

Children and Domestic Violence: The Prosecutor's Response

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Violence against women and violence against children are not isolated phenomena. Rather, such violence often coexists in families. Household telephone surveys reveal that frequency of child abuse doubles among families experiencing intimate partner violence, compared to families with nonviolent partners, and that the rate of child abuse escalates with the severity and frequency of a child's mother's abuse (Straus, Gelles, and Steinmetz, 1980).

Domestic violence is also a known risk factor for recurring child abuse reports (English et al., 1999) and for child fatalities (U.S. Advisory Board on Child Abuse and Neglect, 1995). In addition, domestic violence frequently coexists with substance abuse, so children are concurrently exposed to dangerous substances and their adverse effects and parental neglect due to addiction (U.S. Department of Health and Human Services, 1999). In fact, one large study involving 9,500 HMO members revealed that the 1,010 people who reported that their mothers had been treated violently also reported exposure to the following other adverse childhood experiences (Felitti et al., 1998):

Substance abuse	59%
Mental illness	38%
Sexual abuse	41%
Psychological abuse	34%
Physical abuse	31%

Children who witness domestic violence often manifest behavioral and emotional problems, poor academic performance, and delinquency (Edleson, 1999).

Although it is generally recognized that the well-being of children who witness domestic violence is tied closely to that of their mothers (Osofsky, 1999), the interests of battered women and their children are not always identical or even compatible. Mothers may have realistic and practical concerns about their financial and physical well-being should they separate from violent partners, and believe that they and their children are better off staying despite the violence (Hilton, 1992). They may lack resources or social networks to extricate themselves from dangerous relationships; the community's support system may be inadequate; and help seeking may be thwarted by waiting lists, lack of insurance, or high fees for services.

Meanwhile, children remain in perilous living environments. Child protection agencies may feel compelled to intervene proactively in these cases to forestall the escalating risk of harm to children, applying categories like "threat of harm," "emotional maltreatment," or "failure to protect." Similarly, prosecutors may file child abuse or endangerment charges against mothers who appear unwilling to take steps to protect their children or who decline to support prosecution of the batterers. Unfortunately, these measures tend to fix responsibility for children's safety disproportionately on their mothers and not on the batterers, where it clearly belongs.

New Initiatives to Address Challenges

In efforts to shift the focus from mothers to batterers and to underscore concern for children exposed to domestic violence, some States have enacted new laws. As of 1999, nine relevant statutes were identified:

- ◆ Two States (Alaska and Minnesota) defined exposure to domestic violence as a form of child maltreatment to meet child abuse reporting requirements (although Minnesota's law was repealed in April 2000).
- ◆ Two States (Utah and Georgia) made exposing children to domestic violence a new criminal child abuse offense.
- ◆ Five States (Florida, Hawaii, Idaho, Oregon, and Washington) enhanced criminal penalties for domestic violence offenses when children are present.

Even though these new laws may have been passed with good intentions, there is concern that they may impose new risks. Battered women may be increasingly subject to charges of criminal child abuse or failure to protect their children, and risk losing custody. Children who are exposed to domestic violence may be forced to testify and, therefore, to “choose sides” in domestic violence cases. Child protection agencies may be overwhelmed by the huge influx of new cases: Minnesota has already repealed its short-lived law making domestic violence a “reportable condition” for child abuse.

Research Questions

With support from the National Institute of Justice, an exploratory study was conducted to address the following research questions:

- ◆ What are the challenges facing prosecutors when children are exposed to domestic violence?
- ◆ How are new laws, now effective in a small number of States, affecting practice?
- ◆ What can prosecutors do to help battered women and their children?

Research Method

The study relied on two sources of data: a national telephone survey of prosecutors and field research in five jurisdictions. Each component is described briefly below.

National Telephone Survey

A national telephone survey of prosecutors was undertaken to describe current practice and to identify promising practices in the response to cases involving domestic violence and child victims or witnesses. Surveys were completed with 128 prosecutors, representing 93 jurisdictions in 49 States. Nearly half (48 percent) of these jurisdictions had units or prosecutors responsible for all family violence cases, about one-third (38 percent) had separate domestic violence and child abuse prosecutors or units, and the rest represented the single perspectives of domestic violence (10 percent) or child abuse (4 percent).

Survey Findings

Most jurisdictions lack a systematic way for prosecutors and investigators to identify co-occurring cases of domestic violence and child maltreatment.

- ◆ Of the 35 responding offices with separate domestic violence and child abuse units, *none* had protocols directing prosecutors in these units to inquire about co-occurrence or to communicate with one another when relevant cases arise.
- ◆ About half of the responding offices were aware of protocols directing law enforcement officers to ask about child victims or witnesses when investigating domestic violence reports.
- ◆ About one-fourth knew of protocols directing investigators to inquire about domestic violence when responding to child abuse reports.

Most respondents (78 percent) agreed that the presence of children provides added incentive to prosecute domestic violence cases. A few individuals pointed to the children's capacity to testify as an important factor in their decisions.

A majority of prosecutors' offices (58.5 percent) aggressively pursue enhanced sanctions for domestic violence offenders when incidents involve children as victims or witnesses. Most commonly, prosecutors argue for harsher sentencing or file separate charges of child endangerment. Those offices where prosecutors had received at least some training about the co-occurrence of domestic violence and child maltreatment (65 percent) were significantly more likely to employ these avenues in applicable cases.

Survey respondents were given three different scenarios involving children and domestic violence:

- ◆ A battered mother is alleged to have abused her children.
- ◆ Both mother and children are abused by the same male perpetrator.
- ◆ Children are exposed to domestic violence but are not abused themselves.

For each scenario, respondents were asked (a) Would your office *report* the mother to the child protection agency? and (b) Would your office *prosecute* the mother?—in the first scenario, for the abuse of her children; and in the latter two scenarios, for failure to protect her children either from abuse by the male perpetrator or from exposure to domestic violence.

The results suggest that these three scenarios represent decreasing degrees of culpability on the part of mothers for the danger to their children (see exhibit 1). Many respondents noted the lack of statutory authority in their States to prosecute mothers for failure to protect their children, especially from exposure to domestic violence. Some explained that they consider the mothers' experience of victimization before reporting or prosecuting them. Factors in these decisions commonly include the severity of injury to the child, chronicity of the domestic violence, the degree to which the mother actively participated in the abuse of her child, and history of failure to comply with services or treatment plans.

Exhibit 1. Prosecutors' Responses to Issue of Children and Domestic Violence

	Would Report At Least Sometimes			Would Prosecute At Least Sometimes		
	n	Percent- age	Total Respondents	n	Percent- age	Total Respondents
Mom Abuses Children	85	94%	90	82	100%	82
Mom Fails to Protect From Abuse	55	63%	87	62	78%	80
Mom Fails to Protect From Exposure to Abuse	34	40%	86	18	25%	73

Prosecutors who indicated that their States had laws either creating or enhancing penalties for domestic violence in the presence of children were significantly more likely to report battered mothers for failure to protect their children from abuse or from exposure to domestic violence, but there was no significant difference in the likelihood of prosecution.

Field Research

To gain a better understanding of the issues facing prosecutors when domestic violence cases involve children as victims or witnesses, five jurisdictions were selected for indepth site visits. Three jurisdictions (Salt Lake County, Utah; Houston County, Georgia; and Multnomah County, Oregon) were in States with legislation explicitly addressing the issue of children who witness domestic violence; the others (Dallas County, Texas, and San Diego County, California) lacked specific laws yet apply creative strategies. The observed impact of new laws in Utah, Georgia, and Oregon is described below, followed by a brief discussion of pertinent activities in Dallas and San Diego.

Utah

Utah was the first State to enact legislation specifically addressing the issue of children who witness domestic violence. Utah's statute (U.C.A. § 76-5-109.1) took effect May 1997 and—

- ◆ Created a crime of child abuse, not domestic violence.
- ◆ Did *not* require the physical presence of a child during the incident of domestic violence.
- ◆ Required at least one previous violation or act of domestic violence in the presence of a child, unless the precipitating domestic violence incident is quite severe.

Although criminal justice agencies in Salt Lake County were not able to provide statistical data, anecdotal evidence suggests that—

- ◆ The law is applied to mothers only if they are arrested in the underlying incident of domestic violence.
- ◆ The law adds minimal time to the offender's sentence (perhaps 6 months) if the sentences for the domestic violence and child abuse charges run consecutively.

- ◆ The crime is relatively easy to prove, requiring either testimony from the responding officer, testimony or excited utterances from the victim parent, or a 911 tape that records children's voices.

Concurrent with the enactment of the new criminal statute, Utah's Department of Child and Family Services (DCFS) created a new category of child abuse and neglect: domestic violence-related child abuse, defined as "violent physical or verbal interaction between cohabitants in a household in the presence of a child." DCFS also hired domestic violence advocates and developed a protocol to guide child protection workers in their determinations.

During a 1-year period (October 1997 through September 1998) shortly after the new law and policy became effective, DCFS received 1,873 referrals for domestic violence-related child abuse, representing 11 percent of the total referrals statewide. Forty-one percent (773) of the reports of domestic violence-related child abuse were substantiated, constituting 18 percent of the total number of substantiated reports.

Domestic violence-related child abuse was the second largest category of substantiated cases, surpassed only by physical neglect cases. In the following year (October 1998 through September 1999), it represented an even larger proportion of the DCFS caseload: 15 percent of referrals and 21 percent of substantiated cases. Two-thirds of the children involved in substantiated cases remained in their homes with no DCFS supervision. Fewer than 6 percent were placed in foster care or group homes; the rest were placed with neighbors, friends, or relatives.

Georgia

Prosecutors in Houston County, Georgia, used new provisions of Georgia's "cruelty to children" statute that pertain to domestic violence committed in the presence of children. These provisions state that any person commits the offense of cruelty to children in the second degree when that individual, as the primary aggressor, either "intentionally allows a child under the age of 18 to witness the commission of a forcible felony, battery, or family violence battery," or has knowledge that a child "is present and sees or hears the act" (O.C.G.A. § 16-5-70).

Conviction for cruelty to children makes little difference to the penalties imposed on a batterer because the sentence typically runs concurrent with the underlying domestic violence charge. However, the law does give prosecutors a stronger argument for no contact as a condition of bond. Violations of no-contact orders are charged as aggravated stalking, a felony offense in Georgia. Prosecutors perceive the severe consequences of violating no-contact orders as perhaps the most effective response to domestic violence among the sanctions available to them.

By identifying children as victims of family violence, the new law—

- ◆ Helps to counter batterers' threats to gain custody of a child.
- ◆ Makes the child eligible for crime victims' compensation.
- ◆ Enables the court to impose no-contact orders on the child's behalf.

Oregon

Unlike Utah and Georgia, which included exposure to domestic violence within their criminal child abuse statutes, Oregon enacted legislation upgrading certain assault offenses from misdemeanors to felonies when a child witnesses the crime (O.R.S. 163-160). The felony upgrade applies only to assault in the fourth degree, a misdemeanor offense that applies to many incidents of domestic violence.

As shown in exhibit 2, the felony upgrade law has had a noteworthy impact on the district attorney's office. The number of felonies reviewed more than tripled in 1998 (the year in which the law became effective), while the number of misdemeanors reviewed remained nearly constant. Also, the number of felony charges issued exceeded the number of misdemeanors for the first time.

Exhibit 2. Domestic Violence Caseload Statistics—Oregon

	1996	1997	1998*
Total Domestic Violence Cases Reviewed	3,791	3,244	4,214
Felonies reviewed	382 (10%)	437 (13%)	1,371 (33%)
Misdemeanors reviewed	3,409 (90%)	2,807 (87%)	2,843 (67%)
Total Domestic Violence Cases Issued	1,268	1,065	1,175
Felonies issued	274 (22%)	265 (25%)	653 (56%)
Misdemeanors issued	994 (78%)	800 (75%)	522 (44%)

*In 1998 Oregon enacted a law upgrading certain assaults from misdemeanors to felonies when a child witnesses the crime.

In that same year, the proportion of domestic violence cases that prosecutors initiated declined. This pattern was true for misdemeanors as well as felonies. Prosecutors may have imposed higher standards as they began to interpret and apply the new law. Case outcome data were not available at the time of this study.

Dallas and San Diego

Prosecutors in Dallas try to coordinate cases with concurrent charges of domestic violence and child abuse to optimize both the sanctions against the offender and the safety of the mother and children. For example, the family violence prosecutor can use child abuse cases to support the domestic violence charge. Even if the child abuse is a felony and the domestic violence is a misdemeanor, prosecutors may accept a plea to jail time on the domestic violence charge and a 10-year deferred adjudication on the child abuse charge, which typically carries with it numerous conditions (e.g., no contact, participation in substance abuse treatment). This avenue ensures a domestic violence conviction while imposing strict court oversight on the child abuse charge.

Prosecutors in San Diego aggressively and creatively seek ways to enhance sanctions for perpetrators of domestic violence and child abuse. For example, domestic violence offenders can be charged with child endangerment when a child—

- ◆ Calls 911 to report domestic violence.
- ◆ Appears fearful, upset, or hysterical at the scene.
- ◆ Is an eyewitness to the incident.
- ◆ Is present in a room where objects are being thrown.
- ◆ Is in a car during a domestic violence incident.
- ◆ Is in the arms of the victim or suspect during an incident (Gwinn, 1998).

Anyone convicted of child endangerment and sentenced to probation is required to complete a yearlong child abuser's treatment program.

Through a collaboration with the San Diego Police Department and Children's Hospital Center for Child Protection, the San Diego City Attorney's Office reviews reported incidents of abuse, neglect, exploitation, or domestic violence with an eye toward any angle that might support a misdemeanor prosecution and with the goal of creating an avenue for service delivery. Most defendants plead guilty and receive informal probation with referrals to parenting and counseling programs.

Discussion and Implications

How Are New Laws Affecting Practice?

In 1998, when the felony upgrade law took effect, the Multnomah County, Oregon, District Attorney's Office issued nearly 150 percent more felony domestic violence cases than in the previous year (see exhibit 2). In both Salt Lake County, Utah, and Houston County, Georgia, prosecutors tend to use new child abuse charges as bargaining chips to exert leverage to win guilty pleas on domestic violence charges. In all three States, the new laws remind law enforcement investigators to document children as witnesses and to take statements from them wherever possible. Such evidence may strengthen prosecutors' domestic violence cases even if the children cannot testify.

The more tangible benefits of the new laws, particularly those in Utah and Georgia, may accrue to the children. By identifying children as victims, these statutes—

- ◆ Allow children access to crime victims' compensation funds.
- ◆ Enable the courts to issue protective orders on a child's behalf, potentially affording prosecutors another tool for monitoring offenders' behavior.
- ◆ Signal a need to file a report with the child protection agency, even in the absence of laws naming domestic violence as a condition of mandatory reporting.

Unfortunately, many child protection agencies are not equipped to respond to the sheer volume of reports they receive when exposure to domestic violence is defined as a form of child maltreatment by law or policy. Elsewhere, critics charge, protective services workers are too quick to remove children from violent homes, inappropriately blaming women for the actions of their abusive partners.

Implications for Researchers

Additional research is needed to understand the impact of criminal justice and social service interventions for domestic violence offenders, victims, and their children. For example—

What happens when domestic violence comes to light during an investigation of child abuse allegations? Are these children more likely to be removed from their homes? What kinds of services are offered to mothers? Are the domestic violence allegations brought to the attention of the criminal justice system? What is the impact of new legislation?

What happens when the domestic violence perpetrator is also charged with child maltreatment? Again, are these children more likely to be removed from their homes? What kinds of services are offered to mothers? What is the impact of new legislation?

What other adverse conditions (e.g., substance abuse, other criminal behavior, or mental illness) co-occur with domestic violence and child maltreatment? How do these conditions affect criminal justice and social service interventions?

How does the criminal justice and social service response differ when a battered mother is criminally charged with abusing, neglecting, or failing to protect her children? How do the consequences for accused mothers compare with those for accused partners? Again, what is the impact of new legislation?

What are the long-term consequences for children who remain in a violent home compared with children who are placed in alternative settings?

Close examination of the existing response and delivery system is essential to identify problems and propose appropriate solutions.

Implications for Practitioners

This exploratory research suggests that prosecutors can find ways to help battered women and their children even in the absence of specific legislation. For example, prosecutors can—

- ◆ *Seek training on domestic violence, child abuse, and the impact of domestic violence on children for all prosecutors, victim advocates, and other court personnel whose job responsibilities include responding to allegations of family violence.*
- ◆ *Institute protocols to encourage information sharing among prosecutors with responsibility for domestic violence and child abuse caseloads.*
- ◆ *Identify avenues for earlier intervention (e.g., by placing greater emphasis on misdemeanor prosecution).*
- ◆ *Train law enforcement investigators to note the presence of children in domestic violence incidents and to take statements from them whenever appropriate to do so. Develop policies*

or protocols to ensure that children receive needed services and to guide law enforcement officers' reports to child protection agencies.

- ◆ *Prosecute domestic violence offenders, wherever possible, on concurrent charges of child endangerment, emotional abuse, or another available charge that reflects the danger to children who witness violence. These additional charges can be used to argue for stricter conditions of pretrial release or probation or perhaps for upward deviation from sentencing guidelines.*
- ◆ *Employ every available avenue to enforce the terms of no-contact orders and probationary sentences.* Field research suggests that these measures may offer the most powerful means of holding domestic violence offenders accountable for their behavior.
- ◆ *Promote increased attention to services for battered women.* Particular attention should be paid to substance abuse treatment. One recent study suggests that substance abuse predicts noncooperation with prosecution among battered women (Goodman, Bennett, and Dutton, 1999).
- ◆ *Ensure that social service agencies will connect with families that have been reported for domestic violence, both to offer referrals for needed services and to monitor future incidents.*
- ◆ *Advocate for needed change, whether legislative, fiscal, or programmatic in nature.* As political leaders in their communities, prosecutors can bring together people with disparate views and direct their energy toward a common goal: protecting battered women and their children.

Given what we now know about risks to children from exposure to domestic violence, prosecutors can no longer ignore or minimize this danger. With creativity, sensitivity, and courage, prosecutors can apply the full force of available sanctions against domestic violence offenders while leading battered mothers and their children toward the safety they so desperately need.

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