

# Reference Point

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## Points of Interest:

- Physical and verbal abuse is present in approximately 74% of all cases
- Minor children witness violence to a parent in nearly 60% of all cases
- 85% of petitioners are exposed to prior acts of violence before filing a legal protective order
- Sole custody of a minor child to the non-offending parent occurs in about 35% of all cases

## Pilot Analysis:

### Child Visitation and Custody Concerns in Cases of Domestic Violence

As positive shifts in how the criminal justice system respond to victims become more apparent, so has the evolution of court protocol to increase confidence in its ability to assist victims of domestic violence. While there are many challenges to overcome, there are indications that courts are responding to the concerns of families by implementing internal protocols to assist in the safety of victims and children.



It appears that even when programs are not adequately funded to create family court divisions, judges, clerks, and court administrators take the appropriate steps and are cognizant of the needs of families entering the judicial system. The results of this study demonstrates that these practices add a sense of consistency

and increases confidence in the court system. The importance of such protocols is the overall reduction of conflicting orders from multiple courts. Additionally, the analysis reveals that sharing information between various levels of courts may be a key component in fostering effective communication and collaboration among judges and allow for better use of resources including local social service programs.

Finally this report reveals the court's shift towards mediation in Georgia and around the country. This process greatly impacts judicial caseloads. While this process adequately reduces the number of hearings necessary in courtrooms, it may be problematic for victims, particularly in cases with previous incidents of domestic violence and occurrences of child abuse.

## Purpose of Pilot

The purpose of this pilot is to review divorce proceedings with the underlying factor of domestic violence to determine the distribution of custody and visitation awards. A total of 92 cases were randomly selected using three specific criteria for the divorce proceeding:

- the presence of at least one minor child
- a documented act of

domestic violence (temporary protective order)

- specific dates of violence, filing, and disposition

Protective orders linking to divorce filings within a 12-month period by a corresponding party were used to determine two primary concerns:

- How courts award custody and visitation in

divorce cases when domestic violence is an underlying factor, particularly in cases where violence occurs in the presence of children or there is a co-occurrence of child abuse.

- To identify internal protocols and practices of courts to assist in ensuring victim safety and the best interest of a child witnessing domestic violence

*The information contained in this report applies specifically to the data collected to complete the pilot analysis. The results of this study should not be generalized to all jurisdictions, as it constitutes the results of specific observations for the courts selected. Every attempt has been made to ensure the information is presented objectively. Opinions presented are those of the Research Division and do not constitute the official position of the Administrative Office of the Courts, the Judicial Council or any specific court.*

## Overview of Findings

Previous Incidents of Domestic Violence	
prior acts	Response (%)
None	15.2
1-3	63.0
4-6	19.6
7-10	2.2

*Co-occurrences of child abuse are present in 13% of all cases of domestic violence against a non-offending parent.*

Research reveals that physical abuse or the combination of physical and verbal abuse is present in approximately 74% of all cases. Findings also reveal that children are present in nearly 60% of cases where victims sought a petition for protective orders. While a vast number of cases indicate the presence of a minor child during violent episodes, 13% of the cases identify co-

occurrences of child abuse.

Single acts of domestic violence seem to be a rarity. Approximately 85% of petitioners indicate being subjected to additional acts of violence prior to filing a legal protective order. In some cases, victims disclose filing multiple orders over a period of time prior to separation or divorce. In other cases, victims did not make a formal complaint to the courts.

Approximately 20% of all dismissals are done at the petitioner's request. In most cases of dismissal, the victim identified the offending parent as providing sole financial support for the family structure. In a miniscule number of cases the court denied orders of protection citing a lack of factual information to support the pending allegations or on the basis that no recent acts of violence had occurred.

## Custody Outcomes

The most common form of custody award in cases involving domestic violence is joint legal custody (46 percent). Approximately 60% of all cases grant legal custody to both the victim and the offending party. Sole custody award of a minor child to a non-offending parent occurs in only about 35% of all cases. In some instances, special provisions are made in the determination of custody for multiple minor children. For in-

stance, one custody determination awarded physical custody of a female minor child to the mother and physical custody of the male minor child to the father.

Awards to the non-offending parent are almost always granted primary physical custody. This is true in more than 90% of all custody determinations. In about 4% of cases alternative provisions for primary

custody of the minor children are awarded. In such cases, primary physical custody awards are made to an immediate relative. Usually this provision is the result of alcohol or other substance abuse concerns.

It is also noteworthy to mention that primary physical custody to an offending parent is not an impossibility, but to the court's credit such cases appear to be rare.

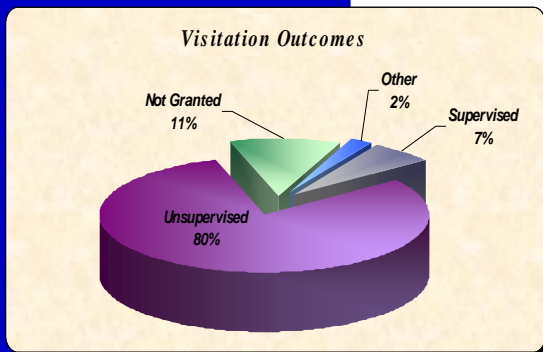
## Visitation Determination

Nearly 85% of all the cases indicate progressive acts of violence, ranging from 1 to 10 previous incidents. 60% of such cases occur in the presence of a child. Despite these factors, only about 12% of

cases result in denial of visitation rights.

In this study, it appears that visitation is usually granted to the offending parent, and in most cases, the offending party assumes this privilege unsupervised. This consistent outcome may be associated with the court's desire to continue a sense of structure and family time for children coping with losing the traditional family struc-

ture. It also appears to be a commitment to maintain parental connections by offering liberal visitation rights. According to the data, unsupervised visitation is common in about 80% of all cases. Comprehensive analysis of cases reflect that parents who commit acts of violence while children are present or perpetrate abuse to a child are highly likely to receive unsupervised visitation.



## Mediation

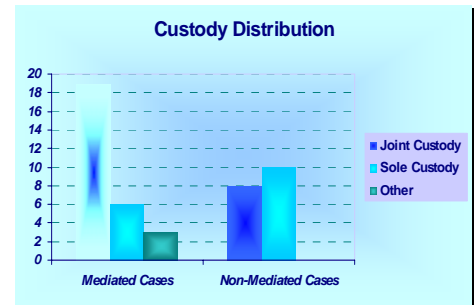
The use of mediation programs is a current trend in family law. However, the process can be problematic in cases of domestic violence as the notion of equal bargaining power can often be imbalanced based on the stronghold of power present in most violent relationships. In addition, the nonviolent parent more often than not has fewer financial resources to pay for legal representation as the primary aggressor is often times the sole financial contributor for the family.

Findings indicate that approxi-

mately 61% of all cases complete mediation to reach a final settlement. Findings reveal that cases entering mediation are more likely to result in joint legal and joint physical custody. More specifically, in about 62% of cases where children are present during violence, settlement agreements establish joint legal and joint physical custody. The non-offending parent is granted sole custody in only about 23% of such settlements. About 43% of the cases not entering mediation result in joint custody and about 57% of non-mediated cases result in sole custody to

the non-offending parent.

Cases settled through mediation are most likely to grant unsupervised visitation. Nearly 90% of mediated settlements agree to unsupervised visitation. Many of these cases include a child witnessing an act of violence to a parent or experiencing a co-occurrence of abuse.



## Practices of the Court

### “ONE FAMILY – ONE JUDGE” THEORY IN PRACTICE

It is not uncommon for a family to have multiple cases, pending in multiple courts, before multiple judges. Therefore it is important to highlight practices that utilize internal protocols to increase the efficiency of adjudicating family law cases. This is also important as it illustrates that courts are cognizant of the concerns affecting families entering the judicial system. In at least two of the courts where information was obtained, there appears to be a clear indication that the idea of “one family, one

judge” is operational. All corresponding cases with the courts indicate the same judge assignment for orders of protection and the divorce filings requiring custody and visitation determination.

This trend is important to identify as it clearly illustrates that many courts, even when not funded, have taken measurable steps to implement internal procedures that make the process of justice fair and equitable to families. The process of assigning all cases involving the same family to one judge assists judicial officials in making more

informed decisions based on comprehensive and current information. This protocol also offers a sense of consistency and increases confidence in the court by reducing the number of conflicting orders. This is particularly true for victims of violence, as individual safety and the well-being of minor children are paramount. In addition, the administration of this practice helps both the judge and the family establish a person-to-person rapport that improves the likelihood of reaching more equitable resolutions.

***“The process of assigning all cases involving the same family to one judge increases confidence in the court by reducing the number of conflicting orders”.***

### MAINTAINING STABILITY AND SHARING INFORMATION

Some courts create innovative ways to handle caseloads for family violence concerns, which include administering protective orders through a magistrate court judge. This process greatly impacts the court’s ability to handle overwhelming numbers of filings for such orders. In an effort to ensure that such cases are given appropriate attention as subsequent

cases regarding the same family are filed, most file jackets include a judge’s note page. Clerks attach this page to the file to disclose pertinent information in addition to the allegations indicated by the order of protection. The notes include information regarding prior arrests for family violence, pending warrants, and asks for information concerning child related court proceedings or divorce cases currently pending.

The practice of identifying additional information contributes to ensuring safety for the victim and minor children. Sharing of information in this manner may facilitate collaboration and communication.

In theory and in practice, this process may allow for more efficient use of court resources, reduce the number of court appearances necessary by the family, and allow for quicker dispositions

## Summary Note:

As local courts move forward in the administration of justice, it is clear that ensuring the safety of victims and their children will continue to be of great concern, even as parties seek legal separation. Insofar as this concern will

remain, courts across the state will continue to evolve and establish internal protocols to address the concerns of victims of domestic violence and the children who witness such abuse.

<sup>1</sup> Georgia's Family Act, 1994 amendments of Code Sections 19-13-3 to 19-13-4. 11Ga. St. U.L. Rev 180 (1994)

<sup>2</sup> United States Department of Health and Human Services, Administration for Children and Families, <http://nccanch.acf.hhs.gov>

<sup>3</sup> Georgia Ann. § 16-5-70 (WESTLAW through 2000 General Assembly )

Files examined from Clayton, DeKalb, Cobb, and Gwinnett County Georgia.

<sup>4</sup> "Joint custody" means joint legal custody, joint physical custody, or both. "Joint legal custody" means both parent s have equal right and responsibilities for major decisions concerning the child, including the child's education, health care, and religious training,. Law provides that the court may designate one parent to have sole power to make certain decisions while both parent retain equal rights and responsibilities for other decisions.

<sup>5</sup> "Sole custody" means a person, including, but not limited to, a parent, has been awarded permanent custody of a child by a court order. A person who has not been awarded custody of a child by the court shall not be considered as the sole legal custodian while exercising visitation rights.

### For More Information:

National Center for State Courts

[www.ncsconline.org](http://www.ncsconline.org)

Office For Violence Against Women

[www.ojp.usdoj.gov/vawo](http://www.ojp.usdoj.gov/vawo)

National Criminal Justice  
Reference Service

[www.ncjrs.org](http://www.ncjrs.org)

State Justice Institute

[www.statejustice.org](http://www.statejustice.org)

National Council of Juvenile and  
Family Court Judges

[www.ncjfcj.org](http://www.ncjfcj.org)

American Bar Association  
Commission on Family Violence

[www.abanet.org/domviol](http://www.abanet.org/domviol)

***Reference Point was created as a resource to publish research findings affiliated with court programs, judicial projects and independent studies preformed by the Research Division. Official caseload reports will continue to be published in "The Work of Georgia's Courts". All questions or official requests for information should be directed to the Administrative Office of the Court's Research Division by phone at 404.656.6412 or by email at AOCResearchGroup@gaaoc.us.***

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