yes		2
Oklahoma	1		Yes	3
Oregon	2		Yes	3
Pennsylvania	10	Yes		3
Rhode Island	0	Yes		1
South Carolina	2	Yes		2
South Dakota	0		Yes	2
Tennessee	1	Yes		2
Texas	2		Yes	3
Utah	2	Yes		2
Vermont	0	Yes		1
Virginia	1	Yes		2
Washington	3			1
West Virginia	5			2
Wisconsin	1		Yes	3
Wyoming	1	Yes		2
TOTAL	Average = 3.1	26	23	

AN EPIDEMIC OF CIVIL RIGHTS ABUSES:
RANKING OF STATES' DOMESTIC VIOLENCE LAWS

Table 3. Domestic Violence Arrest Laws

State	Pro-Arrest for Domestic Violence (Yes = 1)	Mandatory Arrest for Domestic Violence (Yes = 2)	Mandatory Arrest for Violation of Restraining Order (Yes = 2)	Primary Aggressor Law (Yes = 2)	Total
Alabama				Yes	2
Alaska		Yes	Yes	Yes	6
Arizona		Yes			2
Arkansas	Yes				1
California	Yes		Yes	Yes	5
Colorado		Yes	Yes	Yes	6
Connecticut		Yes			2
Delaware			Yes		2
District of Columbia		Yes			2
Florida	Yes			Yes	3
Georgia				Yes	2
Hawaii					0
Idaho					0
Illinois					0
Indiana					0
Iowa		Yes	Yes	Yes	6
Kansas		Yes	Yes		4
Kentucky			Yes		2
Louisiana		Yes	Yes		4
Maine		Yes	Yes		4
Maryland			Yes	Yes	4
Massachusetts	Yes		Yes		3
Michigan	Yes				1
Minnesota			Yes		2
Mississippi		Yes	Yes		4
Missouri			Yes	Yes	4
Montana	Yes			Yes	3
Nebraska			Yes		2
Nevada		Yes		Yes	4
New Hampshire			Yes	Yes	4
New Jersey		Yes	Yes	Yes	6
New Mexico			Yes		2
New York		Yes	Yes	Yes	6
North Carolina			Yes		2
North Dakota	Yes		Yes		3

SAVE: STOP ABUSIVE AND VIOLENT ENVIRONMENTS

Ohio		Yes		Yes	4
Oklahoma					0
Oregon		Yes	Yes	Yes	6
Pennsylvania			Yes		2
Rhode Island		Yes	Yes	Yes	6
South Carolina		Yes	Yes	Yes	6
South Dakota		Yes	Yes	Yes	6
Tennessee	Yes		Yes	Yes	5
Texas			Yes		2
Utah		Yes	Yes	Yes	6
Vermont					0
Virginia		Yes	Yes	Yes	6
Washington		Yes	Yes	Yes	6
West Virginia			Yes		2
Wisconsin		Yes	Yes	Yes	6
Wyoming					0
TOTAL	8	22	33	24	

AN EPIDEMIC OF CIVIL RIGHTS ABUSES:
RANKING OF STATES' DOMESTIC VIOLENCE LAWS

Table 4. Harmfulness of Domestic Violence Laws, by State

State	Definition of Domestic Violence (Table 1)	Incentives to Make False Allegations (Table 2)	Arrest Laws (Table 3)	Total (Sum of columns 1, 2, and 3)	Ranking
Alabama	4	3	2	9	27
Alaska	6	3	6	15	51
Arizona	4	3	2	9	27
Arkansas	2	3	1	6	11
California	4	4	5	13	49
Colorado	2	2	6	10	34
Connecticut	0	0	2	2	1
Delaware	2	3	2	7	15
District of Columbia	2	4	2	8	21
Florida	2	2	3	7	15
Georgia	2	2	2	6	11
Hawaii	2	2	0	4	5
Idaho	0	3	0	3	2
Illinois	2	3	0	5	8
Indiana	2	3	0	5	8
Iowa	2	3	6	11	41
Kansas	0	2	4	6	11
Kentucky	2	1	2	5	8
Louisiana	2	3	4	9	27
Maine	4	3	4	11	41
Maryland	2	1	4	7	15
Massachusetts	2	4	3	9	27
Michigan	6	1	1	8	21
Minnesota	2	3	2	7	15
Mississippi	2	4	4	10	34
Missouri	4	4	4	12	46
Montana	4	2	3	9	27
Nebraska	0	2	2	4	5
Nevada	4	3	4	11	41
New Hampshire	6	3	4	13	49
New Jersey	4	3	6	13	49
New Mexico	6	3	2	11	41
New York	4	2	6	12	46
North Carolina	6	2	2	10	34
North Dakota	4	3	3	10	34
Ohio	2	2	4	8	21

SAVE: STOP ABUSIVE AND VIOLENT ENVIRONMENTS

Oklahoma	4	3	0	7	15
Oregon	2	3	6	11	41
Pennsylvania	4	3	2	9	27
Rhode Island	2	1	6	9	27
South Carolina	0	2	6	8	21
South Dakota	2	2	6	10	34
Tennessee	2	2	5	9	27
Texas	2	3	2	7	15
Utah	2	2	6	10	34
Vermont	2	1	0	3	2
Virginia	4	2	6	12	46
Washington	4	1	6	11	41
West Virginia	4	2	2	8	21
Wisconsin	2	3	6	11	41
Wyoming	2	2	0	4	5

AN EPIDEMIC OF CIVIL RIGHTS ABUSES:
RANKING OF STATES' DOMESTIC VIOLENCE LAWS

Table 5. Harmfulness of Domestic Violence Laws, by Rank

State	Definition of Domestic Violence (Table 1)	Incentives to Make False Allegations (Table 2)	Arrest Laws (Table 3)	Total (Sum of columns 1, 2, and 3)	Ranking
Alaska	6	3	6	15	51
California	4	4	5	13	49
New Hampshire	6	3	4	13	49
New Jersey	4	3	6	13	49
Missouri	4	4	4	12	46
New York	4	2	6	12	46
Virginia	4	2	6	12	46
Iowa	2	3	6	11	41
Maine	4	3	4	11	41
Nevada	4	3	4	11	41
New Mexico	6	3	2	11	41
Oregon	2	3	6	11	41
Washington	4	1	6	11	41
Wisconsin	2	3	6	11	41
Colorado	2	2	6	10	34
Mississippi	2	4	4	10	34
North Carolina	6	2	2	10	34
North Dakota	4	3	3	10	34
South Dakota	2	2	6	10	34
Utah	2	2	6	10	34
Alabama	4	3	2	9	27
Arizona	4	3	2	9	27
Louisiana	2	3	4	9	27
Massachusetts	2	4	3	9	27
Montana	4	2	3	9	27
Pennsylvania	4	3	2	9	27
Rhode Island	2	1	6	9	27
Tennessee	2	2	5	9	27
District of Columbia	2	4	2	8	21
Michigan	6	1	1	8	21
Ohio	2	2	4	8	21
South Carolina	0	2	6	8	21
West Virginia	4	2	2	8	21
Delaware	2	3	2	7	15
Florida	2	2	3	7	15

SAVE: STOP ABUSIVE AND VIOLENT ENVIRONMENTS

Maryland	2	1	4	7	15
Minnesota	2	3	2	7	15
Oklahoma	4	3	0	7	15
Texas	2	3	2	7	15
Arkansas	2	3	1	6	11
Georgia	2	2	2	6	11
Kansas	0	2	4	6	11
Illinois	2	3	0	5	8
Indiana	2	3	0	5	8
Kentucky	2	1	2	5	8
Hawaii	2	2	0	4	5
Nebraska	0	2	2	4	5
Wyoming	2	2	0	4	5
Idaho	0	3	0	3	2
Vermont	2	1	0	3	2
Connecticut	0	0	2	2	1

References

- ¹ Miller N. What does research and evaluation say about domestic violence laws? A compendium of justice system laws and related research assessments. Alexandria, VA: Institute for Law and Justice, 2005, footnote 28.
<http://www.ilj.org/publications/dv/DomesticViolenceLegislationEvaluation.pdf>
- ² Hudson Z. Jury acquits Rucker Smith. *Americus Times-Recorder*, May 5, 2006.
http://www.americustimesrecorder.com/siteSearch/apstorysection/local_story_125003348.html
- ³ SAVE. Without restraint: The use and abuse of restraining orders. Rockville, MD: 2008.
<http://www.radarsvcs.org/docs/RADARreport-VAWA-Restraining-Orders.pdf>
- ⁴ Hirschel D and Buzawa E. Understanding the context of dual arrest with directions for future research. *Violence Against Women*, Vol. 18, December 2002, Table 1.
- ⁵ SAVE: Expanding definitions of domestic violence, Vanishing rule of law. Rockville, MD: 2008. <http://www.radarsvcs.org/docs/RADARreport-Vanishing-Rule-of-Law.pdf>
- ⁶ SAVE: Perverse incentives, false allegations, and forgotten children. Rockville, MD: 2008.
<http://www.radarsvcs.org/docs/RADARreport-Perverse-Incentives.pdf>
- ⁷ Miller N. What does research and evaluation say about domestic violence laws? A compendium of justice system laws and related research assessments. Alexandria, VA: Institute for Law and Justice, 2005. <http://www.ilj.org/publications/dv/DomesticViolenceLegislationEvaluation.pdf>
- ⁸ Hirschel and Buzawa. *Ibid*.
- ⁹ SAVE: Expanding definitions of domestic violence, Vanishing rule of law. Rockville, MD: 2008. <http://www.radarsvcs.org/docs/RADARreport-Vanishing-Rule-of-Law.pdf>
- ¹⁰ Zorn E. A seminar in divorce, down-and-dirty style. *Chicago Tribune*, November 4, 1988, p. 1.
- ¹¹ Hirschel D and Buzawa E. Understanding the context of dual arrest with directions for future research. *Violence Against Women*, Vol. 18, December 2002, Table 1.
- ¹² Cook P. *Abused Men: The Hidden Side of Domestic Violence*. Westport, CT: Praeger, 1997.
- ¹³ Young C. Hitting below the belt. *Salon.com*, October 25, 1999.
http://www.salon.com/mwt/feature/1999/10/25/restraining_orders/
- ¹⁴ McElroy W. Abuse of temporary restraining orders endangers real victims. *FoxNews.com*, December 27, 2005. <http://www.ifeminists.net/introduction/editorials/2005/1228.html>
- ¹⁵ Schoenberg D, quoted in Braver SL. *Divorced Dads: Shattering the Myths*. New York: Tarcher/Putnam, 1998, p. 240.
- ¹⁶ Epstein E. Speaking the unspeakable, *Massachusetts Bar Association Newsletter*, 1993.
- ¹⁷ Kasper T. Obtaining and defending against an order of protection. *Illinois Bar Journal*, June 2005. http://www.ancpr.org/obtaining_and_defending_against_.htm
- ¹⁸ Leving JM and Sacks G. Some progress for California fathers, but still a long way to go. *Ifeminists.net* July 5, 2006.
<http://www.ifeminists.net/introduction/editorials/2006/0705sacks.html>