

FALSE ALLEGATIONS OF ABUSE, OR NOT?

Understanding the Reality of Domestic Violence

Protective order dismissals do not automatically indicate false allegations.

There are many reasons why true domestic violence goes unrecognized by the legal system.

In the wake of the recent fatalities in WV related to domestic violence and child abuse and the known risks and damage caused by family violence, any changes that deter reporting of abuse or seeking assistance for victimization would be dangerous.

Why domestic violence protective orders may not be granted

Failure to meet the evidentiary standard	In emergency order hearings, petitioners must prove allegations by clear and convincing evidence, the highest evidentiary standard. In final order hearings, petitioners must prove allegations by a preponderance of the evidence. Domestic violence by nature is often a "hidden crime", without witnesses and/or corroborating evidence available. Just because evidence is not available, does not mean that the violence or threats did not happen.
Reconciliation	The petitioner may decide to drop the protective order in hopes of reconciliation and that the relationship can continue without further violence. This decision is often in response to promises from the respondent that "things will be better."
Fear of retaliation	Post-separation is clearly the most dangerous and lethal time for victims of domestic violence. Petitioners may make the decision to drop their protective orders or recant allegations because they realize it is their safest option. This decision is often in response to threats of retaliation and further violence from the abuser.
Successful protection	Some petitioners are able to secure the safety they need through the emergency protective order, and do not see benefit from pursuing a full hearing. Other petitioners find sufficient protection through criminal bond conditions posed on their abusers.
Non-service	Many emergency protective orders (EPO) never get served by law enforcement upon the respondent. The EPO may be continued, but a full order cannot be granted.
Inappropriate venue	Petitioners may need immediate relief in terms of custody, separation, and/or child protection but the waiting time for a temporary hearing in family court is several months. Attorneys may advise their clients to file a DV petition to expedite the process.



Carefully Considering False Allegations

Dangers of Punitive Measures for Disclosing Abuse

- **Deters reporting**—victims of domestic violence will not seek help from the legal system, increasing their isolation and vulnerability to further harm. Punitive measures would also create a chilling effect in the reporting of child abuse and neglect, placing children at greater risk.
- **Creates redundancy** and conflicts in the law—current law adequately addresses false allegations.
- **Feeds victim-blaming** attitudes—if a true victim is not believed, it perpetuates the harmful attitude that victims lie and/or are to be blamed for the abuser’s behavior. A punitive response toward the victim strengthens the abuser’s power, control and license to use violence in the relationship.

Solutions To Assuring False Allegations are Addressed

- **Utilize current law**—current WV law adequately addresses remedies for false allegations in civil and criminal matters.
- **Have more judges**—to allow for time to responsibly review evidence and to make the family court more accessible to litigants in need of emergency relief for non-domestic violence issues.
- **Reinforce judicial decision making**—courts were established to uncover the truth, to reveal false allegations that are a universal daily reality in the legal system. This is why we have judges—to make decisions based on facts, evidence and law.

**Current Law Adequately
Addresses False
Allegations**