How Domestic Violence Affects Child Custody Decisions in Massachusetts

Services

Family Law

- Child Custody & Visitation
- Domestic Violence & Restraining Orders

Related Attorneys

Amber Cohen

By Amber Cohen on June 24, 2026

Massachusetts family courts value the best interest of the child(ren) over almost anything else, and if you are trying to navigate a situation with domestic violence, it will likely have a large impact on how the judge creates the custody order. If you are trying to separate from an abusive partner, you need a family law attorney who is familiar with domestic violence and intimate partner violence cases.

At Cohen Cleary, P.C., we will be beside you every step of the way to help you advocate for a custody order that protects you and your children.

What Counts as Domestic Violence Under Massachusetts Law?

The definition of domestic violence is quite broad compared to what many may think and encompasses many forms of abuse, though the legal definitions vary slightly depending on whether we look at the civil definition or criminal charges, both of which can be relevant regarding custody cases.

However, the general understanding is that domestic violence addresses behavior by someone in your family, residence, or with whom you have a romantic or sexual relationship. This relationship distinguishes the abuse from assault by a stranger.

Abusive behavior includes attempting or causing physical harm, placing another in fear of imminent and significant bodily harm, or forcing someone to engage in sexual contact through force, threat, or duress.

How Domestic Violence Can Impact Custody Decisions

It is widely accepted as fact that it is in the best interest of the child to protect them from abuse and violence. Therefore, a judge is obligated to consider any instances of violence against the children or the parent when determining a custody order or parenting plan.

When the judge is determining the custody order, they will often consider the abuser's ability to communicate or coordinate with the custodial parent. An abuser's inability to safely co-parent may limit their access to video calls, e-mail updates, or no contact. A judge is unlikely to order a custody arrangement that will put the survivor in danger or under unnecessary stress.

The Role of Restraining Orders (209A Orders) in Custody

©2026 Cohen Cleary. All Rights Reserved

Cases

If you are leaving an abusive relationship, you have likely heard of 209A orders under abuse prevention laws. These types of protective orders are reserved for those experiencing domestic violence, in that it is a family member, partner, or co-parent perpetrating the abuse.

If you have not obtained a 209A order, do not panic. These are not required to show domestic violence or to make a credible case that your child's other parent is a threat to their safety. However, if you have successfully obtained one, it can serve as evidence of abuse in the home, strengthening your case.

Can an Abusive Parent Still Get Custody in Massachusetts?

Massachusetts Probate and Family Courts understand custody in two ways: legal and physical.

- **Legal custody** refers to the right and responsibility to make major decisions affecting a child's welfare, including matters of education, medical care, and religious upbringing.
- **Physical custody** refers to the child's primary residence and the allocation of day-to-day care and parenting time.

If you present a convincing case to show that the other parent was abusive, particularly to or in front of the children, the judge is unlikely to feel it is in the child's best interest to spend long amounts of time with the other parent in terms of physical custody.

If you have evidence of domestic violence, it is unlikely that the judge will order equal parenting time. Depending on the situation, they may receive supervised visitation, phone calls, video calls, or another form of contact to allow the relationship to continue safely for you and your children.

In more extreme cases, they may have no court-ordered parenting time, leaving it up to the primary parent to determine whether and when the other parent is safe to engage with. Or they may lose physical custody entirely.

When Domestic Violence Can Lead to Loss of Parental Rights

When it comes to custody cases, the non-custodial parent retains their parental rights even if the other parent has sole legal and physical custody. However, the courts may agree to sever the abuser's legal relationship to the children in some more specific instances:

- Conviction of murder or manslaughter of the other parent
- Conviction of attempting, conspiring, or soliciting to commit the murder of the child or the other parent
- Conviction of a form of assault resulting in significant injury to the child
- Conviction of sexual assault

Termination of parental rights is not something that the courts take lightly. While it can protect the children in some ways, it also relieves the abuser of their legal obligations to their children

©2026 Cohen Cleary. All Rights Reserved

for things like child support. However, in some situations, this is well worth the trade-off.

What to Do If You're Dealing with Domestic Violence and Custody Issues

If you are in immediate danger, call 911. The decision to leave an abusive partner is substantial, and it is well documented that the first 18 months after leaving an abusive partner are the most dangerous. We understand that situations involving increased risk or safety concerns may require a parent to act quickly to protect themselves or their children. While ensuring safety should always be the first priority, parents should also be mindful that sudden changes to a child's residence or parenting arrangements can create additional legal issues, including allegations of custodial interference. When circumstances permit, there are several steps that can be taken to protect both your family's safety and your legal position.

- **Safety plan:** Work with someone who can help you plan to leave. This may be a counselor or DV advocate. Try to make sure you know where you are going, and have safety nets in place.
- **Speak with an attorney:** Make a plan with an attorney who can help you protect your parental rights. This often includes providing resources to obtain a 209A order that can offer a degree of legal protection while you rebuild, as well as evidence in your custody case. Taking the appropriate steps up front can reduce your abuser's chances of gaining custody.
- **Collect evidence:** Whenever possible, collect evidence of the abuse. This can be photos of injuries, videos of incidents, medical records, or screenshots of threatening messages.

If you have already left and are in the midst of custody challenges, stay calm in your interactions with the other parent. Try to keep everything in writing as evidence, and avoid making derogatory statements about the other person in front of or to your children.

Speak with a Massachusetts Child Custody Lawyer Experienced in Domestic Violence Cases

Domestic violence is often not what it seems, and our Massachusetts child custody lawyers understand this. We are on your side and prepared to help you make a case in defense of your parental rights, focusing on your child's best interest.

This is not something you have to face on your own. Call us today to schedule a consultation, and will help you understand your options and determine your next steps.

©2026 Cohen Cleary. All Rights Reserved