

# Domestic Violence

## *and the Impact it has on Children*

The estimated lifetime prevalence of intimate partner violence in Kentucky is higher than that of the nation.

**By Travis A. Fritsch and Susan B. Jones**

Domestic violence, the exercise of power and control over one's intimate partner and children, is highly volatile in nature, with potentially fatal consequences. Lawyers and other professionals can better serve their clients by becoming more aware of the impact of domestic violence on children, protection and remedies available for complex or high-risk cases, and risk/lethality factors.

The estimated lifetime prevalence of intimate partner violence in Kentucky is higher than that of the nation. 37.1% of all adult women in Kentucky (approx. 587,300) age 18 and older have experienced physical and/or sexual abuse in their lifetime, compared to 24.8% of adult women in the nation.<sup>1</sup> When the number of children of these families is factored in, the consequences are dramatically multiplied. Domestic violence is the single strongest precursor to child abuse and neglect fatalities in the United States.<sup>2</sup>

### **Children of Domestic Violence**

Children who witness domestic violence often manifest behavioral and emotional problems, poor academic performance and delinquency, and are more frequently the subject of child abuse reports and fatalities. Violence against domestic partners

and children often co-exist in families—with the frequency of child abuse doubling in families experiencing intimate partner violence. The rate of child abuse escalates with the severity and frequency of the abuse of the parent.<sup>3</sup>

In a large study involving 9,500 HMO members, 1,010 people who reported that a parent had been treated violently also reported being exposed to other adverse childhood experiences; e.g., substance abuse (59%), sexual abuse (41%), psychological abuse (34%), and physical abuse (31%).<sup>4</sup>

Sons of perpetrators demonstrate significantly elevated rates of domestic violence when they become adults. Further, if daughters of batterers become victims of abuse, they may find it more difficult to seek appropriate assistance.<sup>5</sup>

The safety and well-being of children who witness domestic violence is closely related to that of their abused parent. Unfortunately, the ability of these abused parents to access safety, information, justice, healing and violence-free stability in their lives is often challenged by the very systems designed to protect and support them both. These domestic violence victims need assistance to ne-

gotiate the avenues of protection on behalf of themselves and their children. One way to promote adult and child safety is to become familiar with “Domestic Violence Risk Factors” and “Strategies for Safety Planning.”<sup>6</sup>

### **DOMESTIC VIOLENCE RISK ASSESSMENT**

Do not minimize the serious risks posed to victims and their children even if there has not been a history of serious or escalating physical abuse. Victims' experiences of violence and control exercised by perpetrators must be validated and their concerns taken seriously. The safety of the victims and their children must be given the highest priority.

Expect denial or promises from the alleged perpetrator not to harm anyone (victim, children, self). No matter how ‘heartfelt’ these statements may seem, the focus must remain on the safety of the children and the abused parent. Take this opportunity, if available, to discuss with perpetrators such things as “control plans,” perpetrator intervention programs with certified mental health experts, and the effects of domestic violence on children and the possible legal consequences.<sup>7</sup>

Take all threats seriously. Persons who would threaten or consider homicide *or suicide*, or threaten to take children, should be considered dangerous. Someone threatening suicide may actually be more dangerous than someone threatening homicide; if a perpetrator plans to take his or her own life, he or she obviously will not survive to face any other consequences if others are killed first.

Do not minimize explicit or implicit threats (e.g., threats veiled as a 'joke', 'harmless comment', or passed off as jealousy; or minimized - only said he'd "get you").

Planned or actual separation from the perpetrator places the victim and children at heightened risk. A victim's effort to seek protective or legal assistance, or having separated from the abuser, is NOT a guarantee of safety. *Victims and children are at greatest risk of serious physical injury or death when planning separation or intervention. They are especially vulnerable during and after separation (even lengthy separations) from the abuser.*

Abduction of Children. Parental abductions occur more frequently when there are incidents of domestic violence. "Post-separation parental abductions happen most commonly two or more years subsequent to the separation, and about half occur during an authorized visit."<sup>8</sup>

## STRATEGIES FOR SAFETY PLANNING

Safety plans should be completed in all cases. 1) Safety planning is an ongoing process. 2) Safety plans should be practiced, reviewed and updated

regularly. 3) Safety plans do not need to be written and may provide increased protection if they remain unwritten. 4) Avoid perpetrator access to safety plans. 5) Document safety plan discussions with the victim and be certain that children with sufficient maturity also understand the safety plan. 6) Safety plans should be developed in collaboration with the adult victim and, if indicated, child victims. 7) Do not put actual safety plans/notes into any discoverable records. 8) Professionals (emergency responders, law enforcement, hospitals/emergency treatment centers, social/shelter workers, etc.) may be involved in safety plan development, depending on the situation and the needs/wishes of the victims. These plans should be tailored to address potential incidents at home, public places (e.g., victim's workplace, school, child care, etc), and community locations (e.g., professional's workplace, courthouse, etc.). Think through the possible situations where the perpetrator could cause problems or access the victim(s) and plan options to address potential violence.

Safety plans should be detailed, practical, practiced and revised.

*Detailed:* to describe possible alternatives to reach safety or help.

*Practical:* to be able to actually carry out the plan.

*Practiced:* these plans can be practiced mentally and/or physically. Children can practice these plans as fire or tornado safety drills.

*Revised:* the plans need to be continually assessed for effectiveness and altered to meet any changes in circumstances (e.g., a divorce becoming final, non-compliance with perpetrator intervention program, explicit/implicit threats of harm to any of the parties). Be certain that children comprehend the revisions.

Collaboration for safety plan development. The trained protective service workers of the local Cabinet for Families and Children, Department for Community Based Services (DCBS), and of the regional spouse abuse/rape crisis centers, may collaborate on the development of safety plans, facilitate access to needed services, and may accompany the victim to court proceedings if requested. Connecting victims with these valuable resources can be extremely helpful for the victims and their children. These services are victim focused, safety driven, provide for degrees of confidentiality and autonomy (right to accept, select or refuse services). Knowing whom to contact and being able to describe the work and capabilities of these local professionals can facilitate a victim's access to safety information and services.

Domestic violence orders may be part of the safety planning process. The protection afforded through emergency protective orders and domestic violence orders should be carefully considered by the victim, with information about the capabilities and limitations of these court orders clearly outlined.<sup>9</sup> Carefully describe what constitutes violation of a protective order and how to respond.

Explain to the victim that the addresses of the victim and the children

All states permit courts to consider domestic violence in relationship to the 'best interest of the child'; Kentucky requires its consideration. Some states have adopted a presumption *against* award of joint or sole custody to the abusive parent; Kentucky has not.

Judges may be required to permit testimony about domestic violence and the impact on children and the non-abusive parent; Kentucky law requires such domestic violence information, records and evidence be admissible and assessed for its affects on the children and the children's relationship to both parents.

Source Document (Adapted): Domestic Violence Commission. (1996). The impact of domestic violence on your legal practice. A lawyer's handbook. Washington, D.C.: American Bar Association.

will be deleted from any order made available to the perpetrator or the public.<sup>10</sup> A parent or family member should also understand that a petition for an emergency protective order may be filed by an adult family member on behalf of a minor family member.<sup>11</sup> A victim preparing a Petition for an emergency protective order can assist the court by including information on the Petition such as the most recent incident, the most frightening incident/behavior, any risks posed to children or others, information related to threats, and any access to weapons or firearms.

Law Information Network of Kentucky (LINK). In order for the victim and the children to receive the benefit of Emergency and Domestic Violence Protective Orders by having those orders available to law enforce-

ment officers through the LINK system for enforcement, the orders must be entered on the proper forms prescribed by the Administrative Office of the Courts.<sup>12</sup> When domestic violence is known or suspected, the court should issue any order pertaining to safety and children (custody, visitation, support) in an Emergency or Domestic Violence Protection Order so that the authorities with responsibility for monitoring or enforcing compliance with the terms are informed through the LINK Domestic Violence File. Restraining Orders and Divorce Decrees are not available to or enforceable by law enforcement officials.

**The United States Congress recommends a presumption against custody for perpetrators [House Concurrent Resolution 172 (1990)]. The National Council of Juvenile and Family Court Judges advises against an award of joint custody where abuse is likely or has occurred.**

If the alleged respondent is believed to be armed or dangerous, the petitioner and/or the court should include such information on the Petition and any order issued thereafter by the court. This Caution Indicator can then be entered into the LINK Domestic Violence File for notice to officers, social workers and other court personnel. Any state order

for the perpetrator not to possess firearms should also be expressly entered on the emergency or domestic violence protective order, along with directions for forfeiture (e.g., weapons should be turned over to or seized by local law enforcement and maintained securely).

Mediation. Mediation can be dangerous to the victim and to any children by increasing the risk of retaliation. Mediation in domestic violence cases is generally inappropriate but, if required, mediators should be trained in the dynamics of domestic violence, risk/lethality factors, and safety planning. Parties should be interviewed separately, and there should be consistent monitoring of safety and compliance with agreed terms.<sup>13</sup>

Parenting and custody concerns. When a court is considering all relevant information in making temporary or permanent custody awards, the court shall consider "Information, records, and evidence of domestic violence as defined in KRS 403.720."<sup>14</sup> If domestic violence has been alleged, the court is required to conduct a hearing to determine the parenting time arrangement, *if any*, which would not seriously endanger the child's or custodial parent's physical, mental or emotional health.<sup>15</sup>

## **Recommendations: Drafting Orders on Custody & Visitation**

**Carefully craft custody/visitation arrangements to serve child's best interest.**

- Use clear and concise language.
- No contact between parties except as provided in court time.
- Order psychological evaluation, home study, custody evaluation, completion of batterer's program, substance abuse treatment, parenting class, or mental health counseling, where appropriate.
- Consider sole custody to non-abusive parent until perpetrator completes court-ordered programs.
- Structure time, method and manner of visitation. *Do not leave visitation as "reasonable" or "mutually agreeable." Police and courts will be unable to enforce such a ruling.*
- Consider supervision through a visitation center or program, especially when safety risks and abduction are a possibility. Arrange for trained intermediaries, not involved in the situation, to provide competent oversight and documentation related to the supervised visits.
- Start with short, time-specific visits and increase time if compliant: limit overnight visitation (consider age).
- Order no use of alcohol or drugs in presence of child or prior to visitation.
- Counseling for children exposed to violence may be very helpful.

Source Document: Training on Custody, Visitation and Support. (2001) Fritsch T.

Children often witness the physical assaults on their parents and develop fear for their parent's safety as well as their own. Nightmares and general anxiety may increase. If the children are exposed to the perpetrator in an unprotected (unsupervised) parenting time arrangement, the children may rightfully feel that they and/or their victim parent are threatened and exposed to risk. The abused parent will not be there to monitor the perpetrator's behavior or be able to intervene for protection if needed. The risk to the child(ren) may increase due to the retaliatory nature of many perpetrators. Another potential problem in parenting time for a perpetrator is that he or she may allow the children to engage in usually restricted and/or unsafe activities in order to appear to be a "fun" parent. Perpetrators tend to be narcissistic individuals and as such may be neglectful of the children during their parenting time.<sup>16</sup> If parenting time is awarded, professionally supervised parenting time for perpetrators should strongly be considered.<sup>17</sup>

## Conclusion

Attorneys can better serve the needs of families of domestic violence when they carefully and thoughtfully consider the numerous issues raised by the presence of domestic violence in a relationship. Children must not be the forgotten victims of domestic violence. Safety of the children and their abused parent, their emotional well-being and safe access to the perpetrator parent for parenting time, *if any*, must be assessed and balanced at every opportunity. Collaboration of knowledgeable professionals is necessary to accurately meet the needs of the child and adult victims of domestic violence. ■



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## ENDNOTES

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