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185355

**CHILDREN AND DOMESTIC VIOLENCE:  
CHALLENGES FOR PROSECUTORS**

by  
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Senior Scientist  
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October 2000

## **EXECUTIVE SUMMARY**

Stopping violence against women now will help prevent future violence, but helping kids will go even further to stop the generational cycle.

—Lt. Gary Cox, West Jordan (UT) Police Department and Utah State Legislator

Violence against women and violence against children are not isolated phenomena. Rather, such violence often co-exists in families. Data suggest that child abuse is 15 times more likely to occur in families where domestic violence is present. Children who grow up in violent homes suffer a wide range of adverse behavioral and psychological effects, including a tendency to repeat abusive behaviors, as perpetrators and victims, as they attain adulthood. Increased awareness of the adverse effects of domestic violence on children has prompted some states to enact laws either creating a new offense, or imposing new sanctions, when domestic violence is committed in the presence of children.

It is the prosecutor's job to enforce these new laws, as well as other existing laws that might be relevant. In their efforts to enforce the law while balancing the interests of women and children, prosecutors across the country have found themselves caught in the midst of a debate over how best to protect children in the context of domestic violence.

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?

The study relied on two sources of data: a national telephone survey of prosecutors, and intensive 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. Because the statutory framework is a key consideration when examining prosecutorial decision-making,

efforts were made to survey two prosecutors' offices per state. Each state's prosecutor coordinator was asked to nominate offices that appeared to have particular knowledge of, or experience with, cases involving children and domestic violence. Ultimately, nominations were received from all but one state.

## **Respondent Characteristics**

Depending upon the structure of each prosecutor's office, it was possible to interview either a single individual with responsibility for all family violence cases (whether as head of a Family Violence Unit or as an individual attorney with this particular assignment), or two prosecutors, one with responsibility for domestic violence cases and the other with responsibility for child abuse cases. For purposes of analysis, in jurisdictions where two prosecutors were interviewed, their responses were combined, so that the unit of analysis remains the jurisdiction and not the individual attorney.

Telephone surveys were completed with a total of 128 prosecutors representing 93 jurisdictions. Nearly half (48%) of these jurisdictions had units or prosecutors responsible for all family violence cases, about one-third (38%) had separate domestic violence and child abuse prosecutors or units, and therefore composite surveys; and the rest represented the singular perspectives of domestic violence (10%) or child abuse (4%).

About three-quarters of responding offices were located in metropolitan areas. Three-fourths had jurisdiction over *all* domestic violence offenses committed within their geographic district; about 13 percent did not handle misdemeanor offenses committed within city limits; 11 percent handled only felonies. A majority of responding prosecutors' offices (63%) were responsible only for criminal child abuse proceedings; the remainder handled child protection (dependency and placement) proceedings as well. More than one-third of respondents had received no training on issues pertaining to children who witness domestic violence.

## **Survey Findings**

- **Protocols explicitly addressing the need for coordination among investigators and prosecutors are lacking in most jurisdictions.**

None of the responding offices with separate domestic violence and child abuse units had protocols directing prosecutors in these units to communicate with one another about families in which domestic violence involves children as victims or witnesses. 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, but only about one-fourth knew of similar protocols directing investigators to inquire about domestic violence when responding to child abuse reports.

- **The existence of statutes identifying exposure to domestic violence as a form of child maltreatment, or creating or enhancing penalties for domestic violence in the presence of children, appears to encourage prosecutors to report these cases to child protection authorities.**

Interestingly, respondents from jurisdictions having the new statutes were *not* more likely to prosecute battered mothers for failure to protect their children from abuse by the perpetrator or exposure to domestic violence.

- **Even in the absence of relevant legislation, many prosecutors' offices are aggressively pursuing enhanced penalties 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 training about domestic violence and child maltreatment were significantly more likely to employ these avenues in applicable cases.

- **Prosecutors consider mothers' experience of victimization in their decisions to report or prosecute battered mothers for abusing their children or failing to protect them from abuse or from exposure to domestic violence.**

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 prior history of failure to comply with services or treatment plans. Respondents were far more likely to report and prosecute mothers accused of abusing their children than they were to report and prosecute mothers for failure to protect their children from abuse or exposure to domestic violence. Indeed, 75 percent said they would *not* prosecute mothers under the latter circumstance, and most of the others would prosecute only in situations of extreme danger.

In sum, survey results suggest that prosecutors are becoming more aware of the risks to children growing up in violent homes. Many are taking active steps to hold domestic violence offenders accountable for the risks to children by arguing for harsher sentences and charging them with child endangerment. Battered mothers are rarely charged criminally with failure to protect their children from abuse or from exposure to domestic violence. Because survey respondents

were nominated specifically for their knowledge of, or expertise in family violence issues, however, the findings may actually overstate the extent to which prosecutors are adapting their approaches to domestic violence cases involving children.

## 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 in-depth site visits. Several criteria helped to inform this decision:

- Based on the telephone surveys, it was clear that much could be learned from jurisdictions in those states that had enacted legislation specifically addressing this issue.
- Field research is most productive where prosecutors have sufficient experience to inform their opinions and observations, and to show an effect on the policies and practices of other agencies in the community.
- Geographic diversity helps to interpret the extent to which innovation spreads across the country and manifests in potentially different ways.

Using these primary criteria, five sites were chosen. Over the course of three days in each jurisdiction, personal interviews were conducted with a wide range of criminal justice, child protection, and domestic violence professionals. Between 12 and 15 people were interviewed in each community. In addition, any available documentation (e.g., brochures, policies, reporting forms, statistical reports, etc.) was gathered and reviewed.

Each site is briefly described below.

In **Dallas County, Texas**, prosecutors are taking active steps to improve the response to battered mothers and their children, even in the absence of statutes explicitly addressing these cases. For example, where appropriate, they will accept pleas to jail time on misdemeanor domestic violence charges and deferred adjudication on felony child abuse charges. This avenue assures a domestic violence conviction while imposing strict court oversight on the child abuse charge. Also, to address the fears of battered mothers, prosecutors allow women to sign “affidavits of nonprosecution,” and they write letters to the child protection agency to explain why some women cannot obtain orders of protection.

Prosecutors in **Houston County, Georgia**, were actively utilizing a new law providing that offenders who commit domestic violence in the presence of a child can be charged with cruelty to children in the second degree.

**Multnomah County, Oregon**, was chosen because the state of Oregon had enacted legislation upgrading certain assault offenses from misdemeanors to felonies when a child witnesses the crime.

**Salt Lake County, Utah**, is the largest jurisdiction in the first state to pass legislation creating a new child abuse offense for domestic violence committed in the presence of a child.

**San Diego County, California**, like Dallas, exists in a state lacking specific legislation addressing situations where children are exposed to domestic violence. Nonetheless, the San Diego City Attorney's Office heavily emphasizes misdemeanor prosecution of domestic violence and collaborates with several key agencies that sponsor specialized programs to support battered women and their children.

Together, these five communities offer a range of experience to inform others who are struggling to balance the equally important goals of

- holding domestic violence offenders accountable for their behavior,
- protecting battered women, and
- protecting children from abuse and violence.

## **STUDY FINDINGS**

### **What Are The Challenges Facing Prosecutors When Children Are Exposed To Domestic Violence?**

Of the three goals listed above, the first—holding domestic violence offenders accountable—is squarely within the province of prosecutors. No other institution in the community has the capacity and power to force offenders to confront and change their behavior. The presence of children tends to buttress prosecutors' efforts to bring domestic violence offenders to justice. Even so, the challenges of prosecuting these cases successfully are formidable.

*How can domestic violence cases be prosecuted successfully despite noncooperative victims?* A large majority of prosecutors' offices surveyed espouse "no-drop" policies for domestic violence cases, but in reality, many cases lack sufficient evidence to go forward without the victim's cooperation. When children are involved as victims or witnesses, prosecutors feel even more compelled to go forward, yet many cases are declined or dismissed for lack of evidence. Prosecutors are extremely reluctant to ask these children to testify against their mothers' wishes. Sometimes, merely listing the child as a witness can induce defendants to enter guilty pleas.

*How can battered mothers be persuaded to support prosecution of abusive partners?* By their own self-reports, prosecutors rarely charge battered mothers

with child endangerment or neglect. Also, child protection agencies in the communities visited rarely remove children from battered mothers (unless the children are victimized or there are other egregious circumstances, such as drug abuse). Still, these outcomes are sometimes threatened—by law enforcement officers, prosecutors, child protection workers, and even battered women’s advocates—to motivate mothers to seek alternative housing, obtain protective orders, or cooperate with prosecution.

*What can prosecutors do when children are repeatedly exposed to serious violence and the evidence is too weak to support prosecution?* Ultimately, these cases are pursued in the child protection system, where attention usually shifts to the mother. In many cases, this occurs because the abusive partners are beyond the reach of the child protection system: They have no legal relationship to the child and may not even live in the same household.

### **How Are New Laws Affecting Practice?**

In Multnomah County, Oregon, the District Attorney’s Office issued nearly 150 percent more felony domestic violence cases in the year that the felony upgrade law took effect. In both Salt Lake County, Utah, and Houston County, Georgia, prosecutors tend to use the new child abuse charges as “bargaining chips” to exert more leverage toward guilty pleas on the 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, which can strengthen prosecutors’ domestic violence cases even if the children cannot testify.

The more tangible benefits of the new laws, and 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 to support health or mental health needs resulting from their exposure to domestic violence;
- Enable the courts to issue protective orders on the children’s behalf (potentially affording prosecutors another tool for monitoring offenders’ behavior); and
- 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, in many jurisdictions, child protection agencies simply do not have adequate resources to respond to the sheer volume of domestic violence reports they receive when these laws take effect.

Based on the reports of prosecutors’ offices that were surveyed and on the limited data available from the five jurisdictions that were studied, predictions of

two potentially adverse consequences of these laws have not yet surfaced in the jurisdictions studied:

- Women are not being charged with these offenses unless they are identified as the primary or predominant aggressor in the underlying domestic violence incident.
- Women are seldom charged with failure to protect, nor are they losing custody of their children, solely on the basis of their children's exposure to domestic violence.

### **What Can Prosecutors Do To Help Battered Women And Their Children?**

Prosecutors can find ways to help battered women and their children even in the absence of legislation. Some suggestions are as follows:

*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 within prosecutors' offices to facilitate 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. Encourage law enforcement agencies to adopt a model of law enforcement-mental health partnership that was pioneered in New Haven, Connecticut, as a means of assuring that children who are exposed to violence receive timely and appropriate therapeutic intervention.<sup>1</sup>*

*Wherever possible, prosecute domestic violence offenders on concurrent charges of child endangerment, emotional abuse, or other available charge reflecting the danger to children who witness violence.*

*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.*

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<sup>1</sup> Marans, S., Berkowitz, S.J., and Cohen, D.J. (1998). "Police and mental health professionals: Collaborative responses to the impact of violence on children and families." *Child and Adolescent Psychiatric Clinics of North America*, Vol. 7, 635-651.

*Promote increased attention to services for battered women.* Women cannot reasonably be expected to extricate themselves from dangerous relationships if the supports are not available in their communities.

*Ensure that the child protection agency has the capacity at least to connect with families that have been reported for domestic violence, to offer referrals for needed services, and to monitor future incidents.* Admittedly, child protection agencies in many communities are hard-pressed even to respond to reports of children who are physically or sexually abused, but there needs to be some avenue for identifying children at risk before they suffer serious harm.

Finally, as political leaders in their communities, prosecutors have the opportunity to *advocate for needed change, whether legislative, fiscal, or programmatic in nature.* Prosecutors can bring together people with disparate views and hammer out ways to overcome distrust and conflict toward a common goal: protection of battered women and their children. Prosecutors must forge collaborations with legislators and agency officials to articulate the precursors to serious violence, indicators of escalating risk to children, and circumstances under which both men and women must be held responsible for the safety of children.

In the words of San Diego City Attorney Casey Gwinn,

It is clear that children must be a central focus of all we do in the civil and criminal justice system intervention efforts in domestic violence cases. In the criminal justice system, in particular, from the initial police investigation through the probationary period, we must prioritize children's issues.

In conclusion, while mothers have choices available to them (albeit admittedly under severe pressure and limitations), children have no choices at all; they are prisoners of their parents' decisions. 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.

# CHILDREN AND DOMESTIC VIOLENCE: CHALLENGES FOR PROSECUTORS

## TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY .....</b>	<b>i</b>
<b>CHAPTER 1: INTRODUCTION AND OVERVIEW .....</b>	<b>1</b>
Scope of the Problem .....	1
Guide to the Report .....	5
<b>CHAPTER 2: TELEPHONE SURVEY OF PROSECUTORS .....</b>	<b>7</b>
Descriptive Information .....	8
Protocols and Procedures to Coordinate Cases .....	14
Prosecution Policies and Practices .....	19
Exploratory Analyses .....	24
Conclusions .....	30
<b>CHAPTER 3: FIELD RESEARCH .....</b>	<b>32</b>
Dallas County, Texas .....	33
Houston County, Georgia .....	41
Multnomah County, Oregon .....	48
Salt Lake County, Utah .....	58
San Diego County, California .....	67
<b>CHAPTER 4: SUMMARY AND CONCLUSIONS .....</b>	<b>78</b>
 <b>APPENDIX A:</b>	 Telephone Survey Instrument
 <b>APPENDIX B:</b>	 Brief Synopses of Statutes Pertaining to Children's Exposure to Domestic Violence

# CHAPTER 1

## INTRODUCTION AND OVERVIEW

Recognition of family violence<sup>2</sup> as a social problem has been evolving over the latter half of the 20<sup>th</sup> century, albeit unevenly. Child maltreatment was identified through the medical community and quickly became the subject of federal and state legislation that defined the problem and created public agencies charged with receiving and investigating reports of children at risk and fashioning treatment plans to protect children and preserve families. Public awareness of domestic violence, or intimate partner violence, emerged through the efforts of grassroots victim assistance programs and women's rights activists. Federal legislation and funding, however, has supplied the impetus for specific initiatives geared towards increasing protection for victims while holding offenders accountable for their actions.

## SCOPE OF THE PROBLEM

In the last decade, research confirms that child maltreatment and domestic violence frequently co-exist. Household telephone surveys reveal that frequency of child abuse doubles among families experiencing intimate partner violence, compared to families with nonviolent partners, and the rate of child abuse escalates with the severity and frequency of their mothers' abuse.<sup>3</sup> Between 30 and 60 percent of men who abuse their female partners also assault their children.<sup>4</sup> Conversely, studies show that 30 to 60 percent of the mothers of maltreated children are in violent relationships.<sup>5</sup> A review of studies reporting the overlap of domestic violence and child maltreatment found variations among the populations studied.<sup>6</sup>

- Physical child abuse and spouse abuse co-occur in about 6 percent of families in community samples;

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<sup>2</sup> For purposes of this report, family violence is defined to include domestic (or intimate partner) violence and child maltreatment; it does not include elder abuse or sibling violence.

<sup>3</sup> Strauss, M., Gelles, R.J., & S. Steinmetz (1980). *Behind Closed Doors: Violence in the American Family*. New York; Doubleday/Anchor.

<sup>3</sup> Edleson, J.L. (1999). "The overlap between child maltreatment and woman battering." *Violence Against Women*, Vol. 5, 134-54.

<sup>5</sup> Wright, R.J., Wright, R.O., & N.E. Isaac (1997). "Response to battered mothers in the pediatric emergency department: A call for an interdisciplinary approach to violence." *Pediatrics*, Vol. 99, 182-192.

<sup>6</sup> Appel, A.E., & Holden, G.W. (1998). "The co-occurrence of spouse and physical child abuse: A review and appraisal," *Journal of Family Psychology*, Vol. 12, 578-599.

- Co-occurrence rates range from 20 to 100 percent in samples of battered women;
- In samples of abused children, co-occurrence rates range from 26 to 59 percent.

Experts estimate that intimate partner violence and child abuse account for about one-third of the \$450 billion spent on crime each year.<sup>7</sup>

In addition to being victimized themselves, children living in violent homes experience serious adverse consequences. These effects may include behavioral and emotional problems, poor academic performance, and delinquency.<sup>8</sup> At the same time, some research suggests that children who have a strong, positive relationship with a competent and caring adult are less likely to demonstrate significant harmful effects of exposure to violence.<sup>9</sup> Unfortunately, battered women may not be able to fulfill this sheltering role for their children due to their own fears or depression.<sup>10</sup> These findings underscore a fundamental principle of the national movement to improve the response to battered women and their children: "Making adult victims safer and stopping batterers' assaults are two important ways to remove risk and thereby create permanency for children."<sup>11</sup>

## Interdependent Yet Conflicting Interests

Although it is generally recognized that the well-being of children who witness domestic violence is tied closely to that of their mothers,<sup>12</sup> 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.<sup>13</sup> They may lack resources or social networks to extricate themselves from dangerous relationships and the community's support system may be inadequate; help-

<sup>7</sup> Lung, C. & D. Daro (1996). *Current Trends in Child Abuse Reporting and Fatalities: The Results of the 1995 Annual Fifty State Survey*. Chicago: National Committee to Prevent Child Abuse.

<sup>8</sup> For a comprehensive review, see Edleson, J. (1999). "Children's witnessing of adult domestic violence." *Journal of Interpersonal Violence*, Vol. 14, 839-70.

<sup>9</sup> Osofsky, J. (Winter 1999). "The impact of violence on children." In *Domestic Violence and Children. The Future of Children*, 9(3): 33-49. Los Altos, CA: The David and Lucille Packard Foundation.

<sup>10</sup> Hilton, N.Z. (1992). "Battered women's concerns about their children witnessing wife assault." *Journal of Interpersonal Violence*, Vol. 7, 77-86.

<sup>11</sup> Schechter, S. & J. Edleson (1999). *Effective Intervention in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice*. Reno, NV: The National Council of Juvenile and Family Court Judges, p. 14.

<sup>12</sup> Osofsky, J.D. (1999). "The impact of violence on children." In *The Future of Children: Domestic Violence and Children*. Vol. 9, 33-49.

<sup>13</sup> Hilton (1992), *supra*, note 8.

seeking efforts may be thwarted by waiting lists, lack of insurance, or high fees for services.

Meanwhile, however, children remain in perilous living environments. Although relatively few are directly injured as a result of domestic violence (typically infants in their mothers' arms or older children who attempt to physically intervene), some children are physically abused by their battered mothers.<sup>14</sup> Furthermore, domestic violence is a known risk factor for recurring child abuse reports<sup>15</sup> and for child fatalities.<sup>16</sup> Also, domestic violence frequently co-exists with substance abuse, so that children are concurrently exposed to the adverse effects of exposure to dangerous substances or parental neglect due to addiction.<sup>17</sup> In fact, one large study involving 9,500 HMO members revealed that the 1,010 people who reported their mothers being treated violently also reported other adverse childhood experiences:<sup>18</sup>

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

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."

Efforts to protect battered mothers and their children are further complicated by concurrent efforts to hold batterers accountable for their actions. Sanctions available to the juvenile/family courts include orders of protection, mandated participation in specialized treatment programs, and loss of custody or visitation rights. Yet these sanctions may not be sufficient to control the behavior of some batterers; other offenders may be beyond the reach of the juvenile/family courts because they lack a familial relationship to the child. For these offenders,

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<sup>14</sup> Holden, G.W., Stein, J.D., Ritchie, K.L., et al. (1998). "Parenting behaviors and beliefs of battered women.." In *Children Exposed to Marital Violence*. G.W. Holden, R. Geffner, & E.N. Jouriles, eds. Washington, DC: American Psychological Association, 289-336.

<sup>15</sup> English, D.J., Marshall, D.B., Brummel, S., & M. Orme (1999). "Characteristics of repeated referrals to child protective services in Washington State," *Child Maltreatment*, Vol. 4, 297-307.

<sup>16</sup> U.S. Advisory Board on Child Abuse and Neglect (1995). *A Nation's Shame: Fatal Child Abuse and Neglect in the United States*. Washington, D.C.: U.S. Department of Health and Human Services, Administration for Children and Families.

<sup>17</sup> U.S. Department of Health and Human Services (1999). *Blending Perspectives and Building Common Ground: A Report to Congress on Substance Abuse and Child Protection*. Washington, D.C.: ACF, SAMHSA, ASPE.

<sup>18</sup> Felitti, V.J., Anda, R.F., Nordenberg, D., Williamson, D.F., Spitz, A.M., Edwards, V., Koss, M.P., and Marks, J.S. (1998). "Relationship of childhood abuse and household dysfunction to many of the leading causes of death in adults." *American Journal of Preventive Medicine*, Vol. 14, 250.

criminal prosecution may be necessary, and many prosecutors augment the battering case with charges of criminal neglect or child endangerment when children are injured in the context of domestic violence. However, despite widespread adoption of “no drop” or “evidence-based” prosecution policies for domestic violence cases, in reality the victim’s cooperation can be crucial. On an encouraging note, one recent study found that women who shared a child with the abuser were almost four times as likely to cooperate with prosecution than women without children in common with the abusive partner.<sup>19</sup> Still, when women decline to pursue prosecution, whether under duress from the defendant or on their own volition, regrettably, the batterers may walk away unscathed by the justice system. Meanwhile, child protection authorities may step in, holding the mothers responsible for assuring their children’s safety.

## **New Initiatives to Address Challenges**

Recognizing the degree of overlap, the adverse consequences for children who are exposed to domestic violence, and the need to protect women and children while holding battering offenders accountable, individuals, government agencies, and public and private entities across the country are taking action. Child protection agencies have instituted training and protocols for their workers to better identify domestic violence when investigating reports of child maltreatment, and some have hired domestic violence specialists to help develop appropriate case plans.<sup>20</sup> Law enforcement agencies are encouraged to note the presence of children when responding to domestic violence incidents, and to consult with mental health professionals to address the children’s trauma and anxiety.<sup>21</sup> Battered women’s shelters are hiring staff to work with children and developing policy for alerting child protection agencies when needed.<sup>22</sup> Juvenile and family courts are sponsoring programs to meet the needs of battered women whose children are at risk for maltreatment.<sup>23</sup>

Increased concern for children exposed to domestic violence has also prompted some state legislatures to enact new laws to address these circumstances. For example, some states created a new crime of child abuse when domestic

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<sup>19</sup> Goodman, L., Bennett, L., & Dutton, M.A. (1999). “Obstacles to victims’ cooperation with the criminal prosecution of their abusers: The role of social support.” *Violence and Victims*, Vol. 14, 427-444.

<sup>20</sup> Whitney, P., & Davis, L. (1999). “Child abuse and domestic violence in Massachusetts: Can practice be integrated in a public child welfare setting?” *Child Maltreatment*, Vol. 4, 158-166.

<sup>21</sup> Marans, S., Berkowitz, S.J., and Cohen, D.J. (1998). “Police and mental health professionals: Collaborative responses to the impact of violence on children and families.” *Child and Adolescent Psychiatric Clinics of North America*, Vol. 7, 635-651.

<sup>22</sup> Saathoff, A.J., & Stoffel, E.A. (1999). “Community-based domestic violence services.” In *The Future of Children: Domestic Violence and Children*. Vol. 9, 97-110.

<sup>23</sup> See, e.g., Lecklitner, G.L., Malik, N.M., Aaron, S.M., & Lederman, C.S. (1999). “Promoting safety for abused children and battered mothers: Miami-Dade County’s model dependency court intervention program.” *Child Maltreatment*, Vol. 4, 175-182.

violence is committed in the presence of a child;<sup>24</sup> others enhanced sentencing for domestic violence offenses committed when children are present,<sup>25</sup> and still others added exposure to domestic violence as an indicator of child maltreatment for purposes of reporting children at risk.<sup>26</sup>

While these new laws provide an added measure of safety for children, there is a concern that battered women will be increasingly subject to charges of failure to protect their children and risk losing custody. For instance, some fear that new laws will be applied to battered mothers, charging them with criminal child abuse. A related concern is that children who are exposed to domestic violence will be forced to testify, and therefore to “choose sides” in domestic violence cases. Minnesota has already repealed its law making domestic violence a “reportable condition” for child abuse: the state’s child protection agency simply was not equipped to respond to the huge influx of cases.

It is the prosecutor’s job to enforce these new laws, as well as other existing laws that might be relevant. In their efforts to enforce the law while balancing the interests of women and children, prosecutors have found themselves caught in the midst of a debate over how best to balance society’s needs to hold batterers accountable while ensuring the safety of women and children.

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?

## GUIDE TO THE REPORT

*Chapter 2* presents the results of a national telephone survey of prosecutors identified by their state prosecutor coordinators as having particular knowledge of, or experience in cases involving children and domestic violence.

Based on the results of the telephone surveys, five sites exemplifying different approaches to the co-occurrence of domestic violence and child abuse were selected for an in-depth visit. *Chapter 3* consists of detailed case studies

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<sup>24</sup> Utah: U.C.A. §76-5-109.1; Georgia: O.C.G.A. §16-5-70.

<sup>25</sup> Florida: Rule 3.704(d)(23); Hawaii: §706-606.4; Idaho: I.D. §18-918(7)(b); Oregon: ORS 163.160(3)(b); Washington: RCW 9.94A.390(2)(h)(ii).

<sup>26</sup> Alaska: AS 47.17.298(8).

describing policies and procedures and the observed outcomes for offenders, victims, and children.

Finally, *Chapter 4* summarizes patterns observed in the telephone surveys and across the five sites and offers some preliminary answers to the research questions listed above.

## CHAPTER 2

### TELEPHONE SURVEY OF PROSECUTORS

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. In consultation with attorneys from the National Center for Prosecution of Child Abuse, the decision was made to survey two prosecutors' offices in each state, for a total of 100 respondent jurisdictions. The reasoning was that the statutory framework is a key consideration when examining prosecutorial decision-making.

To identify respondent offices, a letter was sent to each state's prosecutor coordinator asking for nominations of offices that appeared to have particular knowledge of, or experience with, cases involving children and domestic violence. The prosecutor coordinators were directed, if possible, to identify offices with differing demographic characteristics. Ultimately, nominations were received from all but one state. A few prosecutor coordinators nominated city attorneys. In those cases, the nominated individuals were interviewed and asked to identify the appropriate district attorney for their jurisdiction; surveys were then carried out with the corresponding district attorneys' offices. Surveys from the six city attorneys are not included in the analyses which follow.

Depending upon the structure of each prosecutor's office, it was possible to interview either a single individual with responsibility for all family violence cases (whether as head of a Family Violence Unit or as an individual attorney with this particular assignment), or two prosecutors, one with responsibility for domestic violence cases and the other with responsibility for child abuse cases. Three versions of the survey form were generated to accommodate these different perspectives: the Survey of Prosecutors Who Handle All Family Violence Cases (attached in Appendix A) was essentially a composite of the surveys of domestic violence and child abuse prosecutors. For purposes of analysis, in jurisdictions where two prosecutors were interviewed, their responses were combined, so that the unit of analysis remains the jurisdiction and not the individual attorney. Where the surveys of domestic violence and child abuse prosecutors had common questions and the two prosecutors responded differently, the answers were coded as "conflicts" and excluded from the analysis.

The following analyses are based on the responses of 128 prosecutors representing 93 jurisdictions.

## DESCRIPTIVE INFORMATION

### Survey Respondents

Table 1 displays the number of responding prosecutors comprising each jurisdiction. Nearly half of the jurisdictions were represented by a single prosecutor who handled all forms of family violence, while nearly 40 percent were represented by a composite of two separate surveys completed by prosecutors responsible for domestic violence and child maltreatment. The remaining 13 jurisdictions were each represented by a single survey completed either by the domestic violence prosecutor (9) or the child abuse prosecutor (4). In some of these latter jurisdictions, there was no corresponding prosecutor designated in the office (e.g., there was a special domestic violence unit, but child abuse cases were distributed among all attorneys in the office); elsewhere the necessary interviews could not be scheduled and completed.

Table 1

Number and Type of Survey Respondents

RESPONDENT TYPE	FREQUENCY	PERCENT
Family Violence	45	48.4%
2 surveys (Domestic Violence and Child Abuse)	35	37.6%
Domestic Violence only	9	9.7%
Child Abuse only	4	4.3%
TOTAL	93	100%

### Size of Counties

To determine the size and degree of urbanization of the counties/districts represented in our survey, a coding scheme developed by the US Department of Agriculture<sup>27</sup> was employed. The results are displayed in Table 2. About three-quarters of responding jurisdictions represented metropolitan areas. The remainder were non-metropolitan areas, including several districts comprising multiple counties.

<sup>27</sup>Butler, Margaret, & Beale, Calvin. (1993). *Rural-Urban Continuum Codes for Metro and Nonmetro Counties*. Washington, DC: US Department of Agriculture, Economic Research Service, Agriculture and Rural Economy Division. Counties are ranked on a scale from 0 to 9, where 0 represents the largest metropolitan areas and 9 represents the smallest rural counties.

**Table 2**

**Degree of Urbanization among Responding Jurisdictions**

<b>DEGREE OF URBANIZATION</b>	<b>FREQUENCY</b>	<b>PERCENT</b>
Metropolitan area	71	76.3%
Non-metropolitan area	22	23.7%
<b>TOTAL</b>	<b>93</b>	<b>100%</b>

**Jurisdiction Of Responding Offices**

It was also important to understand the jurisdiction of each office over the crimes of domestic violence and child abuse. Specifically, in some counties, misdemeanor offenses committed within city limits are prosecuted by city attorneys rather than district attorneys; for purposes of this study, this distinction applies primarily to domestic violence cases. Table 3 depicts the jurisdictional responsibilities for domestic violence prosecutions among the responding jurisdictions. Three-fourths of responding prosecutors' offices had jurisdiction over all domestic violence offenses committed within their geographic district; about 13 percent did not handle misdemeanor offenses committed within city limits; 11 percent handled only felonies.

Also, in many jurisdictions, prosecutors are responsible for representing the state or county child protection agency in proceedings to determine the dependency and placement status of maltreated children. Table 4 shows the distribution of responding jurisdictions and their responsibility for child abuse cases in criminal and civil venues. A majority of responding prosecutors' offices were responsible only for criminal child abuse proceedings; the remaining 36 percent handled the dependency and placement proceedings as well.

**Table 3**

**Responsibility for Domestic Violence Prosecution**

<b>RESPONSIBILITY</b>	<b>FREQUENCY</b>	<b>PERCENT</b>
All domestic violence cases	67	74.4%
All but misdemeanors in the city	12	13.3%
Only felonies	10	11.1%
Other <sup>1</sup>	1	1.1%
<b>TOTAL<sup>2</sup></b>	<b>90</b>	<b>99.9%</b>

<sup>1</sup> One jurisdiction handled all domestic violence cases carrying potential jail sentences longer than 30 days and fines exceeding \$500.

<sup>2</sup> Prosecutors responsible only for child abuse cases were not asked this question.

**Table 4**

**Responsibility for Child Abuse Proceedings**

<b>CHILD ABUSE RESPONSIBILITY</b>	<b>FREQUENCY</b>	<b>PERCENT</b>
Criminal and civil cases	30	35.7%
Criminal cases only	54	64.3%
<b>TOTAL<sup>1</sup></b>	<b>84</b>	<b>100%</b>

<sup>1</sup> Prosecutors responsible only for domestic violence cases were not asked this question.

**Caseload Estimates**

Tables 5 and 6 show caseload estimates for responding jurisdictions. While large fractions of respondents were unable to provide estimates, those who did reported far more misdemeanor domestic violence cases than felony cases (see Table 5) : about 60 percent prosecuted more than 500 misdemeanor cases in 1998, compared to 21 percent who handled that many felonies.

**Table 5****Estimates of Domestic Violence Caseloads**

<b>CASELOAD ESTIMATE</b>	<b>FELONY CASES</b>		<b>MISDEMEANOR CASES</b>	
	<b>FREQUENCY</b>	<b>PERCENT</b>	<b>FREQUENCY</b>	<b>PERCENT</b>
< 50	18	31.6%	5	10.0%
51-100	6	10.5%	4	8.0%
101-250	11	19.3%	4	8.0%
251-500	10	17.5%	7	14.0%
501-1000	7	12.3%	10	20.0%
> 1000	5	8.8%	20	40.0%
<b>TOTAL<sup>1</sup></b>	<b>57</b>	<b>100%</b>	<b>50</b>	<b>100%</b>

<sup>1</sup> Excludes Not applicable/Missing and Don't know responses.

Table 6 reveals that, compared to domestic violence, child abuse caseloads are relatively small in most jurisdictions. More than 40 percent of responding offices handled fewer than 50 criminal child abuse cases in 1998, while fewer than 7 percent handled more than 500 such cases. Only a small number of respondents ventured to estimate caseloads for civil proceedings.

### **Services for Offenders and Victims**

As shown on Table 7, nearly all responding offices reported the existence of treatment programs for batterers in their communities. And, as revealed on Table 8, batterers in most communities are very often sentenced to attend these programs; indeed, many respondents reported that attendance is mandatory.

**Table 6**

**Estimates of Child Abuse Caseloads**

<b>CASELOAD ESTIMATE</b>	<b>CRIMINAL CASES</b>		<b>CIVIL CASES</b>	
	<b>FREQUENCY</b>	<b>PERCENT</b>	<b>FREQUENCY</b>	<b>PERCENT</b>
< 50	26	43.3%	5	38.5%
51-100	13	21.7%	3	23.1%
101-250	13	21.7%	3	23.1%
251-500	4	6.7%	2	15.4%
501-1000	2	3.3%	0	0
> 1000	2	3.3%	0	0
TOTAL <sup>1</sup>	60	100%	13	100%

<sup>1</sup> Excludes Not applicable/Missing and Don't know responses.

**Table 7**

**Existence of a Batterers Treatment Program**

<b>BATTERERS TREATMENT PROGRAM</b>	<b>FREQUENCY</b>	<b>PERCENT</b>
Yes	83	93.3%
No	6	6.7%
TOTAL <sup>1</sup>	89	100%

<sup>1</sup> Excludes Not applicable/Missing and Don't know responses.

**Table 8**

**Sentencing to Batterers Treatment Programs**

<b>SENTENCING PRACTICE</b>	<b>FREQUENCY</b>	<b>PERCENT</b>
Very often/mandated	65	81.3%
More often than not	10	12.5%
Sometimes	3	3.4%
Rarely	1	1.3%
Unless sentenced to prison/jail	1	1.3%
<b>TOTAL<sup>1</sup></b>	<b>80</b>	<b>99.8%</b>

<sup>1</sup> Excludes Not applicable/Missing and Don't know responses.

Every responding office reported the existence of programs in the community to which prosecutors can refer battered women and their children. Respondents were provided a list of possible services: shelter, legal services, specialized counseling for battered women, specialized counseling for child witnesses to violence, victim assistance program, and child protection agency. Respondents were also asked if there were other services not mentioned in this list. As shown on Table 9, a majority of offices indicated that all the listed services were available in their communities. About one-third identified one or more services on the list that were *not* available; these most commonly included specialized counseling for child witnesses (named by 22 respondents) and legal services (named by 10 respondents).

**Table 9**

**Services Available for Battered Women and Their Children**

<b>SERVICES AVAILABLE</b>	<b>FREQUENCY</b>	<b>PERCENT</b>
All listed	57	65.5%
All but (see text above)	30	34.5%
<b>TOTAL<sup>1</sup></b>	<b>87</b>	<b>100%</b>

<sup>1</sup> Excludes Not applicable/Missing and conflicting responses.

## Training For Prosecutors

Respondents were also asked whether prosecutors in their office had received any particular training about co-occurring domestic violence and child maltreatment. As shown on Table 10, most offices reported having received at least some training on this issue. Still, fully one-third reported having received no training.

Table 10

### Training on Co-Occurring Domestic Violence and Child Maltreatment

TRAINING RECEIVED	FREQUENCY	PERCENT
Yes	29	34.1%
No	30	35.3%
Some/limited scope	26	30.6%
TOTAL <sup>1</sup>	85	100%

<sup>1</sup> Excludes Don't know and conflicting responses.

## Protocols And Procedures To Coordinate Cases

Tables 11 and 12 reveal the extent to which responding jurisdictions have implemented protocols to identify co-occurring domestic violence and child maltreatment. None of the responding prosecutors' offices had instituted internal protocols to coordinate the actions of prosecutors with separate responsibility for domestic violence and child abuse cases. Jurisdictions were about twice as likely to have protocols directing law enforcement officers to ask about children when investigating domestic violence cases than they were to have protocols directing police or child protection workers to ask about domestic violence when investigating child abuse reports. Sizable fractions of respondents did not know whether such protocols existed.

**Table 11**

**Existence of a Protocol to Ask About Children  
When Investigating Domestic Violence**

<b>IS THERE A PROTOCOL?</b>	<b>FREQUENCY</b>	<b>PERCENT</b>
Yes	46	51.1%
No	30	33.3%
Don't know	14	15.6%
TOTAL <sup>1</sup>	90	100%

<sup>1</sup> Excludes Not applicable/missing responses.

**Table 12**

**Existence of a Protocol to Ask About Domestic Violence  
When Investigating Child Abuse**

<b>IS THERE A PROTOCOL?</b>	<b>FREQUENCY</b>	<b>PERCENT</b>
Yes	22	26.5%
No	39	47.0%
Don't know	22	26.5%
TOTAL <sup>1</sup>	83	100%

<sup>1</sup> Excludes Not applicable/missing responses

Respondents in offices that lacked protocols were asked how they generally learn about families where domestic violence and child maltreatment are co-occurring. Most respondents referred to police reports. Many noted that police have been trained to ask about child witnesses when investigating domestic violence cases, and specifically to record names and ages. A few respondents observed that police are expected to take statements from child witnesses. A small number of respondents mentioned multidisciplinary teams as a vehicle for learning about domestic violence occurring in families where child abuse has been alleged.

Table 13 indicates that checking for prior child abuse reports is not a routine investigative response to domestic violence cases. Only 18 percent of respondents described these checks as routine; about one-fourth said police

“sometimes” check, but four out of 10 said police do not check for prior child abuse reports. Nearly 17 percent simply did not know. A few respondents observed that child abuse records are not generally available to law enforcement and can only be obtained via subpoena.

**Table 13**

**Police Checks for Prior Child Abuse Reports**

<b>DO POLICE CHECK?</b>	<b>FREQUENCY</b>	<b>PERCENT</b>
Yes	15	17.9%
No	35	41.7%
Sometimes	20	23.8%
Don't know	14	16.7%
<b>TOTAL<sup>1</sup></b>	<b>84</b>	<b>100%</b>

<sup>1</sup> Excludes conflicting responses

Table 14 examines the extent to which cases involving co-occurring domestic violence and child maltreatment are heard by the same judge and/or in the same court, and whether they are handled by the same prosecutor. In most jurisdictions, these cases are handled by different prosecutors (55 percent) and heard in different courts (72 percent). Several respondents spoke of family courts that generally do not hear criminal matters. Sometimes, the same court will hear all misdemeanor charges, and in a few jurisdictions the domestic violence and child abuse charges can be filed on the same complaint and heard together. (Note, however, that in nine jurisdictions, respondents disagreed about the possibility of have the same court or same prosecutor handling these cases, perhaps reflecting different interpretations of the questions or unusually complicated jurisdictional issues.)

**Table 14**

**Cases Handled by Same Judge/Court or Same Prosecutor**

<b>COORDINATED CASES</b>	<b>SAME JUDGE/COURT</b>		<b>SAME PROSECUTOR</b>	
	<b>FREQUENCY</b>	<b>PERCENT</b>	<b>FREQUENCY</b>	<b>PERCENT</b>
Yes	12	14.6%	20	25.0%
No	59	72.0%	44	55.0%
Sometimes	11	13.4%	16	20.0%
TOTAL <sup>1</sup>	82	100%	80	100%

<sup>1</sup> Excludes don't know and conflicting responses.

**Statutory Framework**

The following tables depict the existence of statutes and case law addressing cases where domestic violence and child maltreatment co-exist. Table 15 shows that a small number of survey respondents indicated that their states had statutes either identifying exposure to domestic violence as a form of child abuse for reporting purposes, or creating or enhancing criminal penalties when domestic violence is committed in the presence of a child. About one in five jurisdictions indicated that their states are considering legislation in this area (although one-third of respondents simply didn't know).

However, many prosecutors could not supply specific citations during the telephone survey, and a search for the pertinent statutes was not always fruitful: we were unable to locate relevant statutory language in five states where prosecutors indicated such laws existed. Ultimately, appropriate statutes were identified in nine states as follows (brief synopses of these laws are contained in Appendix B):

Two states (Alaska and Minnesota) had laws defining exposure to domestic violence as a form of child maltreatment for purposes of the child abuse reporting requirements (although Minnesota's law was repealed in April 2000).

Two states (Utah and Georgia) have statutes creating a new criminal child abuse offense when children are exposed to domestic violence.

Five states (Florida, Hawaii, Idaho, Oregon, and Washington) have statutes enhancing criminal penalties for domestic violence offenses when children are present.

Statutes in Georgia, Oregon, and Utah are addressed in depth later in this report.

**Table 15**  
**Statutory Framework**

STATUTORY FRAMEWORK	EXPOSURE IS CHILD ABUSE		NEW/ENHANCED PENALTIES	
	FREQUENCY	PERCENT	FREQUENCY	PERCENT
Yes	11	12.4%	14	15.2%
No	78	87.6%	78	84.8%
TOTAL <sup>1</sup>	89	100%	92	100%

<sup>1</sup> Excludes don't know, missing, and conflicting responses.

Despite the absence of statutes explicitly addressing cases involving children and domestic violence, Table 16 reveals that prosecutors are aggressively pursuing ways to enhance penalties when domestic violence occurs in the presence of children. At least 30 respondents seek harsher sentences, citing the presence of children as an aggravating factor. In some jurisdictions this may mean the difference between jail and prison time. Another common avenue, mentioned by at least 21 respondents, is filing child endangerment charges. One prosecutor noted the possibility of getting consecutive sentences for the distinct crimes of domestic violence and child endangerment. Still another prosecutor used the presence of children to argue for more stringent conditions on bail and restraining orders.

As shown on Table 17, only 10 percent of responding jurisdictions said there is pertinent case law. A few observed that the laws are too new for cases to have reached the appellate level. The few cases that were mentioned tended to support the view that parents have a duty to protect their children from harm. Others upheld sentences that had been enhanced because of the presence of children or allowed child endangerment charges under these circumstances.<sup>28</sup>

<sup>28</sup> See, for example, *State v. Miranda*, 715 A.2d 680 (Conn. 1998) (boyfriend who established a "family-like" relationship with mother and two children convicted of first degree assault for failing to protect the children from mother's abuse); *Labastida v. State*, 931 P.2d 1334 (Nev. 1996) (mother convicted of second degree murder for failing to protect seven-week-old). Nationwide, of course, there are numerous published opinions on the parents' duty to protect their children, as described in recent law reviews. See, for example, Enos, V.P. (1996). "Prosecuting battered mothers: State

**Table 16**

**Use of Other Avenues to Enhance Penalties**

<b>USE OF OTHER AVENUES</b>	<b>FREQUENCY</b>	<b>PERCENT</b>
Yes	48	58.5%
No	34	41.5%
TOTAL <sup>1</sup>	82	100%

<sup>1</sup> Excludes don't know, not applicable/missing, and conflicting responses.

**Table 17**

**Relevant Case Law**

<b>IS THERE CASE LAW?</b>	<b>FREQUENCY</b>	<b>PERCENT</b>
Yes	9	9.9%
No	82	90.1%
TOTAL <sup>1</sup>	91	100%

<sup>1</sup> Excludes don't know and conflicting responses.

## **PROSECUTION POLICIES AND PRACTICES**

Survey respondents were asked a series of questions to determine how their offices handle cases involving children and domestic violence. The following tables display the results.

Table 18 indicates that three-fourths of responding offices have "no drop" policies for domestic violence cases, meaning that they will go forward on cases even with noncooperating victims. Even among offices that do not have formal "no drop" policies, many respondents explained that their principal caveat was the need for sufficient evidence to support prosecution. A few noted concerns

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laws' failure to protect battered women and abused children," *Harvard Women's Law Journal*, Vol. 19, p. 229; Skinazi, H.R. (1997). "Comment, Not just a 'conjured afterthought': Using duress as a defense for battered women who 'fail to protect'," *California Law Review*, Vol. 85, p. 993.

for the victims' safety if prosecution were to proceed. One prosecutor had even been informed by a judge that "the new wave is *not* to prosecute unless the victim is willing."

**Table 18**

**No Drop Policies for Domestic Violence Cases**

<b>IS THERE A POLICY?</b>	<b>FREQUENCY</b>	<b>PERCENT</b>
Yes	67	74.4%
No	23	25.6%
<b>TOTAL<sup>1</sup></b>	<b>90</b>	<b>100%</b>

<sup>1</sup> Excludes prosecutors who handle only child abuse cases.

Respondents were also asked whether the presence of children influences their decisions to prosecute domestic violence cases. As shown on Table 19, six out of 10 respondents replied affirmatively. Many respondents explained that they go forward on domestic violence cases regardless of the children's presence; others said that children make the case more compelling to juries; still others reflected that they (the prosecutors) feel more compelled to go forward when children are involved. At least seven identified the children's capacity to testify as an important factor.

**Table 19**

**Influence of Children on Decisions to Prosecute Domestic Violence**

<b>DO CHILDREN INFLUENCE DECISIONS?</b>	<b>FREQUENCY</b>	<b>PERCENT</b>
Yes	54	60.0%
No	20	22.2%
Sometimes	16	17.8%
<b>TOTAL<sup>1</sup></b>	<b>90</b>	<b>100%</b>

<sup>1</sup> Excludes prosecutors who handle only child abuse cases.

Respondents were then presented with three different scenarios involving children and domestic violence:

1. An abused mother is alleged to have abused her children.
2. Both mother and children are abused by the same male perpetrator.
3. Children are exposed to domestic violence but not abused themselves.

For each scenario, respondents were asked (a) whether they would report the mothers in these incidents to the child protection agency, and (b) whether they would prosecute the mothers: in the first scenario, for the abuse of their children; and in the latter two scenarios, for failure to protect their children from either abuse by the male perpetrator or from exposure to domestic violence.

Tables 20 and 21 display the results, suggesting, in general, that these three scenarios represent decreasing degrees of culpability on the part of mothers for the danger to their children. As shown on Table 20, while nearly all respondents said they would report battered mothers who allegedly abused their children, far fewer (37 percent) would report mothers for failure to protect their children from abuse by the male perpetrator. About one-fourth of respondents would report mothers for failure to protect their children from exposure to domestic violence; a few noted the inability of child protection agencies to intervene if children are not injured.

**Table 20**

**Reporting Incidents Involving Children and Domestic Violence**

WOULD YOU REPORT?	MOM ABUSES CHILDREN		FAILURE TO PROTECT FROM ABUSE		FAILURE TO PROTECT FROM EXPOSURE	
	FREQUENCY	%	FREQUENCY	%	FREQUENCY	%
Yes	79	87.8%	32	36.8%	23	26.7%
No	5	5.6%	32	36.8%	52	60.5%
Sometimes	6	6.7%	23	26.4%	11	12.8%
TOTAL <sup>1</sup>	90	100.1%	87	100%	86	100%

<sup>1</sup> Excludes Not applicable/missing and Don't know responses.

At least 17 respondents volunteered that prosecutors are mandated reporters, and several observed that any of these incidents should already be known to the child protection agency by the time they arrive at the prosecutor's office. Many respondents evaluated the mother's role in her children's plight before reporting to the child protection agency. Several would only report if they believed the mother was unwilling or unable to prevent the abuse of her children, or only in egregious circumstances (e.g., the case where a mother turned on the vacuum while the child was being beaten). At least eight said they would report the male perpetrator or the incident, not the mother, and leave it to the child protection agency to determine culpability.

Table 21 turns to the question of prosecution: Would your office prosecute a woman under any of the three given scenarios? This table reveals the same pattern: While a large majority of respondents (84 percent) would prosecute mothers who allegedly abuse their children, fewer (39 percent) would prosecute mothers for failure to protect their children from abuse, and a small minority (fewer than one in 10) would prosecute for failure to protect children from exposure to domestic violence.

**Table 21**

**Prosecuting Incidents Involving Children and Domestic Violence**

WOULD YOU PROSECUTE?	MOM ABUSES CHILDREN		FAILURE TO PROTECT FROM ABUSE		FAILURE TO PROTECT FROM EXPOSURE	
	FREQUENCY	%	FREQUENCY	%	FREQUENCY	%
Yes	69	84.1%	31	38.8%	7	9.6%
No	0	0	18	22.5%	55	75.3%
Sometimes	13	15.9%	31	38.8%	11	15.1%
TOTAL <sup>1</sup>	82	100%	80	100.1%	73	100%

<sup>1</sup> Excludes Not applicable/missing and Don't know responses.

For some respondents, the severity of the abuse inflicted upon the child was an important factor in their decisions to prosecute battered, abusive mothers; some stated they would consider the mothers' victimization as a mitigating factor at sentencing. Similarly, prosecutors considered the chronicity and severity of violence when deciding whether to go forward on charges of failure to protect from abuse or exposure to domestic violence. Many would limit prosecution to the most egregious scenarios: death or serious injury, ongoing abuse, active

complicity of the mother, and prior history of failure to comply with services or treatment plans. Many respondents noted that, in their states, there is no statute to support prosecutions for failure to protect children from abuse by another party or from exposure to domestic violence; instead, some prosecutors would pursue petitions in the civil dependency courts.

Finally, respondents who said their offices would prosecute under any of the three given scenarios were asked how often this actually happens. As shown on Table 22, although many respondents did not know how often these cases are actually prosecuted, most offices had rarely, if ever, prosecuted battered mothers accused of abusing their children or failing to protect their children from abuse or exposure to domestic violence. About 28 percent said they prosecuted battered mothers charged with abusing their children “very often” or “more often than not,” compared to one in 10 who prosecuted battered mothers for failure to protect their children from abuse with the same frequency. Only one respondent reported “very often” prosecuting battered mothers for failure to protect children from exposure to domestic violence; indeed, more than half of the survey respondents had *never* prosecuted such a case. (Note, however, that some respondents in offices having responsibility for civil dependency matters may have included these proceedings within their definitions of “prosecution.”)

**Table 22**

**Frequency of Prosecuting Cases Involving Children and Domestic Violence**

HOW OFTEN DO YOU PROSECUTE?	MOM ABUSES CHILDREN		FAILURE TO PROTECT FROM ABUSE		FAILURE TO PROTECT FROM EXPOSURE	
	FREQUENCY	%	FREQUENCY	%	FREQUENCY	%
Very often	14	17.7%	4	6.3%	1	3.3%
More often than not	8	10.1%	2	3.2%	0	0
Sometimes	0	0	4	6.3%	1	3.3%
Rarely	21	26.6%	29	46.0%	7	23.3%
Never	12	15.2%	12	19.0%	17	56.7%
Don't know	24	30.4%	12	19.0%	4	13.3%
TOTAL <sup>1</sup>	79	100%	63	99.8%	30	99.9%

<sup>1</sup> Excludes Not applicable/missing responses.

## EXPLORATORY ANALYSES

Survey findings were examined to explore the following research questions:

- Did jurisdictions having a single Family Violence unit or prosecutor respond to these cases differently than those with separate Domestic Violence and Child Abuse units or prosecutors?
- Did responses from nonmetropolitan jurisdictions differ from the responses of metropolitan jurisdictions?
- Did the existence of laws addressing children and domestic violence have a significant impact on prosecutors' responses to these cases?
- Did training for prosecutors have a significant impact on their responses to these cases?

Table 23 displays the independent and dependent variables that were used in these analyses.

With few exceptions, the answers to the research questions were "no." The exceptions, where significant differences were observed, are as follows:

- Jurisdictions with Family Violence prosecutors are more likely to use the same prosecutor for cases involving domestic violence and child victim/witnesses than are jurisdictions with separate Child Abuse and Domestic Violence units (see Table 24).

To a large extent, this finding reflects the logical structure of the office having a single unit or individual responsible for all kinds of family violence cases. However, even in this category, 40 percent of jurisdictions do not have a single prosecutor handling both domestic violence and child abuse charges. This finding may indicate some confusion in the wording of the question: some respondents may have interpreted "these cases" to include civil child dependency proceedings, for example, or misdemeanor charges that, in their jurisdictions, are not the responsibility of the responding offices.

**Table 23**

**Independent and Dependent Variables for Exploratory Analyses**

**INDEPENDENT VARIABLES**

Structure of office (Family Violence Unit vs. Domestic Violence and Child Abuse Units)

Degree of urbanization

Existence of laws addressing children and domestic violence

Training for prosecutors

**DEPENDENT VARIABLES**

Protocols to ask about domestic violence when investigating child abuse

Protocols to ask about child victim/witnesses when investigating domestic violence

Whether police routinely check for child abuse history when investigating domestic violence

Whether domestic violence and child abuse cases are handled by the same prosecutor

Whether domestic violence and child abuse cases are heard in the same court or by the same judge

Whether prosecutors are using other avenues (in addition to specific statutes) to enhance penalties when children witness domestic violence

Whether the office has a "no drop" policy for domestic violence cases

Whether the presence of children influences the decision to prosecute

The likelihood of reporting battered women who

- Abuse their children
- Fail to protect their children from abuse
- Fail to protect their children from exposure to domestic violence

The likelihood of prosecuting battered women who

- Abuse their children
- Fail to protect their children from abuse
- Fail to protect their children from exposure to domestic violence

**Table 24**

**Are These Cases Handled by the Same Prosecutor?**

OFFICE STRUCTURE		CASES HANDLED BY THE SAME PROSECUTOR?	
		Some or All of the time	No
Family Violence	Count	26	18
	%	59.1%	40.9%
Separate Responsibility for Domestic Violence and/or Child Abuse Cases	Count	10	26
	%	27.8%	72.2%
<b>TOTAL</b>	Count	36	44
	%	45%	55%

$\chi^2 = 7.844$ ,  $df=1$ ,  $p=.005$ ,  $\phi = .313$ .  
Fisher's Exact Test = .007 (2-sided)

- Offices in nonmetropolitan jurisdictions are more likely than offices in metropolitan areas to *report* a battered woman for failure to protect her children from abuse by the male perpetrator (see Table 25).

**Table 25**

**Would Your Office Report a Battered Woman for Failure to Protect Her Child from Abuse?**

DEGREE OF URBANIZATION		REPORTING PRACTICE		
		Yes	Sometimes	No
Metro	Count	19	20	27
	%	28.8%	30.3%	40.9%
Non-Metro	Count	13	3	5
	%	61.9%	14.3%	23.8%
<b>Total</b>	Count	32	32	23
	%	36.8%	36.8%	26.4%

$\chi^2 = 7.563$ ,  $df=2$ ,  $p=.023$ ,  $\phi = .295$ .

Note, however, that no corresponding difference was found in the likelihood of *prosecuting* battered mothers.

- New legislation does appear to have an impact on prosecutors' reporting practices. In jurisdictions having new laws, prosecutors were significantly more likely to report battered women to child protection authorities for failure to protect their children from abuse by the batterers or from exposure to domestic violence (see Tables 26-28). It is noteworthy that survey respondents were *not* significantly more likely to *prosecute* battered mothers under these circumstances.

Recall that survey respondents were asked about laws that either 1) identify exposure to domestic violence as a form of child maltreatment for reporting purposes, or 2) apply or enhance criminal penalties when children are exposed to domestic violence.

As shown on Table 26, survey respondents in states having laws identifying exposure as a form of child abuse are, in fact, significantly more likely to report these incidents to the child protection agency. Tables 27 and 28 indicate similar patterns among survey respondents from states with laws that impose new or enhanced criminal penalties when children witness domestic violence: they are significantly more likely to report these mothers, whether for failure to protect their children from abuse by the batterer (Table 27) or from exposure to domestic violence (Table 28).

**Table 26**

**Would Your Office Report a Battered Woman for Failure to Protect Her Child from Exposure to Domestic Violence?**

LAWS IDENTIFYING EXPOSURE TO DV AS CHILD ABUSE		REPORTING PRACTICE	
		Some or all of the time	No
Yes	Count	9*	2
	%	81.8%	18.2%
No	Count	25	47
	%	34.7%	65.3%
TOTAL	Count	34	49
	%	41.0%	59.0%

$\chi^2=8.752$ ,  $df=1$ ,  $p=.003$ ,  $\phi=.325$ ,

\*Expected Cell Size < 5, Fisher's Exact Test Sig.=.006 (2 sided)

**Table 27**

**Would Your Office Report a Battered Woman for Failure to Protect Her Child from Abuse?**

LAWS APPLYING OR ENHANCING CRIMINAL PENALTIES FOR EXPOSURE TO DV		REPORTING PRACTICE	
		Some or all of the time	No
Yes	Count	12	1*
	%	92.3%	7.7%
No	Count	42	31
	%	57.5%	42.5%
TOTAL	Count	54	32
	%	62.8%	37.2%

$\chi^2=5.711$ ,  $df=1$ ,  $p=.017$ ,  $\phi=.254$ ,

\*Expected Cell Size <5, Fisher's Exact Test Sig.=.026 (2 sided)

**Table 28**

**Would Your Office Report a Battered Woman for Failure to Protect Her Child from Exposure to Domestic Violence?**

LAWS APPLYING OR ENHANCING CRIMINAL PENALTIES FOR EXPOSURE TO DV		REPORTING PRACTICE	
		Some or all of the time	No
Yes	Count	9	4
	%	69.2%	30.8%
No	Count	25	47
	%	34.7%	65.3%
TOTAL	Count	34	51
	%	40%	60%

$\chi^2=5.464$ ,  $df=1$ ,  $p=.019$ ,  $\phi=.254$ ,

Fisher's Exact Test Sig.=.030 (2 sided)

Together, these analyses suggest that the new laws do encourage prosecutors to make these cases known to child protection agencies, but not necessarily to prosecute the battered mothers.

- Offices where prosecutors had received at least some training on this issue were more likely to use other avenues (in addition to available statutes) to enhance penalties for people who commit domestic violence in the presence of children (see Table 29).

**Table 29**

**Are Prosecutors Using Other Avenues to Enhance Penalties?**

HAVE PROSECUTORS RECEIVED TRAINING?		USE OF OTHER AVENUES	
		Yes	No
At least some training	Count	34	18
	%	65.4%	34.6%
No training	Count	9	14
	%	39.1%	60.9%
<b>TOTAL</b>	Count	43	32
	%	57.3%	42.7%

$\chi^2=4.49$ ,  $df=1$ ,  $p=.034$ ,  $\phi= .245$

This finding suggests that increased knowledge about the dynamics and consequences of witnessing domestic violence encourages prosecutors to be more vigorous in their efforts to hold domestic violence perpetrators accountable for their behavior.

It is important to acknowledge several limitations of the above series of analyses. First, many of the exploratory analyses required collapsing categories due to small cell sizes; while there was a logical basis for these decisions, it is possible that the new categories may distort or mask differences. Also, cases with the responses “don’t know” and “conflict between prosecutors from the same office” were coded as missing data; tables reflecting a large proportion of missing data should be scrutinized carefully. Finally, all of the analyses are bivariate. Because many of the responses were overwhelmingly homogeneous, it was not possible to conduct multivariate analyses to control for the effect of interrelated variables.

In sum, the results of the exploratory analyses should be considered merely suggestive. Their primary value is to provide a springboard for future research.

## CONCLUSIONS

Using a purposive sample of prosecutors identified by state prosecutor coordinators, a national telephone survey was conducted to identify existing policies and practices in responding to cases involving domestic violence and children as victims or witnesses. Keeping in mind that the findings are not generalizable and that they reflect prosecutors' self reports of conditions in their respective jurisdictions and offices, the results offer several interesting insights into the challenges that arise in these cases.

Some key findings are the following:

- **Protocols explicitly addressing the need for coordination among investigators and prosecutors are lacking in most jurisdictions.**

None of the responding offices with separate domestic violence and child abuse units had protocols directing prosecutors in these units to communicate with one another about families in which domestic violence involves children as victims or witnesses. 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, but only about one-fourth knew of similar protocols directing investigators to inquire about domestic violence when responding to child abuse reports.

- **The existence of statutes identifying exposure to domestic violence as a form of child maltreatment, or creating or enhancing penalties for domestic violence in the presence of children, appears to encourage prosecutors to report these cases to child protection authorities.**

Interestingly, respondents from jurisdictions having the new statutes were *not* more likely to prosecute battered mothers for failure to protect their children from abuse by the perpetrator or exposure to domestic violence.

- **Even in the absence of relevant legislation, many prosecutors' offices are aggressively pursuing enhanced penalties 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 training about domestic violence and child maltreatment were significantly more likely to employ these avenues in applicable cases.

- **Prosecutors consider mothers' experience of victimization in their decisions to report or prosecute battered mothers for abusing their children or failing to protect them from abuse or from exposure to domestic violence.**

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 prior history of failure to comply with services or treatment plans. Respondents were far more likely to report and prosecute mothers accused of abusing their children than they were to report and prosecute mothers for failure to protect their children from exposure to domestic violence. Indeed, 75 percent said they would *not* prosecute mothers under the latter circumstance, and most of the others would prosecute only in situations of extreme danger.

In sum, the results suggest that prosecutors are becoming more aware of the risks to children growing up in violent homes. Many are taking active steps to hold domestic violence offenders accountable for the risks to children by arguing for harsher sentences and charging them with child endangerment. Criminally charging battered mothers with failure to protect their children from abuse or from exposure to domestic violence appears to occur relatively infrequently, primarily in situations posing the greatest danger to children. Because survey respondents had been nominated specifically for their knowledge of, or expertise in family violence issues, however, the findings may actually overstate the extent to which prosecutors are adapting their approaches to domestic violence cases involving children.

## CHAPTER 3

### 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 in-depth site visits. Several criteria helped to inform this decision:

- Based on the telephone surveys, it was clear that much could be learned from jurisdictions in those states that had enacted legislation specifically addressing this issue.
- Field research is most productive where prosecutors have sufficient experience to inform their opinions and observations, and to show an effect on the policies and practices of other agencies in the community.
- Geographic diversity helps to interpret the extent to which innovation spreads across the country and manifests in potentially different ways.

Using these primary criteria, five sites were chosen (listed alphabetically):

Dallas County, Texas  
Houston County, Georgia  
Multnomah County, Oregon  
Salt Lake County, Utah  
San Diego County, California

Over the course of three days in each jurisdiction, personal interviews were conducted with a wide range of criminal justice, child protection, and domestic violence professionals. Specific interview respondents were identified in consultation with a key liaison in each site, and several respondents who were not available during our visit were later interviewed by telephone. Between 12 and 15 people were interviewed in each community. In addition, any available documentation (e.g., brochures, policies, reporting forms, statistical reports, etc.) was gathered and reviewed.

The case studies that follow in this chapter were shared with all interview respondents in draft form and revised to incorporate their feedback. Because the goal of this study was to shed light on challenges facing prosecutors, the case studies are narrowly written to focus on relevant content. To the extent possible, the case studies follow a parallel format describing (a) background and context of the jurisdiction; (b) response of criminal justice agencies; (c) response of the child protection system; and (d) response of domestic violence providers or advocates. Each case study ends with a brief summary. Observed patterns across the sites are discussed in **Chapter 4, Summary and Conclusions**.

## **DALLAS COUNTY, TEXAS**

Dallas County, Texas, was chosen as a site for field research because it exemplifies a jurisdiction where there no statutes explicitly addressing children who are exposed to domestic violence, yet prosecutors are taking active steps to improve the response to children and mothers in these cases.

As a backdrop to this case study, respondents in Dallas noted several similarities between domestic violence cases involving children and intrafamilial child sexual abuse cases:

- offenders “groom” their victims to believe that theirs is an acceptable lifestyle;
- children’s loyalties are divided between their mothers and the mothers’ male partners; and
- professionals express concern over the need for children to testify under these circumstances.

To some extent, these characteristics underlie the approach taken by professionals in Dallas to enhance the community’s response to battered women and their children. Specifically, to address the “grooming” issue, treatment programs for both offenders and victims seek to challenge beliefs that violence in families is acceptable. Also, professionals and advocates in Dallas are acutely sensitive to the children’s difficult position in these cases and seek to avoid, wherever possible, the need for children to testify and (in effect) “take sides.”

### **Background**

Concern for the children of battered women in Dallas County can be attributed, at least in part, to a meeting convened in September 1996, at the request of the Dallas Police Department. Noting published research documenting extensive overlap between domestic violence and child abuse, police theorized that many of the families they saw in the Family Violence Unit ought to show up in reports to Child Protective Services (CPS), but this theory was not borne out. They questioned whether the battered women’s shelters were failing to report child maltreatment, as mandated by law.<sup>29</sup>

The meeting was attended by representatives of the Dallas Police Department, District Attorney’s Office, CPS, Children’s Advocacy Center, Children’s Medical Center, Lawyers Against Domestic Violence, and three domestic violence shelters/service providers. As it turned out, shelters did make referrals to CPS, but most were for bruises and did not rise to the level of requiring police action.

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<sup>29</sup> Texas law requires reports either to CPS or police, who are then mandated to cross-report to one another.

Furthermore, mothers seldom report child abuse to the shelters for fear of losing their children to CPS.<sup>30</sup> Finally, a “huge” percentage of domestic violence offenders have no relationship to the children that would subject them to the jurisdiction of CPS and the Family Court. Numerous recommendations resulted from this meeting, and one, in particular, was implemented soon thereafter: A Domestic Violence Specialist from The Family Place, the largest domestic violence service agency in Dallas, was placed in Child Protective Services. This individual's role is discussed further in **Child Protective Services Response**, below.

In January 1999, the Texas Department of Protective and Regulatory Services released figures demonstrating a 71 percent increase in child fatalities attributed to abuse or neglect, from 103 deaths in FY 1997 to 176 in FY 1998. In both years, 36 percent of the children had prior involvement with CPS. Upon closer analysis, several common themes were identified among the cases with CPS involvement:

- The parents in these cases tended to be overwhelmed by their caregiving responsibilities, exhibited a low tolerance for stress, and held unrealistic expectations for their children's behavior.
- Many were emotionally immature parents who repeatedly made choices that jeopardized the child's safety. Parenting behaviors were characterized by indifference toward the child and the desire to put adult needs first.
- Single mothers tended to make poor choices about their male partners who consequently engaged in behaviors leading to the child's death.
- Parents and other household members exhibited a history of violence and drug and alcohol abuse.
- The children were very young, or otherwise vulnerable due to physical and mental impairments.
- The home environment was typically chaotic and characterized by minimal resources and poor external support systems.<sup>31</sup>

These findings prompted a number of recommendations to improve CPS' capacity to identify families at high risk for fatal child abuse or neglect. One outcome was a revised risk assessment instrument, which explicitly includes questions that address the extent of violence in the home. It is likely that the

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<sup>30</sup> Dallas Children's Advocacy Center, Meeting Summary, September 27, 1996.

<sup>31</sup> Texas Department of Protective and Regulatory Services, *Child Abuse and Neglect Related Deaths in Texas and the Nation*, January 1999.

increased attention to domestic violence as a risk factor in fatal child abuse or neglect is manifested not only in the CPS response but more widely throughout the justice and social service systems as they seek to reverse the trend in child fatalities. See **Child Protective Services Response**, below, for further discussion of this issue.

Also, in the last legislative session, there was an initiative to enhance domestic violence charges from misdemeanor to felony offenses when incidents occur in the presence of children. This effort failed, largely due to concerns about children having to testify. (The draft legislation had included the presence of children as a factual matter that would have to be proved.) Critics also feared that the threat of harsher sentences (i.e., to prison, not jail) would discourage women from reporting domestic violence, or exert even greater pressure on them to retract charges.

## **Criminal Justice System Response**

### **Dallas Police Department**

It is difficult for police to discern when children are at risk in domestic violence cases, and CPS receives very few reports from police who have responded to a domestic violence incident. Police only report cases involving injury to a child, and by all accounts, actual child injuries resulting from domestic violence are rarely seen. Police interview child witnesses only when the domestic violence is serious. Proposals to insert a “checkbox” for children present on the police incident report were denied by the Dallas Police Department, citing the cost of revising the computer program.

Conversely, when cases present as child abuse (whether to CPS or police), mothers rarely disclose their own victimization. More frequently, this information emerges in interviews with the children.

Police are able to get emergency protective orders on behalf of domestic violence victims, on their own initiative with approval from a magistrate, and even without the woman’s request. These orders place the woman’s address on a “hazardous location” file, which appears on the officer’s computer screen the next time a report comes in from that location. Emergency orders are effective, with a magistrate’s approval, for a period ranging from 31 to 61 days. However, protective orders can only be obtained for children *if they have been injured*.

At this writing, there are plans to place a CPS worker in the Police Department’s Family Violence Unit to screen for domestic violence reports involving families with children under the age of four. If CPS has an open case and there are multiple reports of domestic violence, the agency will consider removing the children.

## **Dallas County District Attorney's Office**

The Dallas County District Attorney's Office has separate Family Violence and Child Abuse Divisions. While the Family Violence Division handles all domestic violence cases in the jurisdiction (felonies and misdemeanors), the Child Abuse Division focuses exclusively on the most serious child abuse felonies: sexual abuse and serious bodily injury of children under the age of 14, physical abuse of children under 6, and child deaths. Other child abuse cases are handled by prosecutors assigned to a general felony caseload.

Prosecutors pursue a fairly strict "no-drop" policy for domestic violence cases, and the presence of children only strengthens their resolve to move cases forward. However, they will offer reluctant women the option of filing an "affidavit of nonprosecution." This document may be helpful to women who fear retribution from their abusive partners by demonstrating their efforts to terminate the system's intervention. It has no effect on the prosecutor's decision making or the court's proceedings,

Where there are concurrent charges of domestic violence and child abuse, prosecutors try to coordinate the cases to optimize 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 take 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, attendance at an appropriate treatment program, participation in substance abuse treatment, etc.). The offender will not have a conviction on the child abuse charge until he violates these conditions, which can result in time in prison—not jail.

In fact, respondents observed that deferred adjudication or a probation sentence is, in some ways, more severe and more effective than jail time, precisely because of the conditions that can be imposed, the length of time that the offender can remain under the court's supervision, and the threat of revocation and incarceration.

Prosecutors will pursue charges against battered mothers who abuse their children, but they do not prosecute for failure to report their partners for abusing the children or for perjury when mothers lie on the witness stand. In their own words, "What's the point?" And, while mothers could be prosecuted for child endangerment or "abuse by omission" if they fail to protect their children from abuse, such cases are rare. There is no statutory authority to prosecute a mother for failure to protect her children from exposure to domestic violence.

The District Attorney's Office in Dallas also handles child protection/ dependency proceedings, but in its Juvenile Division, which is located in another building.

There is little communication between the Adult Criminal and Juvenile Divisions within the office. However, the Juvenile Division does run criminal background checks on every family that it tries, so that attorneys are aware of pending domestic violence charges and prior domestic violence convictions. This information is presented as a factual circumstance for the judge to consider when determining the child's placement status. Statistics are not available to document the prevalence of co-occurring child protection and criminal domestic violence cases.

### **Dallas County Courts**

There is a domestic violence court that hears misdemeanor cases exclusively. On the standard form that is commonly used when granting probation, there is a line on which the judge indicates whether there is an "affirmative finding" of family violence. A positive finding on the record can be used to deny an offender custody or visitation with children or purchase of guns. Also, as of September 1, 1999, a second offense of family violence is a felony, and there are reportedly more trials on the misdemeanor charges as a result.

### **Child Protective Services Response**

Like its counterparts in many other communities across the nation, CPS in Dallas struggles to dispel common perceptions—among the general public and some domestic violence advocates and professionals—that the agency either fails to respond to reports of children at risk in violent households, or over-reacts and removes children from battered mothers unnecessarily.

On the one hand, shelter workers correctly observed that their reports to CPS are assigned a lesser priority because the children are considered to be safe, at least for the moment. At the other extreme, CPS is often cast as the "bad guy" in the system's efforts to persuade battered mothers to leave their abusive partners. Police in Dallas are said to threaten mothers with CPS intervention, and several interview respondents reported that CPS workers threaten battered mothers with removal of their children if the mothers do not move to a shelter and/or obtain a protective order. In fact, these are not hollow threats: Mothers who fail to take steps to protect their children *are* at greater risk of removal, and CPS workers are supposed to explain this risk when they counsel battered mothers.

Sometimes there are legitimate reasons why a mother cannot comply with the recommended safety plan. For example, obtaining a protective order is not entirely within the woman's control. Some women are not eligible for protective orders, e.g., if they are in a "dating" relationship with the offender and there is no marriage (whether current or terminated) or child in common. In these circumstances, prosecutors have provided women with written explanations to help CPS workers understand why protective orders were not issued.

The cloak of confidentiality that limits open communication about specific cases also contributes to widespread misunderstandings and distrust between CPS and the battered women's providers, in particular. For example, domestic violence workers may be outraged to learn that CPS has removed children from a mother, for no apparent reason other than the mother's victimization. What they don't know, and what CPS can't tell them, is that this family has been reported to CPS numerous times for abuse or neglect, and that this history—in conjunction with the new information about the mother's abuse—now places the children at higher risk.

This confidentiality barrier works both ways: CPS workers sometimes find it difficult to locate mothers when conducting their investigations. Domestic violence shelters in Dallas can neither confirm nor deny that a woman is utilizing their services, thereby frustrating investigators' efforts to complete their investigations within the statutory time frame.

There are some ways to surmount the confidentiality problem. For example, shelter workers can ask mothers to sign a release during the intake process (although this may be difficult when mothers are in crisis). And, later, when CPS holds permanency planning team meetings to determine the child's placement, mothers who are accompanied by a domestic violence advocate are implicitly giving permission to share information.

It is not possible at this time to determine what proportion of the CPS caseload in Dallas involves domestic violence or to examine the outcomes for mothers and children in these cases. Although investigators routinely ask about domestic violence in their risk assessments, and considerable information is recorded in the case files, all these data are forwarded to the state (Texas Department of Protective and Regulatory Services) and are not published at the county level. Statewide, the agency conducted 111,147 investigations of child abuse and neglect in FY 1998, and of those, 46,068, or about 41 percent, showed indications of domestic violence in the home.<sup>32</sup>

Acknowledging the overlap in domestic violence and child protection cases and recognizing the need to improve the agency's response, Child Protective Services in Dallas has undertaken two major initiatives. These are described below.

### **Domestic Violence Specialist**

First, as mentioned above, in response to a recommendation that emerged from the September 1996 meeting, CPS houses a Domestic Violence Specialist from

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<sup>32</sup> Texas Department of Protective and Regulatory Services, *Annual Report Fiscal Year 1998*, p. 12.

The Family Place, one of Dallas County's largest service providers for battered women and abusive partners. This individual has been located at CPS since May 1998, although he began his coordinating role with CPS in February 1996. His functions include training, consultation, and brokering services. The Domestic Violence Specialist is available to accompany CPS investigators when their referrals explicitly involve domestic violence, or to consult for input on individual cases; unfortunately, however, utilization of his consultation services remains low. Much of his work focuses on bridging gaps in communication between CPS and the various battered women's service providers in the County, including shelters, advocates, and counseling programs.

For example, CPS workers are trained to ask about domestic violence during the Risk Assessment, to provide battered mothers with a card listing community services, and to engage in safety planning. The Domestic Violence Specialist works with the CPS investigators to help them perform these functions without threatening their clients. He also tries to dispel misconceptions of the CPS workers' interventions among the battered women's community and to help them understand some of the barriers and constraints, even if they can't surmount them.

To encourage cross-fertilization among domestic violence and child protection workers, the Domestic Violence Specialist coordinates cross-training at least twice a year, working closely with CPS, domestic violence staff, and the Dallas Children's Advocacy Center. He has also tried to coordinate dual staffings among CPS and domestic violence workers to involve both perspectives in appropriate cases. However, the domestic violence and child protection workers do not always tell him about families that may require dual interventions and seem not to have the time for these meetings, so these staffings have not materialized.

More recently, the Domestic Violence Specialist has offered "Project Caretaking," an orientation program for new CPS clients who are domestic violence victims. He and a female counselor talk about the impact of domestic violence on women and children and encourage mothers to access services. However, CPS workers are not referring as many women to this program as had been anticipated. Furthermore, limited experience with the program suggests that families do not follow up on these referrals: eleven referrals to The Family Place over a two-month period resulted in four no-shows, and only one referral actually accessed domestic violence services. Batterers who are referred to the Batterers Intervention and Prevention Program follow through only when the criminal courts are involved.

The Domestic Violence Specialist also attends staffings when children have been removed (even if the removal was not related to domestic violence) to include safety and service planning for battered mothers, if appropriate. According to the Domestic Violence Specialist's records, in 1999, domestic

violence was indicated in 18 percent of removal staffings (151 of 825).<sup>33</sup> The Domestic Violence Specialist believes that over the last five or six months there have been more removals strictly for domestic violence. (This observation may reflect the impact of the enhanced Risk Assessment instrument that was instituted in response to the increase in CPS-involved child fatalities; see discussion above.)

### **High Risk Investigation Units**

Another response to the widely publicized increase in child fatalities was the creation in July 1999 of three High Risk Investigation Units within CPS. These Units accept only cases involving children age 4 or younger who are identified as primary victims of physical abuse or neglect; these include cases of "neglectful supervision" with at least two prior referrals on the families. The Units enjoy a relatively low caseload (at 12 cases per worker). They also will have a terminal providing a direct link to the District Attorney's information system so that workers in the Units can determine whether there are prior domestic violence convictions in the family. This link is being implemented on a pilot basis only for cases coming into the High Risk Units.

To summarize, Dallas appears to typify many of the challenges that arise when communities attempt to balance the goals of protecting women and children while holding domestic violence offenders accountable for their behavior. The child protection agency has been under especially intense scrutiny since the child fatality report was published, and one outcome of its effort to better identify children at risk has been increased attention to families experiencing other forms of violence. Strict confidentiality restrictions (or strict interpretations of confidentiality restrictions) limit the information that can be shared, so that CPS cannot fully explain its actions in ways that would educate others and perhaps soften its "bad guy" image in the community.

Still, prosecutors are sensitive to the doubts and fears of battered mothers and take steps to address those fears, for example, by allowing women to sign "affidavits of nonprosecution" and writing letters to CPS to explain why some women are unable to obtain orders of protection. Reportedly, battered mothers are rarely prosecuted criminally for child endangerment, perjury, or failure to report partners for abusing their children. Battered mothers are sometimes charged with failure to protect in Juvenile Court, but data are not available to document how often this happens and with what outcomes for mothers and children.

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<sup>33</sup> Removal means that the child is placed in substitute care (not including voluntary placement with relatives) while CPS completes its investigation. Some respondents observed that temporary removal of the children may be "just what the doctor ordered" for some mothers, giving them a respite from child care to attend to their own needs, such as achieving sobriety or finding work.

At the same time, prosecutors offer creative solutions to hold offenders accountable for both domestic violence *and* child abuse whenever possible. For example, they will accept pleas to jail time on misdemeanor domestic violence charges and deferred adjudication on felony child abuse charges. As noted above, this avenue assures a domestic violence conviction (which, under a new law, subjects the offender to felony prosecution for a second offense) while imposing strict court oversight on the child abuse charge.

Together, CPS, the Dallas Police Department, and the District Attorney's Office are taking steps to address the needs of battered women and their children while holding offenders accountable for the battering. Without statistics to document the frequency with which these cases enter the child protection and criminal justice systems, or the outcomes for mothers and children in the child protection system, it is difficult for CPS, in particular, to counter the community's assertions that the agency (a) is too quick to remove children from violent homes or (b) fails to respond to reports of children affected by domestic violence. These data are essential to understanding the nature of these cases and the reality of the system's response.

## **HOUSTON COUNTY, GEORGIA**

### **Background**

Houston County is located about 100 miles south of Atlanta. There are two primary cities: Perry (the county seat) and Warner Robins. The county population is around 110,000. Robins Air Force Base is a major employer, although much of the county is rural/suburban.

The Houston Family Violence Prevention Council was created in 1993, consisting of all the pertinent criminal justice and social service agencies plus citizen representatives. Most recently the Council created a 24-week batterers intervention program for first offenders; the next initiative will be developing a county-wide domestic violence protocol.

Houston County was selected for study because prosecutors who were surveyed were actively utilizing provisions of Georgia's "Cruelty to Children" law that pertain to domestic violence committed in the presence of children. The relevant language is as follows:

**O.C.G.A. §16-5-70. Cruelty to children.**

(c) Any person commits the offense of cruelty to children in the second degree when:

(1) Such person, who is the primary aggressor, intentionally allows a child under the age of 18 to witness the commission of a forcible felony, battery, or family violence battery; or

(2) Such person, who is the primary aggressor, having knowledge that a child under the age of 18 is present and sees or hears the act, commits a forcible felony, battery, or family violence battery.

(e) A person convicted of the offense of cruelty to children in the second degree shall be punished as for a misdemeanor upon the first or second conviction. Upon conviction of a third or subsequent offense of cruelty to children in the second degree, the defendant shall be guilty of a felony and shall be sentenced to a fine not less than \$1,000.00 nor more than \$5,000.00 or imprisonment for not less than one year no more than three years or shall be sentenced to both fine and imprisonment.

Prior to April 22, 1999, the law had applied only to incidents involving a forcible felony, thereby excluding a large number of domestic violence cases. At the time of our visit, in February 2000, several respondents were not yet aware that the law had changed to include *any* incident of family violence battery.<sup>34</sup>

Other statutes in Georgia are essential to understanding the community's approach to domestic violence:

- While the first conviction of a family violence battery is a misdemeanor offense, second and subsequent convictions are felonies.
- A person who violates a protective or restraining order or condition of probation or parole prohibiting contact commits the felony offense of aggravated stalking.<sup>35</sup>

To support these statutes, criminal justice and human service agencies in Houston County have implemented a number of pertinent policies and practices. A handbook for domestic violence victims, published by the Houston Family

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<sup>34</sup> "If the offense of battery is committed between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household, then such offense shall constitute the offense of family violence battery. . ." **O.C.G.A. §16-5-23.1(f)**

<sup>35</sup> The proscribed behaviors are defined as follows: "...follows, places under surveillance, or contacts another person at or about a place or places without the consent of the other person for the purpose of harassing and intimidating the other person." **O.C.G.A. §16-5-91(a)**.

Violence Prevention Council, describes the shared philosophy and policy toward protection of children.<sup>36</sup>

There are very strong laws in the state to protect children from abuse. You have the responsibility to keep your children from being abused as best you can.

If your children are being beaten by someone in your home and you are not able to stop it, the Department of Family and Children's Services (DFCS) may come in and remove your children from the home in order to protect them. If they feel it is an emergency they will remove the children right away. You will have an opportunity later to get a lawyer and to have a court hearing in order to try to get them back. In many cases, DFCS will give you the opportunity to leave the home with the children in order to keep the children out of foster care.

If the situation is not an emergency, the DFCS worker may talk to you and try to help you work things out at home. Obviously, in situations like that, it is more appropriate for the abuser to be forced to leave the house—not the children. In these cases, you may want to consider having the abuser arrested or ordered out of the house by a restraining order.

## Law Enforcement Response

There are four law enforcement agencies in Houston County: Perry Police Department, Warner Robins Police Department, Centerville Police Department, and the Houston County Sheriff's Department.

Family/domestic violence cases are investigated exclusively by the law enforcement agency having geographic jurisdiction unless there are also allegations of child abuse or molestation. In those circumstances, the cases are referred to the Juvenile Division of the Sheriff's Department, which, in accordance with the Houston County Child Abuse/Fatality Protocol (April 1999), investigates any case in the county involving a juvenile victim (or perpetrator). All law enforcement agencies also refer cases involving child victims to the Department of Family and Children's Services (DFCS), the child protection agency in Georgia. Cases involving injury to a child are jointly investigated by the Sheriff's Department and DFCS.

The Juvenile Division of the Sheriff's Department is most likely to become involved in a domestic violence case when it involves a child who is injured—most commonly an infant in the mother's arms or an older child who "got in the middle." If the injury is not serious, officers will talk to parents about the risks to

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<sup>36</sup> *A Guide to Houston County, Georgia's Family Violence Laws, 3<sup>rd</sup> Edition, 1999*, pp. 32-33.

their children. But if there are repeated incidents, visible injuries, or a signed safety plan in effect, officers will report to DFCS.

The State of Georgia has developed a Family Violence Incident Report which all law enforcement agencies use to record information. This form contains specific items for noting whether children were involved and whether the act was committed with children present. There are also explicit instructions to include statements from children, if possible, in the narrative section of the report.

The Perry Police Department has designed its own Domestic Violence Supplemental form to record additional information. Again, there are items to record whether children were present and, if so, how many, their ages, and whether statements were taken. Between July 1999 and February 2000 (about 7 months), the Perry Police Department charged 112 domestic violence cases and 17 counts of cruelty to children associated with family violence battery.

Court magistrates in Houston County are reportedly well aware of the new law: if they see children listed as witnesses in family violence cases but no charge for cruelty to children, the magistrates will themselves issue a warrant on the additional charge.

The Child Abuse/Fatality Protocol referenced above provides guidance for law enforcement officers when responding to children who witness domestic violence:

Children in such situations should be interviewed away from the scene of the violence. No questioning should take place in front of an alleged offender. Caution should also be used in interviewing a child in the presence of the victim parent; it is preferable to talk to the child alone.

Rainbow House, the children's advocacy center in Warner Robins, is available to law enforcement agencies in Houston County for courtesy interviews with children who witness serious domestic violence. These interviews are videotaped for possible use at trial (although children must still be available for cross-examination).

When they talk to battered mothers, law enforcement officers in Houston County are explicit about the need to leave the abusive partner, and they give mothers a choice: protect your children, or they will go to foster care. This is not an idle threat: In Georgia only law enforcement officers have the authority to remove children without a court order. Even so, decisions to remove children are generally made in consultation with DFCS workers.

## The Prosecutors' Response

In Houston County, the District Attorney's Office handles felony offenses and the Solicitor General handles misdemeanors. Unlike many other jurisdictions in Georgia, Houston County comprises a single judicial circuit.

At the time of our visit, the Houston County District Attorney's Office was about to hire a dedicated domestic violence investigator with a new VAWO grant. Among other investigative responsibilities, this individual was expected to serve as a central repository of information about domestic violence incidents occurring countywide so that defendants and families can be tracked as they move within the county's borders. With a consolidated history, law enforcement agencies should be better able to identify patterns and assign their investigative resources accordingly, and prosecutors would have a more complete picture of the defendant's behavior.

Typically, family violence battery offenders are released after arraignment on conditional bond with a no contact order. First offenders, however, are allowed to enter a plea and participate in a 24-week "Family Time Out" program developed by the Houston County Family Violence Task Force. If they complete this program successfully, the charge is dismissed. The Solicitor General has seen "only a handful" of repeat offenders who have completed Family Time Out, but there have been no formal studies to determine the program's effectiveness. Although Georgia's law defines the second (and subsequent) family violence battery convictions as felonies, the availability of this program means that, in practice, a perpetrator will not be charged with a felony until a *third* conviction (because the first offense is dismissed upon satisfactory completion of the program).

Although both the Solicitor General's Office and the District Attorney's Office have "no-drop" policies, the magistrate's and state courts frequently hear pleas from women who want to dismiss the charges against their partners. In response, the courts often modify these orders to read "no *violent* contact" so that the partners can continue to live together. Violations of such orders—i.e., another violent incident—can not only revoke bond but also incur the aggravating stalking (felony) charge.

The criminal justice system in Houston County treats felony family violence offenders much more harshly than it does misdemeanor offenders. Unlike misdemeanor offenders, whose release on bond is virtually automatic, felony offenders can be denied bond if they were on probation at the time of the new offense, if they have extensive criminal histories, or if the domestic violence is especially severe or long-term. The pretrial diversion program (Family Time Out) is not available to felony offenders, and no contact orders remain in effect until final disposition of the case via conviction or acquittal. Post-conviction, no

contact orders can only be modified after at least six months of probation and mandatory counseling for both offenders and victims.

Because cruelty to children is almost always a misdemeanor offense, it makes little difference to the penalties imposed on a family violence perpetrator; indeed, the sentence typically runs concurrent with the underlying domestic violence charge, regardless of whether it is a misdemeanor or a felony.

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 fact, *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.*

Also, by identifying children as victims of the family violence battery, the new law accomplishes at least three things:

- It can help to counter batterers' threats to gain custody of a child,
- It makes the children eligible for crime victims compensation, and
- It enables the court to impose no contact orders *on the children's behalf.*

## **The Child Protection Response**

By policy, DFCS in Georgia does not open an investigation until there is an actual incident of child maltreatment. Although the department's criteria do allow for investigations of emotional abuse, which could be construed to include exposure to domestic violence, the term is poorly defined and very difficult to prove; it would require a psychologist or psychiatrist to document the mental injury and identify the source. Furthermore, the agency is not adequately staffed to respond to all reports of children exposed to family violence, and the investigative protocol does not include questions about domestic violence.

However, the agency does receive copies of all reports of family violence involving children directly from the Sheriff's Department and from HODAC (the Victim Resource Center), and these reports are reviewed to assess the risk to children. If the children are very young, or if a child placed a 911 call, the case may be screened in "to get the department's foot in the door." Even so, unless there's evidence of injury to the child, workers can only educate the parents about the availability of resources and the possibility of removal if the child is injured as a result of family violence. The Houston County Juvenile Court confirms no perceived increase in the numbers of women charged with failure to protect as a result of the new law.

If a child is injured in the context of domestic violence, DFCS may go to court to have the child declared "deprived" and prepare a case plan. This plan typically involves short-term placement for children while parents receive treatment for

substance abuse, attend domestic violence counseling for victims and batterers, or address other case-specific needs. If there is a failure, the agency can return to court to change the plan. If there is concurrent criminal action on the case, then the DFCS case plan can be incorporated into the criminal court order.

DFCS has a somewhat symbiotic relationship with the District Attorney's Office in cases where children witness domestic violence. For example, if a perpetrator is beyond the reach of DFCS (e.g., because he is neither married to the mother nor the legitimate father of the child), then the District Attorney can be more proactive in pursuing charges against him. Conversely, if the District Attorney lacks sufficient evidence to make a case against a perpetrator, sometimes DFCS can intervene through a court-ordered treatment plan for the family. (The Solicitor General has also declined to prosecute some cases when the family was adequately engaged in a DFCS case plan.) The District Attorney may also ask DFCS to intervene if a parent is interfering with a child's testimony.

DFCS sometimes receives reports from the battered women's shelter when women return to abusive partners, but active DFCS intervention only occurs if there are risks to the child in addition to the exposure to domestic violence, e.g., alcohol or substance abuse, lack of food, terrorizing the children. Reportedly, some women will even "sabotage" a situation so DFCS will remove the children and the mothers can return to their partners.

An unusual program in Houston County is Gateway Cottage, a residential treatment program for drug-addicted mothers and their children under the age of 12 (who are in the legal custody of DFCS). The program director estimates that 95 percent of his clients are also victims of domestic violence (sometimes by more than one man), and about half have had multiple experiences with DFCS. The goal is reunification, and the program claims a 27 percent success rate.

Interestingly, the cruelty to children law has been firmly supported by battered women's advocates in Houston County; in fact, domestic violence workers were active in getting the law passed, and they don't perceive it as penalizing victims and children. Prosecutors even report getting calls from advocates asking why they didn't file cruelty to children in certain cases. In the words of one victim advocate, "Having your children taken away is the price you pay for choosing to live in a dangerous situation." However, opinion is mixed among respondents in Houston County about the sufficiency of resources to enable women to extricate themselves from abusive relationships.

In conclusion, agencies in Houston County appear to have achieved a relatively high level of consensus around the need to protect children who are exposed to domestic violence. The new law is widely perceived as a valuable tool available to the justice and social service systems in their efforts to deliver services to battered women and their children. Unfortunately, DFCS is not equipped to

respond effectively to all these cases, and consequently the agency's policy continues to prohibit opening investigations in the absence of evidence that a child was injured. At the same time, state law does not clearly define the terms of "emotional abuse" or "mental injury," which are alternate avenues for opening cases and assessing needs.

In practice, the justice system relies heavily on its diversionary Family Time Out program, which may be effective in deterring some offenders from repeating their abuse. No contact orders are also thought to be effective, especially since, in Georgia, violation of these orders can result in a felony charge of aggravated stalking.

## MULTNOMAH COUNTY(PORTLAND), OREGON

### Background

In late 1998 and early 1999, the Multnomah County Health Department conducted telephone interviews with 739 women between the ages of 18 and 64.<sup>37</sup> Using a version of the Conflict Tactics Scale, the study found that one of every seven women in the county had been physically abused by a partner in the preceding year. Based on statewide data, the study authors estimated that 21,000 children in Multnomah County were exposed to domestic violence in that year. Acknowledging the significant negative impact of witnessing violence on children, the authors offered the following recommendations:

To address the impact of domestic violence on children, we must:

- Ensure that people who work with children:
  - Know how to identify children exposed to violence,
  - Take steps to increase the safety of these children, and
  - Know what services and resources are appropriate to help address the negative impacts caused by children's exposure to domestic violence.
- Expand services to address the emotional and developmental needs of children exposed to domestic violence.

These recommendations characterize much of the work that is ongoing in Multnomah County around the issue of domestic violence and children. However, Multnomah County was chosen for study because the state of Oregon had enacted legislation upgrading certain assault offenses from misdemeanors

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<sup>37</sup> Multnomah Co. Health Dept., Portland Multnomah Progress Board, Portland Police Bureau, & Multnomah County Domestic Violence Coordinator's Office (undated). *Domestic Violence in Multnomah County*. Portland, OR: Multnomah County Health Department.

to felonies when a child witnesses the crime. The language of this law is reproduced below.

**ORS 163.160 Assault in the fourth degree.**

- (1) A person commits the crime of assault in the fourth degree if the person:
- (a) Intentionally, knowingly or recklessly causes physical injury to another; or
  - (b) With criminal negligence causes physical injury to another by means of a deadly weapon.
- (2) Assault in the fourth degree is a Class A misdemeanor.
- (3) Notwithstanding subsection (2) of this section, assault in the fourth degree is a Class C felony if the person commits the crime of assault in the fourth degree and:
- (a) The person has previously been convicted of assaulting the same victim;
  - (b) The person has previously been convicted at least three times under this section or under equivalent laws of another jurisdiction and all of the assaults involved in domestic violence, as defined in ORS 135.230;<sup>38</sup> or
  - (c) The assault is committed in the immediate presence of, or is witnessed by, the person's or the victim's minor child or stepchild or a minor child residing within the household of the person or victim.
- (1) For the purposes of subsection (3) of this section, an assault is witnessed if the assault is seen or directly perceived in any other manner by the child.

The current version of the law differs in two ways from the original language when the law became effective in July 1998:

- It added subsection (3)(b), to extend the law's reach to persons with three prior domestic violence convictions against *any* victim;
- It clarified the meaning of "witnessing." This clarification was made to alleviate a requirement for children to testify.

The felony upgrade applies only to assault in the 4<sup>th</sup> degree, a misdemeanor offense that applies to many incidents of domestic violence. Assaults in the first, second, or third degree are felonies that require more serious injuries or the use of weapons.

Even before this legislation was passed, agencies in Multnomah County had recognized the challenge when children witness domestic violence and had

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<sup>38</sup> "Domestic violence" means abuse between family or household members. "Family or household members" means any of the following:

- (a) Spouses.
- (b) Former spouses.
- (c) Adult persons related by blood or marriage.
- (d) Persons cohabiting with each other.
- (e) Persons who have cohabited with each other or who have been involved in a sexually intimate relationship.
- (f) Unmarried parents of a minor child. **ORS 135.230.**

taken steps to address this problem. These and other, more recent activities are described below.

## **Criminal Justice System Response**

### **Portland Police Bureau**

The Portland Police Bureau established a Domestic Violence Reduction Unit (DVRU) in 1993 to focus greater attention on misdemeanor domestic violence reports. Officers in the unit received training from shelter workers and probation officers. The goal is to provide more intensive follow-up with victims to discuss their histories of domestic violence, procedures for obtaining restraining orders, development of safety plans, and contacts with prosecutors and victim advocates. The same officers are also responsible for interviewing suspects and completing the necessary paperwork. An NIJ-sponsored evaluation of the program found significantly fewer self-reports of repeated violence in the six months following arrest of the batterer.<sup>39</sup>

Historically, the DVRU worked closely with the Multnomah County Child Abuse Team, a multijurisdictional unit representing the Portland Police Bureau, Oregon State Police, Gresham Police Department, and the Multnomah County Sheriff's Office. The Child Abuse Team is co-housed with the Child Abuse Hotline and caseworkers from the State Office of Services for Children and Families (SCF; see below) and deputy district attorneys assigned to the Child Abuse Team. However, after identifying a 65 percent cross-over in their cases, the Domestic Violence Reduction Unit merged with the Child Abuse Team, both organizationally and physically, about one year prior to our visit. The new team has jurisdiction throughout Multnomah County (with the exceptions of Gresham and Troutdale, where the police departments maintain their own domestic violence units). Ultimately, police hope to create a "one-stop" receiving center for all family violence cases to facilitate communication among all the agencies involved.

A pilot Domestic Violence Intervention Team (DVIT) began in October 1999, at the time of our visit operating in only two of five precincts in Portland. In this project, detectives are teamed with victim advocates to follow up on domestic violence incidents that do *not* present with probable cause for an arrest, and a prosecutor is assigned to handle all related cases, including child custody issues if appropriate. Agency representatives attend a staffing the day after the incidents to determine next steps. The goal is to identify families experiencing chronic, yet "low-level" violence, and to apply the most resources in terms of weekly law enforcement visits and victim advocate assistance with safety planning, information and referrals. Ideally, by building relationships with victims,

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<sup>39</sup> Jolin, A., Feyerherm, W., Fountain, R., & Friedman, S. (1998). "Beyond arrest: The Portland, Oregon Domestic Violence Experiment." Final Report submitted to the National Institute of Justice, Grant No. 95-IJ-CX-0054.

the DVIT project will encourage them to seek safety and support prosecution, if appropriate.

The Portland Police Bureau uses a supplemental report form for all family violence incidents, and this form includes instructions to interview child witnesses to the incidents. This form was in place before the felony upgrade law was enacted, but the form is even more useful now that the law is in place. A review of all domestic violence police reports written in March 1999 revealed that children were noted in one-third of the incidents.<sup>40</sup> There is also a "special report" for cases that are eligible for DVIT response, i.e., where the report of domestic violence does not result in arrest. The information gathered on these forms is used to triage cases in terms of immediacy and intensity of the team's response. Police do not report child witnesses to SCF, the child protection agency, unless the children are injured.

Police in Portland view the felony upgrade statute as another "hammer" they can use against domestic violence perpetrators. From their perspective, "We may not be able to break the cycle of violence between perpetrator and victim, but we can break it for the child."

### **Multnomah County District Attorney's Office**

The Family Justice Division within the Multnomah County District Attorney's Office includes a Domestic Violence Unit, the multidisciplinary Child Abuse Team, a Juvenile Division (for both dependency and delinquency cases), and child support.

Protection of children in violent families has long been a priority of the DA's Office. Concern for these children arose from the office's involvement in local and state child fatality review teams, where domestic violence was found to be a risk factor. In 1998, a history of domestic violence was noted in ten percent of 238 cases reviewed by Child Fatality Review teams in Oregon. The Oregon Health Division observed that this figure probably underestimates the true prevalence of domestic violence in homes experiencing child deaths, and called for "better ascertainment of domestic violence" to "help identify children at risk for untimely death who might be saved by more aggressive intervention."<sup>41</sup> Even before the felony upgrade law was passed, the DA's Office was training law enforcement officers to look for children in domestic violence cases, to accord these cases higher priority, and to consider whether the children need protection.

Even though the felony upgrade also applies to defendants with prior convictions (either one against the same victim or three against any victims), prosecutors

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<sup>40</sup> Local Public Safety Coordinating Council (undated draft). *An Evaluation of the Multnomah County Criminal Justice Response to Domestic Violence*.

<sup>41</sup> *Child Death in Oregon, 1998*. Oregon Child Fatality Review Annual Report, December 1999. Oregon Department of Human Services, Oregon Health Division.

observe that the large majority of elevated cases are those involving child witnesses. Police may not have access to prior criminal history at the time they file charges, especially for cases occurring outside their jurisdiction, but it's easy for them to note the presence of children. Prosecutors may upgrade on the basis of prior convictions at a later point, when they are able to access criminal histories.

By law, felony sanctions are far more severe than misdemeanors. Offenders can be sentenced up to five years in prison on the felony, vs. less than one year in jail on a misdemeanor charge. Felons also are prohibited from purchasing firearms and receive more intensive probation. Some speculate that the specter of such harsh sanctions provides even greater incentive for defendants to persuade victims to withdraw the charges.

In practice, prosecutors report they are not reducing felony charges, nor are they seeing more trials. Defendants plead guilty, often because they are loathe to see children testify: "When it comes to children, we've found their conscience." Furthermore, children can be very compelling, unimpeachable witnesses. In practice, when necessary, victim or police officers can testify as to the children's location at the time of the incident.

Table 1 below depicts statistics maintained by the Multnomah County Domestic Violence Coordinator in the Department of Community and Family Services. These data indicate that the felony upgrade law has had a noteworthy impact on the District Attorney's Office. Specifically, the number of felonies reviewed more than tripled in 1998 (the year in which the law became effective) over the number of felonies reviewed in 1997, while the number of misdemeanors reviewed remained nearly constant. And, in 1998, the number of felonies *issued* exceeded the number of misdemeanors for the first time.

**Table 1**

	1996	1997	1998
<b>Total DV Cases Reviewed</b>	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%)
<b>Total DV Cases Issued</b>	1,268	1,065	1,175
Felonies issued	274 (22%)	265 (25%)	653 (56%)
Misdemeanors issued	994 (78%)	800 (75%)	522 (44%)

Table 2 further indicates that the proportion of domestic violence cases that were issued by the DA's Office declined in 1998, compared to previous years. This pattern was evident among misdemeanors as well as felonies, suggesting,

perhaps, that prosecutors imposed higher standards as they began to interpret and apply the new law. Recall, for example, that in its first year of implementation, the language of the law would have required children to testify in order to prove they had witnessed the assault—an especially difficult task in cases involving very young children or uncooperative mothers. Statistics for 1999 were not available at the time this report was written.

**Table 2**

	1996	1997	1998
Total DV Cases Reviewed	3,791	3,244	4,214
Total DV Cases Issued	1,268 (33%)	1,065 (33%)	1,175 (28%)
Felonies reviewed	382	437	1,371
Felonies issued	274 (72%)	265 (61%)	653 (48%)
Misdemeanors reviewed	3,409	2,807	2,843
Misdemeanors issued	994 (29%)	800 (29%)	522 (18%)

The “red hot button” issue for prosecutors is what to do about children when mothers choose not to pursue criminal prosecution of a domestic violence perpetrator. Unless sufficient evidence can be gathered to prosecute without the mothers’ participation, such cases may be more likely to appear in Family Court to ensure the children are protected. However, since the Family Court lacks jurisdiction over persons who are unrelated to the child, actions in this venue are more likely to be taken against mothers (for failure to protect) than against the perpetrators who are factually responsible for the threat of harm. Because of the chronic nature of domestic violence and the potential for serious harm to children, prosecutors believe the question is not *if* the state should intervene, but rather *when* the state’s intervention becomes unavoidable.

### **Multnomah County Family Court**

The Family Court in Multnomah County has jurisdiction over all juvenile matters, domestic relations, probate, and matters under the Family Abuse Prevention Act (FAPA), which provides for civil restraining orders in most domestic violence cases. The Juvenile Court may also issue restraining orders on behalf of children, but only if there are allegations of physical abuse or neglect of the child.

The Family Court has no adult criminal jurisdiction, with one exception: a deferred sentencing program (DSP) for “early” domestic violence offenders. Under this program, which has operated since 1993, defendants can plead guilty and undergo six months of intensive probation and treatment. After 30 days in

the program, they check in with the court to report their progress. At the end of six months, successful defendants can withdraw their pleas and the case is dismissed. In 1998, the first year in which the Multnomah County Domestic Violence Coordinator began tracking these cases, 426 (82%) of the 522 misdemeanor defendants were considered eligible for DSP, but only 227 (53% of those eligible; 43% of total) accepted the program. Presumably, many defendants gamble that they can persuade or coerce their victims to withdraw, or that the women will decline to participate in the prosecution for their own reasons, and the cases will be dismissed.

Family Court judges are able to learn about pending criminal cases when women try to vacate restraining orders, and the judges try *not* to vacate these orders whenever possible. While the court rarely sees dependency cases based solely on the existence of domestic violence, there are almost always other problems, especially drugs, which are reportedly an issue in 90 percent of dependency cases and in *all* cases resulting in termination of parental rights. The court has instituted a triage program to identify drug problems at the first shelter hearing and involve treatment programs as soon as possible. Unfortunately, there are insufficient resources in the community and many mothers are not yet ready to actively address their drug problems. Furthermore, there are no resources specific to domestic violence available to the Family Court.

The Chief Judge of the Family Court is working on plans for Family Court judges to assume probations on any parents whose children are the subject of juvenile dependency cases. Another possible strategy to focus resources and to coordinate efforts among the courts include assuming probations on all parents who are on probation for family violence offenses or violations of restraining orders.

## **The Child Protection System Response**

The child protection agency in Multnomah County is the State Office of Services for Children and Families (SCF). With funding from the Administration for Children and Families (DHHS) and the Violence Against Women Office (DOJ), SCF has undergone a process of self-assessment, training, guideline development, and pilot-testing of new approaches to child protection cases in which domestic violence is a concern.

The current version of the *SCF Practice Guidelines for Cases With Domestic Violence* (dated November 23, 1999) articulates the agency's philosophy regarding the child protection system's response to domestic violence:

SCF's primary responsibility is the protection of children. We believe the best way to achieve that is to engage families to provide safety within the family. These practice guidelines overlay the dynamics of domestic violence onto child protection. Recommendations here do not replace our existing mandates or practices, but build on them. The guidelines are based on belief that achieving safety for the adult victim increases the safety for the children.

The guidelines, which draw heavily from a curriculum developed and distributed by the Family Violence Prevention Fund<sup>42</sup> and a protocol developed by the Massachusetts Department of Social Services,<sup>43</sup> provide detailed instructions and questions to help caseworkers screen families for domestic violence and assessing the mothers' and children's service needs. Considered still a draft, the document provides a comprehensive discussion of current laws and safety options available to domestic violence victims and their children in family and criminal courts.

Oregon's child abuse reporting law does not name domestic violence as a reportable condition, but SCF screening guidelines identify domestic violence as an indicator under "threat of harm." The guidelines encourage mandatory reporters to report "situations where they feel the child is at imminent risk of injury, the child tells them they are afraid, or when they see demonstrable effects of the domestic violence on the child's behavior." In addition, many professionals in the community believe that domestic violence *is* included in the mandatory reporting law, and others have mistakenly interpreted the felony upgrade law as a child abuse offense. As a result, SCF receives a large number of reports in which children are exposed to domestic violence but not directly victimized.

Consequently, SCF statistics on reports involving exposure to domestic violence tend to be inconsistent; however, these cases now comprise the largest single category of reports to the Child Abuse Hotline. Of 4,306 types of allegations classified by SCF in 1999, 43 percent involved "threat of harm." (For comparative purposes, 21% involved physical abuse, 18% involved neglect, and 14% involved sexual abuse.) Most domestic violence referrals come from police, and these numbers have increased from 400 to 1,000 referrals per month since the felony upgrade law became effective. SCF runs criminal record checks on most of these cases to inform their assessment of patterns, history, and the

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<sup>42</sup> Ganley, A., & Schechter, S. (1996). *Domestic Violence: A National Curriculum for Child Protective Services*. San Francisco, CA: Family Violence Prevention Fund.

<sup>43</sup> Massachusetts Department of Social Services (undated). *Domestic Violence Protocol*. Boston, MA: Author.

seriousness of violence in the homes. This information ultimately strengthens their case in court.

Under the guidelines, SCF does not investigate all reports of children exposed to domestic violence; "the system would be overwhelmed" if they did. To assist in decisions about the appropriate response to these reports, the agency employs two domestic violence consultants (one full-time equivalent). These individuals also help with training and encourage linking with the domestic violence community. Their connection to the Child Abuse Hotline brings them into the multidisciplinary team as well.

SCF "red flags" the highest risk, most serious cases for special staffings with police and prosecutors. Because domestic violence is often present in cases of child fatalities, SCF has invited domestic violence advocates to participate in these "red flag" staffings as well. However, these invitations have been declined for fear of compromising mothers' confidentiality. At the time of our visit, negotiations were underway to encourage domestic violence representatives to attend even if they are unable to share information.

Although SCF does not contract with any services that are specific to domestic violence, it does refer a large number of families experiencing domestic violence to another initiative. **Family and Community Alliance (FCA)** is a community-based program supported by the Multnomah County Department of Health as a "safety net" for families that might otherwise fall through the cracks of public social service agencies. Most of the 689 families referred to this program by SCF in 1999 had been reported to SCF for allegations of domestic violence but *not* victimization of the children. The Health Department had not anticipated this predominance of domestic violence cases when it designed FCA because SCF had little information about its screened-out cases.

According to the FCA program director, a minority of SCF's referrals to FCA actually accept services (20% in January 2000), which include goal-setting, safety planning, and referrals to community-based resources and supports. Some families may refuse services because they fail to understand that the referral to FCA signifies SCF's decision *not* to intervene. When families accept services, the program staff work with mothers to help them understand the effects of domestic violence on their children. Reportedly, the program's interventions are more successful with families having concrete resource needs, such as housing or transportation, than with families whose problems are more intractable, such as substance abuse or mental illness.

FCA's program director believes that not only are more women being referred to the Child Abuse Hotline because of the felony upgrade law, but also that more women are losing custody of their children because of domestic violence. She acknowledges, though, that many of her clients are Spanish-speaking women

who may not know how to utilize the system and who may have other risk factors as well.

## **Response Of Domestic Violence Service Providers And Advocates**

It appears that the service and advocacy communities in Multnomah County are generally supportive of the felony upgrade law. As one batterers' treatment provider expressed it, "The good thing about the law is that society is making a great statement that domestic violence is bad and also that doing it in front of kids is much worse." For some batterers, this therapist finds the message to be quite powerful, and it is especially useful that the statement is coming from the legislature and not from the feminist community. The law does not, however, appear to have a preventive or deterrent effect on most men.

From one victim advocate's perspective, the felony upgrade is "a wonderful thing," largely by making a felony charge available when so many domestic violence offenses can only be charged as misdemeanors. This individual was not aware of any battered mothers who had been charged as offenders under the felony upgrade law. Shelters in Multnomah County provide support groups for children who witness domestic violence, and efforts are underway to continue this support after the children leave the shelter. Although domestic violence service providers and advocates are *not* mandated child abuse reporters in Oregon, they will call the Child Abuse Hotline if they have concern for children and alert these mothers that they are making the call. And, while shelters do see cases where mothers have been charged (or threatened) with failure to protect their children from exposure to domestic violence, they also see serious situations where SCF fails to act—at least for the duration of the child's stay in the shelter.

Another advocate fears that prosecutors may be according higher priority to domestic violence cases involving children, at the expense of other serious cases. On the positive side, the law has raised people's awareness of the effects on children and the need for services specific to domestic violence. This advocate would like to see a model for holding offenders accountable while protecting women and children. She suggests longer jail sentences for domestic violence perpetrators, not only to demonstrate the seriousness of the crime, but also to allow more time for women to extricate themselves and their children and begin to rebuild their lives. To do this, prosecutors need help with investigations to support evidence-based prosecution (i.e., without the women's participation).

In summary, it is early to draw conclusions about the impact of the felony upgrade law in Multnomah County, beyond its contribution to large increases in prosecutors' felony caseloads and reports to the child protection agency. On the "plus" side, the law clearly addresses the severity of committing domestic

violence in the presence of children and directs its sanctions toward the perpetrators of this violence. However, in the absence of a commensurate infusion of services and resources to help mothers leave their abusive partners, there is concern that these relationships will simply resume "where they left off" when the offenders are released from jail. This is the point where SCF and the Family Court are more likely to intervene to ensure the children are protected, and where *mothers* may become the target of attention.

## **SALT LAKE COUNTY, UTAH**

"Stopping violence against women now will help prevent future violence, but helping kids will go even further to stop the generational cycle."

*Lt. Gary Cox, West Jordan Police Department and Utah state legislator*

### **Background**

Utah was perhaps the first state to enact legislation specifically addressing the issue of children who witness domestic violence. Utah's statute, which became effective in May 1997, is reproduced below.

Notably, this statute considers the commission of domestic violence in the presence of a child not as an enhancement, but rather as a new crime. Other critical elements of this legislation include the following:

- It creates a crime of child abuse, not domestic violence. According to those who drafted the legislation, this describes the offense for what it is: a crime against a child.
- It does not require the actual physical presence of a child during the incident of domestic violence. The perpetrator simply must be aware that a child may hear or see it.

**U.C.A. §76-5-109.1. Commission of domestic violence in the presence of a child.**

(1) As used in this section:

(a) "Domestic violence" means the same as that term is defined in Section 77-36-1.

(b) "In the presence of a child" means:

(i) in the physical presence of a child; or

(ii) having knowledge that a child is present and may see or hear an act of domestic violence.

(2) A person is guilty of child abuse if he:

(a) commits or attempts to commit criminal homicide, as defined in Section 76-5-201, against a cohabitant in the presence of a child; or

(b) intentionally causes serious bodily injury to a cohabitant or uses a dangerous weapon, as defined in Section 76-1-601, or other means or force likely to produce death or serious bodily injury against a cohabitant, in the presence of a child; or

(c) under circumstances not amounting to a violation of Subsection (2)(a) or (b), commits an act of domestic violence in the presence of a child after having committed:

(i) a violation of Subsection (2)(a) or (b) on one or more prior occasions; or

**(ii) an act of domestic violence in the presence of a child, not amounting to a violation of Subsection (2)(a) or (b), on one or more prior occasions.**

(3) (a) A person who violates Subsection (2)(a) or (b) is guilty of a third degree felony.

(b) A person who violates Subsection (2)(c) is guilty of a class A misdemeanor.

- Unless the precipitating domestic violence incident is quite severe, it requires at least one previous violation or act of domestic violence in the presence of a child. Prosecutors state that there does not need to be a prior arrest or conviction, however; a police incident report documenting an earlier act in the presence of a child will suffice. Nor does the law require prior offenses against the same victim or involving the same child.

The law was drafted in response to the Utah Attorney General's belief that domestic violence in the presence of a child should be recognized as an act of child abuse. Also driving the enactment of this statute was a concern that many battered mothers did not follow through with protective orders, i.e., by attending the hearing to make the orders permanent, thereby leaving their children vulnerable. Utah's statute allows the state to intervene when mothers do not: In the words of one interview respondent, "Children are the only ones who don't have a choice in this situation."

The legislation was authored by a state legislator (who is also a police lieutenant), the state Attorney General's Office, and the state's Domestic Violence Advisory Council. By all accounts, the only opposition came from a very conservative citizens' organization which objected primarily to government intervention in family matters. The requirement that at least one prior incident of domestic violence in the presence of a child must occur before the new child

abuse offense can be charged was instituted, at least in part, in response to this concern.

In general, the law has experienced minimal opposition from battered women's advocacy organizations. Such challenges might have been expected given the law's gender-neutral language, the distinct possibility that it could be applied to women as well as men, and the implicit expectation that reports to the child protection agency will ensue. Reportedly, these concerns were largely defused because the Utah Domestic Violence Advisory Council played an active role in drafting the legislation.

Under another Utah law (shown below), the child protection agency (Department of Child and Family Services, or DCFS) has responsibility for supporting many domestic violence services. In this capacity, DCFS has implemented numerous mandatory training programs for its child protection workers and domestic violence advocates. Several persons interviewed credited this extensive training with promoting a shared understanding of the law's intent and how best to implement it. Some of these training programs are open to other child-serving professionals in the community, including shelter directors, law enforcement officers, Head Start teachers, and other educators. Although tensions certainly arise from time to time, this history and organizational structure appears to have set the stage for a climate of cooperation and shared goals among the child protection and domestic violence communities in Utah.

**U.C.A. § 62A-4a-105. Division responsibilities.**

The division shall:

(17) provide domestic violence services in accordance with the requirements of federal law, and establish standards for all direct or contract providers of domestic violence services. Within appropriations from the Legislature, the division shall provide or contract for a variety of domestic violence services and treatment methods; . . .

As yet another indicator of the state's recognition of the impact of domestic violence on children, the legislature appropriated funds for a pilot program to provide specialized counseling for children who witness domestic violence. At this writing, the program operates in only three jurisdictions while it is evaluated with an eye toward future expansion. There are also private mental health providers who work with these children, but specialized counseling services are not yet widely available in Utah.

## Criminal Justice System Response

It appears as though the criminal justice community in the Salt Lake area invokes the new law whenever possible. Specific procedures have been instituted, for example:

- Salt Lake City Police officers are trained to document the presence of children when they respond to domestic violence reports.
- The City Prosecutor's Office, which prosecutes misdemeanor incidents occurring within Salt Lake City, developed a special screening sheet for documenting a "Child Present Finding" (see appendix [x]). This form ensures that applicable cases aren't missed and creates the requisite paper trail so that the new charge can be applied in future incidents.
- Domestic violence victim advocates located in the Salt Lake City Police Department routinely review the screening sheets to identify cases with child witnesses and ensure that Child Protective Services is notified.

The Salt Lake County District Attorney's Office, which prosecutes all felonies and those misdemeanors which are not handled by city prosecutors, counted 34 charges under this statute over the first eleven months of calendar year 1999.

Much attention focuses on adjudication of misdemeanor domestic violence incidents. In the Third Judicial District (which includes Salt Lake County), there are three judges assigned to a specialized Domestic Violence Court. By creating a specific venue, this court seeks to expedite cases and concentrate greater attention to follow-through. Efforts are made to resolve cases as early as possible—ideally, at arraignment. If early resolution is not possible, then cases are set for trial or pretrial within one or two weeks. Defendants who fail to appear are booked to send the message that "we mean business." And, after sentencing, offenders must return to court three times: first, to prove to the judge that they showed up for their first appointment with the batterers treatment program; second, after they have been evaluated and a treatment plan has been generated; and third, when they finish treatment. According to a study conducted by a domestic violence victim advocate from the Salt Lake City Police Department, since the Domestic Violence Courts became operational, the number of misdemeanor domestic violence filings dropped, the number of convictions rose, and eight out of 10 people on probation did not re-offend.<sup>44</sup> While this study may not meet strict scientific standards, interview respondents found the results encouraging and supportive of their collective efforts to "crack down" on domestic violence.

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<sup>44</sup> Rivera, R. (Nov. 8, 1999). "Court cracks down on domestic violence." *Salt Lake Tribune*, p. C4.

A recurring problem in Salt Lake County arises because different courts hear the criminal and child protection matters that commonly arise when children witness domestic violence. Specifically, criminal courts hear misdemeanor and felony domestic violence and child abuse complaints, while the Juvenile Court hears matters concerning child placement and services. Frequently, the Juvenile Court is unaware of pending criminal court proceedings, which raises the possibility of conflicting orders. For example, the criminal court may have ordered the domestic violence defendant to have no contact with the victim and her children, while the Juvenile Court considers a visitation request. Or, the Juvenile Court may order an offender to attend a batterers treatment program before he can regain custody of his child. Most such programs require participants to admit culpability for purposes of treatment, which they will be unwilling to do if they are defendants in concurrent criminal domestic violence cases. Consequently, defendants remain untreated and children remain in limbo until the criminal matters reach disposition.

Utah has attempted to address this problem by passing a law requiring parties to protective orders to notify the court of related proceedings in civil, juvenile, or criminal courts involving the same parties.<sup>45</sup> Unfortunately, however, notification of related cases is complicated by the different case identification practices used by the different courts: criminal courts identify cases by defendant's last name, while juvenile courts typically use the child's first name and last initial. Of course, in many families the last names of mothers, their male partners, and children are different, further complicating efforts to cross-reference court proceedings.

To overcome this problem, a new Court Initiative project is working to create a system of shared information so that the courts will be fully aware of a family's prior history with the child protection and justice systems as well as protective orders or probation conditions that might be in effect. One option being considered is providing DCFS an advance list of all cases scheduled to appear in Domestic Violence Court each day so that families can be identified and pertinent information compiled to assist the court.

None of the criminal justice agencies in Salt Lake County (i.e., Salt Lake City Police Department, Salt Lake City Prosecutor's Office, Salt Lake County District Attorney's Office, the courts) produces statistical reports providing details of cases falling under the provisions of the new child abuse law, e.g., gender of defendants, number and ages of children, nature of the precipitating domestic violence, or case outcomes for defendants, victims or children. Anecdotally, however, several themes emerged:

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<sup>45</sup> "At any hearing in a proceeding to obtain an order for protection, each party has a continuing duty to inform the court of each proceeding for an order for protection, any civil litigation, each proceeding in a juvenile court, and each criminal case involving either party, . . ." U.C.A. § 30-6-4.1(1).

- The law is very infrequently applied to mothers. This would happen only if the woman were arrested in the underlying incidents of domestic violence. In some locations law enforcement officers reportedly continue to arrest both combatants, despite guidelines for identifying the "predominant aggressor" contained in Utah's "cohabitant abuse" statute.<sup>46</sup>
- The law is largely symbolic. It adds minimal time to the offender's sentence; perhaps six months if the sentences for the domestic violence and child abuse charges run consecutively. (Interestingly, however, one police officer recalled a defendant who preferred to plead to a more serious domestic violence charge rather than be convicted on the child abuse charge to avoid being identified as a child abuser in prison.)
- The crime is relatively easy to prove. Proof that children were present on two occasions can usually be satisfied with (a) testimony from the reporting officer who sees the children there or testifies as to "excited utterances" made by the children; (b) testimony or excited utterances from the victim parent; or (c) the 911 tape that records children's voices. Having children testify is considered an absolute last resort.

Some view the new offense as a "wake-up call" to parents, who otherwise might not recognize the impact of their violence on children in the home. Police are also fully aware of the threat to mothers (inherent in reports to the child protection agency, which are routinely filed in these cases; see discussion below), but at the same time they see these threats as positive opportunities to educate parents about the potential risk to their children's mental health and the services available in the community.

Furthermore, by identifying children who witness domestic violence as victims of child abuse, the new law extends eligibility for Crime Victims Reparation funds to these children. This money can support short-term relocation expenses as well as counseling for mothers and children. All that is required is a report to police. Several interview respondents in Salt Lake County see access to this resource as a valuable incentive for mothers to report domestic violence.

## Child Protection System Response

Concurrent with the enactment of the new criminal statute, Utah's Department of Child and Family Services (DCFS) instituted a policy creating a new category of child abuse and neglect: "Domestic Violence Related Child Abuse," or DVRCA, which is defined as "violent physical or verbal interaction between cohabitants in

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<sup>46</sup> "In determining who the predominant aggressor was, the officer shall consider:  
 (a) any prior complaints of domestic violence;  
 (b) the relative severity of injuries inflicted on each person;  
 (c) the likelihood of future injury to each of the parties; and  
 (d) whether one of the parties acted in self defense." U.C.A. § 77-36-2.2(3).

a household in the presence of a child." The circumstances may be either a severe isolated incident or a pattern of conduct. Reports can be substantiated on the DVRCA charge, but DCFS policy prohibits removing children from their homes solely for this reason.

In adopting the new category of DVRCA, DCFS hired domestic violence advocates and developed a protocol to guide child protection workers in their determinations. A preliminary case records review conducted by the DCFS Domestic Violence Specialist before the protocol was formally adopted as agency policy, and before staff were trained on the protocol, revealed that Safety Planning and Risk of Danger activities were rarely documented, suggesting either that these activities were not performed or that workers neglected to record them. These findings were used to identify issues for future training.

The DCFS protocol acknowledges the heightened risk of domestic violence associated with DCFS intervention and provides specific instructions in efforts to lessen this risk. According to this protocol, child protection workers must:

- staff each case with a domestic violence worker or supervisor;
- conduct Safety Planning activities with mothers and with children as young as five years of age;
- complete a Risk of Danger form and review it periodically over the course of DCFS involvement with the family;
- inform the family of available resources;
- make appropriate referrals (including services for the domestic violence perpetrator); and
- educate parents about the short- and long-term effects of exposure to domestic violence on their children. This education explicitly includes "information explaining the recent changes in the criminal code."

Despite the development of policy and protocol to guide DCFS workers in applying the new category of DVRCA, there is no corresponding language in the state's Human Service Code to support it. Some critics may question whether DVRCA is, in fact, reportable under the existing code, but the DCFS policy and protocol have not yet been challenged.

As noted above, DCFS domestic violence advocates (many of whom were formerly child protection workers) are expected to participate in staffings for relevant cases and contribute to the agency's recommendations to the Juvenile Court regarding services and placement. This procedure affords battered women's advocates a voice in Juvenile Court that would otherwise be unheard.

In practice, however, it is possible that the domestic violence advocate's perspective will be "co-opted" by that of the child protection worker in the final report to the court, and some domestic violence advocates reportedly speak directly to the court to represent the mothers' concerns.

In addition, the DVRCA protocol presumes that substantiated findings of DVRCA are made against the "predominant perpetrator," but recognizes the possibility that failure to protect charges may also apply to non-offending parents, for example, when "parent is aware of the potential harm to children, and has been provided with resources and options but did not access them, and there is documentation that these resources have been recommended in case history." Workers must document all their intervention activities in the case records, along with specific reasons for any deviations from the protocol.

Available statistics for a one-year period shortly after the new law and policy became effective (October 1997 - September 1998) indicate the impact on DCFS caseload:

- DCFS received 1,873 referrals for DVRCA that year, representing 11 percent of the total referrals across the state of Utah.
- Forty-one percent (773) of the DVRCA reports were substantiated, constituting 18 percent of the total number of substantiated reports in Utah that year.

In fact, DVRCA was the second largest category of substantiated cases, surpassed only by physical neglect cases (21%) and followed by sexual abuse (16%), emotional maltreatment (14%), and physical abuse (12%). (Other categories, at less than 10% each, included nonsupervision, dependency, medical neglect, fetal addiction/exposure, and failure to protect.)

More recent statistics, for DCFS fiscal year 1999 (October 1998 – September 1999), reveal that DVRCA represents an even larger proportion of the DCFS caseload: 15 percent of referrals and 21 percent of substantiated cases. Most reports of DVRCA come from law enforcement agencies, often via the domestic violence advocates who screen incident reports for child witnesses. In practice, however, DVRCA in the absence of injuries or other serious allegations is considered a "priority 3" within DCFS, which does not demand an immediate response. Sometimes (according to interview respondents) there is no response at all. Presumably, if DCFS were to respond fully to every report of DVRCA, the impact on caseload would be even greater.

Actions taken by DCFS on behalf of the 2,222 children involved in the 1,165 substantiated cases of DVRCA included the following:

Home, no DCFS supervision	67%
Home, voluntary supervision	19%
Home, court-ordered supervision	6%
Informal placement, no DCFS supervision	2%
Informal placement, voluntary supervision	1%
Informal placement, court-ordered supervision	1%
Substitute care, court-ordered placement	5%
Substitute care, voluntary placement	<1%

Fully 92 percent of the children in substantiated DVRCA cases remained in their homes. Fewer than 6 percent were placed in substitute care (i.e., foster or group homes), while the remainder were in informal placements (i.e., with neighbors, friends, or relatives selected by the mother).

Critics have voiced concerns that child protection workers are quick to charge battered mothers with failure to protect their children from violence perpetrated by the male partners. The Domestic Violence Specialist in DCFS hears this assertion frequently but her own examination of the numbers failed to find support: Only 48 (4%) of the 1,165 DVRCA cases in FY 1999 were also substantiated on failure to protect charges, and 17 (35%) of those cases involved additional charges of child physical or sexual abuse. Interview respondents further observed that charging mothers with failure to protect is perceived as a "last resort," taken when (1) the male batterer is unrelated and not a household member (and therefore not subject to sanctions available to the Juvenile Court), and (2) the mother is unable or unwilling to protect her children. Charging these mothers with failure to protect may be the only way to get services for them and their children.

In conclusion, there appears *not* to have been a rush to judgment against battered mothers in Utah when their children are exposed to domestic violence. Interview respondents in Salt Lake County observed that, contrary to early concerns, mothers are not being inappropriately charged with child abuse under the new statute, nor are they being inappropriately charged with failure to protect under DCFS rules. Rather, the criminal statute and DCFS policy together appear to provide

- (1) a means of conveying a message to parents that violent behavior has serious consequences for their children;
- (2) a vehicle for allowing early intervention by DCFS;
- (3) referrals for mothers and children to a wide range of community services and resources; and
- (4) outside placement for children in a small number of cases involving other forms of child abuse.

## **SAN DIEGO COUNTY, CALIFORNIA**

### **Background**

San Diego County is one of the largest jurisdictions in the country, both in terms of population (2,725,000) and size (4,000 square miles). The County is home to several military bases and a diverse minority community in which, according to the 1990 census, 20 percent are Hispanic (65% white, 6% black, 7% Asian, and 1% other). Due to its proximity to Mexico, San Diego County is also home to a large number of immigrants whose status in this country may or may not be legal. Efforts to intervene on behalf of battered women and their children are especially complicated among immigrant families, who not only fear the criminal justice and child protection systems but the possibility of deportation as well.

At the same time, prosecutors and medical professionals in San Diego have provided exceptionally strong leadership in the areas of child maltreatment and domestic violence. In recent years, the San Diego City Attorney has played a particularly prominent role in shaping policy and practices designed to protect mothers and children while holding batterers accountable:

It is clear that children must be a central focus of all we do in the civil and criminal justice system intervention efforts in domestic violence cases. In the criminal justice system, in particular, from the initial police investigation through the probationary period, we must prioritize children's issues.

*—San Diego City Attorney Casey Gwinn*

In addition, the San Diego Domestic Violence Council, a multi-agency organization, is vibrant and active in developing program and policy among its member agencies countywide. Indeed, the commitment to victim safety and offender accountability appears pervasive among criminal justice and human service agencies in San Diego.

### **Law Enforcement Response**

By policy, law enforcement agencies and CPS cross-report all domestic violence cases involving children as victims or witnesses. As a result, CPS recorded an 18 percent increase in calls to its hotline. And, after training CPS workers about the risks to children of exposure to domestic violence, the numbers increased again because the workers are asking mothers directly about violence in their homes. Another factor contributing to large caseloads in San Diego is California's law mandating health care providers to report domestic violence to law enforcement agencies (California Penal Code §§11160-11163.2): Because

so many domestic violence cases involve children, there is a “domino” effect as police, in turn, report to CPS.

Law enforcement officers in San Diego are instructed to note children by name and age in every police report involving domestic violence and to question children at the scene wherever possible. Children who witness serious domestic violence may be taken to the Center for Child Protection at Children's Hospital for a full forensic interview by a child interview specialist in a child-friendly setting. Children who witness domestic violence are eligible for crime victim compensation in California if the police incident report identifies the offense as domestic violence and the child as a victim—specific charges of child abuse or endangerment are *not* required.

## Prosecutors' Response

Prosecutors in San Diego are both aggressive and creative in finding ways to enhance the sanctions for perpetrators of domestic violence and child abuse. For example, domestic violence offenders can be charged with *child endangerment*.

Any person who . . . willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or permits that child to be placed in such a situation that its person or health may be endangered, is guilty of a misdemeanor.  
**California Penal Code § 273a(b)**

This statute is particularly relevant when a child:<sup>47</sup>

- calls 911 to report domestic violence (the City Attorney reports that nearly 30 percent of 911 calls in domestic violence cases come from children)
- appears fearful, upset or hysterical at the scene
- is an eye witness to the incident
- is present in the room where objects are being thrown
- is in the car during the domestic violence incident
- is in the arms of the victim or suspect during the incident.

Anyone who is convicted of child endangerment and sentenced to probation will be required to complete a year-long child abuser's treatment program, currently under development. Compliance with the conditions of probation is monitored by judges in the Family Violence Solutions Center, described below.

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<sup>47</sup> Gwinn, C. (1998). “Domestic Violence and Children: Difficult Issues.” Presentation for the National College of District Attorneys.

Another charge that is sometimes available when children are exposed to domestic violence, especially if alcohol is involved, is “*vicious and degrading behavior*”:

Any person who in the presence of any child indulges in any degrading, lewd, immoral or vicious habits or practices, or who is habitually drunk in the presence of any child in his care, custody or control, is guilty of a misdemeanor. **California Penal Code § 273g.**

There is also case law in California to support the removal of children from a parent’s custody based on their exposure to domestic violence. The case, *In re Heather A.*, 52 Cal.App.4th 183; 60 Cal.Rptr.2d 315 (Dec. 1996) involved two children who were “periodically exposed to violent confrontations between the father and the minors’ stepmother that endangered their physical and emotional safety.” Although the children apparently were not physically injured, the court noted the risk of injury. The court also noted the father’s history of abusive relationships and the likelihood that he would continue to be violent. Finally, the court recognized the children’s vulnerability to “secondary abuse,” citing expert testimony that “children are affected by what goes on around them as well as what is directly done to them.”

Children testify only in the most serious cases; more commonly, police testify as to the children’s demeanor or statements at the scene (excited utterances). If children absolutely must testify, they have access to the child-friendly interviewing facility and “Kids in Court” witness preparation program at Children’s Hospital.

Prosecutors compare the dynamics of domestic violence to those of child molestation cases, in which children are often placed in the untenable position of having to “take sides.” However, there is an interesting distinction. In molestation cases, if mothers pressure their children to recant, CPS will intervene and remove the children. Although the same dynamic occurs in domestic violence cases, CPS reportedly does not intervene unless the child is injured. While it may be possible to prosecute some mothers for child endangerment when they pressure children to recant (in both child molestation and domestic violence cases), this does not happen because it would force a second trial where the child would most certainly have to testify—this time against the mother.

## Special Programs

To support the prosecutors’ creative and aggressive use of available statutes, there are several programmatic efforts in San Diego explicitly designed to

address the challenges of domestic violence and children. These initiatives are described below.

### **The Child Advocacy Project (CAP)**

The Child Advocacy Project (CAP) was funded by the California Office of Criminal Justice Programs to provide services to children and families in reported incidents of abuse, neglect, exploitation or domestic violence that are *not* investigated for criminal justice system intervention, e.g.:

- a precipitating incident may not be a crime but rather an indication of a family member's mental illness.
- a child victim is too young to be interviewed and there is insufficient evidence for further investigation.
- a report of domestic violence appears to involve only verbal assaults.

Because incidents like these, while potentially serious, may not warrant intervention by either police or CPS, there is no avenue to offer services to children and families who may be at risk.

Through CAP, cases like these are reviewed with an eye toward any angle that might support prosecution by the City Attorney.<sup>48</sup> In this way, the criminal justice system can take action to hold perpetrators of child abuse or domestic violence accountable; meanwhile, the social worker can contact the family to identify needs and offer appropriate services and advocacy. The goal of prosecution is *not* to incarcerate parents, but rather to create an avenue for service delivery; in fact, a large majority of defendants plead guilty and receive informal probation with referrals to parenting and counseling programs. These offenders are then monitored by the Family Violence Solutions Center, described below.

CAP is a collaboration among the San Diego Police Department, San Diego City Attorney's Office, and Children's Hospital Center for Child Protection. Project staff—a full-time social worker and interns from Children's Hospital, part-time investigator and part-time prosecutor—are co-located at the San Diego Police Department.

All CPS hotline calls are cross-reported to the Police Department's Child Abuse Unit, where they are carefully scrutinized for prior criminal and CPS histories and potential avenues for gathering evidence to support prosecution. Selected cases are assigned to the CAP social worker for follow up by telephone or home visit. If these efforts generate sufficient evidence, the cases are reviewed by the prosecutor assigned to the project. Even if the cases do not result in arrest or prosecution, CAP offers a range of short-term advocacy and case management services to the families along with periodic follow-up.

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<sup>48</sup> In San Diego, the City Attorney's Office prosecutes misdemeanor offenses occurring within the City of San Diego. Misdemeanors that occur elsewhere in the county, as well as all felonies, are prosecuted by the District Attorney's Office.

In Fiscal Year 1999 (July 1, 1998-June 30, 1999), the San Diego Police Department reviewed 11,143 referrals from mandated child abuse reporters. Of those, 530 were referred to CAP and 437 children received services through the project. In that same year, the City Attorney reviewed 600 cases and submitted 256 for prosecution (in the previous year only 65 cases were submitted for prosecution). And, in the first six months of FY2000, there were 258 CAP reviews, of which 143 were submitted for prosecution resulting in 81 convictions.

While domestic violence is not the sole focus of the project, it does constitute the second largest category of child abuse offenses that CAP has identified among its cases (physical abuse is the largest). Indeed, it is especially important for CAP to work with families experiencing domestic violence because CPS is not likely to be involved. According to the project social worker, CAP typically works on cases that are being prosecuted by the City or District Attorney but the corresponding CPS cases have been closed. Also, because CAP services are voluntary, they tend to be most effective when the batterer is out of the home (e.g., in prison on a felony conviction), CPS has closed its case, and the mother is receptive to the program's intervention.

### **Madge Bradley Family Violence Solutions Center**

The Family Violence Solutions Center is a branch of the Family Law division of the Superior Court. It occupies its own facility and two courtrooms that hear all requests for civil restraining orders, post-conviction misdemeanor domestic violence cases for which probation has been granted, and various family matters related to the domestic violence, including paternity, divorce, and legal separation. The goal is to have a single judge presiding over all family issues arising from domestic violence.

The Center is predicated on the notion that effective interventions in domestic violence require re-education of offenders and victims. Furthermore, since domestic violence involves the dynamic of power and control, the locus of this dynamic must shift away from the perpetrator and onto the court. Thus, the Family Violence Solutions Center maintains ongoing oversight of probationers, at least every two months throughout the mandatory 52-week Domestic Violence Recovery Program (DVRP) and for the duration of the probationary period. (Treatment is felt to be more effective than jail because it educates offenders and exposes them to a group counseling process.) Each time an offender appears in court, the judge uses the opportunity to educate him and the entire courtroom audience about the seriousness of domestic violence and the need to hold offenders accountable for their behavior. Probationers who fail to comply with the recovery program or other conditions of their probation (e.g., substance abuse treatment) are sent to jail and ordered to return to the recovery program. New offenses result in a jail term and, again, an order to participate in treatment. Probationers are also required to volunteer their services to a nonprofit

community program and demonstrate proof to the court that they have completed their assignment.

A study of 161 domestic violence defendants whose cases were disposed during January and February of 1995<sup>49</sup> showed that DVRP was imposed for 126, although stayed for one, so that 125 defendants (78%) were expected to enroll in treatment. Of those, 65 percent eventually enrolled in the program, and 90% of those enrolled (n=73) were still participating one year later (although six had started over). Of the total 161 defendants, 38 (24%) had a total of 52 new domestic violence contacts with police in the subsequent year, but only nine of the new offenses occurred *after* enrollment in DVRP. However, the study indicated delays in enrolling defendants into the treatment program: median time to proof of enrollment was 90 days, while the median time to first new offense was 81 days. Presumably, if defendants could be persuaded to enter treatment sooner, recidivism rates might go down.

The study also reported the presence of children in the homes of 154 of the 161 defendants. More than half of these households (81, or 53%) had children present, with a total of 145 children and a median age of 4. Five of the calls to police were made by children. Data on DVRP enrollment and recidivism were not analyzed separately for defendants from households with children.

When children are involved and the family appears before the court to determine visitation, the court will require completion of the Domestic Violence Recovery Program as a prerequisite to unsupervised visitation. A Family Court Services mediator interviews the child to assess the impact of domestic violence and whether the child remains at risk.

Some assistant city attorneys observe that judges at the Center tend to treat domestic violence offenders and victims as equal participants in the court process, which ignores the imbalance of power in the relationship that fostered the abuse in the first place. Others in the community expressed concern with the physical structure of the building, which has only one elevator and insufficient space to adequately separate victims and batterers.

At this writing, the San Diego Domestic Violence Council is developing a 52-week treatment program for child abuse offenders, similar to the Domestic Violence Recovery Program. In some cases, it would be possible for an offender to be sent to *both* programs, either concurrently or consecutively.

### **Family Violence Project**

While the programs described thus far apply largely to misdemeanor offenses, the Family Violence Project (FVP) focuses its efforts on *felony* offenders. FVP is

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<sup>49</sup> *Domestic Violence: Profile and Tracking of 161 Offenders*. San Diego Municipal Court, Special Projects Unit, April 1996.

a collaborative effort of San Diego County Health and Human Services Agency/Children's Services and the Adult Probation Department. The project was created in 1994 in response to an incident in which an offender on probation for felony domestic violence ultimately killed his girlfriend, her child, and himself. Had there been communication between the child protection worker and the probation officer, it was felt, this gruesome outcome might have been avoided.

The goals of the Family Violence Project are to:

- reduce family violence
- ensure victim safety
- reduce the intergenerational cycle of abuse
- lower the rate of child removals
- streamline service delivery
- avoid unnecessary duplication of services

To accomplish these goals, the project combines the investigative and service resources as well as the oversight responsibilities of the child protection agency and the probation department in cases where a parent is on felony probation *and* the family is CPS-involved. Seven social workers and three probation officers are co-housed in CPS space.

Eligible cases are identified by both participating agencies. CPS staff review reports from the Polinsky Center (the receiving home when children are removed) and cross-check the mothers' and fathers' names against probation records. Conversely, probation officers can access CPS records to locate eligible probationers. Approximately 40 percent of the cases involve mothers as probationers, e.g., for drug offenses, driving under the influence, or child abuse.

This approach allows the agencies to make more effective use of resources and capabilities. Soon after appropriate cases are identified, CPS workers and probation officers conduct joint home visits and generate joint case plans that simultaneously address the conditions of probation and reunification. Both CPS and the Probation Department have the capacity to perform drug testing, but probation officers can do it "on the spot." Both agencies can order domestic violence offenders into the 52-week recovery program, but only CPS can pay for it. (Offenders ordered into the program by Probation must pay for it themselves.) And, while CPS workers can visit homes at any time, probation officers can conduct searches. In short, the Family Violence Project "places the accountability on the parent where it belongs, without getting kids caught in the middle."

If, during a home visit or search, or in response to a call for service, FVP staff uncover a violation of a restraining order or probation conditions, or a new offense, the probation officer will take the offender back to court while the CPS worker talks to the mother. If the offense raises child protection issues, the CPS worker explains that the mother essentially must choose between the offender

and her children, and works with her to locate needed services, e.g., victims' groups, drug treatment, in-home parenting education, individual therapy. In serious cases CPS will file a petition against a mother for failure to protect her children.

Over 20 months between November 1994 and June 1996, when the Family Violence Project was operating as a pilot program, 275 cases (counted by child clients) were screened in. During that period of time, the project conducted 649 joint social worker/probation officer home visits, or approximately 32 visits per month. Families screened into the FVP presented with drug abuse, child physical and sexual abuse, neglect, and domestic violence. Ninety-nine of the families presented with multiple problems, and 38 (38%) of those involved domestic violence and some form(s) of child abuse or neglect. Of these 38 families, 22 (58%) also presented with drug abuse problems.

At the end of the 20-month pilot period, the project documented only six new domestic violence offenses and no new child physical or sexual abuse offenses. There were no child deaths or adult fatalities due to homicide or suicide. Twenty-six perpetrators were re-arrested and 114 violation reports were filed. Only 23 children were removed from their homes. On the strength of these statistics, the Family Violence Project was fully adopted by the participating agencies and they no longer maintain data on their cases.

### **Family Violence Response Teams**

In the southern part of San Diego County, police in Chula Vista work with domestic violence advocates from South Bay Community Services to respond jointly to domestic violence incidents that are reported to police. The advocates are on call via pagers 24 hours a day, seven days a week; they have about 15-20 minutes to respond. Typically, by the time the advocate arrives, police have already taken statements from the children. The advocate's role is to assess the children for signs of abuse, work with them and with the battered parent or caregiver to develop safety plans, and provide referrals for needed services. If the children are perceived to be in danger, the advocates report to CPS. After 72 hours, advocates follow up with the victims to offer additional services, including counseling and support groups. Victims are encouraged to obtain services for their children even if they won't follow up for themselves.

Advocates also counsel family violence victims about applying for restraining orders. Generally, restraining orders require evidence of violence beyond verbal abuse or threats; psychological abuse is hard to prove. With sufficient evidence, restraining orders can include children, other relatives, or even pets. Violations are misdemeanors.

Reportedly, going to the scene with police officers is a very powerful experience for the advocates, who see first-hand how children suffer. The advocates' intervention may be the only time someone actually talks to the children.

Despite explanations from the program's advocates and CPS workers about the risks to them and their children and the potential for their children to be removed from their care, family violence victims often choose to stay with abusive partners. In the program's experience, children are removed only if there is severe abuse or threats to them, or if their parents or caregivers repeatedly fail to follow up on referrals for services.

A similar program was recently launched in the northern part of the county (Encinitas); this program includes CPS workers in the initial response team as well as the domestic violence advocates; a prosecutor is available by pager to respond to the scene in difficult cases. The Encinitas program is a pilot effort that is being evaluated with hopes of expanding the Response Team concept countywide.

### **Hospital-Based Family Violence Programs**

As noted above, California has enacted a law requiring health care providers to report cases of domestic violence to law enforcement agencies. In at least two hospitals in the San Diego area (Children's Hospital and Palomar Hospital), programs have been designed to build on the law and improve responses to battered women and their children. The guiding philosophy is that more domestic violence victims would cooperate with the criminal justice system if there were enough support and services for them and their children.

The City Attorney's Office frequently refers battered women and children to the Family Violence Program at Children's Hospital for services; other families are referred by CPS, schools, police, other community agencies, hospital staff, or word of mouth. Program staff work with battered women to identify their needs and develop safety plans. They present the available options and explain how the program can help.

Meanwhile, program staff obtain copies of police reports so they can tailor their recommendations in view of police actions regarding the perpetrator. For example, if an offender is likely to be incarcerated for a while, the woman may not need emergency shelter. Program staff also obtain releases from the women so they can share important information with police and prosecutors, e.g., the location of a batterer so that a restraining order can be served. They also obtain releases to share information with CPS and explain to mothers their mandate to report if they suspect children are at risk.

According to staff of the Children's Hospital Family Violence Program, CPS appears to be moving away from filing failure to protect petitions against mothers

and toward voluntary contracts for services. This approach helps lift the aura of blame from the mother and attempts to engage her in actively seeking services for herself and her children. Some staff report, however, that if mothers are not obtaining services, it is rare that their children are seen by therapists.

### **Shelter-Based Program**

The YWCA maintains one of six emergency shelters for battered women in San Diego. At one time, there was a project in which a CPS worker spent one day each week at the shelter to cross-train about domestic violence and child protection and to problem-solve barriers to coordination of service. While this program is no longer operative, there are still training opportunities.

Shelter staff routinely ask about CPS involvement and child abuse during their intake process. According to the shelter director, more than 70 percent of families are reported to CPS as a way of getting services for the children. Shelter staff also contact CPS when mothers return to abusive partners. Generally, however, CPS does not respond to these reports unless there is an extensive history of domestic violence or if the children have been hurt. The shelter director believes that reporting to CPS is a positive outcome, but how the report is implemented makes the difference. To that end, training helps shelter workers describe CPS to mothers in a positive (not adversarial) way and to prepare reports that explain to CPS the steps mothers have taken to protect their children.

In this shelter's experience, mandating battered women into shelters is not productive and, in fact, merely "delays the inevitable." Such women are disruptive in groups or they don't participate in treatment. They continue to see their abusive partners, thereby exposing other residents to danger. Ultimately, either they return to their partners or the shelter asks them to leave. Eventually their children will be removed.

To summarize, several key agencies in San Diego have placed a high priority on improving the response to battered women and their children. CPS, however, apparently has limited active intervention in any but the most serious instances of children exposed to domestic violence. This may in fact be a purposeful decision acknowledging an overwhelming influx of reports stemming from more aggressive reporting policies in law enforcement agencies and the "fallout" from the mandatory domestic violence reporting law.

Within the criminal justice system, much of the emphasis is on misdemeanor offenses. This reflects the philosophy of the City Attorney's Office, which believes that more effective prosecution of misdemeanors can interrupt the cycle of violence. In fact, the office newsletter is entitled, *Misdemeanors Matter*. The Office's involvement in CAP, in particular, represents an unusual, proactive

initiative to enhance the likelihood of prosecution as a vehicle for obtaining services for all members of the affected households. It would be especially useful if CAP staff were able to document the effectiveness of their interventions in terms of outcomes for the offenders, mothers, and children.

Similarly, while the Family Violence Solutions Center and the Family Violence Project (in which CPS and Adult Probation join forces) appear to be innovative approaches toward coordination of effort, it is hard to determine their effectiveness in the absence of data.

Despite the impressive development of specialized programs responding to domestic violence offenders, battered women, and their children, a key question is yet unanswered: To what extent do these programs produce an integrated response toward a common goal? Even if each program had been rigorously evaluated, it is still hard to assess the extent to which the programs build on one another toward an integrated community response, especially in such a large and geographically dispersed jurisdiction.

## CHAPTER 4

### SUMMARY AND CONCLUSIONS

This study was conducted to address three research questions:

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

Comments in this chapter represent the results of exploratory research and should not be construed as conclusive or definitive in any way. Many important questions have not been empirically tested, and several are raised in this chapter for future consideration. Below we address each of this study's research questions in turn.

#### **What Are The Challenges Facing Prosecutors When Children Are Exposed To Domestic Violence?**

Prosecutors around the country are struggling to balance three goals:

- Holding offenders accountable
- Protecting battered women
- Protecting children from abuse and violence

Of these three goals, the first—holding domestic violence offenders accountable—is squarely within the province of prosecutors. No other institution in the community has the capacity and power to force offenders to confront and change their behavior.

Based on our telephone survey, a large majority (75%) of responding jurisdictions have “no-drop” policies for domestic violence cases, although the reality is such that many cases lack sufficient evidence to go forward without the victim's cooperation. On a positive note, one recent study suggests that having children in common with the abuser strongly predicts cooperation with prosecution.<sup>50</sup> But mothers who decline to support prosecution of their abusers raise a “red hot button” issue for prosecutors: What can they do when children

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<sup>50</sup> Goodman, L., Bennett, L., & Dutton, M.A. (1999). “Obstacles to victims' cooperation with the criminal prosecution of their abusers: The role of social support.” *Violence and Victims*, Vol. 14, 427-444.

are repeatedly exposed to serious violence, but the evidence is too weak to proceed without the mother's active participation?

One alternative is to subpoena the child as a witness, to testify in court about the domestic violence—typically over the mother's objections. This is a very delicate situation: it places children in the untenable position of going against their mothers' wishes to testify against the abusers. This scenario is not uncommon in the context of intrafamilial child sexual abuse cases, but there is one major difference: In those cases, the *child* is the victim. If mothers deny the abuse of their children or try to persuade their children to recant the allegations, the children may be removed from their mothers' custody (at least for the duration of the criminal case). Foster parents or child protection workers can bring the children to court and provide emotional support (along with children's advocacy centers and victim/witness assistants) to help them testify. But in domestic violence cases, where children may not be victims of physical or sexual abuse, there is less justification to place children outside the home. As a result, prosecutors in the jurisdictions studied rarely ask children to testify in domestic violence cases against their mothers' wishes.

Sometimes, merely listing the child as a witness in the case against the domestic violence perpetrator can persuade defendants to enter a guilty plea. Prosecutors we interviewed reported that children's testimony is usually quite compelling and persuasive to juries, and further, that some defendants prefer not to subject their children to the ordeal of testifying.

Another alternative is to charge mothers with child endangerment, emotional abuse, or perjury (if they deny previous statements confirming their victimization). This option is even less desirable to prosecutors, not only because it shifts culpability away from the perpetrators of abuse and onto the victims, but because it may require children to testify—this time against their mothers. According to prosecutors interviewed in the telephone survey and in the field research, such prosecutions are extremely rare.

More commonly, perhaps, prosecutors file a report with the child protection agency (if police or others have not already done so). Some prosecutors we surveyed were quick to clarify that such reports would focus on the incident, the situation, or the domestic violence perpetrator—*not* on the mother. However, in practice, once the report reaches the child protection agency, attention usually shifts to the mother. In many cases, this occurs because the abusive partners are simply beyond the reach of the child protection system: They have no legal relationship to the child; rather, they are the mothers' boyfriends, perhaps not even living in the household. Even where offenders are parents, caretakers, or otherwise within the legal jurisdiction of the child protection system, the ultimate sanction available—severance of their relationship to the child—may carry little weight.

Furthermore, there is a powerful disincentive for domestic violence offenders to comply with treatment programs offered through the child protection system. Such programs typically require participants to admit their abusive behaviors, but to do so might jeopardize offenders whose allegations are being prosecuted in criminal court. This dilemma has been noted in child physical and sexual abuse cases as well.<sup>51</sup>

Among the most frequently utilized ways to hold domestic violence offenders accountable is the use of protective or restraining orders, which may be available to victims through the criminal and/or civil courts. Violations of these orders are criminal offenses in some jurisdictions. An analogous option is the “no-contact” order that many courts issue as a condition of pretrial release, probation, or parole. Violations can be serious: in Georgia, for example, violation of a no-contact condition is considered aggravated stalking—a felony offense. Several prosecutors believe that these orders may be the most effective means of extending the courts’ control over the behavior of domestic violence offenders, especially since violations are relatively easy to enforce and may incur serious sanctions.

However, enforcement of no-contact orders remains largely a responsibility of the domestic violence victim. Many interview respondents—whether prosecutors, law enforcement officers, or victim advocates—observed that some women repeatedly return to abusive partners or allow them back into their homes. When victims violate their own safety plans and repeatedly place their children at risk, prosecutors, law enforcement officers, shelter workers, and particularly child protection workers feel even more compelled to take action. In this situation, again, the mother is more likely to become the target.

### **How Are New Laws Affecting Practice?**

A small number of states have enacted legislation explicitly addressing cases in which children are exposed to domestic violence. As described in Chapter 2, these laws fall into three categories:

1. Most common are laws allowing upward deviations from existing sentencing guidelines for domestic violence offenses that are committed in the presence of children. We have included Oregon’s “felony upgrade” law in this category.
2. At least two states (Georgia and Utah) have created a new child abuse offense when children witness domestic violence.
3. At least two states (Alaska and Minnesota) statutorily added exposure to domestic violence among the types of “reportable conditions” of child maltreatment for purposes of investigation and possible intervention by the state’s child protection agency (although Minnesota later repealed this law).

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<sup>51</sup> Whitcomb, D., & Hardin, M. (1996). *Coordinating Criminal and Juvenile Court Proceedings in Child Maltreatment Cases*. Washington, DC: National Institute of Justice.

The telephone survey suggested that prosecutors in jurisdictions having new laws are significantly more likely to report these cases to child protection authorities, but no more likely to prosecute battered mothers for failure to protect their children from abuse by the perpetrator or from exposure to domestic violence. In addition, field research in three jurisdictions where such laws had been enacted (Utah, Georgia, and Oregon) revealed some interesting and perhaps unanticipated implications of these laws.

In Multnomah County, Oregon, the felony upgrade law has had a clearly discernible effect on prosecutors' caseloads: in 1998, when the law became effective, prosecutors reviewed more than triple the number of felony domestic violence cases over the number of cases they reviewed the previous year. The number of felony cases issued in 1998 increased by nearly 150 percent over 1997. Additional research is needed to document the impact of this law (and the upward sentencing laws that have been passed in other states) on offender outcomes.

In both Utah and Georgia, the laws creating new child abuse crimes appear to have had minimal effects on outcomes for domestic violence offenders: these new crimes are misdemeanor-level offenses and the sentences tend to run concurrent with the underlying domestic violence sentence or to increase the total sentence by a few months at best. In practice, prosecutors tend to use the new child abuse charges as "bargaining chips" to exert more leverage toward guilty pleas on the domestic violence charges. To the extent that this strategy achieves more convictions, the new laws are helpful.

In all three states, the new laws help to remind law enforcement investigators to document children as witnesses, and to take statements from them wherever possible, which can strengthen prosecutors' domestic violence cases even if the children cannot testify.

The more tangible benefits of the new laws, and 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 to support health or mental health needs resulting from their exposure to domestic violence;
- Enable the courts to issue protective orders on the children's behalf (potentially affording prosecutors another tool for monitoring offenders' behavior); and
- 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.

In most jurisdictions, reports to the child protection agency are seen as a mixed blessing. On the positive side, these reports open the door for social service intervention in troubled families that may not yet have sought help. Some mothers who cannot access services for fear of angering their partners may actually welcome a mandate from a state agency because it provides a plausible excuse. On the negative side, however, many child protection agencies simply do not have adequate resources to respond to the sheer volume of domestic violence reports they receive when these laws take effect. Minnesota repealed its law (which included exposure to domestic violence among the reportable conditions for child abuse) precisely for this reason.

Based on the reports of prosecutors' offices that were surveyed and on the limited data available from the five jurisdictions that were studied, predictions of two potentially adverse consequences of these laws have not surfaced. First, **women are not being charged with these offenses *unless they are identified as the primary or predominant aggressor in the underlying domestic violence incident.*** By all accounts, such outcomes are rare (although some jurisdictions have documented increasing numbers of dual arrests in domestic violence cases).

Second, **women are seldom charged with failure to protect, nor are they losing custody of their children, solely on the basis of their children's exposure to domestic violence.** The large majority of prosecutors' offices we surveyed reported that they lack statutory authority to prosecute criminally unless children are injured as a result of domestic violence. Similarly, child protection agencies generally lack explicit authority to intervene in the absence of demonstrable harm to the children.

Of the jurisdictions studied, only Utah could provide data to inform the hypothesis that battered women are inappropriately charged with failure to protect their children from exposure to domestic violence. There, as noted above in Chapter 3, of the 2,222 children involved in substantiated reports of "domestic violence related child abuse" (DVRCA), fewer than six percent were placed in out-of-home care by court order. Among those families where mothers were charged with failure to protect, there were other problems: child physical or sexual abuse, and frequently drug involvement. Fully two-thirds of the families substantiated for DVRCA received no services at all from the child protection agency beyond the initial response. While these figures suggest the child protection agency in Utah is cautious in its interventions with families where domestic violence has been reported, arguably the absence of follow-up services for the large majority may leave some children at continuing risk.

Further research is needed to understand the response of child protection agencies to reports of domestic violence in their caseloads and the outcomes of their interventions in these families. This question is central to a large demonstration project that is currently underway in five jurisdictions, with funding

from several agencies within the Department of Health and Human Services and the Department of Justice. Using *Effective Intervention in Domestic Violence & Child Maltreatment Cases: Guidelines for Policy and Practice*<sup>52</sup> as a foundation, these communities are implementing system-wide reforms in efforts to improve the response of child protection agencies, domestic violence providers, and the juvenile/family courts in cases of domestic violence involving children as victims or witnesses. The National Institute of Justice is supporting a national evaluation of this initiative.

### **What Can Prosecutors Do To Help Battered Women And Their Children?**

Prosecutors can find ways to help battered women and their children even in the absence of legislation. Some suggestions, gleaned from reports of prosecutors surveyed by telephone and in the field, are as follows:

*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. Only about one-third of prosecutors' offices responding to our survey indicated that they had received training specifically on the overlap of domestic violence and child maltreatment; these prosecutors were significantly more likely than those who had not received such training to charge offenders with child endangerment or to argue for harsher sentences when children are exposed to domestic violence. Training should be truly cross-disciplinary, so that all agencies and providers in the community can benefit from the breadth of knowledge about, and perspectives on this complex problem.

*Institute protocols within prosecutors' offices to facilitate information-sharing among prosecutors with responsibility for domestic violence and child abuse caseloads.* None of the offices surveyed for this study reported having such protocols; many prosecutors reported learning of overlapping cases only haphazardly. At a minimum, prosecutors handling felony-level domestic violence ought to be aware of concurrent felony child abuse charges, and vice versa. Similarly, prosecutors handling misdemeanors ought to know about concurrent domestic violence and child abuse charges. Development of such protocols should be relatively straightforward. But the complexity of domestic violence cases involving children as victims or witnesses raises some difficult questions:

- How can information be communicated between felony and misdemeanor prosecutors, especially in jurisdictions where these cases are assigned to different offices (i.e., District and City Attorneys)?

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<sup>52</sup> Schechter, S. & J. Edleson (1999). *Effective Intervention in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice*. Reno, NV: The National Council of Juvenile and Family Court Judges.

- How can information be shared between prosecutors handling criminal domestic violence cases and those handling child protection proceedings? What information can be shared across those two venues, given concern for confidentiality?

Greater knowledge of the issues facing any given family can help prosecutors craft approaches that more effectively sanction offenders while meeting the family's needs. Such knowledge can also reduce the possibility of conflicting orders, e.g., where the criminal court has issued a no-contact order while the juvenile/family court is preparing a visitation agreement.

*Identify avenues for earlier intervention.* Many jurisdictions indicated in response to our survey that they heavily emphasize prosecution of misdemeanor-level domestic violence, theorizing that early intervention can prevent the violence from escalating. Some prosecutors' offices take this philosophy a step further, e.g., in San Diego, where the City Attorney's Office works with the Police Department and social workers to screen reports for any angle that might support misdemeanor charges and, therefore, an opportunity to introduce services to troubled families where children are at risk.

*Encourage law enforcement investigators to note the presence of children in domestic violence incidents and to take statements from them whenever appropriate to do so.* About half of the prosecutors' offices responding to our telephone survey indicated that law enforcement agencies in their jurisdictions have protocols directing them to ask about children when they investigate reports of domestic violence. Field research suggested that identifying children as witnesses can support evidence-based prosecution by persuading some defendants to enter guilty pleas rather than expose themselves to potentially damaging child testimony or expose their children to the ordeal of testifying. In some jurisdictions, merely noting the child as a witness (even if not a victim) may suffice to gain eligibility for victim compensation funds to support mental health services. Communities across the country are encouraged to adopt a model of law enforcement-mental health partnership that was pioneered in New Haven, Connecticut, as a means of assuring that children who are exposed to violence receive timely and appropriate therapeutic intervention.<sup>53</sup>

*Wherever possible, prosecute domestic violence offenders on concurrent charges of child endangerment, emotional abuse, or other available charge reflecting 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. More than half of respondents to our telephone survey reported using these avenues to enhance

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<sup>53</sup> Marans, S., Berkowitz, S.J., and Cohen, D.J. (1998). "Police and mental health professionals: Collaborative responses to the impact of violence on children and families." *Child and Adolescent Psychiatric Clinics of North America*, Vol. 7, 635-651.

penalties when they are available; some prosecutors reported obtaining consecutive sentences.

*Employ every available avenue to enforce the terms of probationary sentences.* Field research suggests that probationary sentences may offer the most powerful means of holding domestic violence offenders accountable for their behavior. Although the initial jail sentences may be short, the threat of returning to jail may be an effective incentive for many offenders to comply with the conditions of their probation—whether that means attending batterer treatment programs, reporting back to the court, or refraining from contact with victims and their children.

*Promote increased attention to services for battered women.* One message that emerged clearly and consistently in the field research is that women cannot reasonably be expected to extricate themselves from dangerous relationships if the supports are not available in their communities. Shelters across the country turn women away every day, especially if they have substance abuse problems or mental illness. Substance abuse, in particular, is intertwined with violence for many women, and together these hazards pose especially high risks for children.<sup>54</sup> In fact, parental substance abuse is a contributing problem for between one- and two-thirds of children involved with the child welfare system.<sup>55</sup> Removal from their mothers' care is an especially imminent threat given enactment of the *Adoption and Safe Families Act of 1997*, which imposes tight time limits on families' efforts to address identified problems before states must move to terminate parental rights. Furthermore, one recent study found that substance abuse predicts noncooperation with prosecution among battered women,<sup>56</sup> suggesting that efforts to help women deal with this problem may benefit efforts to prosecute their abusers as well.

*Ensure that the child protection agency has the capacity at least to connect with families that have been reported for domestic violence, to offer referrals for needed services, and to monitor future incidents (e.g., via access to police incident reports).* Another message that emerged clearly from both the telephone surveys and the field research is concern about the capacity of child protection agencies to respond to children who are exposed to domestic violence without evidence of immediate harm. Admittedly, child protection agencies in many communities are hard-pressed even to respond to reports of children who are physically or sexually abused, but there needs to be some avenue for identifying children at risk before they suffer serious harm.

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<sup>54</sup> Felitti, V.J., Anda, R.F., Nordenberg, D., Williamson, D.F., Spitz, A.M., Edwards, V., Koss, M.P., and Marks, J.S. (1998). "Relationship of childhood abuse and household dysfunction to many of the leading causes of death in adults." *American Journal of Preventive Medicine*, Vol. 14, 245-258.

<sup>55</sup> U.S. Department of Health and Human Services (1999). *Blending Perspectives and Building Common Ground. A Report to Congress on Substance Abuse and Child Protection*. Washington, D.C.: U.S. Government Printing Office.

<sup>56</sup> Goodman, Bennett & Dutton, *supra*, note 50.

As political leaders in their communities, prosecutors have the opportunity to *advocate for needed change, whether legislative, fiscal, or programmatic in nature*. As the chief law enforcement officials, prosecutors can assert their leadership to convene people who have disparate views and hammer out ways to overcome distrust and conflict toward common solutions: protection of battered women and their children. While those who advocate for battered women and those who advocate for child protection understandably place the highest priority on their respective clients' needs, they should agree on at least these two statements:

1. Exposure to domestic violence can have serious consequences for children.
2. Protecting mothers is prerequisite to protecting their children.

And, while it may be true that most mothers place the highest premium on their children's safety, battered women's advocates who were interviewed in this study acknowledge that there are times when children are at serious risk and their mothers are unable to protect them. One shelter director noted situations where women repeatedly met with their abusive partners, not only placing themselves and their children at risk, but all the other shelter residents as well. For such women, loss of custody of their children is only a matter of time—but will it happen soon enough to avert the ultimate tragedy?

Prosecutors must take the lead to work with representatives of law enforcement, domestic violence service providers, and child protection agencies to articulate the precursors to serious violence, indicators of escalating risk to women and children, and circumstances under which both men and women must be held responsible for the safety of children.

In conclusion, while mothers have choices available to them (albeit admittedly under severe pressure and limitations), children have no choices at all; they are prisoners of their parents' decisions. 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.

## **APPENDIX A**

### **TELEPHONE SURVEY INSTRUMENT**

## FORM A

### SURVEY OF PROSECUTORS WHO HANDLE ALL FAMILY VIOLENCE CASES

Hello. My name is \_\_\_\_\_. I'm conducting a survey of prosecutors to learn about policies and procedures for handling cases involving both domestic violence and child maltreatment. The study is sponsored by the National Institute of Justice. You were identified by [insert name of initial contact] as someone who has particular experience with the special challenges that arise in these cases.

The survey should take 30-45 minutes. Is this a good time, or would you prefer to schedule the call at another time? [If rescheduling]:

When would be a good time for you? \_\_\_\_\_

Would it be helpful if I fax the survey to you before we talk? [If so]:

Fax number: \_\_\_\_\_

I'll look forward to talking with you \_\_\_\_\_ (date and time).

#### [When proceeding with the survey]

Thanks for taking the time to complete the survey. Let's get started.

First, you should know that all responses will be kept confidential. Survey findings will be reported only in the aggregate and will not be identified by individual respondents or offices. The findings will be used to identify five jurisdictions where we will do more intensive research through site visits and interviews with a wide range of professionals with an interest in battered women and their children. Do you have any questions so far?

1. Is your office responsible for prosecuting *any* domestic violence case or only felony charges?

- This office handles all domestic violence cases.
- Another office handles misdemeanors.

Which agency handles these cases? \_\_\_\_\_

2. How many domestic violence cases did your office prosecute in calendar year 1998?

\_\_\_\_\_ felonies

\_\_\_\_\_ misdemeanors (if appropriate)

3. Is your office responsible for child abuse dependency proceedings in civil court?

- This office handles both criminal and civil child abuse proceedings.
- Another office handles dependency cases.

Which agency handles these cases? \_\_\_\_\_

4. How many child abuse cases did your office prosecute last year?

\_\_\_\_\_ criminal cases

\_\_\_\_\_ dependency cases

5. When CPS and/or police investigate reports of suspected child abuse or neglect, are there protocols for them to ask specifically about domestic violence?

- Yes. Could you please send/fax a copy?
- No.
- Don't know.

[If no or don't know]: How do you find out when a child abuse case involves domestic violence?

6. When police respond to domestic violence calls, are there protocols for them to ask about children who may be victims of, or witnesses to, the violence?

- Yes. Could you please send/fax a copy?
- No.
- Don't know.

[If no or don't know]: How do you find out that a domestic violence case involves child victims or witnesses?

7. Do police or other investigators routinely check with CPS about prior reports of child abuse or neglect in families experiencing domestic violence?

- Yes.
- No.
- Sometimes.
- Don't know.

[If sometimes]: Under what circumstances would police check with CPS?

8. Are domestic violence and child abuse cases involving the same family heard by a single judge or in a special family court?

- Yes.
- No.
- Don't know.

9. Does the same prosecutor handle all these proceedings?

- Yes.
- No.
- Don't know.

10. Are there any laws in your state that explicitly address the issue of co-occurring domestic violence and child maltreatment? (Read options):

Are there laws identifying children's exposure to domestic violence as a form of child maltreatment?

Yes.       No.       Don't know.

Are there laws that apply or enhance criminal penalties for domestic violence when children are present?

Yes.       No.       Don't know.

Are there any other laws that address the issue of children who witness or who are exposed to domestic violence?

Yes.       No.       Don't know.

[If yes:] What are the key provisions?

[IF RESPONDENT INDICATES EXISTING LAWS: Could you fax the relevant language or citations to these statutes?]

11. Is the state legislature considering any action on these issues?

Yes.       No.       Don't know.

[If yes]: Do you know any details?

12. Are prosecutors using other avenues to enhance the potential penalties for those who commit domestic violence in the presence of children [If prompt is needed: For example, charging emotional abuse or endangerment when children are present?]

Yes.       No.       Don't know.

[If yes]: Please explain.

13. Is there any pertinent case law we should know about?

Yes.       No.       Don't know.

[If yes]: Please explain.

[IF RESPONDENT INDICATES PERTINENT CASE LAW: Would you be able to fax the relevant language or citations for these opinions?]

14. Does your office have a "no drop" policy for domestic violence cases?

Yes.       No.       Don't know.

15. Does the presence of children influence decisions to prosecute male batterers when mothers are unwilling or uncooperative victims?

Yes.       No.       Sometimes.       Don't know.

Please explain.

**Now I'm going to ask you about three different scenarios in cases of co-occurring domestic violence and child maltreatment: First are cases where a battered woman is abusing her children. Second are cases where the male perpetrator is battering both the mother and the children. Third are cases where children are exposed to domestic violence but not directly abused themselves.**

16. In the first scenario, where there is evidence that a battered woman has abused her children, would your office report this woman to CPS (child protective services)?

Yes.       No.       Sometimes.       Don't know.

Please explain.

17. Would your office *prosecute* a battered woman who has abused her children?

Yes.       No.       Sometimes.       Don't know.

- (A) How frequently does your office charge mothers under these circumstances?

Very often (75-100% of the cases)  
 More often than not (50-75% of the cases)  
 Sometimes (25-50% of the cases)  
 Rarely (10-25% of the cases)  
 Never.  
 Don't know.

- (B) What are the specific charges?

18. In the second scenario, where a male perpetrator is battering both the mother and her children, would your office *report* the mother to CPS for failure to protect her children?

Yes.       No.       Sometimes.       Don't know.

Please explain.

19. Would your office *prosecute* a battered woman for failure to protect her children from abuse by the male perpetrator?

Yes.       No.       Sometimes.       Don't know.

(A) How frequently does your office charge mothers under these circumstances?

- Very often (75-100% of the cases)
- More often than not (50-75% of the cases)
- Sometimes (25-50% of the cases)
- Rarely (10-25% of the cases)
- Never.
- Don't know.

(B) What are the specific charges?

20. In the third scenario, where children are exposed to domestic violence but not directly abused, would your office *report* to CPS battered mothers who fail to protect their children from continued exposure to domestic violence?

Yes.       No.       Sometimes.       Don't know.

Please explain.

21. Would your office prosecute a battered woman for failure to protect her children from continued exposure to domestic violence?

Yes.       No.       Sometimes.       Don't know.

(A) How frequently does your office charge mothers under these circumstances?

- Very often (75-100% of the cases)
- More often than not (50-75% of the cases)
- Sometimes (25-50% of the cases)
- Rarely (10-25% of the cases)
- Never.
- Don't know.

(B) What are the specific charges?

21. Is there a specialized batterers treatment program in your community?

Yes.                       No.                       Don't know.

[If yes]: How frequently are domestic violence offenders sentenced to attend this program?

- Very often (75-100% of the cases)
- More often than not (50-75% of the cases)
- Sometimes (25-50% of the cases)
- Rarely (10-25% of the cases)
- Never.
- Don't know.

23. Are there any specific resources, programs, or services in your community where you can refer battered mothers and their children?

Yes.                       No.                       Don't know.

[If yes:] Is there [read options]:

- Shelter.
- Legal services.
- Specialized counseling for battered women.
- Specialized counseling for child witnesses to violence.
- Victim assistance program.
- Child protection agency.
  
- Other: \_\_\_\_\_
- Other: \_\_\_\_\_

24. Have prosecutors in your office received any particular training about co-occurring domestic violence and child maltreatment?

Yes.                       No.                       Don't know.

This concludes our telephone survey. Before I forget, I'd like to review the materials you offered to send/fax to me:

[Review survey and list documentation below]:

**We will be compiling the results of these surveys over the next few weeks, and I may call you back with some follow-up questions. In the next step, we will choose as many as five jurisdictions for field research to learn more about prosecutors' responses to domestic violence cases involving child victims or witnesses. Do you anticipate that, if selected, your office would have any concern about participating in the field research component of our study?**

Yes. Why?

No.

Do you have any questions for me? [note nature of questions they ask]

Thank you so much for your time!

## **APPENDIX B**

### **BRIEF SYNOPSES OF STATUTES PERTAINING TO CHILDREN'S EXPOSURE TO DOMESTIC VIOLENCE**

## APPENDIX B

### BRIEF SYNOPSES OF STATUTES PERTAINING TO CHILDREN'S EXPOSURE TO DOMESTIC VIOLENCE

#### Alaska

A child may be in need of aid if that child has experienced "repeated exposure to conduct by a household member . . . against another household member that is a crime [of assault in the 4<sup>th</sup> degree or reckless endangerment or stalking in the first or second degree] or an offense under a law or ordinance of another jurisdiction." **Alaska Stat § 47.10.011.** (Domestic violence is 4<sup>th</sup> degree assault classified as a Class A misdemeanor.)

#### Florida

A domestic violence crime committed in the presence of a child under 16 who is a family household member may increase the sentencing points by a factor of 1.5. **Rule 3.704(d)(23).**

#### Georgia

Any person commits the offense of cruelty to children in the second degree when:

- (1) Such person, who is the primary aggressor, intentionally allows a child under the age of 18 to witness the commission of a forcible felony, battery, or family violence battery; or
- (2) Such person, who is the primary aggressor, having knowledge that a child under the age of 18 is present and sees or hears the act, commits a forcible felony, battery, or family violence battery. **Ga. Code Ann. § 16-5-70.**

#### Hawaii

". . . the court shall consider the following aggravating factors in determining the particular sentence to be imposed: (a) the defendant has been convicted of committing or attempting to commit an offense involving abuse of a family or household member; (b) the defendant is or has been a family or household member of either a minor referred to in paragraph (c) or the victim of the offense; and (c) the offense contemporaneously occurred in the presence of a minor."

**Haw. Rev. Stat. Ann. § 706-606.4.**

## Idaho

Penalties for domestic violence are doubled if the crime took place "in the physical presence of a child [under 16] or knowing that a child is present and may see or hear an act of domestic assault or battery." **Idaho Code § 18-918(7)(b).**

## Minnesota (repealed April 2000)

Neglect in domestic violence cases occurs when a parent/caretaker:

- (i) engages in violent behavior that demonstrates a disregard for the well-being of the child as indicated by action that could reasonably result in physical, mental, or threatened injury, or emotional damage to the child;
- (ii) engages in repeated domestic assault. . . ;
- (iii) intentionally inflicts or attempts to inflict bodily harm against a family or household member . . . that is within sight or sound of the child; or
- (iv) subjects the child to ongoing domestic violence by the abuser in the home environment that is likely to have a detrimental effect on the well-being of the child. **Minn. Stat § 626.556(c)(8)(i-iv)**

## Oregon

- (1) A person commits the crime of assault in the fourth degree if the person:
  - (a) Intentionally, knowingly or recklessly causes physical injury to another; or
  - (b) With criminal negligence causes physical injury to another by means of a deadly weapon.
- (2) Assault in the fourth degree is a Class A misdemeanor.
- (3) Notwithstanding subsection (2) of this section, assault in the fourth degree is a Class C felony if the person commits the crime of assault in the fourth degree and:
  - . . . (c) The assault is committed in the immediate presence of, or is witnessed by, the person's or the victim's minor child or stepchild or a minor child residing within the household of the person or victim.

For the purposes of subsection (3) of this section, an assault is witnessed if the assault is seen or directly perceived in any other manner by the child. **Or. Rev. Stat. § 163.160.**

## Utah

A person is guilty of child abuse if he:

- (a) commits or attempts to commit criminal homicide, as defined in Section 76-5-201, against a cohabitant in the presence of a child; or
- (b) intentionally causes serious bodily injury to a cohabitant or uses a dangerous weapon, as defined in Section 76-1-601, or other means or force likely to produce death or serious bodily injury against a cohabitant, in the presence of a child; or
- (c) under circumstances not amounting to a violation of Subsection (2)(a) or (b), commits an act of domestic violence in the presence of a child after having committed:
  - (i) a violation of Subsection (2)(a) or (b) on one or more prior occasions; or

(ii) an act of domestic violence in the presence of a child, not amounting to a violation of Subsection (2)(a) or (b), on one or more prior occasions. **Utah Code Ann. § 76-5-109.1.**

**Washington**

An offense that involves domestic violence and “occurred within sight or sound of the victim’s or the offender’s minor children under the age of 18” is considered an aggravating circumstance and the court may set a sentence outside the standard range for such crimes. **Wash. Rev. Code § 9.94A.390(2)(h)(ii).**

U.S. Department of Justice  
National Center for Juvenile Justice (NCJJ)  
U.S. Probation Service (USPS)