

## REBUTTABLE PRESUMPTION\* STATES

**\*Rebuttable presumption that sole or joint physical custody or legal custody is not in the best interests of the child and should not be awarded to the perpetrator of domestic violence, unless otherwise noted.**

STATE	STATUTE	STANDARD OF PROOF	DOMESTIC VIOLENCE DEFINITION	STANDARD OF PROOF TO REBUT
Alabama	§ 30-3-131 § 30-3-133	A determination by the court that domestic or family violence has occurred.	An incident resulting in the abuse, stalking, assault, harassment, or the attempt or threats thereof. (§ 30-3-130)	Once a trial court determines that domestic or family violence has occurred, the court cannot consider awarding joint custody of a child to the perpetrator unless he or she has clearly rebutted the presumption against joint custody.  <u>Jackson v. Jackson</u> , 709 So. 2d 46, 48 (Ala. Civ. App. 1997).
Alaska	§ 25.24.150	A history of perpetrating domestic violence against the other parent, child, or domestic living partner. History is defined as one incident of domestic violence	One or more of the following offenses or an offense under law or ordinance of another jurisdiction having elements similar to these offenses, or an attempt	A preponderance of the evidence that the perpetrating parent successfully completed an intervention program for batterers, where reasonably available; the

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		where the parent caused serious physical injury or a finding that the parent engaged in more than one incident of domestic violence.	to commit the offense, by a household member against another household member: a crime against the person; burglary; criminal trespass; arson or criminally negligent burning; criminal mischief; terrorist threatening; violating a protective order; and harassment. (§ 18.66.990)	perpetrating parent does not engage in substance abuse; and the best interests of the child require the perpetrating parent's participation as a custodial parent because the other parent is absent, suffers from a diagnosed mental illness that affects parenting abilities, or engages in substance abuse that affects parenting abilities.
Arizona	§ 25-403.03	A determination that an act of domestic violence was committed.  If the court makes a finding of the existence of significant domestic violence pursuant to §	Intentionally, knowingly, or recklessly causing or attempting to cause sexual assault or serious physical injury; placing a person in reasonable apprehension of imminent serious	The court shall consider all of the following: whether the parent has demonstrated that being awarded sole custody or joint physical custody or legal custody is in the child's best interest;

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		13-3601, or finds by a preponderance of the evidence that there has been a significant history of domestic violence joint custody shall not be awarded.	physical injury to any person; or engaging in a pattern of behavior for which a court may issue an ex parte order to protect the other parent who is seeking child custody or to protect the child and the child's siblings.	whether the parent has successfully completed a program of alcohol or drug abuse counseling, if the court determines counseling is appropriate; whether the parent has successfully completed a parenting class, if the court determines a parenting class is appropriate; if the parent is on probation, parole, or community supervision, whether the parent is restrained by a protective order that was granted after a hearing; and whether the parent has committed any further acts of domestic violence.

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Arkansas	§ 9-13-101 § 9-15-215	A finding by a preponderance of the evidence that a parent engaged in a pattern of domestic abuse.	Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members; or any sexual conduct between family or household members, whether minors or adults, which constitutes a crime under the laws of this state. (§ 9-15-103)	The statute is silent on the standard of proof used to rebut the presumption.
California	Fam. Code § 3044	A finding that a party perpetrated domestic violence against the other party within the previous five years.	Intentionally or recklessly causing or attempting to cause bodily injury or sexual assault or placing a person in reasonable apprehension of imminent serious bodily	A preponderance of the evidence. The perpetrator must show: (1) that an award of sole or joint physical or legal custody is in the best interests of the child; however, the preference

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			injury to that person or another or engaging in any behavior involving, but not limited to, threatening, striking, harassing, destroying personal property or disturbing the peace of another.	for frequent and continuing contact with both parents may not be used to rebut the presumption in whole or in part; (2) successful completion of a batterer's treatment program, a program of alcohol or drug abuse, or parenting class (if appropriate); (3) compliance with the terms and conditions of probation or parole or a protective or restraining order; (4) that he or she is not restrained by a protective order or restraining order with its terms and conditions; and (5) that he or she has not committed any

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				further acts of domestic violence.
Delaware	tit. 13 § 705A	Evidence that a party is a perpetrator of domestic violence.	<p>Domestic violence includes threats or acts of physical or sexual abuse and any other offense against the person committed by one parent against the other, against any child living in either parent's home, or against any other adult living in the child's home.</p> <p>A perpetrator of domestic violence is an individual who has been convicted of committing:</p> <p>(1) Any felony level offense; (2) Assault in the third degree; (3)</p>	There have been no further acts of domestic violence and the perpetrator of domestic violence has: (1) successfully completed a program of evaluation and counseling designed specifically for perpetrators of family violence conducted by a public or private agency or a certified mental health professional; (2) successfully completed a program of alcohol or drug abuse counseling (if appropriate); and (3) demonstrated that giving custodial or residential responsibilities to the

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			Reckless endangering in the second degree; (4) Reckless burning or exploding; (5) Unlawful imprisonment in the second degree; (6) Unlawful sexual contact in the third degree; or (7) Criminal contempt of a Family Court protective order based on an assault or other physical abuse, threat of assault or other physical abuse or any other actions placing the petitioner in immediate risk or fear of bodily harm; or any comparable offense in another jurisdiction, against the child at issue in a custody or visitation	perpetrator is in the best interests of the child.

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			proceeding, against the other parent of the child, or against any other adult or minor child living in the home.	
District of Columbia	§ 16-914 § 16-831.08 (rebuttable presumption re: granting custody to a third party who has committed an intrafamily offense)	A preponderance of the evidence that an intrafamily offense occurred.	Intrafamily offense means interpersonal, intimate partner, or intrafamily violence. (§ 16-1001) Interpersonal violence means an act punishable as a criminal offense that is committed or threatened to be committed by an offender upon a person with whom the offender shares or has shared a mutual residence or who is or was married to, in a domestic partnership with, divorced or	The party found to have committed an intrafamily offense has the burden of proving that visitation will not endanger the child or significantly impair the child's emotional development.

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			separated from, or in a romantic, dating, or sexual relationship with another person who is or was married to, in a domestic partnership with, divorced or separated from, or in a romantic, dating, or sexual relationship with the offender. (§ 16-1001) Intimate partner violence means an act punishable as a criminal offense that is committed or threatened to be committed by an offender upon a person to whom the offender is or was married; with whom the offender is or was in a domestic	

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			partnership; or with whom the offender is or was in a romantic, dating, or sexual relationship. (§ 16-1001) Intrafamily violence means an act punishable as a criminal offense that is committed or threatened to be committed by an offender upon a person to whom the offender is related by blood, adoption, legal custody, marriage, or domestic partnership, or with whom the offender has a child in common. (§ 16-1001)	
Florida	§ 61.13	Evidence that the parent has been convicted of a misdemeanor of the first	Any assault, aggravated assault, battery, aggravated battery,	The statute is silent on the standard of proof used to rebut the

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		degree or higher involving domestic violence.	sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by any other family or household member. (§ 741.28)	presumption.
Hawaii	§ 571-46	Evidence that family violence has been committed by a parent.	Defines family violence as the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense: attempting to cause or causing physical harm to another family or household member; placing a	The presumption may be rebutted by the introduction of any evidence which would support a finding of the presumption's nonexistence.  <u>Rezentes v. Rezentes</u> , 88 Haw. 200, 208, 965 P.2d 133, 141 (1998).

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			family or household member in fear of physical harm; or causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress. (§ 571-2)	
Idaho	§ 32-717B	Evidence that one of the parents is a habitual perpetrator of domestic violence.	The physical injury, sexual abuse, or forced imprisonment or threat thereof of a family or household member, or of a minor child by a person with whom the minor child has had or is having a dating relationship, or of an adult by a person with whom the adult has had or is having a dating relationship. (§ 39-6303)	The statute is silent on the standard of proof used to rebut the presumption.

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Iowa	§ 598.41	Evidence that a history of domestic violence exists.	Domestic abuse means committing assault as defined in section 708.1 (criminal statute) under any of the following circumstances: the assault is between family or household members who resided together at the time of the assault; the assault is between separated spouses or persons divorced from each other and not residing together at the time of the assault; the assault is between persons who are parents of the same minor child, regardless of whether they have been married or have lived together at any time; the assault is	The statute is silent on the standard of proof used to rebut the presumption.

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			between persons who have been family or household members residing together within the past year and are not residing together at the time of the assault; the assault is between persons who are in an intimate relationship or have been in an intimate relationship and have had contact within the past year of the assault.	
Louisiana	§ 9:364	Evidence that a history of perpetrating family violence exists. A history is defined as one incident of family violence that has resulted in serious bodily injury or more than one incident of	Family violence includes, but is not limited to, physical or sexual abuse and any offense against the person as defined in the Criminal Code of Louisiana, except negligent injuring and	A preponderance of the evidence that the perpetrator successfully completed a treatment program, is not abusing alcohol or drugs, and the best interests of the child requires the perpetrator's participation as a

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		domestic violence.	defamation, committed by one parent against the other parent or any of the children. Family violence does not include reasonable acts of self-defense utilized by one parent to protect himself or herself or a child in the family from family violence of the other parent. (§ 9:632)	custodial parent because of the other parent's absence, mental illness, or substance abuse. <i>The fact that the abused parent suffers from the effects of abuse shall not be grounds for denying that parent custody.</i>
Massachusetts	209C § 10 208 § 31A 209 § 38	A preponderance of the evidence that a pattern or serious incident of abuse has occurred.	Defines abuse as the occurrence of one or more of the following acts between a parent and the other parent or between a parent and child: attempting to cause or causing bodily injury or placing another in reasonable fear of imminent bodily injury.	A preponderance of the evidence that sole custody, shared legal custody, or shared physical custody with the abusive parent is in the best interests of the child.

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			Defines serious incident of abuse as the occurrence of one or more of the following acts between a parent and the other parent or between a parent and child: attempting to cause or causing serious bodily injury; placing another in reasonable fear of imminent serious bodily injury; or causing another to engage involuntarily in sexual relations by force, threat, or duress.	
Minnesota	§ 518.17	Evidence that domestic abuse occurred between the parents.	Domestic abuse means the following, if committed against a family or household member by a family or household member:	The statute is silent on the standard of proof used to rebut the presumption.

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			physical harm, bodily injury, or assault; the infliction of fear of imminent physical harm, bodily injury, or assault; or terroristic threats, criminal sexual conduct, or interference with an emergency call. (§ 518B.01)	
Mississippi	§ 93-5-24	A preponderance of the evidence that a parent has a history of perpetrating family violence. A history of perpetrating family violence is one incident of family violence that has resulted in serious bodily injury to, or a pattern of family violence against, the party making the	Family violence is not defined in the statutes. However, abuse is defined as the occurrence of one or more of the following acts between family or household members who reside together or who formerly resided together or between individuals who have a current dating	A preponderance of the evidence. The court must consider: whether the perpetrator has demonstrated that awarding the perpetrator sole or joint physical or legal custody is in the best interests of the child because of the other parent's absence, mental illness, or substance abuse; whether the

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		allegation or a family or household member of either party.	relationship: attempting to cause or intentionally, knowingly, or recklessly causing bodily injury or serious bodily injury with or without a deadly weapon; placing, by physical menace or threat, another in fear of imminent serious bodily injury; or criminal sexual conduct committed against a minor. (§ 93-21-3)	perpetrator has successfully completed a batterer's treatment program; whether the perpetrator has successfully completed a program of alcohol or drug abuse counseling (if appropriate); whether the perpetrator has successfully completed a parenting class (if appropriate); if the perpetrator is on probation or parole, whether the perpetrator is restrained by a protective order granted after the hearing and whether the perpetrator complied with its terms and conditions; and whether the perpetrator

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## REBUTTABLE PRESUMPTION\* STATES

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STATE	STATUTE	STANDARD OF PROOF	DOMESTIC VIOLENCE DEFINITION	STANDARD OF PROOF TO REBUT
				has committed any further acts of domestic violence.
Missouri	§ 455.050 (applies to custody in context of protective order; no similar presumption in general custody statute, § 452.375)	Evidence of abusive behavior by a parent.	Abuse is the occurrence of any of the following acts against a family or household member: assault; battery; coercion; harassment; sexual assault; or unlawful imprisonment. (§ 455.010)	The statute is silent on the standard of proof used to rebut the presumption.
Nevada	§ 125C.210** § 125C.220** § 125C.230 ** § 125.480** § 432B.157*** ** sole or joint custody *** sole or joint custody and visitation	§§ 125C.230, 125.480, 432B.157 = Clear and convincing evidence that either parent or any other person seeking custody of a child has engaged in one or more acts of domestic violence against the child, a parent of the child, or any other	Domestic violence occurs when a person commits one of the following acts against or upon the person's spouse or former spouse, any other person to whom the person is related by blood or marriage, any other person with whom the	§§ 125C.210, 125C.230, 125.480, 432B.157 = These statutes are silent on the standard of proof used to rebut the presumption. § 125C.220 = The rebuttable presumption can be overcome only if the court determines that: there is no other

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		person residing with the child. § 125C.210 = A child is conceived as a result of sexual assault and the person convicted of sexual assault is the natural father of the child; and where the parties were married at the time of the assault, but later divorce, the conviction of sexual assault. § 125C.220 = A conviction of the parent of a child for murder in the first degree of the other parent of the child.	person is or was actually residing, any other person with whom the person has had or is having a dating relationship, any other person with whom the person has a child in common, the minor child of any of those persons, the person's minor child or any other person who has been appointed the custodian or legal guardian for the person's minor child: a battery, an assault, compelling the other person by force or threat of force to perform an act from which the other person has the right to refrain or to refrain from	suitable guardian for the child; the convicted parent is a suitable guardian for the child; and the health, safety, and welfare of the child are not at risk; or the child is of suitable age to signify his assent and assents to the order of the court awarding sole or joint custody of the child to the convicted parent.

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			an act which the other person has the right to perform; a sexual assault; a knowing, purposeful or reckless course of conduct intended to harass the other person. Such conduct may include, but is not limited to: Stalking; arson; trespassing; larceny; destruction of private property; carrying a concealed weapon without a permit; injuring or killing an animal; false imprisonment; unlawful entry of the other person's residence, or forcible entry against the other person's will if	

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			there is a reasonably foreseeable risk of harm to the other person from the entry.	
North Dakota	§ 14-09-06.2	Credible evidence that domestic violence has occurred and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding.	Domestic violence means physical harm, bodily injury, sexual activity compelled by physical force, assault, or the infliction of fear of imminent physical harm, bodily injury, sexual activity compelled by physical force, or assault, not committed in self-defense, on the complaining family or household member. (§ 14-07.1-01)	Clear and convincing evidence that the best interests of the child require the perpetrator to have residential responsibility.
Oklahoma	tit. 43 § 109 tit. 43 § 112.2 tit. 43 § 109.3	tit. 43 § 109 = Evidence that domestic violence, stalking, or harassment	tit. 43 § 109 = Defines domestic violence as the threat of the infliction of	All statutes are silent on the standard of proof used to rebut the

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		<p>occurred.</p> <p>tit. 43 § 112.2 = Evidence that a person was convicted of domestic abuse within the past five years or is residing with a person convicted of domestic abuse within the past five years.</p> <p>tit. 43 § 109.3 = A preponderance of the evidence that domestic abuse, stalking, or harassing behavior occurred.</p>	<p>physical injury, any act of physical harm or the creation of a reasonable fear thereof, or the intentional infliction of emotional distress by a parent or a present or former member of the household of the child, against the child or another member of the household, including coercive control by a parent involving physical, sexual, psychological, emotional, economic, or financial abuse.</p> <p>tit. 22 § 60.1 = Defines domestic abuse as any act of physical harm, or the threat of imminent physical harm which is</p>	presumption.

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			committed by an adult, emancipated minor, or minor child 13 years of age or older against another adult, emancipated minor or minor child who are family or household members or who are or were in a dating relationship.	
Oregon	§ 107.137	Evidence that a parent committed abuse.	Abuse means the occurrence of one or more of the following acts between family or household members: attempting to cause or intentionally, knowingly, or recklessly causing bodily injury; intentionally, knowingly, or recklessly placing another in fear	The statute is silent on the standard of proof used to rebut the presumption.

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			of imminent bodily injury; or causing another to engage in involuntary sexual relations by force or threat of force. (§ 107.705)	
South Dakota	§ 25-4-45.5	A conviction or history of domestic abuse. A history of domestic abuse may only be proven by greater convincing force of the evidence.	Domestic abuse is physical harm, bodily injury, or attempts to cause physical harm or bodily injury, or the inflicted fear of imminent physical harm or bodily injury between family or household members. (§ 25-20-1)	When substantial, credible evidence has been introduced to rebut the presumption, it shall disappear from the action or proceeding.  <u>Nemec v. Goeman</u> , 2012 S.D. 14, 810 N.W.2d 443, 448 (2012).
	§ 25-4A-22	A finding by the court that a parent has a history of committing domestic abuse or has an assault conviction as defined in § 25-4-45.5,		

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		creates a rebuttable presumption that joint physical custody is not in the best interests of the child.		
Texas	§ 153.004	Credible evidence of a history or pattern of past or present child neglect, or physical or sexual abuse by that parent directed against the other parent, a spouse, or a child.	Family violence is an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places a member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself; abuse by a member of a family or	The statute is silent on the standard of proof used to rebut the presumption.

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			household toward the child of the family or household; or dating violence. (Fam. Code § 71.004)	
Wisconsin	§ 767.41* *sole or joint legal custody	Evidence that a party has engaged in a pattern or serious incident of interspousal battery or domestic abuse.	Domestic abuse is any of the following engaged in by an adult family member or an adult household member against another adult family member or adult household member, by an adult against his or her former spouse, by an adult against an adult with whom the individual has or had a dating relationship, or by an adult against an adult with whom the person has a child in common: intentional infliction of	A preponderance of the evidence that: the party who committed the battery or abuse has successfully completed treatment for batterers and is not abusing alcohol or any other drug; and it is in the best interests of the child for the party who committed the battery or abuse to be awarded joint or sole legal custody.

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			physical pain, physical injury or illness; intentional impairment of physical condition; sexual assault; damaging property that belongs to another; or threatening to engage in any of these activities. (§ 813.12) Battery is either (1) causing bodily harm to another by an act done with intent to cause bodily harm to that person or another without the consent of the person so harmed (§ 940.19) or any person subject to an injunction who intentionally causes bodily harm to the petitioner who sought the injunction by an act	

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			done without the consent of the petitioner. (§ 940.20(1)(m))	

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