



A key mission of the Center for Research on Violence Against Women is to ensure that the findings of quality research make it into the hands of advocates. This translation of research to practice ensures that science has an impact on the lives of women and children.

In 2010 the Center for Research on Violence Against Women conducted a survey with over 100 rape crisis and domestic violence advocates in Kentucky about what they needed to know from research to help them do their jobs. Advocates identified ten top issues. A series of ten briefs were prepared by the Center to answer the Top Ten Things Advocates Need to Know.

TOP TEN THINGS ADVOCATES NEED TO KNOW

1. What services do survivors of rape find most helpful, and what help do they say they need?
2. What type of sex offender is most likely to recommit their crimes? Incest offenders, rapists, or pedophiles?
3. What mental health issues are caused by experiencing intimate partner violence or sexual assault?
4. Do protective orders work? Who violates protective orders the most?
5. What is the impact of mandatory arrest laws on intimate partner violence victims and offenders?
6. What are the most significant long-term health consequences of chronic sexual or physical violence?
7. What percentage of rape cases gets prosecuted? What are the rates of conviction?
8. Does treatment with intimate partner violence offenders work?
- 9. DOES A REPORT OF INTIMATE PARTNER VIOLENCE OR SEXUAL ASSAULT BY A PARTNER PUT A WOMAN AT RISK OF LOSING CUSTODY OF HER CHILDREN?**
10. How do women from different racial/ethnic backgrounds experience intimate partner violence (IPV) or sexual assault? Does race and ethnicity matter?

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**DOES A REPORT OF INTIMATE PARTNER VIOLENCE OR
SEXUAL ASSAULT BY A PARTNER PUT A WOMAN AT RISK OF
LOSING CUSTODY OF HER CHILDREN?**

REPORT AT A GLANCE

- A recent national study found that 25.6% of children were exposed to physical or psychological violence between parents or caretakers in their lifetimes.
- Exposure to violence may involve seeing violence, overhearing a confrontation, seeing the aftermath such as bruises or broken furniture, or being told about the violence.
- Children exposed to domestic violence may suffer from significant emotional and behavioral problems related to this traumatic experience.
- Witnessing parental violence may be the single strongest factor for involvement in intimate partner violence as an adult.
- Though all 50 U.S. states explicitly require judges to consider exposure to domestic violence when evaluating welfare and custody options for children, the significance of the issue is often overlooked by family courts, lawyers, and court-related services.
- Intended to protect children's well being, "failure to protect" laws may unduly punish victims of domestic violence and not the offender.
- There may be many mitigating circumstances as to why a victim may not have taken any formal action to protect herself or her children from exposure to domestic violence. This perceived lack of action can be used against women in child custody cases.
- As professionals work to improve the systemic responses to domestic violence and child maltreatment, the ultimate goal must be to intervene in ways that balance the needs of the both children and mothers affected by intimate partner violence, so that no battered woman has to choose between getting help and losing custody of her children.

In 2010 the Center for Research on Violence Against Women conducted a survey with over 100 rape crisis and domestic violence advocates in Kentucky about what they needed to know from research to help them do their jobs. Advocates identified ten top issues. This brief is one in a series of ten prepared by the Center to answer these top ten research questions.

Introduction

The problem of domestic violence is most often seen as a conflict between two adults where the victim, most often a woman, is the person harmed through physical, sexual, and psychological aggression by her partner. To fully understand the breadth of domestic violence, however, a broader perspective on how "victim" is defined is crucial. In the majority of homes where there is violence between the adult partners, there are children there to witness the assault and to live through its aftermath. Studies find that children living in violent homes are at greater risk of being abused, maltreated, or neglected in homes where domestic violence occurs (1; 2, 3). Even if a child is not physically harmed, witnessing or being aware of parental violence might be emotionally, psychologically, or developmentally harmful (3, 4, 5).

This article discusses recent research literature on child custody issues facing women who experience domestic violence. Research in recent decades has been helpful to raise awareness of the impact of domestic violence on child well-being and to create better protections for children, but in some ways this awareness has also created a more precarious situation for battered mothers. This is a controversial and challenging problem in which experts and practitioners must weigh the ethical concerns of protecting children *and* the needs of adult victims of abuse, a balancing act that becomes challenging when those needs appear to be in conflict. The first section of this article defines and describes children's exposure to parental domestic violence. This research provides important background for understanding controversial "failure to protect" laws, which hold caretakers legally accountable for exposing their children to dangers such as violence in the home. Supporters of "failure to protect laws" believe they compel women to report abuse sooner for fear of losing their children, however other research suggests

that there are good reasons why a woman might not immediately report domestic violence, especially when she has children. The final section looks at challenges and possibilities suggested by experts for improving the legal response to domestic violence and child welfare, with the goal of protecting children without discouraging battered mothers from reporting abuse.

How Many Children Experience Abuse and/or DV Exposure?

The U.S. Department of Health & Human Services found that in FY 2009, there were 3.3 million reported incidents of child maltreatment (6). These national statistics record that a maltreated child's primary caregiver was either a perpetrator or victim of domestic violence in 18.3% of cases where evidence of child maltreatment could be substantiated, but this report does not go into detail about the parental violence (6). It is likely that most statistics underestimate both child maltreatment and co-occurrence of domestic violence, because not all incidents of domestic violence or child maltreatment are reported or are able to be substantiated by authorities. Appel and Holden (7) analyzed the results of 17 studies of battered mothers and estimate that approximately 40% of children whose mothers are battered are also physically abused, though individual study estimates vary widely. This variability is because measuring exact rates of co-occurrence between domestic violence and child maltreatment is very difficult due to people's reluctance to report one or both types of violence, the sensitivity of the subject matter, the challenge of clearly defining the many different types of possible violence, and inconsistencies when a child, mother, and father are each surveyed about violence in a home (8).



Even if they are not directly maltreated, many children are exposed to intimate partner violence between their parents or caretakers. The phrase "exposure to domestic violence" can describe a variety of different experiences for children.

Researchers do not agree on which types of partner violence impact children the most, or what exactly constitutes exposure to violence. Researchers use the term "exposure" because studies have found that violence in a home impacts children even if not directly witnessed (4, 9, 10).

Exposure to violence may involve seeing violence, overhearing a physical confrontation, seeing the aftermath of an incident such as bruises or damaged furniture, or being told about violence by siblings or parents (8).

In October 2011, the U.S. Department of Justice released the first national study designed to estimate children's exposure to intimate partner violence between caretakers (11). The National Survey of Children's Exposure to Violence (NatSCEV) estimated that approximately 17.9% of children were exposed to parental intimate partner physical violence over their lifetime, and about 6.6% were exposed in the past year. The study also measured exposure to psychological and emotional abuse between parents and/or caretakers (16.0% lifetime exposure, 5.7% within the past year). If both physical and psychological violence between parents or caretakers is considered, 25.6% of children were exposed to IPV in their lifetimes, and 11.1% in the past year. These findings are similar to prior estimates, which had placed children's annual intimate partner violence exposure rates between 10-20% of all children in the U.S. (8, 12). Prior to this study, most research in this area was focused more on the impact of children's exposure to domestic violence rather than its prevalence.

25.6% of children were exposed to physical or psychological violence between parents or caretakers in their lifetimes (11).

Several research studies find that domestic violence in a household has a detrimental impact on children. Even if children are unaware that violence is taking place, some theories suggest that domestic violence may temporarily "spillover" into how the victimized parent treats a child (7,

13). Multiple research studies that interviewed battered mothers provide evidence of spillover effects; many women described how the emotional toll of domestic violence affects how much energy and empathy they could put into parenting (14, 15, 16). One interview-based study found that some battered women "create unhelpful silences" about their own abuse when trying to shield their children from the violence (16). Other research has found that maternal victimization may undermine women's parental authority in ways that have been linked to child-to-parent aggression and other child behavioral problems (3, 17). However, at least one study found that the effects of domestic violence on women's parenting was temporary; the quality of parenting by battered women in their study improved significantly within 6 months of separation from their abusers (13).

A study that followed a group of 500 children over 20 years found that witnessing parental violence was the single strongest factor for involvement in intimate partner violence as an adult (23).

Research is inconclusive as to whether or not exposure to domestic violence makes women more likely to engage in child abuse. A small study by Coohy (18) found that previous child abuse by a woman's mother—and importantly not battering by a partner—predicted the likelihood that battered women in the study had engaged in child abuse. Holden, Stein, Ritchie, Harris, and Jouriles (13) conducted two studies comparing child abuse among women in shelter to women in the community with contradicting results. Several studies have utilized data from the 1975 and 1985 National Family Violence Survey data, and have generally concluded that domestic violence is at least associated with child abuse. One of the most recent analyses of this data found husband-to-wife domestic violence was a significant predictor of a mother's violence towards her child even when controlling for several demographic factors (19). However, using the same data to analyze child abuse by either parent, Ross (20) calculated that the father was three times as likely to abuse a child as the mother whenever domestic violence was present. Though

there is still much debate among researchers about the extent to which battered mothers are involved in child abuse, most research clearly shows that any domestic violence "increases the risk that the child has been or will be subject to violence" (21, p. 7).

Exposure to intimate partner violence may cause psychological trauma or distress in children, or may teach children to use violence and aggression to solve their problems (3, 4, 12, 22). Kitzmann, Gaylord, Holt, and Kinney (5) analyzed 118 studies on children exposed to violence and concluded that children who witnessed violence were just as likely as children who were directly abused to have negative outcomes in terms of psychosocial functioning, emotional development, adjustment problems, levels of distress, and the likelihood of using violence themselves. There is also evidence that childhood exposure to domestic violence leads to domestic violence later in life. A study by Ehrensaft et al. (23) followed a group of 500 children over 20 years and found that witnessing parental violence was the single strongest factor for involvement in intimate partner violence as an adult. Research suggests that this intergenerational transmission of violence occurs because many children learn to tolerate or use violence as they grow older, and is especially common among children who develop behavioral problems as a result of violence they have experienced or witnessed (3, 18, 23). Still, not every child exposed to child maltreatment or domestic violence has problems later in life.

Children with more stability, social support from friends or caregivers, a strong mother-child relationship, and a feeling of control of their own lives appear to more readily escape the cycle of violence (3, 22).



Reporting IPV, Children and the Law

Today, laws in all 50 U.S. state explicitly require judges to consider exposure to domestic violence when evaluating welfare and custody options for children (24, 25). Statutes in 28 states (including Kentucky) require courts to consider evidence of domestic violence in custody cases, and the other 22 state have stronger statutes that directly presume that it is against a child's best interest for the perpetrator of domestic violence to have sole or joint custody (24). A legal presumption against a domestic violence perpetrator usually means a non-abusive parent will receive sole custody (24, 26, 27), except in states that also have a contradictory "friendly parent" provision which encourages joint custody (28). Kentucky currently has neither a presumption against abusers nor a "friendly parent" provision, but specifies that domestic violence be considered as a factor in custody cases (see Table 1).

The general trend in domestic violence laws and services has been to increase protections for women and their children. For example, many domestic violence shelters provide programs for the children of battered women

who seek shelter services (8, 12). Recently, child custody evaluations have been highlighted by researchers as an area which needs improvement, because there is no uniform procedure for dealing with child custody evaluations when domestic violence is alleged between parents (4, 26, 27, 29, 30, 31, 32, 33, 34).

Despite the increased attention to domestic violence issues in child custody, there are practical challenges for carrying out these protections. One major difficulty has been the ability of the court system to integrate research and new information into practice (35). For example, a 2002 exploratory study conducted by University of Kentucky researchers found that over half of their sample of child custody evaluations "reported interviewing parents together regardless of domestic violence" (36). Such practices most often will prevent the full disclosure of abuse because women fear retaliation from the ex-partner, since research shows that women do remain at risk for future violence by a former partner when the abuser has continued contact with her through joint custody arrangements (34, 37).

TABLE 1. EXCERPTS FROM KENTUCKY LAWS ON CHILDREN AND DOMESTIC VIOLENCE

KRS 403.270

(2) The court shall determine custody in accordance with the best interests of the child and equal consideration shall be given to each parent and to any de facto custodian. The court shall consider all relevant factors including:

- (f) Information, records, and evidence of domestic violence as defined in KRS 403.720;
- (i) The circumstances under which the child was placed or allowed to remain in the custody of a de facto custodian, including whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence as defined in KRS 403.720 and whether the child was placed with a de facto custodian to allow the parent now seeking custody to seek employment, work, or attend school.

KRS 620.023

(1) Evidence of the following circumstances if relevant shall be considered by the court in all proceedings conducted pursuant to KRS Chapter 620 in which the court is required to render decisions in the best interest of the child:

- (b) Acts of abuse or neglect as defined in KRS 600.020 toward any child;
- (d) A finding of domestic violence and abuse as defined in KRS 403.720, whether or not committed in the presence of the child;

KRS 600.020

(1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his parent, guardian, or other person exercising custodial control or supervision of the child:

- (b) Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means;

A major misconception is that parental divorce and separation ends a child's exposure to domestic violence. A national survey in Canada found that 28% of women reported some type of violence by a former partner, and over half of those reporting violence by an ex-partner said the violence got worse or began after separation (38). Other research shows that separated mothers already experience increased stress because of financial strain and day-to-day responsibilities after separation (39), and that abusive men use child visitation or custody challenges to further stress, intimidate, threaten, control, or abuse these women (40, 41, 42, 43). Interviews with divorced battered mothers suggest that women struggle to negotiate fear, continuing partner abuse, and child-welfare concerns when a joint custody agreement requires continued contact with an abuser (14).

Finally, there is research to suggest that women who report domestic violence feel like they receive contradictory messages from the systems designed to help them. For example, Stark (44) conducted interviews in which many battered women said they felt pressured into participating in the prosecution of domestic violence cases by the worry or implication that child protective services might investigate them if they did not cooperate. In some jurisdictions, women may have legitimate child custody concerns when reporting domestic violence because of "dual arrest" policies in which both parties are automatically arrested when police respond to a domestic violence call (45, 46, 47). Fear or apprehension about getting themselves, their children, or their partner involved in the legal system may discourage women from reporting abuse occurring prior to separation, which in turn can undermine her credibility when she only later reports a history of intimate partner violence during a divorce case or child custody hearing (27, 48, 49). As Jaffe, Johnston, Crooks, and Bala (27) explain:

Some victims may hesitate to report violence in an attempt to reduce conflict, while others may not initially recognize what they have experienced as abuse until they have some distance and counseling. For example, a woman may not recognize that sexual abuse can even happen in the context of a marriage, but may later come

to understand her experience as a violation of her rights. Unfortunately, in these cases, she might be subjected to an unjustifiable extent of suspicion by justice system professionals when she discloses sexual abuse for the first time after separation. Reports of abuse first made in the context of litigation should never be dismissed solely because of the timing of disclosure. (p. 507)

SEVEN MISCONCEPTIONS ABOUT DOMESTIC VIOLENCE AND CHILD CUSTODY (49)

1. **Domestic violence is rarely a problem for divorcing couples involved in a child custody dispute.**
Reality: The majority of parents in "high-conflict divorces" involving child custody disputes report a history of domestic violence.
2. **Domestic violence ends with separation for abused women.**
Reality: Abused women often face continuing risks from their partner after separation.
3. **As long as children are not abused directly, they are not harmed by exposure to domestic violence.**
Reality: Children exposed to domestic violence may suffer from significant emotional and behavioral problems related to this traumatic experience.
4. **Since domestic violence is behavior between adults, it is not relevant for the determination of custody.**
Reality: Domestic violence is highly relevant to the determination of child custody by courts and court-related services.
5. **Family courts, lawyers, and court-related services, such as mediation and custody evaluation, can assess the needs of abused women and their children as well as the impact of the batterer.**
Reality: The significance of domestic violence is often overlooked by family courts, lawyers, and court-related services.
6. **Legal and mental health services for abused women and their children separating from batterers are readily accessible and well coordinated.**
Reality: Abused women often experience difficulty accessing appropriate legal and mental health counseling services for themselves and their children.
7. **There are no apparent solutions and community strategies to the complex dilemmas posed by abused women and children separating from batterers.**
Reality: There are many emerging community and court innovations in responding to women and children separating from an abusive parent.

Delays in reporting abuse also contribute to the incorrect perception that false allegations of domestic violence are common legal tactics to be disregarded in family court decisions (32, 27, 50). Based on their review of research, Jaffe and his colleagues (27) recommend that parents' abuse claims should be evaluated by verification from multiple sources, like police and medical reports, eyewitnesses, or corroboration by neutral third parties (e.g., teachers, neighbors), and also by taking into consideration the psychological state of the parties involved.

Failure to Protect" Laws and IPV

Of significant relevance to a battered woman's custody of her children may be the so-called "failure to protect" laws. The purpose of these laws is to hold caretakers accountable for any harm done to the children for whom they are responsible, or for not taking action to protect children from known dangers. Because the court system now recognizes that domestic violence or sexual assault against a child's mother can be detrimental to child welfare, domestic violence in a home has been used by courts or social services to challenge child custody or even criminally charge mothers for being unable to protect a child from exposure to domestic violence (51, 24, 52). A well-known challenge to "failure to protect" laws occurred in 2002 in the case of *Nicholson v. Williams* (53). This was a class-action against New York City's Administration for Children's Services (ACS) that overturned a policy of removing children from mothers who experienced domestic violence. In the *Nicholson* case a woman was severely attacked for attempting to leave her abuser, and made arrangements for a babysitter to care for her children before going to the emergency room, however ACS policy still required social services to remove the children from the babysitter's home because the mother allegedly could not protect them due to domestic violence.

The U.S. District Court eventually ruled that children could not be removed from their mothers solely because of exposure to domestic violence. The *Nicholson* case is important because "for the first time, and in an incredibly powerful opinion, a federal court had found that battered mothers could not constitutionally be held responsible for the acts of their abusers" (53).

However, Goodmark (53) also reports that several states such as New Jersey, Florida, and Pennsylvania continue to carry out these types of policies despite the *Nicholson* ruling. Kentucky laws related to domestic violence and child custody do include in some language on "failure to protect" as a form of child neglect (see Table 1).

Supporters of "failure to protect" laws argue that the first responsibility of the family court system should be to protect children from exposure to domestic violence, even if protective actions are against the interests of the direct victim of partner abuse. Some scholars argue that these laws will reduce violence in homes because they "hold victims of domestic violence liable for not protecting their children [in] an attempt to compel these victims to take affirmative action to prevent harm to their children" (52, p. 288). In this view, reporting domestic violence is considered a way of protecting children, and ideally as long as women immediately report abuse they should not be charged under "failure to protect" statutes. Evidence from case law and research studies suggests that, in practice, these laws are most often cited by courts and social services to incriminate domestic violence victims (as in the above example of the New York City ACS) or cited by abusers and their attorneys to undermine battered mothers in child custody disputes (3, 24, 25, 51, 53). Scholars have also raised issues with the fairness of "failure to protect" laws, arguing that in practice they are usually only charged against mothers (3, 51, 52). Some scholars pointedly ask: why aren't abusive men charged with exposing their children to domestic violence when they harm the child's mother? (51, 54).

As "failure to protect" laws are usually only charged against mothers, some scholars pointedly ask: why aren't abusive men charged with exposing their children to violence when they harm the child's mother? (51, 54)

Several scholarly law articles cite cases in which a battered mother's status as a survivor of domestic violence made



her vulnerable to child custody challenges related to "failure to protect" claims (24, 25, 51, 53).

For example, Harris (24) describes a 2009 case in New York where a woman named Charlotte separated from her abusive partner, Gary, and took her child to live with her new partner, David. When

Charlotte separated from David due to domestic violence, she and her son temporarily moved back in with Gary. Soon after, Charlotte was arrested on outstanding traffic warrants and went to jail. Upon her release, Charlotte returned to David and filed for custody of her child, but Gary argued that Charlotte should not have custody due to ongoing domestic violence between her and her new partner. The court awarded custody to Gary, even though he had assaulted Charlotte when they were in a relationship years earlier, because, the court ruled, that by returning to her new partner Charlotte was failing to protect her son from exposure to current domestic violence. This case is a good example of the complex circumstances under which a battered woman may lose custody of her children after reporting the domestic violence she has experienced.

A battered mother might not report domestic violence to the police or other service providers for many of the same reasons that women in general do not report domestic violence or sexual assault. In her review of domestic violence and sexual assault in the justice system, Jordan (55) describes the "numerous factors" affecting any woman's decision to report violence, including "fear of reprisal from the offender, a victim's perception of social stigma attached to a victimization, and a belief that nothing may be accomplished in doing so" (p.1415). Regardless of whether or not she has children, representative national studies show that only around 17% of rape survivors and 27% of women physically assaulted report violent victimization to police (56).

Women may choose not to report violence for reasons such as:

- Perceptions of racial bias in the justice system (57, 58)
- Fear of being arrested themselves (59)
- For immigrant women, fear that reporting will lead to themselves or their partner being deported (60)
- Simply not believing that the police are an appropriate solution for their situation (61)
- Because they have employed different strategies to protect their children (25, 44)

Taking the steps to separate from an intimate partner can also be extremely disruptive, especially if a woman and her children are dependent on the abuser for housing, income, and child-care responsibilities (39, 55). This research suggests that holding battered women responsible for "failure to protect" their children may not be appropriate, given the "many mitigating circumstances as to why a victim may not have taken any formal action to protect herself or her children from exposure to domestic violence" (52).

Controversies

There are many controversies surrounding the question of how to protect children from exposure to domestic violence. Recent scholarship in domestic violence and child custody criticizes the "behind closed doors" approach to custody settlements (29). Other researchers suggest that child custody evaluations should improve and standardize their techniques for investigating domestic violence and abuse claims (26, 27, 32, 33). One proposed solution is to refer allegations of domestic violence in custody cases to the juvenile court system, which has the ability and resources to investigate the home and work with a parent to improve conditions for child welfare, rather than simply transferring custody to the other parent (24). Some scholars challenge the gendered assumptions about mothers and fathers which may place children with unsafe custodians, for example, assuming that a son will benefit from having a relationship with his father

regardless of how violent he may be (30, 32). Because of the success of laws which deny custody to domestic abusers, a number of father's rights organizations have emerged to challenge the validity of domestic violence and child abuse claims in court (25). Some of these legal strategies have been successful, with some fathers arguing "parental alienation syndrome" (the claim that after separation women brainwash children to believe that their fathers were abusive) despite the fact that this diagnosis is based on biased, poor-quality, non-scholarly claims (50). All of these controversies challenge us to re-think our assumptions and common practices with the goal of improving outcomes for both child and adult survivors of domestic violence.

Conclusion

Current research literature suggests that battered mothers' worries that they may lose custody of their children because they report domestic violence or sexual assault can, in certain circumstances, be a valid concern. Research finds that children do not have to be abused or directly witness parental violence to be affected by violence in their homes, but rather that exposure to domestic violence can involve a wide range of experiences which affect children in many different ways. As courts and social services come to better understand how intimate partner violence impacts children, all 50 U.S. states have included domestic violence as an important factor to be considered in child custody cases. Some people have claimed that the "failure to protect" children from exposure to intimate violence is the legal responsibility of the mother as caretaker, even when she is the one who has been victimized. These continuing challenges highlight the need to continue to critically examine the ways in which domestic violence is understood and addressed within our legal system, especially with regard to mothers and their children. As scholars, legislators, advocates, and other professionals work to improve the systemic responses to domestic violence and child maltreatment, the ultimate goal must be to intervene in ways that balance the needs of the both children and mothers affected by intimate partner violence, so that no battered woman has to choose between getting help and losing custody of her children.

Resources

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