

## What is the legal definition of ‘a pattern of domestic violence’?

The definition of “pattern of domestic violence” has a great deal of elasticity to it and the phrase implicitly considers many relevant facts and circumstances, not just one.

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### What You Need to Know

- The phrase “pattern of domestic violence” can be found in cases from Texas to Minnesota, Hawaii to Maine, Alaska to Florida.

- Not to be confused with the “cycle of domestic violence,” “a pattern of domestic violence” implies both quantity and quality.
- “A pattern of domestic violence” implies a multi-dimensional perspective that is akin to another well-known phrase -- “the totality of the circumstances.”

Domestic violence affects adults, children, families, and communities in dramatic and indelible ways. It will have a detrimental impact on people’s health, mental health, safety, and legal rights, including custody rights. And so, every state has a system of shelters, mental health services, and legal aid for victims of domestic violence and their families.

In the legal setting, two phrases are frequently mentioned: “the cycle of domestic violence” and “a pattern of domestic violence.” The “cycle of domestic violence” generally refers to three phases: the tension building phase, the abusive incident, and the honeymoon phase. This article focuses on the other phrase, “a pattern of domestic violence.”

The phrase “pattern of domestic violence” can be found in cases from Texas to Minnesota, Hawaii to Maine, Alaska to Florida. Not to be confused with the “cycle of domestic violence,” “a pattern of domestic violence” implies both quantity and quality. In terms of quantity, is it two, three, or more incidents? In terms of quality, does it mean that domestic violence was informally alleged or that it was formally reported? Or, does it mean that the perpetrator was

charged, or perhaps even that the perpetrator was previously convicted multiple times? If drug abuse and child abuse are also part of the picture, does that strengthen the assertion of there being a “pattern of abuse?” If so, by how much?

The importance of defining this phrase is critical. For instance, in custody decisions, courts will rightfully consider acts of domestic violence against spouses, partners, or others, when considering the effect of that violence on children. A pattern of domestic violence may trigger a legal presumption that giving the alleged perpetrator parenting time — whether it be supervised or unsupervised — may not be in the best interests of the children. A “pattern of domestic violence” may also generate, among others, mandatory drug testing, mental health interventions, the prohibition of overnight visits, and the termination of parental rights.

Taking a look at how this phrase has been used in several recent court cases may provide some clarity.

- In the Interest of T.E.C., 2021 Tex. App. LEXIS 39, \*19-20, 2021 WL 41150 (Tex. App. San Antonio, January 6, 2021): In this case regarding termination of parental rights, “The removing caseworker Sotello testified there was an on-going **pattern of domestic violence** between Father and Mother since 2013. Specifically, Sotello testified that Father’s criminal history since 2011 included four family violence assault cases: a 2011 assault-bodily injury/married which was dismissed for a missing witness; a 2013 assault of a family member which was dismissed based on a missing witness; a 2014 assault of a family member which was dismissed; in 2015, charges of aggravated assault and injury to a child (this charge was ultimately rejected) and Father received six months’ confinement on

the aggravated assault; and an aggravated assault charge in May 2018. Sotello described Father's criminal history as showing a pattern of the same type of domestic violence and a pattern of missing witnesses. Mother has been repeatedly listed as a victim since 2011 and she is still together with Father. According to Sotello, that shows Mother is not protective of the children. In explaining why the continued domestic violence by Father against Mother poses a threat to the children, Sotello stated, "It puts them at risk of injury and neglect. They continue to witness domestic violence. They could be abused and injured when that occurs as well. They are witnessing everything." Sotello opined that witnessing domestic violence between their parents causes children emotional harm."

- In *People v. Shannon F.* (In re T.F.), 2020 IL App (3d) 190706-U, "The history between the respondent and the minors' father showed a **pattern of domestic violence**, which at times occurred when the minors were present. Though there were no reported incidents of domestic violence after the April 2019 incident, and the respondent contended that the domestic violence issue was resolved, the history of domestic violence cannot be ignored: the 2014 juvenile case that was initiated in part due to domestic violence, the 2015 order of protection where the respondent testified that the minors' father punched her on the face causing a swollen eye, and the April 2019 incident where the minors' father struck the respondent on the face and knocked her to the ground when the minors were present. This demonstrated **pattern of domestic violence** raises serious concerns over the minors' well-being while in the respondent's care and is a breach of the respondent's duty to provide the minors with a safe and nurturing shelter."
- In re Porcalyn N., 2021 Tenn. App. LEXIS 198, the court wrote: "In the instant case, the trial court found that the primary conditions underpinning the Child's removal from Father's custody were drug use and, broadly, illegal activity within the home. The trial court also found that these issues persisted at the time of trial because Father "continue[d] to use drugs, failed to participate in treatment, and continues to participate in illegal activity." While the record preponderates in favor of the trial court's findings that Father continues to abuse drugs and incur new criminal charges, the record preponderates against the finding that Father failed to participate in any treatment. It is undisputed that Father completed an alcohol and drug assessment, passed some drug screens, and eventually completed an intensive outpatient treatment program. Nonetheless, our own review of the record leads us to conclude that clear

and convincing evidence supports termination for persistent conditions because the most significant problems necessitating the Child's removal were still prevalent by the time of trial. Chief among these problems, as we have discussed at length, is the **pattern of domestic violence** between Father and Mother. Not only did Father not participate in the required domestic violence or parenting classes, but Father at several points in his testimony blamed Mother for the violence in their relationship. Father's refusal to take any responsibility for this issue suggests Father is likely incapable of safely parenting the Child. Likewise, Father's flippant attitude about substance abuse in the home inspires little confidence that this condition will be remedied at any point in the near future."

Even these few cases reveal that the definition of "pattern of domestic violence" has a great deal of elasticity to it. It is a phrase that implicitly considers many relevant facts and circumstances, not just one. Indeed, all relevant factors surrounding the legal issue at hand are to be taken into account. More than a one-dimensional, ironclad metric, "a pattern of domestic violence" implies a multi-dimensional perspective that is akin to another well-known phrase — "the totality of the circumstances."

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