

WHITE PAPER – FALSE ALLEGATIONS

Introduction

The problem of false allegations goes back centuries. In the 18th century BC, Babylon's King Hammurabi worried about the injustice to the extent that false witnesses were to be punished as harshly as those who were convicted of the same crime.

The Founding Fathers were equally aware of the problem and included several provisions in the U.S. Constitution and Bill of Rights designed to assure due process and minimize such claims.

Nonetheless, false allegations of domestic violence have now become widespread. Each year, at least one million allegations of domestic violence are made in which no physical violence is even alleged.¹ One recent study concluded that 81% of restraining orders were false or unnecessary.²

Problem

False allegations of domestic violence arise as a result of a number of factors:

1. VAWA uses the term, "includes," in its definition of domestic violence: "The term 'domestic violence' *includes* felony or misdemeanor crimes of violence..."³ The all-encompassing word, "includes," allows almost any other offense to be subsumed under that definition.
2. Most states employ civil law definitions of domestic violence or partner abuse that include vague terms such as "fear," "afraid," and "harassment," terms that are usually left undefined, and are difficult to refute.⁴
3. Many in the domestic violence industry advocate for even broader definitions of abuse, to include possessiveness, being "concerned" about the relationship, or even seeking joint child custody.
4. Persons who merely allege domestic violence gain a strong advantage in child custody disputes, and qualify for free legal help and other services and benefits.⁵
5. Few states have provisions in their civil domestic violence laws that penalize the making of false statements. And when such statutes do have penalties for such actions, they are seldom enforced. In some cases, court systems have advised the wrongly accused not to pursue the issue if children are involved, as the criminal repercussions for the accuser can be viewed as "bad for the children."
6. In most jurisdictions, restraining orders are issued based on the lowest possible standard of proof: the "preponderance of evidence" standard, which means the judge believes there's a slightly better than 50-50 chance that the accusations are true.
7. Most temporary restraining orders are issued on an *ex parte* basis, which means that the person against whom the order is issued is given no notice that a hearing has been scheduled and is not present to defend himself.

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8. Judges usually do not require hard evidence of abuse in order to issue a restraining order; indeed, judges are often urged to “err on the side of caution” in deciding whether to issue a restraining order.⁶

False allegations are harmful for a number of reasons:

1. They seriously harm the reputation, employability, criminal record, financial status, and parental rights of the falsely accused.
2. By influencing custody decisions, they force children into single-parent households and place them at greater risk of a broad range of social pathologies.
3. They can trigger violations in due process and undermine public confidence in the justice system and the rule of law.
4. They overload the system with minor and trivial cases, making it harder for true victims to get the services they need.
5. In the long term, they make persons less willing to believe the accounts of true victims.

Needed Policies

Federal and state domestic violence laws need to be revised to reflect the following policies:

1. The definition of domestic violence should be consistent with statutory definitions of physical assault.
2. Harassment and stalking should be objectively defined in terms of specific acts by the alleged offender, not the perceptions or feelings of the alleged victim.
3. Partner abuse that does not fall within the above-described definition of domestic violence, harassment, or stalking should be addressed by counseling, treatment, and mediation, not by the law enforcement or criminal justice systems.
4. In order to obtain a restraining order, petitioners must provide hard evidence of physical assault, harassment, or stalking.
5. Restraining order petitioners may not make a petition for child custody while a temporary restraining order is in effect.
6. Because restraining orders can affect constitutionally protected parental rights, judges should use the evidentiary standard of “clear and convincing evidence.”
7. Restraining orders should be issued during *ex parte* hearings only when objective evidence is presented that the violence, harassment, or stalking represents an immediate credible threat to the petitioner’s physical safety.
8. States should enact laws that penalize the filing of false complaints or engaging in perjury. These laws should pertain to the actions of plaintiffs, attorneys, domestic violence shelters, and other organizations that engage in such activities.
9. Prosecutors and judges should be encouraged to vigorously pursue such violations.
10. Government-funded legal services must be made equally available to both the petitioner/plaintiff and respondent/defendant.

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References

¹ RADAR: Without restraint: The use and abuse of domestic restraining orders. 2008.

<http://www.mediadar.org/docs/RADARreport-VAWA-Restraining-Orders.pdf>

² Foster BP. Analyzing the cost and effectiveness of governmental policies. *Cost Management*, Vol. 22, No. 3, 2008.

³ 2005 Violence Against Women Act, Section 3(A)(6).

⁴ RADAR: Expanding definitions of domestic violence, Vanishing rule of law. 2008.

<http://www.mediadar.org/docs/RADARreport-Vanishing-Rule-of-Law.pdf>

⁵ RADAR: Perverse incentives, false allegations, and forgotten children. 2008.

<http://www.mediadar.org/docs/RADARreport-Perverse-Incentives.pdf>

⁶ N.J. Judges Told to Ignore Rights in Abuse TROs, *New Jersey Law Journal*, April 24, 1995.

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