

■ PRACTICE KIT 15 ■

DOMESTIC VIOLENCE

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PRACTICE KIT 15
Best Interest Representation in Domestic Violence Cases
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INTRODUCTION

The intersection between child welfare and domestic violence laws raise various issues on best practices when advocating for a child's best interest. This practice kit is intended as a guide for lawyers who are working with families affected by domestic violence.

In particular, this practice kit aims to:

- Guide practitioners on ways to interview clients, opposing parties, and professionals involved in the lives of the families affected by domestic violence.
- Provide a baseline understanding of domestic violence and the intersection with child welfare.
- Provide a list of nationwide articles that discuss recent trends in child welfare and domestic violence.
- Reference state laws that affect families affected by domestic violence.
- Provide guidance on the role of the Guardian *ad litem* in neglect proceedings that involve domestic violence.
- Reference the Child and Family Service Agency's policies that govern the agency's practices when working with families affected by domestic violence.
- Equip practitioners with lists of referrals available to families affected by domestic violence.

Understanding Domestic Violence

What is Domestic Violence?

Domestic Violence in General

Domestic violence (also called intimate partner violence (IPV), domestic abuse or relationship abuse) is a pattern of abusive behaviors that is used by one partner to gain or maintain power and control over another partner in an intimate relationship. Domestic violence can include physical, emotional, psychological, sexual, and/or economic actions or threats of action. The National Domestic Violence Hotline website has helpful information including warning signs, typical behaviors, and types of abuse. See <https://www.thehotline.org/is-this-abuse/abuse-defined/>

Power and Control Wheel

The Domestic Abuse Intervention Project developed [a diagram](#) that indicates the types of behaviors an abuser might use to establish and maintain control over his/her partner.

Spiral of Violence

In the past, domestic violence advocates and service providers used the “cycle of violence” to describe a common course or pattern of behaviors by the abuser in a relationship. It included four stages: tension building; acute violence; reconciliation or honeymoon; and calm. Today, domestic violence advocates and service providers reference the “spiral of violence.” This change in diagram was meant to reflect that the stages need not go in a particular order. See <https://www.safeplaceolympia.org/wp-content/uploads/2011/06/The-Spiral-of-Violence.png>

Facts and Figures

Statistics in General

To learn more about the rates of victimization, the demographics of those involved, the impact on children and youth as well as domestic violence in the work place, you can visit: <https://www.thehotline.org/resources/statistics/>

District of Columbia Specific

For DC specific information regarding domestic violence statistics, you can visit: <https://www.speakcdn.com/assets/2497/dc.pdf>

Domestic Violence: Children and Adolescents

Impact on Children

The National Child Traumatic Stress Network (NCTSN) has provided information regarding the immediate reactions and long-term effects of domestic violence on children. It is important to note that a child's experience of violence depends on a number of factors including the age of the child, the temperament of the child, the frequency and intensity of domestic abuse, the response of adults as well as others in the social environment. For more information, see

- <https://www.nctsn.org/what-is-child-trauma/trauma-types/domestic-violence/effects>
- <https://www.nctsn.org/resources/domestic-violence-and-children-questions-and-answers-domestic-violence-project-advocates>

NCTSN has also developed a fact sheet series for parents whose children have been affected by domestic violence. The series includes information to help parents talk with the children about domestic violence as well as support in managing behaviors and relationships in a way that promotes resilience and recovery. See <https://www.nctsn.org/resources/children-and-domestic-violence-parents-fact-sheet-series>

Teen Dating Violence

The National Institute of Justice has funded research examining the nature, characteristics, and extent of dating violence; risk and protective factors; long-term and short-term outcomes; and systematic evaluations of teen dating violence prevention and intervention programs, policies and legislation. See

<https://www.nij.gov/topics/crime/intimate-partner-violence/teen-dating-violence/pages/welcome.aspx>

Child Abuse and Neglect

What is Child Abuse and Neglect?

It is frequently cited that 30 to 60% of children from homes where domestic abuse is present are also victims of abuse themselves.¹ As legal professionals, it is important to understand what child abuse and neglect is as well as the signs and symptoms, in order to respond appropriately. For more information about recognizing signs and symptoms, see <https://www.childwelfare.gov/pubs/factsheets/whatiscan/>.

NCTSN has information on the effects, interventions, and other resources for physical and sexual abuse:

- <https://www.nctsn.org/what-is-child-trauma/trauma-types/sexual-abuse>
- <https://www.nctsn.org/what-is-child-trauma/trauma-types/physical-abuse>

¹ Edleson, JL. "The Overlap Between Child Maltreatment and Women Battering." *Violence against Women* (February 1999) 5:134-54.

Sibling Violence

Research demonstrates that there is a strong correlation between sibling violence and other forms of family violence in the home environment. Western Centre for Research & Education on Violence Against Women & Children put out an issue-based newsletter on the topic of sibling violence. Here you can learn more about factors that contribute to development of abuse between children at home, the incidence of violence, signs and symptoms, as well as how to respond to it:

<http://www.vawlearningnetwork.ca/issue-21-sibling-violence>

One specific type of sibling violence is sibling sexual abuse or incest. Research shows that sibling sexual abuse is more common when children live in homes with the presence of violence². Furthermore, since sexual assault is common in domestic violence, children may be exposed to sexual material and conduct before developmentally appropriate. As a result, children may exhibit inappropriate sexual behavior towards their siblings. This article gives background on sibling sexual abuse as well as best practice guidelines for professionals who receive initial disclosures:

<https://www.tandfonline.com/doi/full/10.1080/1177083X.2012.729513>

The Washington Coalition of Sexual Assault Programs published a "Research and Advocacy Digest" on Sibling Incest that provides an overview of what it is as well as what professionals should consider in working sibling sexual abuse survivors and their families. See

http://www.wcsap.org/sites/default/files/uploads/resources_publications/research_advocacy_digest/RAD_v10_i2.pdf

Parental Alienation/The Alienated Child

One of the ways that abusive partners can exert power and control over significant others is to use the children they have in common. When partners separate, the abuser may be more motivated to intimidate and control their victims through the children³. Many times, there are concerns that the abuser may alienate the child when there is domestic violence present in cases. There has been much dispute over the validity of the concept of "parental alienation" or "parental alienation syndrome." Richard A. Warshak is a psychologist and author who is considered one of the leading authorities on parental alienation. His website has an abundance of information that addresses this topic. See <https://www.warshak.com/index.html>

In response to the controversy, Joan B. Kelly and Janet R. Johnson wrote the following article that examines issues with parental alienation as a concept: The Alienated Child: A Reformulation of Parental Alienation Syndrome. See <http://jkseminars.com/pdf/AlienatedChildArt.pdf>

² Friedrich WN, Fisher JL, Dittner CA, et al. Child Sexual Behavior Inventory: normative, psychiatric and sexual abuse comparisons. *Child Maltreat.*2001;6 (1):37– 39

³ Bancroft, Lundy, "Court Review: Volume 39, Issue 2 - The Parenting of Men Who Batter" (2002). Court Review: The Journal of the American Judges Association. 144.

Domestic Violence in Custody Proceedings in the District of Columbia

When working with families of survivors of domestic violence, it is important to understand the legal remedies available for the family, the resources the court can provide the parties, and the strategic considerations when advocating for your client. The following items offer practitioners the opportunity to develop a foundation to better understand the interplay of domestic violence/intimate partner violence in custody proceedings.

A custody case can involve two parents or it may also involve a third party complainant and a parent.

For Parent vs. Parent Custody Cases

Pursuant to [D.C. Code 16-914 \(B\)\(2\)](#), there shall be a rebuttable presumption that joint custody is in the best interest of the child or children, except in instances where a judicial officer has found by a preponderance of the evidence that an intrafamily offense as defined in § 16-1001(8).

Under [D.C. Code § 16-1001\(8\)](#) an “intrafamily offense” means interpersonal, intimate partner, or intrafamily violence. [Under DC Code § 16-1001\(9\)](#) “intrafamily violence” means an act punishable as a criminal offense that is committed or threatened to be committed by an offender upon a person to whom the offender is related by blood, adoption, legal custody, marriage, or domestic partnership, or with whom the offender has a child in common.

For Parent vs. Third Party

Under [D.C. Code § 16-831.02](#) a third party may file a complaint for custody of a child or a motion to intervene in an existing action involving custody of the child.

Pursuant to [D.C. Code § 16-831.02 \(b\)\(1\)](#) at any time after the filing of a third-party complaint for custody or a motion to intervene, a parent may move to dismiss an action filed by a third party on the grounds that the third party has committed an intrafamily offense against the child, the child's parent, or any other member of the child's family, or that the third party does not meet the characteristics set forth in subsection (a) of this section.

Court Resources

The D.C. Superior Court's [Domestic Violence Division](#) is located at 500 Indiana Avenue NW, Room 4510. The Domestic Violence Division handles request for Civil Protection Orders as well as cases alleging violation of protection orders and all misdemeanor criminal cases involving intrafamily offenses. The Domestic Violence Division can answer questions on [how to get a protection order](#).

[The Domestic Violence Intake Centers](#) are located at the Moultrie Courthouse at 500 Indiana Avenue, NW, Room 4550, Washington, DC 20001 and the United Medical Center at 1328 Southern Avenue, SE, Suite 311, Washington, DC 20032. The Intake Centers have representatives from the Court as well as the following organizations:



- [Office of the Attorney General for the District of Columbia](#) (including a child support enforcement officer)
- [DC Metropolitan Police Department](#)
- [SAFE \(Survivors and Advocates for Empowerment\)](#)
- [US Attorney's Office](#)
- [Legal Aid Society of DC](#)
- [AYUDA](#)
- [Bread for the City](#)
- [DC Volunteers Lawyers Project](#)
- [Wendt Center](#)

The Center in the Moultrie Courthouse, 500 Indiana Avenue, NW, Room 4550

The Intake Center in the Moultrie Courthouse handles all aspects of a case including requests for Temporary Protection Orders (TPO) (two week orders). The Center provides counseling, social services, and legal assistance to clients. TPO hearings requested in the Moultrie Courthouse are held in person before a judge.

The Greater Southeast Intake Center in the United Medical Center, 1328 Southern Ave., SE, Medical Pavilion, Suite 311

The Greater Southeast Intake Center handles initial filings for Civil Protection Orders (CPOs) and motions. Clients can request a TPO (two week order) in the Greater Southeast Intake Center and hearings are conducted via teleconferencing. The Center provides counseling, social services, and legal assistance to victims. To obtain a CPO (order that lasts one year), parties must go to the Moultrie Courthouse.

Through [Supportive Advocacy Services](#), DC SAFE provides court-based advocacy services for more than 6,000 survivors each year. The Supportive Advocacy Team is located in the Domestic Violence Intake Center (DVIC) at DC Superior Court and the DVIC Southeast Satellite (DVICSE) at United Medical Center. Advocates work with victims throughout their court case to ensure that the legal remedies they seek enhance their overall safety, and to provide resources, information and referrals as the survivor's situation changes over time. The [D.C. Superior Court Supervised Visitation Center](#) provides supervised visitation and exchange services primarily to court referred domestic violence cases.

Additional Resources

The D.C. Superior Court issued a [Domestic Violence Case Management Plan](#) to inform the public and court staff regarding the specific procedures of the Domestic Violence Unit.

[Legal Resource Library](#) – DV LEAP is a nationally recognized resource for lawyers and survivors involved in domestic violence litigation or policy work. DV LEAP's library consists of:

- [Brief & Court Opinions](#)
- [Publications](#)
- [Case Digests](#)
- [Training Materials](#)
- [DV Organizations](#)
- [Custody Resources](#)

The [D.C. Coalition against Domestic Violence](#) , which offers support, services, education and advocacy, provides a list of [Legal Assistance](#) for survivors of domestic violence and publishes [Domestic Violence Laws in the District of Columbia](#).

[Victim Legal Network of DC](#) (VLNDC) is a network of legal service organizations in the D.C. that provides services to victims of crimes in D.C.

[Network for Victim Recovery of DC](#) (NVRDC) [Legal Clinic](#) provides free one-on-one legal advice to victims of crimes regarding the following areas:

- Crime Victim's Rights
- Civil Protection Orders
- Legal options under Title IX for university/college student survivors of sexual assault, intimate partner/dating violence, and stalking
- Rights for survivors of domestic violence seeking to break their lease; and
- Limited advice, information, and referrals related to being a crime victim in the District of Columbia.

The American Bar Association Commission on Domestic Violence and Sexual Violence (ABA) House of Delegates adopted the "black letter" law of [Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil Protection Order cases](#).

The [D.C. Bar Association](#) offers a list of [links for legal information](#) purposes.

Domestic Violence in Neglect Proceedings in the District of Columbia

When court-appointed as a Guardian *ad litem* for a child that has alleged to have been affected by domestic violence, there are certain considerations when formulating a best interest determination for a child involved in neglect proceedings.

Children exposed to domestic violence may be alleged to be abused or neglected pursuant to different statutory provisions:

- [D.C. Code § 16-2301\(9\)\(A\)\(i\)](#): “the term ‘neglected child’ means a child who has been abandoned or abused by his or her parent, guardian, or custodian, or whose parent, guardian, or custodian has failed to make reasonable efforts to prevent the infliction of abuse upon the child. For the purposes of this sub-subparagraph, the term ‘reasonable efforts’ includes filing a petition for civil protection from intrafamily violence pursuant to section 16-1003.”
 - The Court of Appeals cases *In re L.D.H.*, 776 A.2d 570, (D.C. 2001) and *In re N.P.*, 822 A.2d 241 (D.C. 2005) make clear that when children are exposed to domestic violence and therefore suffered mental injury, such evidence can allow a court to find that the child experienced inflicted abuse pursuant to D.C. Code §16-2301 (23)(A)(i).
 - Pursuant to [D.C. Code § 16-2301\(b\)\(31\)](#), “the term ‘mental injury’ means harm to a child's psychological or intellectual functioning, which may be exhibited by severe anxiety, depression, withdrawal, or outwardly aggressive behavior, or a combination of those behaviors, and which may be demonstrated by a change in behavior, emotional response, or cognition.”
- [D.C. Code § 16-2301\(9\)\(A\)\(ii\)](#): “the term ‘neglected child’ means a child who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his or her physical, mental, or emotional health, and the deprivation is not due to the lack of financial means of his or her parent, guardian, or custodian.”

Making Best Interest Determinations

In assessing the best interest of the child, the Guardian *ad litem* attorney should assess the impact of domestic violence on the children involved. This may include investigating the circumstances that led to the child being exposed to domestic violence and whether the child suffered mental injury as a result of being exposed to domestic violence.

In order to gather the information needed to make a best interest recommendation for a child exposed to domestic violence, the Guardian *ad litem* may want to interview all of the parties involved, including, but not limited to:

- The child(ren)
- The parents
- Family members
- Community members/familial supports
- Social workers
- School staff members
- Medical professionals

- Counselors involved with the family
- Law enforcement

The Guardian *ad litem* may also want to review records involving the family, including, but not limited to:

- Complaint filed by the District of Columbia
- Medical records
- Criminal and civil background checks (including whether any TPOs or CPOs have been filed)
- Social media

The Guardian *ad litem* should take into consideration the following things about survivors of domestic violence:

- Survivors of domestic violence often delay disclosures of certain violence in the home
- Depending on the survivor's cultural background, the survivor may not understand that certain acts are considered violence
- Survivors of domestic violence often recant their statements
- Survivors of domestic violence often appear, on the surface, to show affection towards the perpetrating parent for various complex reasons
- Survivors of domestic violence sometimes have a history of protective behaviors that can appear contrary to be contrary to the child's safety
- Offending parents will often file restraining orders and custody complaints in order to maintain control over the non-offending parent
- Offending parents will often be the person to initiate calls to the police or social services

Assessing the Need to Remove a Child from their Home due to DV Allegations

Pursuant to [Super. Ct. Neg. R. 13](#), when CFSA moves the court to place a child in shelter care, the government shall have the burden of showing that shelter care is required under the criteria set for in [D.C. Code § 16-2310](#).

Under D.C. Code § 16-2310, a child shall not be placed in shelter care prior to a fact finding hearing or dispositional hearing unless it appears from available information that shelter care is required and that no alternative resources or arrangements are available to the family that would adequately safeguard the child without requiring removal.

When assessing whether the Guardian *ad litem* should support shelter care for a child, it is important to investigate whether a safety plan with the victim parent of domestic violence can help eliminate the risk of removing the child from the home. When determining whether a safety plan could be helpful, please refer back to the Safety Planning section of this Practice Kit.

Practice Standards for Attorneys in Child Abuse and Neglect Proceedings

While keeping in mind the complexities involved in abuse and neglect cases involving allegations of domestic violence, it is paramount to ensure that the attorney's work is in compliance with the [Child Abuse and Neglect Attorney Practice Standards](#).

Two Models for Working with DV in Child Welfare and Legal Settings

- The Safe and Together™ Model was designed specifically for working with families impacted by domestic violence within child welfare: <https://safeandtogetherinstitute.com/>
- The SAFeR Model was designed by the Battered Women's Justice Project is a model for working with domestic violence in legal settings: <https://www.bwjp.org/our-work/projects/safer.html>

Safety Planning

Safety planning is a central component to working with domestic violence survivors and their children. Safety plans are important tools that can be utilized in child welfare work at a number of different points in the case:

- When the children are still in the home, as part of the solution for preventing removal;
- With the survivor once the children are in care, as a way to empower them and provide tools to help keep themselves and their children safe;
- Prior to starting unsupervised visits; and/or
- As part of the process for moving towards protective supervision and case closure.

A safety plan is a specific, clearly outlined plan for the survivor to utilize when they are in danger. Safety planning must be done with the survivor and be driven by what they say is needed to keep them and their children safe. Safety plans driven by what professionals say is needed will not necessarily have the buy-in from survivors or utilize the significant knowledge that the survivor has about the perpetrator. When creating a safety plan, it is important to keep in mind the literacy level of the survivor.

Components of a safety plan can include:

- What to do if the perpetrator shows up (e.g.: children go to a neighbor's home, or go into their bedroom and lock the door, call police, call the permanency social worker).
- If the perpetrator is still in the home, what the survivor and children should do if the perpetrator gets violent (e.g.: children go to a neighbor and call grandma to pick them up).
- Phone numbers and specific people (supports) that the survivor can utilize if he/she is feeling unsafe. This information should all be written out.

There are a number of safety planning resources available online. Below are links to a few organizations that provide more information on how to safety plan.

- <http://www.thehotline.org/2013/04/10/what-is-safety-planning/>
- <http://stoprelationshipabuse.org/help/develop-a-safety-plan/>
- <https://www.rainn.org/articles/safety-planning>

“Dos” and “Don’ts” of Working with Domestic Violence in Child Welfare

DO hold the perpetrator accountable for their abusive behaviors.

DON’T hold the survivor accountable for the perpetrator’s actions.

DO try to safety plan with the survivor.

DON’T make a Civil Protection Order (CPO) a requirement for the survivor.

Oftentimes, survivors have gotten protective orders in the past and found that the perpetrator does not obey them or that the situation got even worse. It is important to ask survivors about their past experiences with CPOs.

DO offer the survivor resources for therapy and safe housing.

DON’T interpret resistance to therapy or services as a sign that the survivor is not a victim of domestic violence.

DO remember that, on average, it takes a survivor seven times to leave a perpetrator for good.¹

DON’T view the survivor making contact with the perpetrator or going back to the relationship as failure.

DO require the perpetrator to demonstrate involvement in their child’s life and positive interactions for reunification.

DON’T hold the survivor to a higher standard than the perpetrator as a parent.

DO consider family therapy for the survivor and the children.

DON’T request or support couples counseling for a survivor and a perpetrator.

¹ 50 Obstacles to Leaving: 1-10 (2013), <https://www.thehotline.org/2013/06/10/50-obstacles-to-leaving-1-10/> (last visited August 17, 2018).

CFSA Policies Surrounding Cases Involving Domestic Violence

The following CFSA policies (see links below) can be referenced when advocating in child welfare cases involving domestic violence. Please visit the [CFSA Program Policy Page](#) to check for updated policies.

1. [Policy Title: Domestic Violence](#) (2013)
2. [Business Process: Domestic Violence](#) (No Date)
3. [Quick Reference Guide: Domestic Violence](#) (2007)

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IPV Background Reading and Additional Resources

Developing a Foundation of Knowledge

When working with individuals who are being or have been impacted by intimate partner violence, it is important to understand the many legal, psycho-social, and cultural factors that contribute to that individual's reality. The following items offer practitioners the further opportunity, outside what is provided in this practice kit, to develop a foundation for a holistic understanding of intimate partner violence.

- [10 Myths about Custody and Domestic Violence and How to Counter Them](#) (American Bar Association): Attorneys who represent victims of domestic violence in custody matters often encounter false claims. The ABA Commission on Domestic Violence provides facts and statistics for use in litigation.
- [Child Sexual Abuse Disclosure: What Practitioners Need to Know](#) (Darkness to Light): This paper provides information on sexual abuse disclosure, includes statistics about disclosure, the factors that contribute to it, as well as some best practices for both parents and professionals.
- [The Parenting of Men Who Batter](#) (Lundy Bancroft): This article discusses the batterer profile, risks of child abuse by the batterer, parenting style, impact on family dynamics as well as implications of separation between parents on children. Lundy Bancroft also co-authored "The Batterer as Parent 2" which is helpful guide in assessing and addressing the impact of male batterers on family functioning. There are many helpful articles that discuss assessment and legal issues on his website: www.lundybancroft.com
- [DC Based Statistics, Fact Sheets and Resources](#) (DC Coalition Against Domestic Violence): This coalition website provides statistics on the incidence of domestic violence in DC, domestic violence related fact sheets and publications, as well as a list of services which may benefit survivors.
- [DC Based Domestic Violence Organizations and Other Resources](#) (DV LEAP): This legal organization provides a list of local resources related to domestic violence work. It also has briefs & court opinions, training materials, publications, case digests, and custody resources.
- [Family Violence Prevention: A Toolkit for Stakeholders](#) (National Resource Center for Healthy Marriage and Families): This toolkit was developed to assist service providers with integrating healthy relationship skills and promoting safety into how they provide services. The toolkit includes information and resources about domestic violence and child maltreatment.