

MANY VOICES

ONE MESSAGE

CALIFORNIA UNITED TO END DOMESTIC VIOLENCE
THE PARTNERSHIP'S POLICY ADVOCACY DAY 2015 

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Study of the Use of “Failure to Protect” Charges Against the Non-Abusive Parent in Domestic Violence Cases

Summary

This study will investigate the use of “failure to protect” charges by Child Welfare Services and Dependency Courts against the non-offending parent in domestic violence situations.

Problem

Domestic violence impacts millions of families every year. According to the California Women’s Health Survey (CWSH), approximately 40% of California women experience physical intimate partner violence in their lifetimes. Of those experiencing physical intimate partner violence, 75% of victims had children under the age of 18 years at home.ⁱ Nationwide, an estimated 15.5 million children are exposed to domestic violence each year, and seven million of these children live in households where the violence was considered severe.ⁱⁱ A range of studies has also shown that there is a 30-60 percent overlap of families with co-occurring child maltreatment and domestic violence.ⁱⁱⁱ

Victims of domestic violence must make difficult choices every day to ensure their own and their children’s safety, to the extent possible given the abusive situation. They must balance complicated tradeoffs between staying in the abusive situation and attempting to leave. Attempting to leave a relationship is the most dangerous time for a victim, a reality known as separation violence.^{iv} Victims are often at risk of homelessness; over 80% of domestic violence survivors entering shelters identified “finding housing I can afford” as a need, second only to “safety for myself” (85%).^v Between 22 and 57% of all homeless women report that domestic violence was the immediate cause of their homelessness.^{vi} Recognizing these complex dynamics, victims employ a range of protective factors to keep their children safe.

When these cases come to the attention of Child Welfare Services, far too often the non-abusive parent, who is also the victim of domestic violence, is charged with “failure to protect” the child from witnessing domestic violence or experiencing abuse at the hands of the other parent. Failure to protect charges can have a devastating impact on the parent and on the child removed from custody of the non-abusive parent. Especially troubling are the case examples in which the parent perpetrating domestic violence, or a member of their family, then gains custody of the child.

These actions are in contrast to the key principles identified by California Leadership Group on Domestic Violence and Child Well-being in their 2010 report, stating:

The best way to keep a child exposed to domestic violence safe is to keep the non-offending parent safe and ensure that the non-offending parent is able to engage in a safe, secure and nurturing relationship with the child... A non-offending parent should not be held responsible for the behavior of an offending partner.^{vii}

These key principles are well-grounded in research and are lived realities of domestic violence survivors and their children. Research has shown that the most critical resiliency factor for a child witnessing domestic violence is the presence of a loving and supportive adult in their life.^{viii} When the non-offending parent is present, supporting this parent and their relationship with the child can provide the best chance for positive development and lifetime outcomes.

Despite this research and these identified key principles, domestic violence advocates across California have raised concern about the frequency with which non-offending parents are still charged with failure to protect and lose custody of their children. The extenuating circumstances caused by abuse call into question the fairness and appropriateness of failure to protect policies for victims of domestic violence.

Solution

Despite the numerous case examples that we know of, we currently lack comprehensive data about the scope and scale of this issue. This information is needed for a clear assessment and to move forward with solutions to best protect children and the non-offending parent.

For this reason, we are requesting a study to examine:

- The policies and processes of the Child Welfare System when domestic violence is indicated, including:
 - Rates of failure to protect charges;
 - When and how CWS makes the decision to charge failure to protect;
 - Casework done prior to removal and requirements placed on the non-offending parents; and
 - Training provided for caseworkers for this type of case.
- Dependency Court cases and decisions, including:
 - The effectiveness of Welfare & Institutions Code Section 361(c)1 which allows a parent to present a safety plan to avoid the removal of the child from their custody.
 - Case outcomes:
 - Frequency of substantiated findings
 - Who is granted custody of the children
 - Training and knowledge of dependency court judges on the dynamics of domestic violence and protective factors

Contact Information

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ⁱ Weinbaum, Z., Stratton, T., Roberson, S., Takahashi, E., & Fatheree, M. (2006). Women experiencing intimate partner violence, California, 1998-2002. In Weinbaum, Z. & Thorfinnson, T. (eds.) *Women's Health: Findings from the California Women's Health Survey, 1997-2003*. California Department of Health Services, Office of Women's Health. Sacramento, California, May 2006. Chapter 12.

ⁱⁱ McDonald, R. and Jouriles, E., et. al., "Estimating the Number of American Children Living in Partner-Violent Families," 2006, *Journal of Family Psychology*, Vol. 20, No. 1, 137-142.

ⁱⁱⁱ Edelson, J.L., "The overlap between child maltreatment and women battering." *Violence Against Women*, 1999, 5(2), 134-154.

^{iv} See: *Bureau of Justice Statistics, Intimate Partner Violence in the U.S. 1993-2004, 2006*. tark E., and Flitcraft, A. Women at risk: A feminist perspective on child abuse. *International Journal of Health Services* . 1988b. ; 18(1):97-118; and Barbara Hart, Remarks to the Task Force on Child Abuse and Neglect, April 1992.

^v Eleanor Lyon and Shannon Lane, Meeting Survivor's Needs: A Multi-State Study of Domestic Violence Shelter Experiences, Feb 18, 2009.

^{vi} Wilder Research Center, Homelessness in Minnesota 2003 22 (2004); Center for Impact Research, Pathways to and from Homelessness: Women and Children in Chicago Shelters 3 (2004); Nat'l Center on Family Homelessness & Health Care for the Homeless Clinicians' Network, Social Supports for Homeless Mothers, 14 26 (2003); Inst. For Children & Poverty, The Hidden Migration: Why New York City Shelters Are Overflowing with Families (2004); Homes for the Homeless & Inst. For Children & Poverty, Ten Cities 1997-1998: A Snapshot of Family Homelessness Across America 3 (1998); Virginia Coalition for the Homeless, 1995 Shelter Provider Survey (1995)(out of print), cited in Nat'l Coalition for the Homeless, Domestic Violence and Homelessness: NCH Fact Sheet #8 (1999).

^{vii} Rosewater, A., and Moore, K., Addressing Domestic Violence, Child Safety and Well-being: Collaborative Strategies for California Families, 2010, Recommendations from the California Leadership Group on Domestic Violence and Child Well-being. 2010. P. 6.

^{viii} Osofsky, J. D. (1999). The impact of violence on children. *The Future of Children: Domestic Violence and Children*, 9 (3), 38.