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Regent University School of Law

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### **Session 3**

# **Family Violence Representation for Every Lawyer: Everything you ever wanted to know about protecting vulnerable family members from domestic violence but were afraid to ask**

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#### **Program Description:**

Domestic violence representation is an area of law that is largely left to criminal prosecutors, but is also a critical area of law for every lawyer to be aware of and knowledgeable in at least minimally, particularly in terms of encountering a client dealing with any type of family related violence. Domestic violence is generally about family members, or people who live in a family-like household, or have a close family-like relationship with a victim or a perpetrator, but it is also about personal or intimate violence between people not connected by a family yet somehow personally and intimately connected. This presentation will illustrate how the law can be used to protect from and against family violence in the context of every lawyer understanding code and case law, the various protective services, federal immigration policy, and other manifestations of public policy with the objective to advocate for safety against family violence. These CLE materials also outline exactly how that occurs within state law, and also gives the lawyer a wider lens on family violence that could be present in the United States from abroad.

#### **Target Audience:**

This CLE aims to serve every lawyer who is not a specialist in the area of family law, criminal law, or violence generally, both in NC and around the nation. It offers legal solutions any and all lawyers can utilize for their clients to protect vulnerable family members from violence as well as state and local policy notions to strengthen marriage and families away from vulnerability at home. The law has long protected against family violence and domestic violence in all contexts.

The simple fact is that every lawyer should have a basic knowledge of this area of law to help clients to be safe.

**Course Objectives:**

1. To examine and explain the protections available for vulnerable family members in code, case law, and public policy;
2. To encourage every lawyer to protect vulnerable clients in their families;
3. To provide attorney training in what to look for and how to respond to family violence; and
4. To offer step-by-step guides for obtaining a protective order, and for spotting the need for and obtaining a federal immigration visa for a victim of family violence.

**Brief Outline:**

- I. Introduction – Definitions
- II. Code
  - a. Summarization
  - b. Step-by-step process through the code to obtain a protective order
  - c. How to advise clients to get safe.
- III. Key case law
- IV. Additional protections and resources available
  - a. Confidentiality Protection
  - b. VAWA
  - c. Additional Privacy protections & resources
- V. International insight
  - a. Federal immigration summary
  - b. Special Visas available to family violence victims
    - i. U visas
    - ii. T visas
  - c. Statistics and cultural explanations
- VI. Helpful guidance for both the lawyer and the client on how to spot, handle, and prevent family violence
- VII. Questions

# **Family Violence Representation for Every Lawyer:**

**Everything you ever wanted to know about protecting vulnerable family members from domestic violence but were afraid to ask**

By Lynne Marie Kohm,<sup>1</sup> Regent University School of Law

## Introduction:

Domestic violence representation is an area of law that is largely left to criminal prosecutors, but is also a critical area of law for every lawyer to be aware of and knowledgeable in at least minimally, particularly in terms of encountering a client dealing with any type of family related violence. Domestic violence is generally about family members, or people who live in a family-like household, or have a close family-like relationship with a victim or a perpetrator, but it is also about personal or intimate violence between people not connected by a family yet somehow personally and intimately connected. This presentation will use the terms domestic violence and family violence interchangeably. It will illustrate how the law can be used to protect from and against family violence in the context of every lawyer understanding Virginia code and case law, the various protective services, federal immigration policy, and other manifestations of public policy with the objective to advocate for safety against family violence.

These CLE materials outline exactly how that occurs within the law of Virginia, and also gives the lawyer a wider lens on family violence that could be present in the United States from abroad. Section I focuses on definitions. Section II fully summarizes the Virginia code, while also outlining a step-by-step process every lawyer can use to help a victim obtain a protective order and advise them to work to get safe. Section III then presents the key Virginia case law in this area, and Section IV follows by offering additional protections and resources available in Virginia. Then Section V offers a good deal of international insight into this area, with not only law on federal immigration in cases of domestic violence and the types of visas available to victims, but also statistics and explanations of the legal and cultural background for such incidents. Finally, Section VI gives very helpful and authentic tips for both the lawyer and the client on how to spot, handle, and prevent family violence.

The objective of this CLE is to provide every lawyer with the basic knowledge and skills to advocate for safety of a vulnerable person against family violence. Attorney training in what to look for and how to respond to family violence not only equips lawyers of all specialties to competently begin minimal direction and guidance for handling family violence issues, but even more importantly strengthens client safety objectives.

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## **I. Definitions from the Virginia Code:**

“Family Violence”: “Family abuse” means any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury and that is committed by a person against such person's family or household member. Such act includes, but is not limited to, any forceful detention, stalking, criminal sexual assault in violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury. Va. Code Ann. § 16.1-228 (West)

“Domestic violence representation”: The Office of the Commonwealth’s Attorney prosecutes crimes on behalf of the community. When an individual is violent with a family or household member, the Commonwealth’s Attorney or Assistant Commonwealth’s Attorney may prosecute the case.

“Household”: Family or household member” means (i) the person's spouse, whether or not he or she resides in the same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents and grandchildren, regardless of whether such persons reside in the same home with the person, (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person, (v) any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time, or (vi) any individual who cohabits or who, within the previous 12 months, cohabited with the person, and any children of either of them then residing in the same home with the person. Va. Code Ann. § 16.1-228 (West).

## **II. Virginia’s Statutory Code**

### **a. Code explained**

#### **i. Civil, criminal, and family law code**

##### **1. § 63.2-1612. Responsibilities of Department; domestic violence prevention and services: the twelve responsibilities enumerated in this statute are as follows:**

1. To support, strengthen, evaluate, and monitor community-based domestic violence programs funded by the Department and to act as the administrator for state grant funds and the disbursement of federal funds pursuant to §§ 63.2-1614 and 63.2-1615;

2. To collaborate with the Statewide Domestic Violence Coalition in developing and implementing community-based programs to respond to and prevent domestic violence;

3. To prepare, disseminate, and present educational programs and materials on domestic violence to the local

departments, community provider agencies, and the general public;

4. To support, strengthen, and act as a resource to local departments on issues of domestic violence, particularly as they relate to both adult and child protective services and self-sufficiency;

5. To establish minimum standards of training and provide educational programs to train workers in the fields of child and adult protective services in local departments and community-based domestic violence programs funded by the Department to identify domestic violence and provide effective referrals for appropriate services;

6. To provide training and educational opportunities on effective collaboration for all staff of local departments and community-based domestic violence programs;

7. To work with the Statewide Domestic Violence Coalition to (a) develop policies and procedures that guide the work of persons providing services to victims of domestic violence and their children; (b) implement methods to preserve the confidentiality of all domestic violence services records pursuant to §§ 63.2-104 and 63.2-104.1 in order to protect the rights and safety of victims of domestic violence; (c) develop policies and implement methods to assure the confidentiality of records pertaining to the address or location of any shelter or facility assisted under the Family Violence Prevention and Services Act, 42 U.S.C. § 10401 et seq.; (d) collect, prepare, and disseminate statistical data on the occurrence of domestic violence and the services provided throughout the Commonwealth; (e) operate the Virginia Family Violence and Sexual Assault 24-hour toll-free hotline and the Statewide Domestic Violence Database (Vadata); and (f) provide a clearinghouse of information and technical assistance on intervention and prevention of domestic violence;

8. To encourage the use of existing information and referral agencies to provide specialized information on domestic violence;

9. To develop and maintain a statewide list of available community and state resources for the victims of domestic violence;

10. To provide technical assistance on establishing shelters, self-help groups and other necessary service delivery programs;
  11. To provide leadership and coordination within the Department on domestic violence as it relates to child and adult abuse and neglect, benefits programs, Temporary Assistance to Needy Families, foster care prevention, child support enforcement, child care, and the promotion of healthy family relationships; and
  12. To promote collaboration and cooperation with other state agencies, including the Department of Criminal Justice Services, the Department of Health, the Department of Housing and Community Development, the Office of the Attorney General, and the Virginia Employment Commission, for technical assistance, data collection and service delivery to facilitate the appropriate response to victims of domestic violence.
2. § 63.2-1503. Local departments to establish child-protective services; duties
- a. Each department shall establish child-protective services under a departmental coordinator within such department or with one or more adjacent local departments that shall be staffed with qualified personnel pursuant to regulations adopted by the Board
  - b. The local department shall ensure they are capable of receiving reports or complaints and responding to them promptly 24 hours a day, seven days a week
  - c. The local department shall widely publicize a telephone number for receiving complaints and reports.
  - d. The local department shall notify the local attorney for the Commonwealth and the local law-enforcement agency of all complaints of suspected child abuse or neglect
  - e. The local department shall use reasonable diligence to locate any child for whom a report of suspected abuse or neglect has been received and is under investigation
  - f. When an abused or neglected child and the persons who are the subject of an open child-protective services case have relocated out of the jurisdiction of the local department, the local department shall notify the child-protective services agency in the jurisdiction to which such persons have relocated, whether inside or outside of the Commonwealth, and forward to such agency relevant portions of the case record.

- g. The local department shall foster, when practicable, the creation, maintenance and coordination of hospital and community-based multidisciplinary teams
  - h. The local department may develop multidisciplinary teams to provide consultation to the local department during the investigation of selected cases involving child abuse or neglect, and to make recommendations regarding the prosecution of such cases.
  - i. The local department shall notify the custodial parent and make reasonable efforts to notify the noncustodial parent as those terms are defined in § 63.2-1900 of a report of suspected abuse or neglect of a child who is the subject of an investigation or is receiving family assessment, in those cases in which such custodial or noncustodial parent is not the subject of the investigation.
3. Title 18, Chapter 8, Article 4. Family Offenses; Crimes Against Children, Etc.
- a. § 18.2-371. Causing or encouraging acts rendering children delinquent, abused, etc.; penalty; abandoned infant.
    - i. Any person 18 years of age or older, including the parent of any child, who (i) willfully contributes to, encourages, or causes any act, omission, or condition that renders a child delinquent, in need of services, in need of supervision, or abused or neglected as defined in § 16.1-228 or (ii) engages in consensual sexual intercourse or anal intercourse with or performs cunnilingus, fellatio, or anilingus upon or by a child 15 or older not his spouse, child, or grandchild is guilty of a Class 1 misdemeanor
  - b. § 18.2-371.1. Abuse and neglect of children; penalty; abandoned infant
    - i. Any parent, guardian, or other person responsible for the care of a child under the age of 18 who by willful act or willful omission or refusal to provide any necessary care for the child's health causes or permits serious injury to the life or health of such child is guilty of a Class 4 felony.
    - ii. Any parent, guardian, or other person responsible for the care of a child under the age of 18 whose willful act or omission in the care of such child was so gross, wanton, and culpable as to show a reckless disregard for human life is guilty of a Class 6 felony.

4. § 18.2-57.2. Assault and battery against a family or household member; penalty.
  - a. Assault/battery on a family or household member is made a class 1 misdemeanor by § 18.2-57.2.A. The conduct and penalty portions of § 18.2-57.2.A are identical to those in the basic § 18.2-57. To violate § 18.2-57.2.A, the accused must have assaulted/battered a family or household member. The definition of these terms in § 16.1-228 is incorporated by reference into § 18.2-57.2. The included persons are: a spouse or former spouse, parents, stepparents, children, stepchildren, siblings, half-siblings, grandparents and grandchildren, whether or not residing with the accused; in-laws (mother, father, son, daughter, brother or sister) who reside with the accused; the other parent of a child of the accused whether or not the accused and the other person reside together; a person who cohabits with or within the previous 12 months cohabited with the accused, and any children of either of them residing with the accused.
  - b. In the case of a first offender, charging under § 18.2-57.2.A rather than § 18.2-57 requires the Commonwealth to prove an additional element, family status of victim. This additional proof does not elevate the first offense.
5. § 18.2-61. Rape.
  - a. If any person has sexual intercourse with a complaining witness, whether or not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in sexual intercourse with any other person and such act is accomplished (i) against the complaining witness's will, by force, threat or intimidation of or against the complaining witness or another person; or (ii) through the use of the complaining witness's mental incapacity or physical helplessness; or (iii) with a child under age 13 as the victim, he or she shall be guilty of rape. And see generally Note, Sexism and the Common Law: Spousal Rape in Virginia, 8 Geo. Mason U. L. Rev. 369, 370 (1986); Criminal responsibility of husband for rape, or assault to commit rape, on wife, 24 A.L.R.4th 105.
  - b. An amendment to the Virginia Marital Rape Statute removed the provision that marital rape cannot occur unless the spouses are living separate and apart, or bodily injury occurs. Va. Code Ann. § 18.2-61

- c. A violation of this section shall be punishable, in the discretion of the court or jury, by confinement in a state correctional facility for life or for any term not less than five years
  - d. There shall be a rebuttable presumption that a juvenile over the age of 10 but less than 12, does not possess the physical capacity to commit a violation of this section.
6. § 16.1-253. Preliminary protective order.
- a. Upon the filing of a petition alleging that the petitioner is or has been, within a reasonable period of time, subjected to family abuse, the court may issue a preliminary protective order against an allegedly abusing person in order to protect the health and safety of the petitioner or any family or household member of the petitioner.
  - b. The order may be issued in an *ex parte* proceeding upon good cause shown when the petition is supported by an affidavit or sworn testimony before the judge or intake officer.
  - c. The preliminary order is effective upon personal service on the allegedly abusing person
  - d. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.
  - e. No fee shall be charged for filing or serving any petition or order pursuant to this section.
7. § 16.1-253.4. Emergency protective orders authorized in certain cases; penalty.
- a. Any judge of a circuit court, general district court, juvenile and domestic relations district court or magistrate may issue a written or oral *ex parte* emergency protective order pursuant to this section in order to protect the health or safety of any person.
  - b. An emergency protective order issued pursuant to this section shall expire at 11:59 p.m. on the third day following issuance. If the expiration occurs on a day that the court is not in session, the emergency protective order shall be

extended until 11:59 p.m. on the next day that the juvenile and domestic relations district court is in session

- c. A law-enforcement officer may request an emergency protective order pursuant to this section.

b. Prosecution & Constitutional Expectations

- i. For a state to intervene, it must balance *parens patriae*, the need for the state to act as parent to protect the best interests of the child, with the rights of the parents to direct the upbringing of their own child, as a fit parent is presumed to be acting in the best interests of the child.<sup>2</sup>
- ii. Certain parents have no protectable legal rights (e.g. rape perpetrator).
- iii. Parents have a fundamental, constitutionally protected right to direct the upbringing of their children.<sup>3</sup>
- iv. For a parent's rights to be curtailed, restricted, or terminated there must generally be presented clear and convincing evidence of that parent's abandonment, abuse or neglect of the child.<sup>4</sup>

c. Sexual Assault & Domestic Violence

- i. Under Virginia Civil law, family abuse means any act involving violence, force threat including but not limited to any forceful detention, which results in bodily injury or places one in reasonable apprehension of bodily injury and which is committed by a person against such person's family or household member
- ii. Assault and battery against a family member is covered under §18.2-57 is a class 1 misdemeanor, but can quickly become a class 6 felony if abuse occurs more than once in a 20-year period
- iii. § 18.2-61 covers martial rape
  - 1. court has discretion to order therapy for defendant upon first offense or may prosecute immediately
- iv. Objective is to promote the maintenance of the family unit and the best interest of the complaining witness
- v. Under Virginia's criminal law, a person found guilty of assault and battery against a family member is also guilty of a class 1 misdemeanor.
- vi. A person found guilty previously of two or more offenses of assault and battery against a family member is also guilty of a class 6 felony

d. Advocacy & Protective Orders

- i. The court can issue a preliminary protective order to protect the health and safety of the family against the alleged abuser- can prohibit specific acts of abuse and specific types of contact VA code § 16.1-253 covers preliminary protective orders

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<sup>2</sup> See generally Lynne Marie Kohm, [Tracing the Foundations of the Best Interests of the Child Standard in American Jurisprudence](#), 10 J. L. FAM. STUD. 337(2008).

<sup>3</sup> For a discussion of the federal constitutional case law protections safeguarding parental rights see generally Lynne Marie Kohm, [The Assault on Parental Rights in America](#), 7 AM. J. BIOMEDICAL SCIENCE & RES. 233 (2020).

<sup>4</sup> [Grounds for involuntary termination of parental rights](#), CHILD WELFARE INFORMATION GATEWAY (2004), [http://www.childwelfare.gov/systemwide/laws\\_policies/statutes/groundterminall.pdf](http://www.childwelfare.gov/systemwide/laws_policies/statutes/groundterminall.pdf).

- ii. Emergency protective order when there is an assertion under oath of abuse and the need to protect against imminent threats to health and safety VA code § 16.1-253.4 emergency protective orders
- iii. Venue for violation of a protective order is proper where the protective order was issued or in any jurisdiction where an act violating the order occurred. Va. Code Ann. § 18.2-60.4. §§ 16.1-252 (preliminary removal order/child abuse or neglect), 16.1-253 (preliminary protective order/child abuse or neglect), 16.1-253.1 (preliminary protective order/family abuse), 16.1-253.4 (emergency protective order/family abuse), 16.1-278.2 (permanent order/child abuse or neglect), 16.1-278.14 (protective order/family offenses); 16.1-278.15 (custody/visitation), 16.1-279.1 (permanent order/family abuse), 20-103.B (order pending divorce, etc.).
- iv. Criminal Punishment for violation of protective order
  - 1. § 16.1-252—violation of order is contempt (§ 16.1-252.J).
  - 2. § 16.1-253—violation of a child protective order is punishable as contempt of court, however if the violation involves acts or omissions that endanger the child's life, health, or development, or results in bodily injury to the child, it is punishable as a class 1 misdemeanor (§ 16.1-253.J). If the order forbids entry on certain premises, violation is a trespass (§ 18.2-119).
  - 3. § 16.1-253.1—violation of the order is contempt (§ 16.1-253.1.C) and a class 1 misdemeanor requiring an active sentence (§ 16.1-253.2); if the order forbids entry on certain premises, violation is a trespass (§ 18.2-119).
  - 4. § 16.1-253.4—violation of the order is a class 1 misdemeanor requiring an active sentence (§ 16.1-253.2); if the order forbids entry on certain premises, violation is a trespass (§ 18.2-119).
  - 5. § 16.1-278.2—violation of the order is contempt (§ 16.1-292.A); if the order forbids entry upon certain premises, violation is a trespass (§ 18.2-119).
  - 6. § 16.1-278.14—violation of the order is contempt (§ 16.1-292.A); if the order forbids entry onto certain premises, violation is a trespass (§ 18.2-119).
  - 7. § 16.1-278.15—violation of the order is contempt (§ 16.1-292.A); if the order forbids entry onto certain premises, violation is a trespass (§ 18.2-119).
  - 8. § 16.1-279.1—violation of the order is contempt (§ 16.1-279.1.C) and a class 1 misdemeanor requiring an active sentence (§ 16.1-253.2); if the order forbids entry on certain premises, violation is a trespass (§ 18.2-119).
  - 9. § 20-103.B—violation of the order is a class 1 misdemeanor requiring an active sentence (§ 16.1-253.2) and a trespass (§ 18.2-119).

**e. The Process every lawyer can use to help a victim obtain a protective order**

**Step 1:** Complete one of the following first two forms, and file with the appropriate court of jurisdiction:

1. Summons - Petition for Protective Order:  
<https://www.vacourts.gov/forms/district/dc383.pdf>.
2. Petition for Protective Order:  
<https://www.vacourts.gov/forms/district/dc383inst.pdf>.
3. For additional guidance see *Protective Orders Virginia Frequently Asked Questions*:  
<https://www.vacourts.gov/courtadmin/aoc/judpln/programs/afapo/faq.pdf>.

**Step 2:** Follow this jurisdictional process for obtaining a protective order:  
<http://vscc.virginia.gov/protective-orders-virginia-guide-victims-english.pdf>

- a. Determine the type of relationship the client has with the person harming the client. This determines where a protective order can be requested:
  - i. If it is a family or household member or under the age of 18, request a protective order through the JDR Court;
  - ii. All other protective orders can be obtained through the General District Court.

**Step 3:** Know the case law

- b. Virginia has recently allowed protective orders to be taken out against abusive family members even without the threat of violence. See *Stephens v. Rose*, 288 Va. 150, 762 S.E.2d 758 (2014).
- c. Family abuse protective orders are final orders in which an appeal may be taken under Va. Code Ann. § 16.1-296(A). The decision of a juvenile and domestic relations court to deny a protective order is also a final order for purposes of appeal under 16.1-296. See *Jacobs v. Wilcoxson*, 71 Va. App. 521, 838 S.E.2d 63 (2020).
- d. Unlike other final orders, the protective order statute allows either party to file a written motion with the court requesting a hearing to dissolve or modify the order at any time and may be entered by the judge *ex parte*. Va. Code Ann. § 16.1-279.1(G).

**Step 4:** Follow through

In cases of family abuse, including any case involving an incarcerated or recently incarcerated respondent against whom a preliminary protective order has been issued pursuant to § 16.1-253.1, the court may issue a protective order to protect the health and safety of the petitioner and family or household members of the petitioner. A protective order issued under this section may include any one or more of the following conditions to be imposed on the respondent:

1. Prohibiting acts of family abuse or criminal offenses that result in injury to person or property;
2. Prohibiting such contacts by the respondent with the petitioner or family or household members of the petitioner as the court deems necessary for the health or safety of such persons;
3. Granting the petitioner possession of the residence occupied by the parties to the exclusion of the respondent; however, no such grant of possession shall affect title to any real or personal property;
4. Enjoining the respondent from terminating any necessary utility service to the residence to which the petitioner was granted possession pursuant to subdivision 3 or, where appropriate, ordering the respondent to restore utility services to that residence;
5. Granting the petitioner and, where appropriate, any other family or household member of the petitioner, exclusive use and possession of a cellular telephone number or electronic device. The court may enjoin the respondent from terminating a cellular telephone number or electronic device before the expiration of the contract term with a third-party provider. The court may enjoin the respondent from using a cellular telephone or other electronic device to locate the petitioner;
6. Granting the petitioner temporary possession or use of a motor vehicle owned by the petitioner alone or jointly owned by the parties to the exclusion of the respondent and enjoining the respondent from terminating any insurance, registration, or taxes on the motor vehicle and directing the respondent to maintain the insurance, registration, and taxes, as appropriate; however, no such grant of possession or use shall affect title to the vehicle;
7. Requiring that the respondent provide suitable alternative housing for the petitioner and, if appropriate, any other family or household member and where appropriate, requiring the respondent to pay deposits to connect or restore necessary utility services in the alternative housing provided;
8. Ordering the respondent to participate in treatment, counseling or other programs as the court deems appropriate;
9. Granting the petitioner the possession of any companion animal as defined in § 3.2-6500 if such petitioner meets the definition of owner in § 3.2-6500; and
10. Any other relief necessary for the protection of the petitioner and family or household members of the petitioner, including a provision for temporary custody or visitation of a minor child.

### **III. Virginia Case Law**

#### **a. Overview**

##### **i. Child abuse**

1. Jones v. Commonwealth, 272 Va. 692, 694 (2006)

- a. Physically harming the child is not a requirement to be convicted of child abuse. Defendant knew or should have known that placing drugs in the same room as her son created a substantial risk of serious injury and her conviction of child abuse was affirmed.
2. Wagoner v. Com., 63 Va. App. 229, 756 S.E.2d 165 (2014), aff'd, 289 Va. 476, 770 S.E.2d 479 (2015)
  - a. the defendant caretaker of an incapacitated adult failed to seek professional medical treatment for an elderly person who had suffered second and third degree burns. It was a “quintessential jury question” as to the cause of death when medical testimony indicated that without treatment the risk of death was 100%, but with treatment there was a 13% to 25% chance of survival).
  - b. The accused must be a parent, guardian or person responsible for the care of a minor. A person can become responsible for care by his own voluntary act and without a specific delegation of supervision or responsibility by a parent or court
  - c. The accused must be a parent, guardian or person responsible for the care of a minor. A person can become responsible for care by his own voluntary act and without a specific delegation of supervision or responsibility by a parent or court. Snow v. Com., 33 Va. App. 766, 537 S.E.2d 6 (2000).
  - d. Nothing in [the statutory] language conveys that an individual cannot have joint responsibility with another individual for the child, or that an individual cannot be responsible if a parent or guardian is also present at the time of the child's injury.” Carrington v. Com., 59 Va. App. 614, 621, 721 S.E.2d 815, 818 (2012) (defendant was living with the child's mother).
3. White v. Com., 68 Va. App. 111, 804 S.E.2d 317 (2017) reversed conviction of felony child abuse when defendant's five-year-old son died in a backyard septic tank. This Code provision “does not impose criminal liability on parents who fail to take positive action to ferret out every potential hazard to ensure the premises are safe. Rather, the statute punishes a parent's willful omission, ‘which requires an awareness’ of the danger associated with leaving her child unsupervised.”
4. Camp v. Com., 68 Va. App. 694, 813 S.E.2d 10 (2018).  
 “Although a level of intoxication at or near the legal limit, in and of itself, may be insufficient to allow a factfinder to conclude that

injury is probable, the same is not true at higher levels of intoxication... Driving with a BAC far above the legal standard for driving while intoxicated can be sufficient to allow a rational factfinder to conclude that the risk of injury is probable.”

5. However, § 18.2-371.1.B.1 does not require proof that the child was even injured; it is enough that conduct of the accused, so gross, etc., as to show reckless disregard for life, placed a child in a position or situation of grave danger to life.
  6. If a child is found to be abused or neglected, is at risk of being abused or neglected by a parent or custodian who has been previously adjudicated as having abused or neglected another child, is abandoned by his parent or other custodian, or who by reason of absence or physical or mental incapacity of the parent is without parental care and guardianship, the court is empowered pursuant to the statute to order a variety of measures which may affect parental rights and eventually lead to their termination altogether. Among these are the power to terminate the rights of either or both parents pursuant to Va. Code Ann. § 16.1-283.
  7. The statute contemplates five broad circumstances when residual parental rights may be terminated and prescribes the findings that are necessary, based on clear and convincing evidence that it is in the best interests of the child that such termination occur.<sup>24</sup> These five circumstances are:
    - a. (1) When a child has been found by the court to have been neglected or abused and has been placed in foster care and:
    - b. (2) When the child has been placed in foster care and the court finds:
    - c. (3) When a child has been found by the court to be neglected or abused upon ground of abandonment and the court finds:
    - d. (4) When the child is in the custody of a local board or child placing agency and the court finds:
    - e. (5) When the court finds that it is in the best interests of a child and the residual parental rights of the parent to a sibling of the child have been previously involuntarily terminated
  8. In Brown v. Spotsylvania Dept. of Social Services, 43 Va. App. 205, 597 S.E.2d 214 (2004), an incarcerated father challenged the termination of his parental rights under circumstances following a conviction for assault on an unrelated child residing with him, on grounds that his felony conviction did not constitute a "felony assault" as referenced in the statute
- ii. Protective orders

1. Elliott v. Commonwealth, 277 Va. 457, 462 (2009)
    - a. This case authorizes the JDR Court to issue protective orders in cases of family abuse to protect health and safety of petitioner and family or household members of petitioner.
    - b. The standard for violating a protective order that is intended to safeguard the health and physical safety of the mother is that the defendant must intended to visually communicate with the victim. Parking a block away does not pose a threat of harm to the victim under § 16.1-279.1(A)(2)
  2. McGowan v. Commonwealth, 850 S.E.2d 376 (2020)
    - a. Defendant tried to argue there was insufficient evidence to support his conviction of violation of the protective order. However, the Court found that the resulted bodily injury was sufficient evidence and affirmed the conviction
  3. Green v. Commonwealth, 843 S.E.2d 389 (2020)
    - a. The defendant was required to have “no contact” with the victim. The court held that asking someone on Twitter to convey a message to the protected parted violated the protective order
  4. Calloway v. Commonwealth, 746 S.E.2d 72 (2013)
    - a. A violation of a protective order is ordinarily a misdemeanor, but it is felony when person violates such protective order by furtively entering home of any protected party while party is present. The defendant tried to argue that because he made noise by breaking glass when he entered home, there was not enough evidence to prove the defendant’s entry was furtive. The court held that making noise when breaking glass did not entitle him to a conviction of the lesser charge
  5. Hsiu Tsai v. Commonwealth, 659 S.E.2d 594 (2008)
    - a. A defendant must have knowledge of the terms of the protective order to support a conviction for a violation of a protective order
- iii. Spousal abuse
1. United States v. Castleman, 572 U.S. 157 (2014)
    - a. The United States Supreme Court held that a conviction for common-law battery satisfies the sufficient use of physical force to qualify as a conviction for a “misdemeanor crime of domestic violence.”
  2. Weishaupt v. Commonwealth, 315 S.E.2d 847 (1984)

- a. A defendant’s estranged wife had the right to refuse sexual intercourse with him. There is no common law exemption that a husband is exempt from being charged for the rape of his wife. A wife can universally revoke her consent at any time during marital intercourse.
- 3. Morse v. Commonwealth, 440 S.E.2d 145 (1994)
  - a. Code § 18.2-67.2:1 is limited to those instances in which sexual intercourse between spouses living together is accomplished against one spouse’s will by force or threat of force, and does not include such acts accomplished by intimidation.
- 4. Poole v. Commonwealth, 860 S.E.2d 391, 394 (2021).
  - a. “Upon review, it is clear that this amendment to Code § 18.2-61 plainly shows the General Assembly's intent to remove any additional elements needed for a conviction of rape when the defendant and victim are spouses. The General Assembly's intent could not be more clear in the added language of the current statute that prohibits forcible sex with another ‘whether or not his or her spouse.’ Code § 18.2-61(A).”
  - b. In 2005, the General Assembly amended the statute by adding language to subsection A providing that a person was guilty of rape by having forcible sex with another, "whether or not his or her spouse." 2005 Va. Acts ch. 631.3
- 5. Herrel v. Commonwealth, 507 S.E.2d 633 1998
  - a. “Any object,” as used in statute proscribing marital sexual assault, includes inanimate objects. Therefore, husband’s attempt to penetrate wife’s anus with his finger by force and against her will violated statute.
- 6. Rickman v. Com., 535 S.E.2d 187 (2000)
  - a. As Whether a living arrangement is “cohabitation” depends upon a totality-of-the circumstances analysis. The three major factors are: first, sharing familial or financial responsibilities (provisions for food, shelter and clothing and commingling assets); second, consortium (fidelity, affection, companionship, conjugal relations); third, length and continuity of the relationship
- 7. Lewis v. Commonwealth, 813 S.E.2d 732 (2018)
  - a. Multiple convictions of some type of domestic abuse lead to felony convictions pursuant to Virginia Code § 18.2-57.2
- 8. Rickman v. Commonwealth, 535 S.E.2d 187 (2000)
  - a. Although first and second offenses of assault and battery of family or household member are punished as Class 1

misdemeanors in Virginia, third offense for assault and battery of family or household member within ten years is subject to heightened punishment as a Class 6 felony.

9. Paduano v. Commonwealth, 766 S.E.2d 745 (2014)

- a. Rape is generally not considered to be a continuous offense. Multiple penetrations will support an equal number of charges.

b. Presumptions & Policies

- i. “Once the presumption favoring parental custody has been rebutted, the parental and non-parental parties stand equally before the court, with no presumption in favor of either, and the question is the determination of the best interest of the child according to the preponderance of the evidence .” Walker v. Fagg, 11 Va. App. 581, 586, 400 S.E.2d 208, 211 (1991) (citing Smith v. Pond, 5 Va. App. 161, 360 S.E.2d 885 (1987)). Cooner v. Cooner, No. 1570-03-4, 2004 WL 834170, at \*4 (Va. Ct. App. Apr. 20, 2004)
- ii. It is well settled that in custody cases involving a controversy between parent and non-parent, there is a presumption that the best interests of the child will be served when the child is placed in the custody of a fit parent with a suitable home. Judd v. Van Horn, 195 Va. 988, 995–96, 81 S.E.2d 432, 436 (1954). Martin v. Pittsylvania Cnty. Dep’t of Soc. Servs., 3 Va. App. 15, 20, 348 S.E.2d 13, 16 (1986)
- iii. There is a presumption that a couple is married if they live together ostensibly as husband and wife. Coureas v. Allstate Ins. Co., 198 Va. 77, 92 S.E.2d 378 (1956).

#### IV. Additional Protections, Resources & Policy in Virginia

a. Confidentiality Protection

- i. A program for residents of the Commonwealth of Virginia, via the Virginia Attorney General. See <https://www.oag.state.va.us/index.php/programs-initiatives/domestic-violence/address-confidentiality-program>

b. Comprehensive overview —state by state

- i. See *How to Hide Your Address*, DOMESTIC SHELTERS, May 18, 2016, [https://www.domesticshelters.org/articles/protecting-personal-affects/how-to-hide-your-address?fbclid=IwAR0-KtTHMcHGvp6IIZ-x\\_2wfNmDtrbQjYID\\_3kLNnT4C4-st1tG5-LkL99w](https://www.domesticshelters.org/articles/protecting-personal-affects/how-to-hide-your-address?fbclid=IwAR0-KtTHMcHGvp6IIZ-x_2wfNmDtrbQjYID_3kLNnT4C4-st1tG5-LkL99w).

c. Violence Against Women Act (VAWA)

- i. Under a subtitle of the Violence Against Women Act, entitled the *Safe Homes for Women Act of 1994*, (VAWA), a person who travels in interstate or foreign commerce or enters or leaves Indian country<sup>5</sup> or

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<sup>5</sup> Virginia has two state-recognized reservations, the Pamunkey and the Mattaponi, both located on tributaries of the York River.

within the special maritime and territorial jurisdiction of the United States, with the intent to kill, injure, harass, or intimidate that person's spouse, intimate partner, or dating partner, and who, in the course of or as a result of such travel or presence, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner is subject to punishment, 18 U.S.C.A. § 2261(a)(1).

- ii. Spouse, and intimate and dating partner defined, 18 U.S.C.A. § 2266.
- d. Coercion or Fraud: 18 U.S.C.A. § 2261(a)(2): a person who causes a spouse, intimate partner, or dating partner to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and who, in the course of, as a result of, or to facilitate such conduct or travel, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner, is subject to punishment.
- e. Virginia Victim Assistance Network
  - i. [www.vanetwork.org](http://www.vanetwork.org)
  - ii. Victim Assist Virginia Helpline 1-888-887-3418
- f. Virginia Sexual and Domestic Violence Action Alliance
  - i. [www.vsdvalliance.org](http://www.vsdvalliance.org)
  - ii. Statewide Hotline 1-800-838-8238
- g. Virginia Legal Aid
  - i. [www.valegalaid.org](http://www.valegalaid.org)
  - ii. 1-866-534-5243
- h. Virginia Poverty Law Center (Family & Sexual Violence)
  - i. [www.vplc.org](http://www.vplc.org)
  - ii. 1-800-868-8752
- i. Virginia State Bar Lawyer Referral Service
  - i. [www.vsb.org/vlrs/index.php/public/vlrs](http://www.vsb.org/vlrs/index.php/public/vlrs)
  - ii. 1-800-552-7977
- j. Virginia Victims Fund (Officially the Criminal Injuries Compensation Fund)
  - i. [www.virginiavictimsfund.org](http://www.virginiavictimsfund.org)
  - ii. 1-800-552-4007
- k. The Fair Housing Act, Violence Against Women Act, and the Virginia Residential Landlord Tenant Act all have legal protections for survivors of domestic violence.
  - i. It is illegal for a housing provider to discriminate against a person because he or she is experiencing or has experienced domestic violence.
  - ii. Shelter Programs:  
[https://www.dss.virginia.gov/files/division/dfs/ofv/shelters\\_programs/shelters\\_programs.pdf](https://www.dss.virginia.gov/files/division/dfs/ofv/shelters_programs/shelters_programs.pdf). This PDF includes information for every county in Virginia for victims of domestic abuse including:
    1. hotline phone numbers
    2. addresses of shelters
    3. websites

4. names of directors
  5. etc.
- I. Where victims can go according to Virginia Legal Aid Society
    - i. Police – call 911
    - ii. Local domestic violence or sexual assault programs
    - iii. Department of Social Services
    - iv. Homeless shelters
    - v. Churches in your community
    - vi. Victim-Witness Program
  - m. For a critique of Virginia domestic violence law which provides a legislative solution with sample language demonstrating how Virginia law could be amended to improve the lives of abuse victims otherwise under coercive control see Rebekah Bunch, *Abused, but not Physically Bruised: How Virginia Can Protect Coercively Controlled Domestic Abuse Victims*, 42 VA. FAM. L. Q. 9 (2022), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4076276](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4076276).
  - n. Other Public Policy Manifestations
    - i. Mandatory Arrest policies: Today, almost all states allow officers to make a warrantless arrest if there is probable cause of domestic violence.<sup>6</sup>
    - ii. No-Drop Policies: No-drop policy is a mandatory prosecution policy, which like mandatory arrest policies, limits the discretion of both the victim and law enforcement by pursuing all domestic violence cases where there is evidence of the commission of a crime.<sup>7</sup> This is to say the prosecutor will pursue a case with or without the cooperation of the victim.<sup>8</sup>

## V. Federal Immigration Policy, Special Visas, Global Perspectives

### I. Federal Law

- A. Immigration Marriage Fraud Act of 1986 and the Violence Against Women Act
  1. Under this act, an immigrant who married an American citizen would have conditional residency (conditioned upon the marriage) for two years before the couple could jointly petition to have the conditions removed. Rachel Gonzalez Settlage, *Uniquely Unhelpful: The U Visa's Disparate Treatment of Immigrant Victims of Domestic Violence*, 68 RUTGERS U.L. REV. 1747, 1755-60 (2016).
  2. To start the immigration process for a spouse to get a marriage visa or a K1-visa, the spouse who is a citizen or has LPR must petition to begin the process. *Id.*
  3. Under the VAWA, “[i]n those situations where the U.S. citizen or lawful permanent resident abuser will not file for a visa on behalf of his immigrant

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<sup>6</sup> Robert J. Friedman, *Protecting Victims from Themselves, but not Necessarily from Abusers: Issuing a No-Contact Order Over the Objection of the Victim-Spouse*, 19 WM. & MARY BILL OF RTS. J. 235, 241 (2010).

<sup>7</sup> *Id.* at 254.

<sup>8</sup> *Id.* at 242.

- spouse, or threatens to withdraw a visa petition already filed, an abused spouse can self-petition for a visa.” *Id.* at 1759-60.
- a. Removes the power of the abuser to determine the status of the immigrant woman. *Id.*
- B. 1990 Immigration Act and the Violence Against Women Act
1. 8 U.S.C. § 1227(a)(7).
    - a. This section allows immigration judges to waive deportation for women and children who are victims of domestic violence or stalking. See § 1227(a)(2)(E)(i). *Id.*
    - b. Women who have “been battered or subjected to extreme cruelty and who is not and was not the primary perpetrator of violence” may petition, on their own, for a stay of removal if their visa has expired and they do not have lawful permanent residency (LPR). *Id.*
  2. 8 U.S.C. § 1229(b).
    - a. A nonpermanent resident may have a stay of removal if he or she is deportable under § 1229(b)(2) AND
    - b. He or she has been battered or subjected to extreme cruelty by
      1. A spouse or parent who is a U.S. citizen, OR
      2. A spouse or parent who is an LPR, OR
      3. A citizen or LPR whom the alien wanted to marry but the marriage was illegitimate, AND
      4. The alien has had “good moral character” (see § 1229(b)(2)(C)), AND
      5. Has been in the United States for a continuous period of more than three years unless their absence in the states was related to their battering. *Id.*
    - c. Provides relief and stays of removal to parents and children of battered aliens and relatives of those who were trafficked. *Id.*
- C. Process of Immigration and procedure
1. Executive Office for Immigration Review (EOIR)
    - a. The EOIR was created by the Department of Justice in 1983 (independent from the Immigration and Naturalization Services and the Department of Homeland Security). U.S. Dep’t of Just., EXEC. OFF. FOR IMMIGR. REV. (last updated May 18, 2022), <https://www.justice.gov/eoir/about-office>.
      1. The Office oversees the implementation of immigration law and policy. *Id.*
      2. The Office also directs three hundred immigration judges and fifty-eight immigration courts throughout the states. *Id.*
      3. Virginia has immigration courts in Arlington, Falls Church, Richmond, and Sterling (new). *Id.*
  2. Board of Immigration Appeals (B.I.A.)
    - a. The B.I.A. conducts paper reviews of appeals from immigration judges (I.J.). *Id.*

- b. The B.I.A.’s rulings are binding on all immigration judges, subject to review by the Attorney General and the federal courts. *Id.*
3. Fourth Circuit and Supreme Court
  - a. Appeals from the B.I.A. go directly to the Fourth Circuit and may be petitioned to the Supreme Court. *Id.*

## II. Special Visas

### A. “Green Cards,” F visas, K Visas

#### 1. “Green Cards” or Permanent Resident Cards

- a. A permanent resident card works as a substitute for an immigrant visa.
- b. “A green card may be presented in lieu of an immigrant visa if the person is returning to an unrelinquished, lawful permanent residence after a temporary absence abroad not exceeding one year.” 8 C.F.R. § 211.1(b); Austin T. Fragomen, Jr., et al., *Permanent resident card*, 2 IMMIGR. L. & BUS., § 12:58 (2d ed., West).

#### 2. F Visas

- a. Students may obtain an F Visa if they wish to study in the United States. Norma Briscoe Hoffpauir, *U.S. Immigration: A Primer for Employment Law Practitioners*, THE MARYLAND STATE BAR ASSOC. INC., CH. 21, III(A) (MSBA 2021).
- b. Female immigrants who apply for student visas or work visas are most likely less likely to suffer from domestic violence.
  1. They have separate incomes from their potential abusers.
  2. On average, they also have more education and a better knowledge of the immigration process.
  3. Most likely have more resources to know their legal rights.

#### 3. K Visas

K visas provide special status to fiancées who intend to live permanently in the United States after marriage. Sarah B. Ignatius & Elizabeth S. Stickney, *K-1 and K-2 visas for fiancé(e)s of U.S. citizens and their children*, IMMIGR. L. & FAM., 2022, § 14:5. Technically, the nonimmigrant visa recognizes the beneficiary’s intent to immigrate based on the planned marriage. *Id.*

1. It expires 90 days after the fiancée enters the United States unless she marries the United States petitioner. *Id.* Then she can adjust her status. *Id.*; 8 U.S.C. §§ 1255(d), 1258(1), 1101(a)(27).

### B. U-Visas—Created Through the Violence Against Women Act of 2000

1. Provides additional protection for women who are not married to and not in the process of marrying a United States citizen and their children under the age of twenty-one. Settlage, *supra* V. I. A. 1., at 1765-66.
2. Protects immigrant women from more than just domestic violence. More requirements to meet. *Id.*
  - a. Protects women who are not married to their abusers. *Id.*

3. There are only ten thousand U-Visas issued yearly, with upwards of seventy-thousand applications. *Id.* at 1755-60.
  - a. While waiting for the review of their applications, women are not given status, but their removal is deferred. *Id.*
  - b. They are given to immigrant women who experience domestic violence or are victims to other crimes (listed in the statute). *See* 8 U.S.C. §§ 1101(a)(15)(U)(iii), 2012(m); 8 U.S.C.A. § 101(a)(15)(U)(iii).
  - c. To qualify for a U-Visa, a woman must meet the following requirements:
    1. She must be a victim of qualified criminal activity,<sup>9</sup>
    2. The criminal activity must have occurred in the United States or violated U.S. law,
    3. She must possess information concerning the criminal activity,
    4. She suffered substantial mental or physical abuse as a result of having been a victim of the criminal activity, AND
    5. She must have helped, is being helpful, or is likely to be helpful to a Federal, State, or local authority investigating or prosecuting the criminal activity for up to four years (or however long their visa lasts). 8 C.F.R. § 214.14(b). *Settlage supra* V. I. A. 1. at 1763-65; 8 U.S.C. §§ 1101(a)(15)(U)(iii), 2012(m); 8 U.S.C.A. § 101(a)(15)(U)(iii).
      - a. Requires an LEC (law enforcement certification). *Id.* at 1751.
4. Who can Apply for a U-Visa?
  - a. Spouse - if applicant was or is the abused spouse of a citizen or LPR. May apply if your child has been the one abused. May include any unmarried children who are under 21
  - b. Parent - if your child is the citizen or LPR and they have abused you
  - c. Child - if the applicant is an abused child under 21 who is unmarried. Their children may also be included in that application
5. Eligibility Requirements
  - a. applicant has a qualifying relationship (see above).
  - b. applicant was subjected to battery or extreme cruelty during the qualifying relationship
  - c. applicant has resided or is residing with the abuser
  - d. applicant has good moral character
6. How to Apply for a U-Visa:
  - a. Form I-360 with evidence to demonstrate that applicant has met all of the eligibility requirements.

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<sup>9</sup> Qualified criminal activity includes but is not limited to abduction, abusive sexual contact, blackmail, domestic violence, extortion, false imprisonment, FGM, felonious assault, fraud in foreign labor contracting, hostage, incest, involuntary servitude, kidnapping, manslaughter, murder, obstruction of justice, peonage, perjury, prostitution, rape, SA, sexual exploitation, slave trade, stalking, torture, trafficking, witness tampering, unlawful criminal restraint, other related crimes or crimes with similar elements. 8 U.S.C.A. § 101(a)(15)(U)(I)(iii).

b. Applicants may apply for employment authorization and from there adjust for a green card.

### C. Asylum

1. Refugee - anyone who is outside their nation, or does not have a state
2. Elements for asylum and refugee applications are similar, however asylum applications are processed within the US whereas refugee applications are processed out of the US, I-589 application
3. Applicants must show that they have suffered past persecution or a credible fear of future persecution.
4. Persecution must be based on at least one of the 5 characteristics, the persecution must be linked to one of these characteristics
  1. Race
  2. Religion
  3. Nationality
  4. Political Opinion; may be imputed
  5. Part of a Particularized Social Group (PSG)
5. The Board of Immigration Appeals (BIA) narrows the definition using:
  1. Common immutable characteristic
  2. Defined with particularity
  3. Socially distinct within the society in question, does not have to be visual
6. DOJ has accepted asylum cases based on sexual orientation, membership within a particular family, and Indigenous Guatemalan women who were unable to leave their abusive homes
7. The Persecution must be a government actor or the government must be unable/unwilling to do anything

\*General Tips for working with Asylum Clients

- a. Be aware of the cultural and family values which persist
- b. Practice with trauma informed care
- c. Important to have a good interpreter if you don't speak the language
- d. Build trust over time, you won't be able to unpack the trauma on the first meeting

### D. T-Visas

1. Trafficking visas are given to women who have been trafficked. *Settlage supra V. I. A. 1. at 1751-52.*
2. They only need secondary evidence and affidavits documenting abuse and their cooperation with law enforcement. *Id.*

## III. Convention of the Elimination of all Forms of Discrimination Against Women (CEDAW)(<https://www.un.org/womenwatch/daw/cedaw/> ).

- A. Was originally promulgated by the United Nations (UN) Entity for Gender Equality, is now handled by the Office of the High Commission for Human Rights in Geneva.
- B. Adopted in 1979 by the UN, often described as the bill of rights for women.

1. Defines what constitutes discrimination against women.
  2. Sets up an agenda for national action.
- C. Discrimination Against Women - any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms, in the political, economic, social, cultural, civil, or any other field.
- D. Acceptance states that the signatories commute themselves to undertake measures to end discrimination including:
- E. Incorporating the principle of equality amongst men and women in the legal system;
  - F. Abolish all discriminatory laws, and adopt those prohibiting discrimination;
  - G. Establish tribunals to ensure effective protection;
  - H. Ensure elimination of all acts of discrimination;
  - I. Agree to take appropriate measures against all forms of trafficking
    1. ensures women's equal access and equal opportunity in political and public
    2. This is the only human rights treaty that affirms reproductive rights of women, and targets culture and tradition as influential forces
- J. Ratifying nations are legally bound to put provisions into practice and to submit national reports every four years
1. Ratifying nations are found at: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en);
  2. US signs 07/17/1980 but has never ratified CEDAW.

#### IV. General Factors that increase vulnerability to domestic violence

- A. Isolation—Regardless of the culture. Settlege, *supra* V. I. A. 1., at 1758.
1. Immigration status is in the hands of the spouse who is a United States citizen or an LPR. *Id.* at 1754.
    - a. Spouses in the United States must file papers to begin the immigration process. See Margaret E. Adams & Jacquelyn Campbell, *Being Undocumented & Intimate Partner Violence (IPV): Multiple Vulnerabilities Through the Lens of Feminist Intersectionality*, Johns Hopkins University School of Nursing, 2012, 23.
  2. Women distrust the government, law enforcement, and the judicial system. Settlege, *supra* V. I. A. 1., at 1758.
    - a. Victims are often threatened or fear deportation. Edna Erez, *Migration/Immigration, Domestic Violence and the Justice System*, 26 *Journal of Comparative and Applied Criminal Justice*, 277, 287 (2002).
    - b. Victims rely on abusers for financial support and worry about reporting their abuser (who may also be deported). *Id.*

- c. Victims bring with them misconceptions of government entities from their home countries.
  - 3. Women do not have their familiar social networks to support them. Adams, *supra* V. IV. A. 1.a., at 20.
    - a. Women generally do not know anyone in the United States when they first immigrate except for their abusers. *Id.* at 19.
    - b. Additionally, because of the advancements within the United States, the majority culture is more focused on individuality and less on tight-knit family groups, cultural practices, and places of religious worship. Julia L. Perilla, *Domestic Violence as a Human Rights Issue: The Case of Immigrant Latinos*, 21 HISPANIC J. OF BEH. SCIENCES 107, 114 (Sage Publications, Inc. 1999).
- B. Other Factors
  - 1. Political upheaval
    - a. Africa is one of the most war-torn continents in the world. Monty G. Marshall & Gabrielle Elzinga-Marshall, *Global Report 2017 Conflict, Governance, and State Fragility*, CTR. FOR SYS. PEACE, 45-53 (2017).
      - 1. State fragility is determined by combining eight different factors, including whether a country is in an armed conflict, political effectiveness, regime type, and political legitimacy. *Id.* at 52-53.
      - 2. Out of the fifty-four countries within Africa, thirty-three countries have experienced war in the past twenty years, while thirteen countries were involved in an active war as of 2017. *Id.* at 45-51.
        - a. Nineteen countries have some form of an autocratic regime. *Id.*
        - b. Two of the five states in the world that are failed states or have collapsed central authorities due to conflict or human/natural disasters are in Africa (Libya and South Sudan). *Id.* at 53.
        - c. Eighteen countries within Africa were marked as being “extremely fragile” states. *Id.* at 45-51.
    - b. According to the Fragility Index, Latin American countries also struggle with political fragility. *Id.*
      - 1. Out of thirty-three countries within Latin America, seven countries have experienced war in the past twenty years, and two (Mexico and Colombia) are considered to be experiencing current conflict (as of 2017) due to the drug trade. *Id.*
      - 2. While no Latin American countries were considered to be “extremely fragile,” at least one country, Haiti, was considered a failed state (due to humanitarian crises), and close to five countries were either institutionalized autocracies (Cuba) or weakening democracies. *Id.* at 45-53.
      - 3. According to the United Nations Office on Drugs and Crime, Columbia is responsible for over half of the world’s cocaine trade, with Peru and Bolivia making up the balance. World Drug Report

2010, United Nations Office on Drugs and Crime [UNODC], UNITED NATIONS, 66 (last visited June 6, 2022), [https://www.unodc.org/documents/wdr/WDR\\_2010/World Drug Report 2010 lo-res.pdf](https://www.unodc.org/documents/wdr/WDR_2010/World_Drug_Report_2010_lo-res.pdf).

- A. Columbia produced and shipped 450 metric tons of cocaine in 2008. *Id.*
  - 1. The production and shipping of drugs have led to the rise of violence between gangs such as FARC, PCC, the Red Command, MS-13, the Sinaloa Cartel, and the National Liberation Army, especially in Colombia and Mexico. *Id.* at 34.
  - 2. Additionally, murders in central America (transit states) increased dramatically with the rise in cocaine production like Venezuela, Honduras, and El Salvador. *Id.* at 27.
- c. Case Law
  - 1. *Gandziami-Mickhou v. Gonzales*, 445 F.3d 351, 353 (4th Cir. 2006).
    - a. Gandziami-Mickhou asked for asylum and a stay of removal. *Id.* She claimed that she had suffered rape, beatings, and torture for being a part of a family that was friends of a recently overthrown dictator in the Congo. *Id.* at 355.
    - b. The immigration judge and the circuit court determined that her story was confusing and lacked testimony. *Id.* at 359.
  - 2. *Djadjou v. Holder*, 662 F.3d 265, 266 (4th Cir. 2011).
    - a. Djadjou asked for a stay of removal. *Id.* at 272.
    - b. She alleged that she had been imprisoned, raped, and tortured on four separate occasions because she was a radical Social Democratic Front member. *Id.* at 268-69.
    - c. The immigration judge and B.I.A. found her evidence conflicting and denied her relief. *Id.* at 266. The fourth circuit affirmed. *Id.*
- 2. Poverty and lack of education
  - a. According to the Human Development Index, the rates of schooling in Africa and Latin America is incredibly low. Human Development Index (HDI), United Nations Human Development Reports, UNITED NATIONS (last visited June 6, 2022), <https://hdr.undp.org/data-center/human-development-index#/indicies/HDI>.
    - 1. The HDI is based on data from the OECD. *Id.*
      - a. Latin American countries average between 10.6 (Chile) and 6.9 (Nicaragua) years of schooling. *Id.*
      - b. African countries average between 12.1 and 2.1 (Niger) years of schooling. *Id.*
  - b. The poverty rates of those living in Latin America and Africa were incredibly high in 2020.

1. These estimates are reported in percentages of households for the fourth quarter of the year in urban areas. Alicia Barcena et al., *Social Panorama of Latin America*, ECON. COMM'N FOR LATIN AM. AND THE CARIBBEAN (ECLAC) UNITED NATIONS, ch. 1, 202, 83 (2021), <https://repositorio.cepal.org/bitstream/handle/11362/47719/S2100654en.pdf?sequence=1&isAllowed=y>.
  - A. Honduras has the highest rate of extreme poverty (20%). *Id.*
  - B. Uruguay has the lowest rate of extreme poverty (.3%). *Id.*
  - C. Columbia has the highest rate of poverty overall (39.8%). Over five countries experienced poverty over 30%, including Argentina, Bolivia, Ecuador, Colombia, El Salvador, and Mexico. *Id.*
2. In Africa, nearly all countries have at least 10% of their populations living below 50% of median income. World Development Indicators, Databank, WORLD BANK, (last visited June 19, 2022), <https://databank.worldbank.org/reports.aspx?source=2&Topic=11>.
  - a. In Zambia, an estimated 58.7% of people lived on a little less than *two dollars per day*. Other Sub-Saharan countries have a quarter to half of their population living on the same level of income as Zambia. *Id.*
  - b. However, in Tunisia and other North African countries, only 0.3% of the population lived on less than two dollars a day. *Id.*
- c. Case Law
  1. *Haoua v. Gonzales*, 472 F.3d 227, 229 (4th Cir. 2007).
    - a. Haoua was a forty-year-old woman from Niger; her family wanted her to marry a chieftain from a nearby Niger town and go through feminine genital mutilation before entering his household. *Id.* She refused and escaped to the United States. *Id.*
    - b. According to the state department, one out of every five women in rural areas in Niger faced female genital mutilatiOn,<sup>10</sup> despite the government's attempts to stop it. *Id.* at 229-31.
      1. The I.J. stated she had only a 10% chance of F.G.M., despite being threatened by her family members and told her to relocate within the country. *Id.* F.G.M. does constitute persecution within the meaning of 8 U.S.C. §§ 1101, 1231(b)(3). *Id.*

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<sup>10</sup> Female Genital Mutilation (F.G.M.), also known as female circumcision, is a cultural practice popular in Africa and parts of the Middle East. F.G.M. involves removing parts of the outer and inner labia. Elliot Klein et al., *Female Genital Mutilation: Health Consequences and Complications—A Short Literature Review*, OBSTETRICS AND GYNECOLOGY INTERNATIONAL, 2-5 (2018). Women are often subjected to F.G.M. when they enter puberty, before marriage, or may forcibly undergo the procedure as young girls. *Id.* Different cultures believe that F.G.M. is a sign of purity or womanhood and is believed to increase male sexual pleasure. *Id.* It generally removes the possibility of female sexual pleasure. F.G.M. may cause pain during sex, bladder inconstancy, infection, and other reproductive health issues. *Id.* F.G.M. is considered a form of domestic violence and abuse if the procedure is undertaken without a woman's consent. *Id.*

2. The court granted review because of the meaningless “10%” critique that was not based on fact. *Id.*
3. Lack of Legislation Against Domestic Violence in Native Countries
  - a. Twenty-eight countries in Africa do not have legislation on domestic violence (that is over half of the countries in Africa). *Countries Without Laws Against Domestic Violence*, WORLDATLAS (last visited June 6, 2022), <https://www.worldatlas.com/articles/nations-without-domestic-violence-regulation.html#:~:text=Some%20of%20the%20countries%20with,Gabon%2C%20and%20Eritrea%20among%20others.>
    1. Countries such as Kenya, Nigeria, and the DRC allow marriage as a defense to charges of sexual assault. In Cameroon, if a perpetrator marries the women he assaulted, he can escape a conviction. *Id.*; Eniko Horvath, et al., *Gender-based violence laws in Sub-Saharan Africa*, Committee on African Affairs of the New York City Bar, 28-30 (2007).
      - A. Many African countries with laws against domestic violence include or only protect families and family members from domestic violence, not women specifically. *Id.* at 57.
      - B. As a result, the WHO’s 2013 report states that 45.6% of all women in Africa face sexual violence in their lives. Shockingly, that means that a little more than four out of ten women within Africa will experience violence before they even immigrate to the United States. *Global and Regional Estimates of Violence Against Women Prevalence and Non-partner Sexual Violence*, WORLD HEALTH ORGANIZATION [WHO], 19 (2013).
  - b. According to the United Nations Development Programme (UNDP), most South American states recently implemented laws against domestic violence (starting in 1993 and continuing to 2013). *Comparing policy interventions on domestic violence in Latin America: criminalization, female empowerment, and male engagement*, UNITED NATIONS DEV. PROGRAMME [UNDP], 12 (Mariana Enghel ed., 2017).
    1. Additionally, some countries may not include sexual assault in their legal definition of domestic violence. *Id.* at 14. Only thirteen states within Latin America have sexual violence in their legal definition of domestic violence. Additionally, twelve states only provide protections to “families,” not directly to women. *Id.*
    2. In some countries, such as Argentina, the minimum mandatory sentence for perpetrators of domestic violence is three days. In other countries like Guatemala, it is five years. *Id.* at 18.
    3. The Americas (which include North and South America) also have a high rate of reported sexual violence, with 36.1% of women reporting sexual violence. *Global and Regional Estimates of Violence*, at 20.

- a. These are reported numbers and include both partner and non-partner abuse. (The data has limitations because it was obtained from only seventy-nine countries and two territories only.) *Id.* at 16.
- b. Women who have suffered domestic violence are more likely to experience similar abuse later, without the compounding issues of immigration. Ann L. Coker, et al., *Frequency and Correlates of Intimate Partner Violence*, 90 AM. J. OF PUB. HEALTH, No. 4, 558 (2000).
- c. Case Law
  - 1. *Gomis v. Holder*, 571 F.3d 353, 354 (4th Cir. 2009).
    - a. Gomis, a Senegalese woman, appealed a B.I.A. decision to affirm an immigration judge’s denial of asylum. *Id.*
    - b. Primarily, Gomis objected to the B.I.A.’s finding that she would not be subjected to female genital mutilation and a forced marriage if she was returned to Senegal. *Id.* at 354.
    - c. The court affirmed the B.I.A.’s decision because Senegal had recently outlawed F.G.M. and because United States statistics did not match the testimony by Gomis of how many women within her ethnicity were forced to go through F.G.M. *Id.* at 358-59.

## V. Global Cultural Views on Sex, Gender, and Violence

### A. In general

- 1. First-generation immigrants to the United States are likelier than natives in their home country to have positive views of violence. Erez, *supra* V. IV. A. 2.a., at 280. These first-generation immigrants also seek to maintain traditional gender roles in the home. *Id.*
- 2. When immigrants travel to a new country with a different dominant culture, they likely try to maintain their culture more rigorously to keep ties to their homeland. *Id.* at 281.
  - a. While male spouses generally immigrate for work, political reasons, or education, women generally follow for marriage. *Id.* at 292.
    - 1. Often, the majority culture seems to be an “assault on their group identity and uniqueness,” opening the door for violence as men try to maintain control over their families’ identity. *Id.* at 280.
      - a. (This increases the negative views of immigrants and of those who try to escape abuse → they are seen as escaping a brutal culture and as rejecting their home) *Id.* at 281.
- 3. Global Rates
  - a. 1 in 3 women worldwide experience physical or sexual violence, primarily by an intimate partner (30%), *Violence Against Women Global Fact Sheet*, WHO, Mar. 2021, <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>.

- b. 27% of women aged 15-49 who have been in a relationship report that they have experienced some form of physical and/or sexual violence by their partner.

B. Latin American Cultural Aspects

1. In Latin America, the concept of family has great importance in culture. Perilla, *supra* V., IV., 3., b., at 114.
  - a. Women and men generally have highly defined gender roles. *Id.* at 115.
  - b. Women are supposed to honor elders and their husbands, and men must act stoically and participate in “manly” activities. *Id.* at 117.
    1. The husband or father is considered to have exclusive rights to a woman’s virginity and her relationships. *Id.* at 120.
    2. Sex is considered a private family matter, and women are encouraged by religion to remain with their families (marriage is viewed as indissoluble). *Id.* at 123-24.
  - c. Ideas about love, power, and respect are also closely linked. *Id.* at 116.
    - a. Machismo: “An expression of exaggerated maleness to the detriment of the feminine.” *Id.* at 115-16.
    - b. Marianism: The expression of self-sacrifice, abnegation, passivity, and sexual purity (like the Virgin Mary). *Id.* at 123-24.
2. Women’s views on violence in Latin America
  - a. While there is scant data on women’s views in Latin America, several countries have elevated rates of women believing that a man is justified in beating his wife for child neglect, burnt food, arguing with him, going out without telling him, and refusing to have sex. *Gender Statistics*, DataBank, WORLD BANK (last visited June 6, 2022), <https://databank.worldbank.org/source/gender-statistics>.
    1. Currently, only Columbia and Peru have elevated levels of women viewing domestic violence favorably.
      - a. 2.3% of Columbian women believe that a man is justified in beating his wife, while 4.9% of women in Peru believe the same. *Id.*
      - b. However, more developed countries like Brazil do not have reported percentages. *Id.*
3. Case Law
  - a. *Del Carmen Amaya-De Sicaran v. Barr*, 979 F.3d 210, 212 (4th Cir. 2020).
    1. Sicaran, an El Salvadoran woman, asked for withholding removal (because she did not enter the country validly) because she had been married and in an abusive and controlling domestic relationship (including being beaten and raped) with a Salvadoran army member. *Id.* at 213.
    2. Several times her husband had injured her family and friends after separating, including them being beaten by other soldiers. *Id.*

3. The I.J. and B.I.A. stated that she did not have good enough evidence that she would be tortured again. *Id.* Her testimony showed that she could escape her husband by moving within El Salvador. *Id.*

### C. African Cultural Aspects

#### 1. Colonialism, Patriarchy, and Female Genital Mutilation

##### a. Colonialism

1. The patriarchal nature of Africa was primarily established and enforced through the colonial system. Amina Mama, *Sheroes and Villains: Conceptualizing Colonial and Contemporary Violence Against Women in Africa*, in ch. 3 DOMESTIC VIOLENCE AND THE LAW IN COLONIAL AND POSTCOLONIAL AFRICA, 47, 54-55 (eds. Emily S. Burrill, et al., 2010).
2. While the northern part of Africa had seen the introduction of the patriarchal structure through the arrival of Islam in the 1200s, Sub-Saharan Africa had unique views of gender that did not precisely match the West's ideas of a male-dominated society. Brenna Streeeter, Senior Thesis, *Gendering a Nation, Nigeria During Decolonization*, (2021).
  - a. While white men who ran the colonial structure were prohibited from marrying African women, women were considered exotic beauties. Amina Mama, *supra* V. V. C.1.a.1., at 54-55.
  - b. Throughout the imposition of colonial rule, Africans were beset with needing to conform to the culture in power to gain any legitimacy. Amina Mama, *supra* V. V. C. 1.a.1., at 54-55.
    - a. As a result, when many countries became independent, ideas about gender and women did not change. *Id.* at 56. Men continuously forced women into the stereotypical European gender roles in part to maintain cultural legitimacy and power in the eyes of the European powers. *Id.* at 56.

- b. Patriarchy: While most research on domestic and family violence is engaged domestically, and generally focused on the West, factors associated with such violence seem to point, especially in Asia and the middle east, "to the importance of the patriarchal culture that is inextricably linked to culture that is resistant to change and must be addressed at a range of levels." Jac Brown, *Factors Related to Domestic Violence in Asia: The Conflict between Culture and Patriarchy*, 24 J. HUMAN BEH. IN THE SOCIAL ENV. 828 (2014). See also Rebekah Bunch, *Shackled by Shari'a: Saudi Women Still Controlled by Male Guardianship System Despite Present (Cosmetic) Reforms*, 8 J. GLOBAL JUSTICE & PUB. POL'Y 1 (2022), also available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3800435](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3800435).

- c. Female Genital Mutilation (see *supra* note 10). (See also Lynne Marie Kohm, *A Brief Assessment of the 25-Year Effect of the Convention on the Rights of the Child*, 23 CARDOZO J. INT'L. & COMPAR. L. 323 (2015)(where Section II. E. specifically discusses FGM in the context of children).
2. Women's views on violence
    - b. Several Central and Eastern African countries have high rates of women who believe it is permissible for men to beat their wives. Justifications for the beatings range from child neglect, burnt food, arguing, and going out, to refusing to have sex. *Gender Statistics*, DataBank, The World Bank (last visited June 6, 2022), <https://databank.worldbank.org/source/gender-statistics>.
      1. Mali has the highest rate of women who believe household abuse is permissible—an estimated 87.2%. *Id.*
      2. The lowest rates are in Burkina Faso, where only 43.5% of women believe men beating their wives is permissible. *Id.*
      3. Data on South Africa and other more developed countries is rare. *Id.*
- D. Middle East
- a. Generally, variations by country.
  - b. Primarily due to family structures and gender inequality in law and culture.
    1. Significantly linked to intimate partner violence, and/or a husband's violence to other family members. See, e.g. Basem Al Ubaidi and Dr. Fatema Tawfeeq et al, *Intimate partner violence in the Kingdom of Bahrain: Prevalence, associated factors and WAST screening in primary health centres*, 10 J. FAM. MED. & PRIMARY CARE 2893, Aug. 2021, [www.ncbi.nlm.nih.gov/pmc/articles/PMC8483099/#:~:text=The%20prevalence%20of%20IPV%20among,IPV%20\(P%20<%200.001\).](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC8483099/#:~:text=The%20prevalence%20of%20IPV%20among,IPV%20(P%20<%200.001).)
    2. See also *Global Country Profiles 2019*, <https://hdr.undp.org/sites/default/files/Country-Profiles/BHR.pdf>.
    3. FGM/Cutting - 87% (see *supra* note 10).
    4. Gender Inequality perpetuated by cultural practices and patriarchal attitudes. See *Global Database*, CEDAW (2010), [Etpu \(unwomen.org\)](http://Etpu.unwomen.org).
    5. Violence against women is frequently perpetuated by the state through not enforcing legal protection but also perpetuating via their own actions systemically. See e.g. Egypt, *Women Watch*, <https://www.un.org/womenwatch/daw/vaw/ngocontribute/Egyptian%20Center%20for%20Women%20Rights.pdf> (last accessed Jun. 22, 2022).
      1. Cultural practices and ideologies regarding purity, chastity and marriageability
      2. The practice was present long before the introduction of either Christianity or Islam

3. Best approach to combat has been to broach the topical from a religious and medical perspective
6. In Iran, in 2018, 66% of women experienced domestic violence in their lifetime. See *Iran holds world record in domestic violence against women*, NCR-IRAN.org, Dec. 4, 2020, <https://women.ncr-iran.org/2020/12/04/iran-holds-world-record-in-domestic-violence-against-women/>. Physical and sexual abuse is prevalent though concrete numbers are not available. *Id.*
7. There were 450 honor killings per year, with 2,736 cases in 2020. Psychological violence is not recognized, and domestic abuse is not illegal. See *Iran's War on Women*, UANI.com, <https://www.unitedagainstnucleariran.com/irans-war-on-women> (last accessed June 22, 2022). Criminal penalties for murder as a result of honor killings are lighter than the penalties of other acts of murder.
8. Domestic violence is often considered a private family matter, and marital rape is legal. Furthermore, Iranian law deters many rape victims from reporting their assault. *Id.*
9. Iraq Family Health survey in 2006/2007 found that 1 in 5 women are subject to domestic abuse. See *Iraq's Urgent Need for Domestic Violence Law*, HRW.org, Apr. 22, 2020, <https://www.hrw.org/news/2020/04/22/iraq-urgent-need-domestic-violence-law>.

E. Eastern Europe

- a. 70% of women in eight eastern European countries reported sexual assault, stalking, domestic violence, or other types of family violence since age 15. See *Study: Violence Against Women Widespread in Eastern Europe*, POLITICO, Mar. 6., 2019, <https://www.politico.eu/article/study-violence-against-women-widespread-in-eastern-europe/#:~:text=Seventy%20percent%20of%20women%20in,a%20study%20published%20on%20Wednesday>.
- b. Varies by country.
- c. Child marriage – 32%. *Id.*
- d. Lifetime partner – only 2%. *Id.*

**VI. Tips for Lawyer & Client - How to Spot, Handle, & Prevent Family Violence**

A. Educate Yourself

- a. (This CLE).
- b. Recognize patterns of learned helplessness: rising anger, violence, contrition, repeated. See *Domestic violence against women: Recognize patterns, seek help*, Mayo Clinic, Apr. 14, 2022, <https://www.mayoclinic.org/healthy-lifestyle/adult-health/in-depth/domestic-violence/art-20048397>.

B. Educate Clients

- a. (Share the information in this CLE).
- b. See, e.g. *Navigating the Family Violence Prevention and Services Program*, U.D. Dept. of Health & Human Services (last accessed Jun. 22, 2022), [https://www.acf.hhs.gov/sites/default/files/documents/fysb/fypsa\\_admin\\_guide\\_20121119\\_0.pdf](https://www.acf.hhs.gov/sites/default/files/documents/fysb/fypsa_admin_guide_20121119_0.pdf).

C. Practice cultural empathy (see e.g. Paul B. Pedersen and Jon Carlson, *Inclusive Cultural Empathy in Practice*, APA (2008), <https://www.apa.org/pubs/videos/4310840>).

D. **Tips on protecting victims at home**

- a. According to Virginia Legal Aid Society:
  1. Learn where to get help, and memorize phone numbers you may need in an emergency and if you don't have your phone (such as family and friends).
  2. Keep a phone in a room you can lock from the inside. Try to keep a cell phone with you at all times.
  3. If the abuser has moved out, change the locks on your doors and get locks on the windows.
  4. Plan an escape route out of your home, and teach it to your children.
  5. Think about where you could go if you need to escape.
  6. Pack a bag with important things you would need if you had to escape. Put it in a safe place, or give it to a friend or relative you trust. Include cash, car keys, and important things, like court papers, passports, birth certificates, medical records, medicines, and immigration papers.
  7. Get an unlisted phone number.
  8. Block Caller ID.
  9. Use voice mail to screen your calls.
  10. Take a self-defense course.

E. **Signs to help spot family violence**

- a. According to Family Central:
  - i. Physical injuries such as bruises or broken skin
  - ii. Behavioral changes - Victims of family violence may become unusually silent and come across as attempting to hide something.

- iii. Changes in lifestyle pattern:
  - 1. Family violence may deter some victims from going home.
  - 2. Victims may stay late, work overtime to avoid home.
- b. According to Nursing in Practice:
  - i. Look for signs of self-harm, forced marriage, medication abuse, and neglect.
  - ii. Listen to how the client communicates: victims may try to hint in a subtle way and need encouragement to speak about it.
  - iii. Consider how the client is managing his or her own health (e.g. avoiding doctors, etc.).
  - iv. If you have concerns, communicate your suspicions and be ready with a plan to help them.
- c. According to the Harvard School of Public Health:
  - i. Domestic violence is predictable and preventable
  - ii. Signs are obsessiveness, jealousy, attempted strangulation, and increase in the severity or frequency of violence.
  - iii. This is a hidden problem: Perception of shame and health consequences may accompany the crisis.
  - iv. This problem starts in young people - 70% of women experience intimate violence starting at less than 25 years old.
  - v. See *The Domestic Violence Crisis*, HARVARD FORUM.EDU, <https://theforum.sph.harvard.edu/events/the-domestic-violence-crisis/> (Oct. 24, 2016).

Conclusion:

The law has long protected against family violence and domestic violence in all contexts. The simple fact is that every lawyer should have a basic knowledge of this area of law to help clients to be safe.

This CLE has worked to provide every attorney basic training in what to look for and how to respond to family violence, both locally in Virginia, and with an understanding of its intersection with federal immigration law as well. It has offered actual step by step guidance on the law and legal actions available to help victimized family members, thereby strengthening client safety objectives.