



The Florida Senate

Issue Brief 2010-303

September 2009

Committee on Children, Families, and Elder Affairs

REVIEW OF DOMESTIC VIOLENCE ISSUES IN THE DEPENDENCY PROCESS

Statement of the Issue

While the effects of domestic violence on women are well documented, and system responses in many areas remain designed to primarily serve adult victims of abuse, the past decade has seen an increase in the amount of research focused on children who are exposed to domestic violence. Studies estimate the number of exposed children to be between 3.3 million and 10 million each year.¹ In efforts to better protect these children, states have enacted laws in both the civil and criminal law arenas. In 1996, the Florida Legislature expanded the definition of “harm” as it relates to children, to include when a person “engages in violent behavior that demonstrates a wanton disregard for the presence of a child and could reasonably result in serious injury to the child.”² As a result, exposure to domestic violence may be grounds for removal of a child from his or her home in a dependency proceeding.

In spite of the expanded definition, more recent Florida appellate decisions have reversed the opinions of the trial courts that have found that exposure to domestic violence is a basis for a finding of harm to the child in a dependency proceeding. In *C.W. v. Department of Children and Families*,³ for example, the court reasoned that a three month old infant, being held by his father as the parents were assaulting one another, could not be found dependent because he did not “appreciate” any physical or mental injury that did or could occur as Chapter 39, F.S. requires.⁴ Reportedly, this trend in case law is making it difficult for the Department of Children and Family Services (DCF or the department) and the Community-Based Care (CBC) lead agencies to intervene on behalf of these children by removing them from their families and obtaining an adjudication of dependency. These appellate decisions, coupled with the May 2009 death, allegedly at the hands of his mother’s paramour, of the infant of a foster child, suggest the need for renewed attention to the issue of the impact of domestic violence on children and how the child protection system and the courts should respond.

Discussion

The negative consequences associated with exposure to domestic violence have been well documented in pre-school and school-aged children. Children at these ages may exhibit increased levels of externalized behavioral problems, as well as internalized problems such as depression and anxiety.⁵ While domestic violence often occurs with other risk factors including lower family income, single parent households, less maternal education, parental separation and divorce, parental substance abuse and incarceration, and child abuse, behavioral and psychological

¹ Jouriles, E.N., McDonald, R., Norwood, W.D., & Ezell, E. (2001). Issues and Controversies in Documenting the Prevalence of Children’s Exposure to Domestic Violence. In S.A. Graham-Bermann & J.L. Edleson (Eds.), *Domestic Violence in the Lives of Children: The Future of Research, Intervention, and Social Policy* (pp. 13-34). Washington, DC: American Psychological Association.

² Chapter 1996-402, L.O.F. and Section 39.01(32)(i), F.S.

³ *C.W. v. Department of Children and Family Services*, 10 So.2d 136 (Fla. 1st DCA 2009).

⁴ Also in *C.W.*, the First DCA determined that the trial court found that because a child may be harmed by witnessing domestic violence, the child in this case was actually harmed. Likewise, in *M.B. v. Department of Children and Family Services*, 937 So.2d 709 (Fla. 2d DCA 2006), the appellate court did not uphold the trial court’s dependency, reasoning that although domestic violence did occur when the father hit the mother in the presence of the children, DCF failed to show that the children suffered any physical or mental injury as a result of witnessing the incident as required for an adjudication of dependency.

⁵ Fantuzzo, J.W. & Mohr, W.K. (1999). Prevalence and Effects of Child Exposure to Domestic Violence. In *The Future of Children Domestic Violence and Children*. 9(3) available at <http://www.futureofchildren.org>. (Last visited September 10, 2009).

problems in children can be attributed to exposure to domestic violence over and above the effects of these co-occurring risk factors.⁶ Reviews of studies of the co-occurrence of child maltreatment and domestic violence in the same families reveal that approximately 30 to 60 percent of children whose mothers are being abused are likely to be abused themselves.⁷

The consequences of exposure to domestic violence for infants⁸ have not been as thoroughly documented; however there is anecdotal evidence that suggests that negative effects may also be seen in infants.⁹ Researchers have described infants exposed to domestic violence as exhibiting eating problems, sleep disturbances, lack of normal responsiveness to adults, mood disturbances, and problems interacting with peers and adults. Clinicians have reported that infants exposed to domestic violence have poor health, poor sleeping habits, and are highly irritable. Anecdotal evidence and clinical observations appear to be supported by the limited empirical research on the effect of trauma occurring in infancy.¹⁰

Infants and children will experience domestic violence and manifest the effects of such exposure in unique ways depending on a variety of factors, including whether or not there was co-occurring physical abuse of the child, age and gender of the child, the time since exposure to the violence, and relationships with adults in the home.¹¹ Protective factors, such as social competence, intelligence, high self-esteem, strong sibling and peer relationships, and a supportive relationship with an adult, can help mitigate the adverse effects of exposure to domestic violence.¹² Significant percentages of infants and children studied showed no apparent negative developmental problems despite witnessing repeated violence.¹³

Should Exposure to Domestic Violence be Defined as Child¹⁴ Maltreatment?

Just as the 1960s and 1970s saw increased concern about children who are physically abused and neglected,¹⁵ and the 1980s and early 1990s drew attention to children who are victims of sexual abuse, research findings relating to

⁶ Edleson, J. L. (2006). Emerging Responses to Children Exposed to Domestic Violence. Available at http://www.vawnet.org/category/Documents.php?docid=585&category_id=481. (Last visited August 14, 2009).

⁷ Edleson, J.L. (1999). The overlap between child maltreatment and woman battering. Available at http://www.vawnet.org/category/Documents.php?docid=389&category_id=485. (Last visited September 10, 2009)

⁸ Infants are typically defined as being between birth and twelve months of age. National Institute of Child Health and Human Development. National Institutes of Health.

⁹ The development of a secure attachment relationship during infancy provides a solid foundation for the development of self-regulation in early childhood. When a caregiver meets and responds to her infant's needs, the secure child eventually learns internal self-regulation. When that caregiving capacity is diminished, such as when a mother has to cope with incidents of domestic violence or when an infant is removed from the mother's care, problems may develop in those infants. Gewirtz, A. and Edleson, J.L. (2004). Young Children's Exposure to Adult Domestic Violence: Toward a Developmental Risk and Resilience Framework for Research and Intervention. The University of Iowa, School of Social Work.

¹⁰ Bogat, G.A., DeJonghe, E., Levendosky, A.A., Davidson, W.S. & Von eye, A. (2006). Trauma symptoms among infants exposed to intimate partner violence. *Child Abuse and Neglect*, 30, 109-125.

¹¹ Edleson, J. L. (2006). Emerging Responses to Children Exposed to Domestic Violence. Available at http://www.vawnet.org/category/Documents.php?docid=585&category_id=481. (Last visited August 14, 2009).

¹² Hughes, H.M., Graham-Bermann, S.A., & Gruber, G. (2001). Resilience in Children Exposed to Domestic Violence. In S.A. Graham-Bermann & J.L. Edleson (Eds.), *Domestic Violence in the Lives of Children: The Future of Research, Intervention, and Social Policy*. Washington, D.C.: American Psychological Association.

¹³ These findings might be explained in a number of ways: it may be that measures are just not sensitive enough to observe the entire range of harm done to these infants and children through exposure to violence or it may also be that these infants and children have not been followed long enough to determine the true impact of violence exposure. On the other hand, it is also highly likely that the experiences of infants and children vary greatly in a number of ways. Edleson, J. L. (1997). Problems Associated with Children's Witnessing of Domestic Violence. Available at http://www.vawnet.org/category/Documents.php?docid=392&category_id=481. (Last visited August 12, 2009).

¹⁴ Chapter 39, Florida Statutes, defines the term "child" as any unmarried person under the age of 18 years who has not been emancipated by order of the court, which would include infants for purposes of this discussion. See s. 39.01(12), F.S.

¹⁵ States responded by creating child protection systems including mandated reporting. See Kalichman, S.C. (1999). Mandated Reporting of Suspected Child Abuse: Ethics, Laws, and Policy. Washington, D.C.: American Psychological Association.

children who are exposed to domestic violence have increased during the last 15 years. State legislatures have responded to findings relating to childhood exposure to domestic violence in a number of ways.

State Statutes Relating to Children Exposed to Domestic Violence

<p>States in which judges are required to consider evidence of domestic violence as a factor in <i>custody and visitation</i> determinations.¹⁶</p>	<p>49 states, including Florida¹⁷ and the District of Columbia statutes specifically reference domestic violence as a best interest factor. Connecticut makes no reference to domestic violence – court just looks to child’s best interest.</p>
<p>States in which a <i>conviction</i> for domestic violence that was committed in the presence of a child may result in harsher penalties.¹⁸</p>	<p>Alaska, Arizona, Arkansas, California, Delaware, Florida,¹⁹ Georgia, Hawaii, Idaho, Louisiana, Mississippi, Montana, North Carolina, Ohio, Oklahoma, Oregon, Utah, and Washington.</p>
<p>States in which the definition of <i>abuse or harm</i> has been expanded to include acts or circumstances that threaten the child with harm or create a substantial risk of harm to the child, which would include exposure to domestic violence.²⁰</p>	<p>Alabama, Alaska, Arkansas, California, Colorado, Florida,²¹ Hawaii, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming. In addition, Arizona, Kansas, New Hampshire, Washington, and the District of Columbia address the issue of risk of harm in their definitions of neglect.</p>

There remains some disagreement in the field as to whether such exposure should be treated as a form of child maltreatment for the purposes of triggering child protective services and dependency court involvement which may result in the removal of children from their homes.²² While children exposed to adult domestic violence are at risk for negative effects and children from homes where adult domestic violence occurs are at a greater risk for being abused themselves, nonetheless many of these children fail to show elevated levels of developmental problems, and significant numbers are not at serious risk of harm. Expanding the definition of maltreatment to include children who are exposed to domestic violence may not always be the most effective method to address the needs of these children.²³

¹⁶ American Bar Association. Available at

http://www.abanet.org/legalservices/probono/childcustody/domestic_violence_chart1.pdf (Last visited September 11, 2009).

¹⁷ Section 61.13(2)(c)2., F.S.

¹⁸ Child Welfare Information Gateway, current through June 2007. Available at

http://www.childwelfare.gov/systemwide/laws_policies/statutes/witnessdval.pdf. (Last visited September 11, 2009).

¹⁹ Section 921.0024(1)(b)2.b., F.S.

²⁰ Child Welfare Information Gateway, current through April 2007. Available at

http://www.childwelfare.gov/systemwide/laws_policies/statutes/define.cfm. (Last visited September 11, 2009).

²¹ Section 39.01(32) i., F.S.

²² Edleson, J.L. (2004). Should childhood exposure to adult domestic violence be defined as child maltreatment under the law? In P.G. Jaffe, L.L. Baker, & A. Cunningham, A. (Eds.), *Protecting Children From Domestic Violence: Strategies for Community Intervention*. New York, NY: Guilford Press.

²³ Weithorn, L.A. (2001). Protecting Children from Exposure to Domestic Violence: The Use and Abuse of Child Maltreatment. *Hastings Law Journal*, Vol. 53(1) and Edleson, J. L. (2006). Emerging Responses to Children Exposed to Domestic Violence. Available at http://www.vawnet.org/category/Documents.php?docid=585&category_id=481. (Last visited August 14, 2009).

There is general agreement that infants and children function best if they can remain safely in their families. In a series of New York State court cases,²⁴ for example, the court recognized that the dynamics of domestic violence require special consideration in cases where children are exposed to domestic violence and that removal from the home is not necessarily the best alternative for the well-being of the children. The court determined that what was missing in state standards for the removal of children is any acknowledgement that even temporary placement in foster care itself poses a risk of harm to a child. As one commentator noted,

The [New York State] courts reasoned that merely assessing the risk of harm to a child if he remains in the care of his parent is not sufficient; the risk of harm from the removal itself, and the risk of harm of the subsequent placement, must be balanced against that harm in continued parental custody.²⁵

Research findings would appear to indicate that states should not automatically define an infant or child's exposure to adult domestic violence as a form of maltreatment.²⁶ Rather, each infant or child's response to domestic violence should be assessed carefully and harm clearly established before child protection agencies and the courts determine necessary interventions.

Implications for Policy and Practice

The question continuing to confront researchers, service providers, and lawmakers is how to best protect infants and children exposed to domestic violence. Since the mid 1990s there appears to have been a growing consensus about the need for coordinated, community-based approaches to the problem of childhood exposure to domestic violence, based upon the collaboration of the various service systems that come into contact with these children and their families.²⁷ Communities may be better able to serve families by building partnerships between community service providers, child protective services, the courts, and the array of informal and formal systems that offer a continuum of services based upon the level of risk present.²⁸ Child welfare agencies across the country have begun to consider how families in their child protection caseload are affected by domestic violence and what they can do differently to serve these families more effectively. Agencies are reexamining their policies and procedures for training, investigation,²⁹ assessment, case management, and other activities as a response to research findings.³⁰

Challenges surrounding the need for such a unified response led the National Council of Juvenile and Family Court Judges (NCJFCJ) to bring together judges and experts to develop guidelines for policy and practice in cases where domestic violence and child maltreatment overlap. This collaboration resulted in a publication commonly known as "the Greenbook," which provides a roadmap for child welfare agencies to work together and provide

²⁴ *Nicholson v. Williams*, 203 F.Supp.2d 153 (E.D.N.Y. 2002); *Nicholson v. Scoppetta*, 344 F.3d 154 (C.A.2 (N.Y.) 2003); *Nicholson v. Scoppetta*, 3 N.Y.3d 357, 820 N.E.2d 840 (N.Y. 2004).

²⁵ Liebman, T. (2006). What's Missing From Foster Care Reform? The Need for Comprehensive, Realistic, and Compassionate Removal Standards. *Hamline Journal of Public Law and Policy*, 28.

²⁶ Edleson, J.L. (2004). Should childhood exposure to adult domestic violence be defined as child maltreatment under the law? In P.G. Jaffe, L.L. Baker, & A. Cunningham, A. (Eds.), *Protecting Children From Domestic Violence: Strategies for Community Intervention*. New York, NY: Guilford Press.

²⁷ *Id.*

²⁸ Carter, J. and Schechter, S. (1997). *Child abuse and domestic violence: Creating community partnerships for safe families- Suggested components of an effective child welfare response to domestic violence*. San Francisco, CA: Family Violence Prevention Fund and Spears, L. (2000). Building bridges between domestic violence organizations and child protective services. Available at http://new.vawnet.org/category/Documents.php?docid=855&category_id=10. (Last visited August 19, 2009).

²⁹ A key recommendation in the literature is that child protective agencies provide flexibility in response to maltreatment reports. Agencies cannot and should not respond to all situations in the same way. The use of differential response systems would allow families whose situations present low risk to be voluntarily diverted to less restrictive but more appropriate programs that promote child safety and positive relationships. *Bringing Systems Together. A Report From NAPCWA's Symposium (National Association of Public Child Welfare Administrators. (2002))*.

³⁰ Aron, L.Y. and Olson, K.K. (1997). *Efforts by Child Welfare Agencies to Address Domestic Violence: The Experiences of Five Communities*. The Urban Institute. Washington, DC.

effective responses to families who are experiencing co-occurring child maltreatment and domestic violence.³¹ The concepts underpinning the Greenbook include the following:

- Interventions should focus on removing batterers from their households and holding them accountable for their violence.
- Child welfare agencies can best protect children by offering their battered mothers appropriate services and protection.
- Being a victim of domestic violence does not equate to being a neglectful parent.
- Separating battered mothers from their children should be the alternative of last resort.

Since the Greenbook's publication in 1999, other states have increasingly begun to implement creative community-based strategies to assess and work with children and their families when domestic violence is an issue.³² Florida's efforts have been somewhat limited, in spite of the fact that the state began outsourcing all foster care and related services to community providers statewide in 1998. On July 1, 2009, in response to the high number of cases involving domestic violence that threatens a child, the department, the Florida Coalition Against Domestic Violence (FCADV), seven Florida certified domestic violence centers, and seven Florida Sheriff's Departments³³ teamed up to begin implementing the Child Protective Investigation (CPI) Project. The program is designed to provide enhanced services and assistance to domestic violence survivors involved in the child welfare system, with the goal of reducing out of home placements. A key feature of the program is the co-location of a Domestic Violence Victim Advocate in these seven local Sheriff's Offices to provide safety planning, risk assessment, and ongoing survivor support.

More recently, parts of DCF's fourth circuit³⁴ began taking the approach that, "in cases where there is extreme or egregious abuse, children should be removed from their homes, but in other cases, removal is not always the right answer and more should be done to help the family and repair the problems."³⁵ As a result, the department has been joined by the CBC lead agency³⁶ to initiate a "foster care redesign."³⁷ Creation of an Integrated Practice Team, a multi-departmental review team that includes a domestic violence center representative, to staff high-risk cases, has been a central component of this project. While the department's Domestic Violence Program Office continues to offer training in other sites throughout the state, only DCF's fourth circuit is participating in the training and technical assistance.

Developing a new methodology for working effectively with infants and children who have been exposed to domestic violence must begin with an understanding that the safety and well-being of an infant or child and his or her nonabusive parent are linked. Whether in response to a legal mandate, changes in policy and procedures within the child protection system, new working relationships between child protection and domestic violence agencies, or the education and training of individual professionals who come into contact with domestic violence victims and their children, this collaborative approach represents a chance to improve upon past practices and work toward policies that are more likely to promote the best interests and safety of infants and children exposed to domestic violence.³⁸

³¹ Schechter, S. and Edleson, J.L. (1999). *Effective Interventions in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice. Recommendations from The National Council of Juvenile and Family Court Judges Family Violence Department (the Greenbook).*

³² See, for example, Fitzgerald, A., Richard, J., Torchia, A. & Allo, J. (2004). *Vermont's Partnership Between Domestic Violence Programs and Child Protective Services: A Model Policy Response for Vermont.*

³³ Broward, Pasco, Citrus, Pinellas, Hillsborough, Manatee, and Seminole County Sheriff's offices.

³⁴ Duval and Nassau Counties.

³⁵ Available at <http://www.fostercareredesign.org>. (Last visited August 20, 2009).

³⁶ Family Support Services of North Florida, Inc.

³⁷ Available at <http://www.fostercareredesign.org>. (Last visited August 20, 2009).

³⁸ Weithorn, L.A. (2001). *Protecting Children from Exposure to Domestic Violence: The Use and Abuse of Child Maltreatment.* *Hastings Law Journal*, Vol. 53(1).