

Domestic Abuse* Information for Child Custody and Parenting Time Evaluators

Why should Custody Evaluators screen for domestic abuse in every case?

Effective and accurate evaluations require knowledge of all relevant facts. Domestic abuse not only affects those who are abused, but also has a substantial effect on children, family members, friends, co-workers, other witnesses, and the community at large. **Children who grow up witnessing domestic abuse are among those seriously affected by this behavior.** Identifying the existence of domestic abuse and its past, present, and continuing impact children is critical to recommending safe and appropriate parenting plans. Frequent exposure to abuse in the home impacts children and youth neurologically, psychologically, socially, academically, and behaviorally, likely resulting in trauma, diminished health, and other life challenges.

- By the time children in the U.S. are between 14-17 years of age, 27% have been exposed to intimate partner violence.¹
- In the same study, when courts included self-reporting, the incidence of domestic violence was 78%.²
- A National Center for State Courts study suggested that up to 24% to 27% of disputed custody cases have court documented domestic violence (based on history of protective orders or criminal domestic violence cases).³ These are the most physical and reported incidences.
- Locally, 36% of Multnomah County Family Court Services' mediation clients report on intake paperwork that they have concerns for their safety. Staff report they are able to identify domestic abuse in about 50% of cases.⁴
- Exposure to abusive behavior can be as damaging as being directly abused.

Due to the prevalence noted above and the important implications for custody and parenting time decisions, Oregon law (ORS 107.137; (1) (d)) specifically requires the consideration of "the abuse of one parent by the other" as a factor in deciding the custody of minor children. New information has emerged regarding best practices for assessing domestic abuse in custody cases and nationwide surveys indicate that many evaluators have not updated their competency in this area.

Additionally, the National Association of Social Workers (NASW), the Association of Family and Conciliation Courts (AFCC), and the American Psychological Association (APA) require that custody evaluators understand and follow the laws governing parenting decisions about children. NASW, AFCC, and Oregon's State Family Law Advisory Council (OFLAC) specify that custody evaluators receive training about intimate partner abuse. NASW considers domestic abuse one of six Areas of Evaluation. The AFCC recently published guidelines and several national organizations have devoted grant money and conference time to ensuring that Custody Evaluators have access to resources to update their training in this area.

* Domestic Abuse is used throughout this document to include coercive, power and control dynamics, instead of solely criminal, physical violence. When statistics are cited related to intimate partner or domestic violence, they do include all forms of abuse, not just physical.

¹ Futures Without Violence Fact Sheet: *The Facts on Children's Exposure to Intimate Partner Violence*. <https://www.futureswithoutviolence.org/userfiles/file/Fact%20sheet%20on%20Children%20Exposed%20to%20IPV%202013.pdf>

² Susan Keilitz et al., *Domestic Violence and Child Custody Disputes: A Resource Handbook for Judges and Court Managers*, prepared for the National Center for State Courts State Justice Institute, NCSC Publication Number R-202, at 5.

³ Ibid.

⁴ Moyer, Judith. Multnomah County Family Court Services Statistics. May 2016

Therefore, credible evaluations require investigating domestic abuse. Asking if there is domestic abuse is only the first step. Parties (including children) may not wish to discuss abuse for a variety of reasons, including worry for safety, discomfort, trauma response, shame, and fear of retaliation. Additionally, victims may fail to recognize their partner's behaviors constitute domestic violence. Often people in abusive situations will use euphemisms when describing abuse, such as anger, communication problems, fighting, controlling, behaviors, or high conflict. Peter Jaffe found that about 20% of cases in family court are labeled as "high conflict," but the majority of these have domestic abuse as a significant issue.⁵ People that are abused, often take responsibility for abuse by saying things like "I push buttons" or "I have a mouth on me."

Also, important to note that there is not a psychological profile for people that are abusive. An abusive person's profile on tests such as the MMPI often look normal, while an abused person's profile looks abnormal due to trauma from the abuse.

Without understanding of domestic abuse, adaptive coping mechanisms can be seen as bad or impaired parenting. Once a frame of domestic abuse dynamics is imposed on the case, those coping mechanisms are seen as savvy. Also, take note of what is driving the disclosure, concern for the child(ren) or contempt of the other parent.

It is important that Custody Evaluators recognize the characteristics of abuse so they do not overlook or misunderstand behaviors that might further jeopardize child or parent's safety. Keep in mind that clients are more likely to disclose if they:

- Know you are talking about this subject with all of your clients -- they are not being singled out;
- Know why the information is important to their case;
- Understand how the information will be used;
- Know that they will be heard and understood;
- Are confident the evaluator understands the impact of domestic abuse on families; and
- Are confident that disclosure will not lead to further abuse to them or their children.

Effective evaluations address domestic abuse directly. The goal in each case in which domestic abuse is identified is to:

- Understand the nature of the abuse;
- Understand the context of abuse;
- Make factual findings that support the existence of abuse;
- Determine the implications of abuse; and
- Account for the abuse in conclusions and recommendations.

When domestic abuse is identified, it is important to be very specific in your report regarding the procedures used to identify the features of the abuse enumerated above, to identify the impact on the children, and to write a specific plan to address safety. Be specific about details in safety focused parenting plans and leave as few things up for negotiation as possible. Plan multiple options for items that may likely need to change, like if a family member is supervising exchanges, think of a secondary contact. In general, parenting plans that have flexibility can be easier for families, but in domestic violence each opportunity for negotiation offers opportunities to manipulate or exert control. It is perfectly acceptable to acknowledge uncertainties, but equally important to account for them in your recommendations. Also, be prepared to make appropriate referrals and address any immediate safety concerns for parents and their children. Information about resources and relevant laws is included below.

⁵ PETER JAFFE, MICHELLE ZERWEER, AND SAMANTHA POISSON, CENTRE FOR CHILDREN AND FAMILIES IN THE JUSTICE SYSTEM, ACCESS DENIED: THE BARRIERS OF VIOLENCE AND POVERTY FOR ABUSED WOMEN AND THEIR CHILDREN AFTER SEPARATION 1 (2004).

Finally, the presence of domestic abuse has safety implications not only for the victim and their children, but also for you and your staff. Being aware of the issue will help you identify and address potential safety concerns. Information about safety planning is included below. Domestic abuse not only affects those who are abused, but also has a substantial effect on family members, friends, co-workers, other witnesses, and the community at large. **Children who grow up witnessing domestic violence are among those seriously affected by this behavior.** Frequent exposure to violence in the home can impact children and youth psychologically, socially, academically, and behaviorally, resulting in trauma, diminished health outcomes, and low academic achievement. By the time children in the U.S. are between 14-17 years of age, 27% have been exposed to intimate partner violence.

What is domestic abuse?⁶

Domestic abuse is a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over the other partner. It may or may not be illegal behavior. Domestic abuse can be physical, sexual, emotional, economic, stalking, or psychological actions or threats of actions that influence another person or used to gain/maintain power and control. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. Below are some examples, these are used in service of power and control.

Physical Abuse: Hitting, slapping, shoving, grabbing, pinching, biting, hair pulling, etc. are types of physical abuse. This type of abuse also includes denying a partner medical care (chronic issues, injuries from abuse, reproductive care, hormones or surgery for a transgender partner), or forcing alcohol and/or drug use upon them.

Sexual Abuse: Coercing or attempting to coerce any sexual contact or behavior without consent. Sexual abuse includes, but is certainly not limited to, marital rape, attacks on sexual parts of the body, forcing sex after physical violence has occurred, or treating someone in a sexually demeaning manner. Sexual abuse can also include consequences for not having sexual contact, such as not allowing a partner to sleep or not allowing access to family money for food and hygiene items. These may be times victims/survivors say “yes” but only because they did not feel as if they could say “no” without consequence.

Emotional Abuse: Undermining an individual's sense of self-worth and/or self-esteem is abusive. This may include, but is not limited to constant criticism, diminishing the other person's abilities, name-calling, or damaging the other parent's relationship with their children.

Economic Abuse: Preventing an individual from acquiring, using, or maintaining financial resources by maintaining total control over financial resources, withholding someone's access to money, forbidding one's attendance at school or employment, ruining the family's credit/rental history, or not spending family money responsibly.

Psychological Abuse: Elements of psychological abuse include - but are not limited to - causing fear by intimidation; threatening physical harm to self, partner, children, or partner's family or friends; destruction of pets and property; causing the individual to feel “crazy” and confused; and forcing isolation from family, friends, school or work.

Domestic violence can happen to anyone regardless of race, age, sexual orientation, religion, or gender. Domestic violence affects people of all socioeconomic backgrounds and education levels. Domestic violence occurs in both opposite-sex and same-sex relationships and can happen to intimate partners who are married, living together, or dating.

⁶ Sources: National Domestic Violence Hotline, National Center for Victims of Crime, WomensLaw.org., and Futures Without Violence. Copied from: <http://www.justice.gov/ovw/domestic-violence> with modifications.

Remember:

- Violence, coupled with a pattern of control and coercion, may be predictive of escalating physical and potentially lethal violence.
- Research shows that victims' perceptions of high danger are often accurate; their perceptions of low danger are not. In fact, victims frequently minimize the occurrence or severity of abuse.
- The most dangerous time for a victim is when the abuser becomes aware that the victim has decided to leave the relationship.
- Children exposed to DV are at increased risk of neglect, physical and sexual abuse.
- Many abusive or coercive behaviors that are highly relevant to the children's well-being and to a well-designed parenting plan would not rise to the level that warrants criminal charges or qualify for a Family Abuse Protection Act Restraining Order. The absence of protection orders or criminal charges does not indicate an absence of domestic abuse.

Domestic Abuse Screening Questions

Below are some questions that you can integrate into your interviews with clients to screen for domestic abuse. Asking questions about domestic violence is recommended in every case. The questions below will help initiate that conversation. “Abuse in relationships utilizes a pattern of power, control and exploitation established by one person over another. It is important to look further than who has done what to whom, because we find that virtually any behavior can either be used by a person to **survive abuse** or be used by a person **to establish power over another**. Rather, in assessing who is establishing systematic power and control in a relationship, it is crucial to look at the context, intent and effect of a pattern of behaviors.”⁷ Finally, your assessment of your client’s level of comfort and your personal practice or style should guide when and precisely how you ask the questions.

- Have you and your partner been involved in other legal cases, including protective order matters?
- What happens when you and your partner disagree?
- Have you or your partner ever destroyed your clothing, objects in your home, or something you especially cared about?
- Have you or your partner taken the children without your consent, threatened to never let them see you again, or otherwise harmed them, physically or emotionally?
- Do you feel you have to walk on egg shells around your partner? Does your partner feel like that with you?
- Have you or your partner tried to control your finances, activities outside the home, or your contact with family or friends?
- Have you or your partner threatened to reveal sensitive information about you that may get you in legal trouble, impact your work, relationships, or embarrass you in some way (e.g. “outing,” criminal history, legal residency status, mental health or drug/alcohol issues)?
- Do you feel safe at home or when around your partner? Does your partner feel safe with you?
- Does your partner prevent you from eating or sleeping, or endanger your health in other ways (including withholding hormones, medication, or birth control)? Do you prevent your partner?
- Have you or your partner ever hurt or threatened you (including pushing, slapping, or hitting you)?
- Have you or your partner ever forced you to do something that made you uncomfortable or that you did not want to do, including something sexual?
- Have you or your partner threatened to take a pet away, withhold care, or harm your pet?
- Is there anything else about your relationship with your partner that you want to share?
- What would your partner say if asked these questions?

⁷ The Northwest Network of Bisexual, Trans, Lesbian, & Gay Survivors of Abuse Assessment Tool.
www.nwnetwork.org

Assessing the level of danger:

If your client reveals the existence of domestic abuse, and is the victim, you can ask other questions to identify the dangerousness of your client's situation. Alternatively, you may want to refer the client to a domestic violence program for this level of assessment. If you choose to ask additional questions relating to level of danger, here are some common questions that can be used for this purpose. Affirmative answers to these questions indicate heightened danger and are cause for concern.⁸ See the resources link below for appropriate referrals.

- Does your partner have, or can they easily get, a gun?
- Has your partner ever tried to choke you?
- Is your partner constantly jealous?
- Does your partner try to control most of your daily activities?
- Has your partner ever forced you to have sex when you did not wish to do so?
- Have you left your partner or separated after living together or being married?
- Is your partner unemployed?
- Has your partner threatened or attempted suicide?
- Do you have a child that is not a child of your partner's?
- Does your partner stalk you or leave threatening messages?

When domestic violence is identified:

- Make sure the victim has support in making a safety plan, especially if time is of the essence. For information about safety planning, go to <http://stoprelationshipabuse.org/develop-a-safety-plan/>.
- Refer the victim to a local domestic violence program for safety planning, support, and additional resources. For current information about Multnomah County resources, go to <https://multco.us/dv/resources-0>.
- Crisis Lines:
 - Call to Safety (Multnomah County) 503-235-5333
 - Clackamas Women's Services (Clackamas County) 503-655-8600
 - Domestic Violence Resource Center (Washington County) 503-469-8620
 - SAFE (Columbia County) 503-397-6161
 - Linéa UNICA (Español) 503-232-4448

Domestic Abuse Resources

⁸ For a more comprehensive tool, the *Danger Assessment*, developed by Jacquelyn C. Campbell, PhD, RN, is well-respected and available online. For more information, go to <https://www.dangerassessment.org/>.

Oregon

- Multnomah County Domestic and Sexual Violence Coordination Office (local resources and information) <https://multco.us/dv>
- Oregon State Bar Family Law Bar Book, Chapter 4 - "Domestic Violence; Family Abuse Prevention Act; Stalking Protective Orders."
- Oregon Judicial Department Family Law Home
<http://courts.oregon.gov/sites/OJD/OSCA/cpsd/courtimprovement/familylaw/index.page>
(family law and protective order forms and domestic violence web page)
<http://courts.oregon.gov/OJD/OSCA/JFCPD/Pages/FLP/Parenting-Plans.aspx>
(safety-focused parenting plans)
- Oregon Department of Justice Address Confidentiality Program
<http://www.doj.state.or.us/crimev/confidentiality.shtml>
- Oregon Department of Justice Crime Victims' Rights Information
www.oregoncrimevictimsrights.org
- Oregon Department of Human Services Domestic Violence Web Page (includes information about benefits for domestic violence victims – Temporary Assistance to Domestic Violence Survivors/TA-DVS)
<http://www.oregon.gov/dhs/abuse/domestic/pages/index.aspx>
- Legal Aid Web Site <http://www.oregonlawhelp.org>
- Oregon Coalition Against Sexual and Domestic Violence <http://ocadsv.org/>
- Defending Childhood Initiative www.defendingchildhoregon.org

National

- ABA Commission on Domestic and Sexual Violence
http://www.americanbar.org/groups/domestic_violence.html (main page)
http://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/20110419_aba_cdv_issue_spotting_authcheckdam.pdf (comprehensive screening tool for attorneys)
http://www.americanbar.org/content/dam/aba/migrated/domviol/publications/187815_ABA_Checklist_FINAL_authcheckdam.pdf (Judicial Checklist)
- WomensLaw.org (General Information on Domestic Violence, State Laws + List of National Resources) <http://www.womenslaw.org/>
http://www.womenslaw.org/gethelp_national.php
- Legal Resource Center on Violence Against Women (information and technical assistance re interstate custody disputes involving domestic violence victims)
<http://www.lrcvaw.org/techassist.html>
- Battered Women's Justice Project www.bwjp.org
- National Council of Juvenile and Family Court Judges
<http://www.ncjfcj.org/our-work/domestic-violence> (domestic violence information)

<http://www.ncjfcj.org/resource-library/publications/judicial-guide-child-safety-custody-cases>
(A Judicial Guide to Child Safety in Custody Cases)

- Resource Center on Domestic Violence: Child Protection and Custody
<https://www.rcdvcpc.org/>
- Futures Without Violence www.promisingfutureswithoutviolence.org (Promising Futures: Best Practices for Serving Children, Youth, and Parents Experiencing Domestic Violence)
- Battered Women’s Justice Project: Practice Guides for Family Court Decision-Making in Domestic Abuse-Related Child Custody Matters
<http://www.bwjp.org/assets/documents/pdfs/practice-guides-for-family-court-decision-making-ind.pdf>

Information on Batterers

- Understanding the Batterer in Custody and Parenting Time Disputes, Lundy Bancroft
<http://www.lundybancroft.com/articles/understanding-the-batterer-in-custody-and-visitation-disputes>
- [Oregon Dept. of Justice Batterer Intervention Program \(BIP\) Advisory Committee](http://www.doj.state.or.us/victims/bip_advisory_committee.shtml)
http://www.doj.state.or.us/victims/bip_advisory_committee.shtml

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Suggested Reading⁹

Articles

Child Custody and Visitation Decisions in Domestic Violence Cases: Legal Trends, Risk Factors and Safety Concerns

Daniel G. Saunders with Karen Oehme

Summary: It may be hard to believe that an abusive partner can ever make good on his threat to gain custody of the children from his victim. After all, he has a history of violent behavior and she almost never does. Unfortunately, a surprising number of battered women lose custody of their children (e.g., Saccuzzo & Johnson, 2004). This document describes how this can happen through uninformed and biased courts, court staff, evaluators, and attorneys and how the very act of protecting ones' children can lead to their loss. It also describes the major legal and social trends surrounding custody and visitation decisions and the social science evidence supporting the need to consider domestic violence in these decisions. It ends with some recommendations for custody and visitation in domestic violence cases.

Citation: Daniel G. Saunders with Karen Oehme. (1998, August). *Child Custody and Visitation Decisions in Domestic Violence Cases: Legal Trends, Research Findings and Recommendations*. Harrisburg, PA: VAWnet, a project of the National Resource Center on Domestic Violence/Pennsylvania Coalition against Domestic Violence. Retrieved 1/14/14, from: <http://www.vawnet.org>.

Children in the Crossfire: Child Custody Determinations Among Couples With a History of Intimate Partner Violence

Kernic, M.A., Monary-Ernsdorff, D.J., Koepsell, J.K., & Holt, V.

Summary: Although most states mandate considerations of intimate partner violence (IPV) in child custody proceedings, little is known about how often a preexisting history of IPV is effectively presented to the courts in dissolution cases and, when it is, what effect it has on child custody and visitation outcomes. This retrospective cohort study examined the effects of a history of IPV, further categorized by whether substantiation of that history existed and whether the court handling the custody proceedings knew of that history, on child custody and visitation outcomes. The findings from this study highlight several issues of concern regarding the reality of child custody among families with a history of IPV. These include two primary concerns: a lack of identification of IPV even among cases with a documented, substantiated history, and a lack of strong protections being ordered even among cases in which a history of substantiated IPV is known to exist.

Citation: Kernic, M.A., Monary-Ernsdorff, D.J., Koepsell, J.K., & Holt, V., *Children in the Crossfire: Child Custody Determinations Among Couples With a History of Intimate Partner Violence*. *Violence Against Women*, 11(8):991-1021 (2005).

Custody Disputes Involving Allegations of Domestic Violence: Toward a Differentiated Approach to Parenting Plans

Peter Jaffe, Janet R. Johnston, Claire Crooks, Nicholas Bala

Summary: Premised on the understanding that domestic violence is a broad concept that encompasses a wide range of behaviors from isolated events to a pattern of emotional, physical, and sexual abuse that controls the victim, this article addresses the need for a differentiated approach to developing parenting plans after separation when domestic violence is alleged. A method of assessing risk by screening for the *potency, pattern, and primary, perpetrator* of the violence is proposed as a foundation for generating hypotheses about the type of and potential for future violence as well as parental functioning. This kind of differential screening for risk in cases where domestic violence is alleged provides preliminary guidance in identifying parenting arrangements that are appropriate for the specific child and family and, if confirmed by a more in-depth assessment, may be the basis for a long-

⁹ Reprinted with permission from the National Council and Juvenile Court Judges

term plan. A series of parenting plans are proposed, with criteria and guidelines for usage depending upon this differential screening, ranging from highly restricted access arrangements (no contact with perpetrators of family violence and supervised access or monitored exchange) to relatively unrestricted ones (parallel parenting) and even co-parenting. Implications for practice are considered within the context of available resources.

Citation: Peter Jaffe, Janet R. Johnston, Claire Crooks and Nicholas Bala, *Allegations of Domestic Violence: Toward a Differentiated Approach to Parenting Plans*, 46 Family Court Review 3, 500–522 (July 2008).

Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Interventions

Kelly, J. & Johnson, M.P.

Summary: A growing body of empirical research has demonstrated that intimate partner violence is not a unitary phenomenon and that types of domestic violence can be differentiated with respect to partner dynamics, context, and consequences. Four patterns of violence are described: Coercive Controlling Violence, Violent Resistance, Situational Couple Violence, and Separation-Instigated Violence. The controversial matter of gender symmetry and asymmetry in intimate partner violence is discussed in terms of sampling differences and methodological limitations. Implications of differentiation among types of domestic violence include the need for improved screening measures and procedures in civil, family, and criminal court and the possibility of better decision making, appropriate sanctions, and more effective treatment programs tailored to the characteristics of different types of partner violence. In family court, reliable differentiation should provide the basis for determining what safeguards are necessary and what types of parenting plans are appropriate to ensure healthy outcomes for children and parent–child relationships.

Citation: Kelly, J. & Johnson, M.P., *Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Interventions*. Family Court Review, 46(3): 476-499 (2008).

Differentiating Types of Family Violence: Implications for Child Custody

Nancy Ver Steegh

Summary: Child custody determinations are based on the fiction that families with a history of domestic violence are all alike. Researchers, scholars, and practitioners increasingly agree that families experience (and children are exposed to) different types of domestic violence. These types of violence involve distinctly different phenomena - they are not simply separate points along a single continuum of abuse. This article examines child custody determinations through the lens of a domestic violence typology. The resulting analysis (1) reconciles competing viewpoints and contradictory evidence about domestic violence; (2) matches families with appropriate child custody court procedures and services such as parent education, mediation, supervised visitation and parent coordination; and (3) exposes serious deficiencies in current domestic violence child custody statutes. Application of the typology leads to the conclusion that child custody courts could more effectively protect children through identification and consideration of the type of domestic violence experienced by the family.

Citation: Nancy Ver Steegh, *Differentiating Types of Domestic Violence: Implications for Child Custody*, 65 Louisiana Law Review 1379 (2005).

Domestic Violence and Child Custody

Hardesty, J.L., Haselschwerdt, M.L., & Johnson, M.P

Summary: This article reviews the empirical research on several important aspects relevant to parenting plan evaluations, including explanations of the subtypes of domestic violence, a summary of the effects of DV on children and a discussion of the options available for parenting plans that prioritize safety and long-term adjustment of parents and children. The failure of professionals to adequately differentiate subtypes, including cases of intimate terrorism/coercive control, increases the risk for inadequate interventions tailored to the specific needs of the parents, or mislabeling appropriately protective parents as “alienating.” The research illuminates not only that meta-analyses have well documented the detrimental effects of domestic violence on children, but also that there may be different effects

depending upon the age and gender of the child. “One-size-fits-all” conclusions or recommendations risk serious errors in divergent directions, including inappropriately over-pathologizing or stigmatizing some parents who will needlessly suffer unwarranted estrangement from their child, or tragically failing to protect the child from a parent with serious and potentially dangerous parenting deficits.

Citation: Hardesty, J.L., Haselschwerdt, M.L., & Johnson, M.P. *Domestic Violence and Child Custody*, in Kuehnle & Drozd (eds) *PARENTING PLAN EVALUATIONS: APPLIED RESEARCH FOR THE FAMILY COURT*, NY: Oxford University Press (2012).

Domestic Violence, Child Custody and Child Protection: Understanding Judicial Resistance and Imagining the Solutions

Joan Meier

Summary: This article focuses on the problem of child welfare in the context of private litigation—divorce, custody/visitation, civil protection orders. While awareness of domestic violence among lawmakers and jurists has increased, the understanding of domestic violence has not sufficiently integrated the lawmaking and court systems to survive the challenges of truly painful decisions regarding families. The article offers two case studies from the author’s practice that illustrate judges’ resistance to battered women’s claims concerning children in private litigation. The author recommends that developing a clear understanding of what is happening in private custody/domestic violence litigation is a necessary extension of the Green Book process.

Citation: Joan S. Meier., *Domestic Violence, Child Custody and Child Protection: Understanding Judicial Resistance and Imagining the Solutions*, 11 *American University Journal of Gender, Social Policy & the Law* 2 (2003).

Empirical Problems with Custody Recommendations: A Call for Clinical Humility and Judicial Vigilance

Timothy M. Tippins, Jeffrey P. Wittmann

Summary: This article proposes a four-level model of clinical inferences to analyze the psychological evaluation process in custody matters. At each level the authors summarize the status of the relevant psychological literature and conclude that, as clinicians respond to the ultimate issues (e.g., who should be the custodial parent) the empirical foundation for such conclusions is tenuous or non-existent. A jurisprudence argument is also made that such opinions should be routinely excluded from the fact-finding process. Given the significant potential for specific custody recommendations to limit personal liberties and the trajectory of a child’s life, the paucity of relevant research available in this area, and profound evidentiary issues, such recommendations should be viewed as ethically inappropriate. A model for what clinicians can ethically say to courts is proposed.

Citation: Timothy Tippins and Jeffrey Wittmann., *Empirical Problems with Custody Recommendations: A Call for Humility and Judicial Vigilance*, 43 *Family Court Review* 193 (2005).

An Integrative Theoretical Model of Intimate Partner Violence, Coparenting After Separation, and Maternal and Child Well-Being

Hardesty, J.L., Raffaelli, M., Khaw, L., Mitchell, E.T., Haselschwerdt, M.L., & Crossman, K.A.

Summary: The quality of coparenting relationships after separation is known to affect mothers' and children's physical and mental health. It is well established that conflict is a common phenomenon among separating parents; however, studies rarely distinguish between relationships characterized by violence as opposed to conflict. Because violence creates a distinct separation and co-parenting experience, we propose a theoretical model that integrates these disparate literatures. The integrated model provides a heuristic tool to guide future theory building, research, and practice.

Citation: Hardesty, J.L., Raffaelli, M., Khaw, L., Mitchell, E.T., Haselschwerdt, M.L., & Crossman, K.A., *An Integrative Theoretical Model of Intimate Partner Violence, Coparenting After Separation, and Maternal and Child Well-Being*. *Journal of Family Theory & Review*, 4:318-331 (2012).

More Responsibilities, Less Control: Understanding the Challenges and Difficulties Involved in Mothering in the Context of Domestic Violence

Lapierre, S.

Summary: Limited work has looked specifically at the issue of mothering in the context of domestic violence, and there is a particular dearth of empirical work that focuses on women's experiences of mothering in these circumstances. This article reports the findings of a study that investigated women's experiences of mothering in the context of domestic violence, and is concerned with the challenges and difficulties that abused women face in regard to their mothering. The author argues that these challenges and difficulties arise from the interaction between the particular context created by the violence and the broader institution of motherhood. More specifically, the article focuses on the following two elements: the women's increased sense of responsibility in regard to their children and their loss of control over their mothering. The findings suggest that in order to support these women, professionals need to understand the challenges and difficulties that they face, and to be mindful not to exacerbate the women's sense of responsibility and loss of control.

Citation: Lapierre, S., *More Responsibilities, Less Control: Understanding the Challenges and Difficulties Involved in Mothering in the Context of Domestic Violence*, *British Journal of Social Work*, 40:1434-1451 (2010).

Parenting Arrangements After Domestic Violence: Safety as Priority in Judging Children's Best Interest

Peter Jaffe, Claire Crooks

Summary: The purpose of this article is to discuss some of the controversies surrounding parent-child access and outline practical guidelines within a clinical and legal context. It begins with an overview of the relevance of domestic violence in custody and access disputes, then provides a framework for differential assessment and interventions that are based on a thorough understanding of the dynamics of violence in a particular relationship. Finally, it identifies factors that should be associated with terminating access, supervising access, or supervising exchanges, which are the most common remedies in these circumstances. Each of the considerations and remedies is discussed with respect to the clinical and research literature, followed by judicial considerations from Judge Wong.

Citation: Peter Jaffe and Claire Crooks, *Parenting Arrangements After Domestic Violence: Safety as Priority in Judging Children's Best Interest*, *6 Journal of the Center Families, Children and the Courts* 81 (2005).

Toward the Differentiation of High-Conflict Families: An Analysis of Social Science Research and Canadian Case Law

Birnbaum, R., & Bala, N.

Summary: Social science research and the courts have begun to recognize the special challenges posed by "high-conflict" separations for children and the justice system. The use of "high conflict" terminology by social science researchers and the courts has increased dramatically over the past decade. This is an important development, but the term is often used vaguely and to characterize very different types of cases. An analysis of Canadian case law reveals that some judges are starting to differentiate between various degrees and types of high conflict. Often this judicial differentiation is implicit and occurs without full articulation of the factors that are taken into account in applying different remedies. There is a need for the development of more refined, explicit analytical concepts for the identification and differentiation of various types of high conflict cases. Empirically driven social science research can assist mental health professionals, lawyers and the courts in better understanding these cases and providing the most appropriate interventions. As a tentative scheme for differentiating cases, we propose distinguishing between high conflict cases where there is: (1) poor communication; (2) domestic violence; and (3) alienation. Further, there must be a differentiation between cases where one parent is a primary instigator for the conflict or abuse, and those where both parents bear significant responsibility.

Citation: Birnbaum, R., & Bala, N. (2010). *Toward the Differentiation of High-Conflict Families: An Analysis of Social Science Research and Canadian Case Law*. *Family Court Review*, 48(3): 403-416 (2010).

REPORTS

Custody Evaluations When There Are Allegations of Domestic Violence

Michael S. Davis, et al.

Based on an examination of approximately 70 actual family law case files. In New York where domestic violence was pre-identified; each party was represented by an attorney; and a custody evaluation had been conducted. The researchers looked at all of the documentation of abuse, each of the custody evaluation reports, and the final judgment or settlement agreement in each case. They found that evaluators' knowledge about domestic violence (their awareness of risk factors and application of a power and control model) was more closely associated with safe parenting plans than either the severity of abuse or the thoroughness of their investigations.

Available at:

<http://www.ncjrs.gov/pdffiles1/nij/grants/234465.pdf>.

Custody Evaluators' Beliefs about Domestic Abuse in Relation to Custody Outcomes

Daniel G. Saunders, et al.

Summary: Based on a national survey of 465 child custody evaluators, respondents reported on their past custody recommendations and responded to a vignette involving domestic violence. Recommendations of sole or joint custody for the perpetrator were related to beliefs that survivors alienate children from the other parent, make false allegations of domestic abuse, and should engage in cooperative parenting. Such recommendations were also related to the belief that domestic violence is not important to consider in evaluations. The stronger the evaluators' patriarchal norms, the stronger they held the foregoing beliefs and tended to recommend that perpetrators have custody.

Available at:

<https://www.ncjrs.gov/pdffiles1/nij/grants/238891.pdf>.

The Effect of Domestic Violence Allegations on Custody Evaluators' Recommendations

Jennifer Hardesty, et al.

Summary: Based on a national survey of 600 respondents from 48 states., surveyed custody evaluators were given a three-part vignette, with randomly varied facts. Among other things, the researchers found that mothers' demeanor was more closely associated with evaluators' recommendations than the severity of the violence (mild v. severe), the context of the violence (conflict v. coercive control), or whether there was documentation of domestic violence (an order of protection) present in the vignette.

Available at:

http://www.bwjv.org/custody_evaluators_own_beliefs_about_domestic_abuse_closely_related_to_custody_outcomes.aspx

Navigating Custody and Visitation Evaluations in Cases with DV: A Judge's Guide (2006) State Justice Institute, National Council of Juvenile and Family Court Judges, University of Nevada, Reno, NV 89507.

Available at:

http://www.ncjfcj.org/sites/default/files/navigating_cust.pdf