

Tailoring Family Court Relief to Fit Survivor Needs

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Takeaways from Today's Presentation



UNDERSTAND SYSTEMS
ABUSE

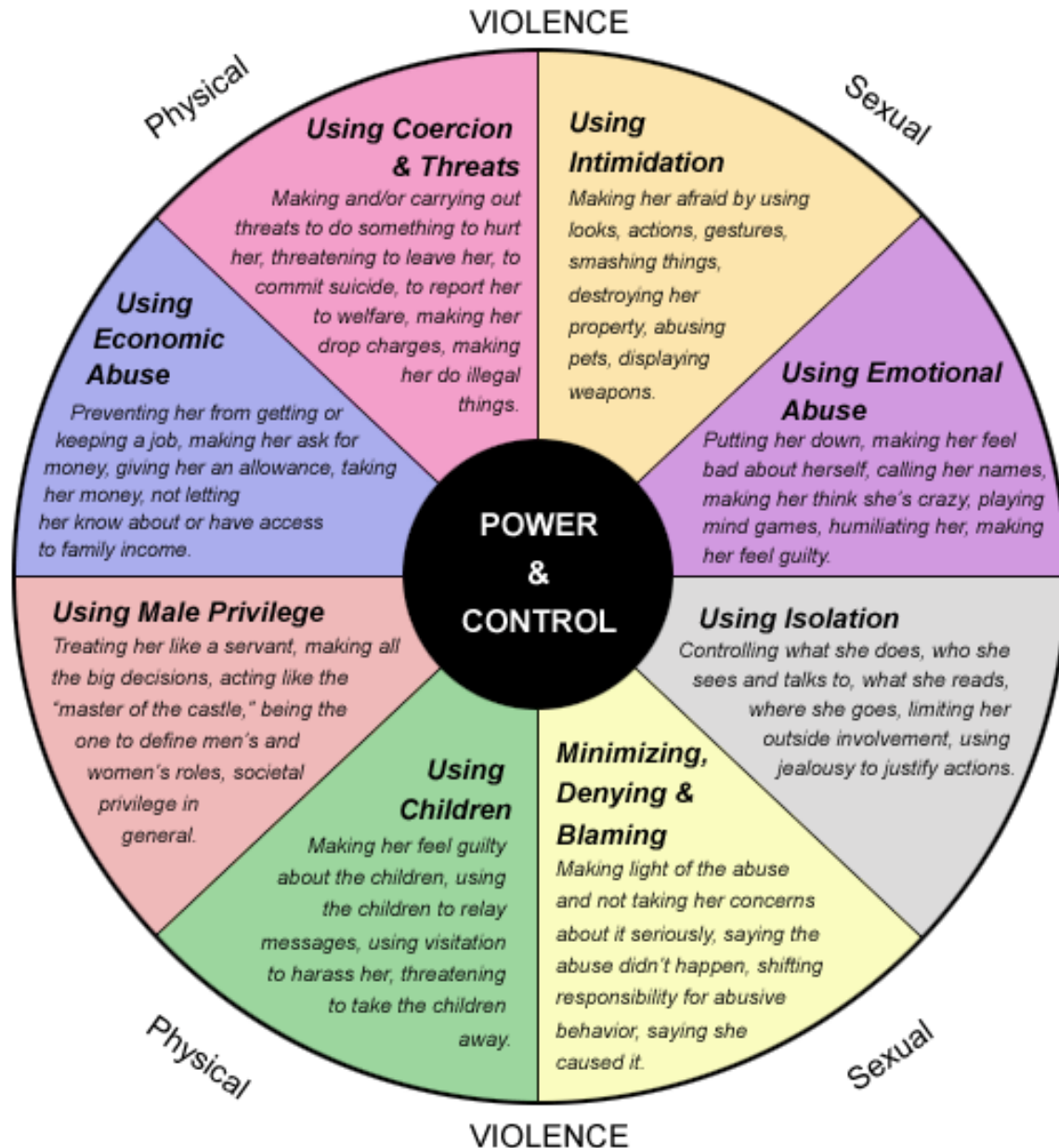


DISCUSS FAMILY COURT
RELIEF OPTIONS



UTILIZE RESOURCE
GUIDE

Power & Control Wheel The Duluth Model

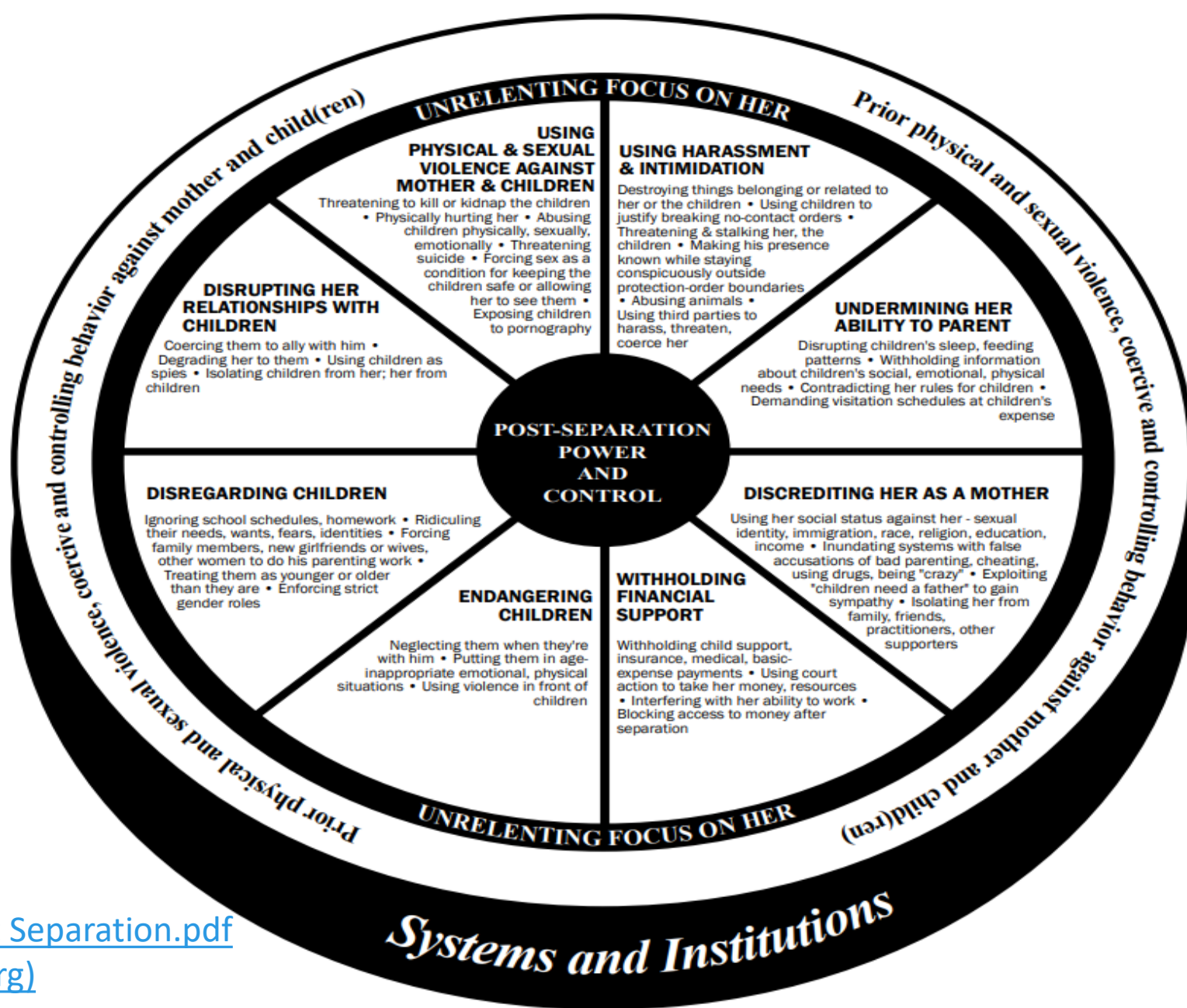


Developed by the *Domestic Abuse Intervention Project* in Duluth, Minnesota, the Power and Control Wheel illustrates the tactics an abuser uses on his victim.

Constantly surrounded by threats and/or actual physical and sexual abuse, the victim is subjected to the various tactics listed in the spokes as the abuser attempts to exert complete power and control over them.

Used with permission: Domestic Abuse Intervention Project, Duluth, MN.

Post-Separation Power & Control Wheel



[Using Children Post Separation.pdf \(theduluthmodel.org\)](https://theduluthmodel.org)

Court Systems Abuse

Court Systems Abuse can take many forms from filing false or retaliatory PFAs to reporting a survivor to CYF to filing endless motions to financially deplete a survivor, etc.

What examples of court systems abuse have you seen in your practice/experience?



In the face of systems abuse, how can Family Court relief help a survivor?

Even though abusers can abuse the court system, a well-trained professional can identify these behaviors and work to safety plan and craft orders to counteract this systems abuse.

Family Court relief can be used to protect victims and their rights.

Protection From Abuse



23 Pa. C.S. §§6101 *et seq.*



The goal of the PFA statute is for early intervention in DV situations and the prevention of future abuse through the use of civil orders.

For many Victims, PFA Relief is often the gateway to Family Court

3,785 Temporary PFAs Petitions filed

3,509 Final PFA Hearings were scheduled

1,114 Final PFA orders were granted

1,349 withdrawals by Petitioners

751 dismissed when Petitioner did not appear

90 dismissed at a final hearing

205 continued for miscellaneous reasons

How can PFAs be helpful to survivors?

No abuse

Eviction and
exclusion

No contact

Stay away

Custody

Firearms

Property
Retrieval

Economic
Relief

Practice Tips:

Remember that PFAs are “a la carte.” You can tailor a PFA Order to fit your client’s safety needs.



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- ❖ Do not make your client homeless – if necessary for Plaintiff to leave residence, negotiate and build in time for Plaintiff to find a place to stay.
 - ❖ Be SPECIFIC in your PFA Order, especially when it comes to communication and custody matters. Schedules that say things like “Defendant shall have custody as the parties agree” are generally a bad idea in DV cases.
 - ❖ Property retrieval: Defendant to be present at the residence only with police or constable. If Defendant is utilizing a 3rd party to get items, Defendant must not be present. Make sure to build in a timeline for Plaintiff’s disposal of items if Defendant does not retrieve them. If Plaintiff needs to get items from Defendant’s residence, build in safety measures.
 - ❖ Firearms: If a Final PFA Order is entered after a hearing, the Judge MUST order that firearms are to be relinquished. If entered by consent, the firearms provisions do not have to be checked off. However, be aware that federal law may still apply and, thus, the Defendant must not possess or acquire firearms.

Safety Planning for PFAs

- ❖ Explain that plaintiff can bring a support person to court
- ❖ Re-iterate connections to local DV agencies
- ❖ Consider safety planning with the client and an advocate about what the client will do if a PFA hearing has negative outcomes.
- ❖ Discuss safety needs around cyber security and stalking
- ❖ Review options around reporting past abuse to local police departments

- ❖ Advocates may encourage victims to—keep phone with them at all times, stay away from kitchen/bathrooms during explosive incidents, change passwords to bank accounts, utilities, Apple account settings and WIFI, using "safe phrase" with children when they are in custody of opposing party

Custody




23 Pa. C.S. §§5321 *et seq.*



Statute addresses standing, required factors to consider when awarding custody, relocation, etc.

Custody Cases and DV survivors

Abusers know that threatening to take/keep children is often the most effective way to control a victim.



Therefore, custody is often a tense, fraught experience for DV survivors.

Custody considerations and possible relief for DV survivors

Advocate for survivor to be primary parent

Request evaluations, if necessary

Set up safe communications and exchanges

DV Waiver for mediation available

Supervised vs. Unsupervised custody

DV Waiver for Mediation

PLEASE COMPLETE AND RETURN THIS FORM:

_____ (name) has been ordered to attend a mediation session at Generations on _____ (date).

Check the appropriate items below:

I have completed the Education seminar on _____ (date).

I have received a court waiver from the Motions Court excusing me from attending the Generations mediation session on _____ (date) for reasons other than domestic violence.

I cannot attend a joint session with the other party due to issues of domestic violence.

I have enclosed a copy of my Protection from Abuse order obtained in the past 24 months.

I have enclosed a copy of other formal charges filed, pending, or adjudicated regarding domestic violence or child abuse:

| | | | |
|-------------|----------------|----------------------|-------------|
| Filed | _____ | _____ | _____ |
| | type of charge | date filed | case number |
| Pending | _____ | _____ | _____ |
| | type of charge | date filed | case number |
| Adjudicated | _____ | _____ | _____ |
| | type of charge | date of adjudication | case number |



What is it?



Why does it exist?



Pros and Cons (Article about mediation—see resource guide)

Kayden's Law (Act 8 of 2024) provided in Resource Guide

Major changes

- Expanded list of crimes
- Rebuttable presumption of supervised visitation
- Explanation for unsupervised custody
- Safety conditions
- Expanded definition of abuse
- Mandatory training for professional supervisors, GALs and Mediators

Safety Planning for Custody

- ❖ If requesting non-professional supervised custody-have a list of possible supervisors that are willing to sign an Affidavit to that effect *AND* can come before the court to establish themselves as a safe supervisor.
- ❖ Establish an emergency contact plan if child is injured/sick/etc... while in custody of one parent
- ❖ Have candid conversations about whether co-parenting counseling is a viable option based on client's history with opposing party. Consider power imbalance and whether counselor is well-versed in domestic violence.
- ❖ Prepare with client to establish safe custody exchanges with opposing party. There have been homicides in Allegheny County that occurred during custody exchanges.
 - ❖ Well-lit, public place—police stations are ideal.
 - ❖ If children are old enough—parents remain in cars while children move from one parent to the other. If unsafe for victim to be at exchanges, identify a 3rd party to carry out the exchange.

Support



23 Pa. C.S. §§4301 *et seq.*



Financial abuse and economic instability are reasons that survivors often find it difficult to leave an abusive relationship. Child support and/or Spousal Support actions can provide a DV survivor with financial stability through a wage-attachable order; however, a survivor must assess the safety of the situation.

Support

- ❖ Child and spousal support are awarded pursuant to a Statewide guideline as established by rule of the Supreme Court, so that persons similarly situated shall be treated similarly.
- ❖ “Spousal support” is paid after the parties are separated but before a divorce is filed.
- ❖ Guideline is based upon the reasonable needs of the child or spouse seeking support and the ability of the obligor to provide support.
- ❖ In assessing reasonable needs and ability of obligor, the guideline places primary emphasis on the net incomes and earning capacities of the parties, with allowable deviations for unusual needs, extraordinary expenses and other factors.
- ❖ The guideline is reviewed at least once every four years.
- ❖ There ARE entitlement defenses that a defendant can raise to argue against the obligation to pay spousal support.

Alimony Pendente Lite (APL)

Alimony *pendente lite* (APL): alimony “pending the litigation.”

Similar to spousal support in terms of the higher income spouse paying the other spouse but is paid *after* a divorce is filed and terminates when a divorce decree is entered.

The purpose of APL is to assist the financially dependent spouse with the legal costs associated with the divorce proceedings, and their living expenses.

Typically, the court uses the same support guidelines to calculate spousal support and APL.

Theoretically, APL is discretionary and should be based on the needs of the spouse with less income.

In practice, APL is generally awarded automatically based on the parties’ incomes regardless of whether the receiving spouse needs financial assistance, using the same formula for spousal support.

No entitlement defenses.

Considerations for DV survivors Receiving Public Benefits

If a person is receiving TANF and/or or subsidized childcare, the welfare office will expect them to file for child support and meet other requirements. However, if a survivor is unable to meet one or more of the program requirements (such as child or spousal support cooperation) because of domestic violence (i.e. it is not safe for them to cooperate), a *good cause waiver* can be granted.

The survivor should talk with their caseworker; appeal any notice that they may have received closing or reducing their TANF/ELRC benefits if DV prevented them or continues to prevent them from complying with one or more program requirements; and they must complete the DV Verification Form.

A victim can self-certify regarding DV.

A survivor must weigh the risks involved in applying for support and the benefits

Considerations for DV Survivors Receiving Public Benefits: Risks/Benefits

A SURVIVOR MUST WEIGH THE RISKS AND BENEFITS INVOLVED IN APPLYING FOR SUPPORT.

RISKS

- ❖ Applying for support involves contact with the other parent of the child which may present a safety risk.
- ❖ A public assistance applicant will be asked to provide information about the identity and location of both parents of any children.
- ❖ If the parents are not married, paternity will have to be established.
- ❖ Every adult in the support action will have to receive court papers, with the addresses of each party, although addresses may be left off if unsafe to include them.
- ❖ Every adult in the support action will have to attend conferences and hearings.

BENEFITS

- ❖ Support payments may increase the family's total income.
- ❖ A support order can include health care coverage determination, payments towards medical expenses and payments towards childcare expenses.
- ❖ By establishing paternity, children may now be eligible for future benefits from the other parent (inheritance, veteran's or social security benefits, life insurance)
- ❖ Cash assistance is time limited. Income from child support may help folks leave public assistance or provide income after leaving.

Practice Tips

Financial abuse is common in domestic violence.

A defendant may try to avoid or reduce paying support by:

- ❖ minimizing hours worked after separation
- ❖ quitting their job
- ❖ taking a job for less money (underemployment)
- ❖ working for friends/family who lie or minimize work.

See Pa. R.C.P 1910.16-2 sections on earning capacity and voluntary reduction of income.

Practice Tips

In order to ascertain a defendant's true income, discovery may be necessary.

However, see Pa. R.C.P. 1930.5: "There shall be no discovery in a simple support, custody, Protection from Abuse, or Protection of Victims of Sexual Violence or Intimidation proceedings unless authorized by order of court."

- ❖ What to do? Present a motion and get an Order designating the case *complex* so parties can engage in discovery.
- ❖ Make sure to give yourself ample time to draft and send out discovery (as well as subpoenas for records) AND time to do a Motion to Compel if defendant does not answer.

Safety Planning for Support

- ❖ In Allegheny County, support conferences take place on the phone, but support hearings are in-person. Call ahead if a sheriff's deputy will be needed.
- ❖ There are two satellite support offices in Penn Hills and Mt. Lebanon. They DO NOT have the same level of security as Family Court. Pay particular attention to clients' needs as they enter and exit these buildings.
- ❖ If a client is filing for support, but wants keep their address confidential, make sure to notate that.
- ❖ If the abusive party is ordered to pay support, this could cause severe escalation, and it may be beneficial to review need for a PFA.

Divorce



23 Pa. C.S. §§3301 *et seq.*



After a divorce is filed is perhaps the most dangerous time for survivors. To an abuser, this signifies the FINAL SEPARATION.

Consider whether filing for divorce is absolutely necessary.

Divorce Considerations for DV Survivors

- ❖ In Allegheny County, four homicides in 2023 were murder/suicides where the parties were in a state of separation where divorces were pending.
- ❖ Utilize the Safety Planning for Lawyers article in Resource Guide.
- ❖ Encourage client to safety plan with a DV advocate.
- ❖ Set expectations that the divorce could be difficult. Inform client that defendant may: refuse to consent to the divorce, commit acts of economic abuse that require motions and contempt hearings, try to drop survivor from health insurance (can be remedied).

Practice Tips

If abuser filed the Complaint in Divorce, make sure to raise all relevant additional claims on behalf of survivor in a Petition Raising Claims.

Consider whether alimony (post-divorce support) may be appropriate in survivor's case. There are 17 factors used in determining amount and duration of alimony. Factor 14 addresses abuse.

Remember: Two ways to get a spouse out of the shared marital residence:

- 1. PFA Order with eviction and exclusion OR**
- 2. Filing a divorce (or a Petition Raising Claims) with a count for exclusive possession of the residence and then requesting an exclusive possession hearing through Motions Court.**

Awarding Exclusive Possession: Fact-based. Must be a clear need. Judge will consider the level of conflict between the parties, ability of a spouse to afford alternate housing, effect upon children and/or custody arrangements, whether one party has already voluntarily vacated.

Practice Tips (cont)

In a Marriage Settlement Agreement (MSA), articulate clearly and specifically the process that grants the survivor possession of assets or property.

Ensure MSA and other orders include concrete deadlines and clearly spell out the consequences for failure to meet the order's requirements. For example, the failing party does not receive their allocated property until they complete the transfer required by the order.

Talk to the survivor about using the Address Confidentiality Program post-divorce.

Safety Planning for Divorce

- ❖ Advise client to be extra vigilant throughout the process
- ❖ Important to be connected to DV services because emergency shelter may be necessary until safety precautions are better established
- ❖ Have client stay connected to local police
- ❖ If client begins new dating relationships, maintain awareness of surroundings—stalking behaviors may increase

Q&A and Discussion
