



PROTECTING CHILDREN OF DOMESTIC VIOLENCE VICTIMS WITH CRIMINAL NO-CONTACT ORDERS

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DOMESTIC VIOLENCE INVOLVING CHILDREN

Domestic violence has multiple, seriously detrimental effects on children whether they are directly abused, the indirect target of violence, or exposed to domestic violence in the home.² Research indicates that 80 to 90 percent of children living in homes where domestic violence occurs are aware of the violence.³ In fact, studies⁴ demonstrate that in 30 to 60 percent of cases where a male partner is violent towards his spouse, children are also direct victims of physical or sexual violence.⁵ Approximately three to ten million children are exposed to some form of domestic violence annually.⁶

Despite widespread acceptance of the growing body of evidence that domestic violence committed against adults is detrimental to children, courts frequently fail to identify and consider the impact of domestic violence on the safety and well being of children. Courts often do not provide adequate safety protections in court orders, even where a

history of substantiated violence is known to exist.⁷ It is incumbent upon prosecutors, therefore, to help courts recognize when children in homes with domestic violence are at risk of continued harm and request courts to extend protective orders to these children during the pendency of a domestic violence case and any period of offender monitoring. Prosecutors should be aware of the laws available to them to keep children safe as well as the research supporting arguments they can make before judges. Prosecutors may also need to properly determine whether they should bring additional charges, argue to increase bail or sentences based on aggravators, and/or file forfeiture by wrongdoing motions to address any ongoing intimidation and harassment by a defendant.

This issue will provide an overview of the statutory authority upon which prosecutors may rely to include children in no-contact orders or to bring additional charges – where appropriate – against a domestic abuser where the safety of a child is at risk. It will also provide suggested research upon

which prosecutors, who are proactively seeking to protect children at risk of further harm, may rely when practicing before judges who may not be inclined to extend no-contact orders to the children of domestic violence victims. In addition, this issue will specifically examine common scenarios in which children may be affected by domestic violence and offer strategies to protect children in criminal domestic violence prosecutions.

DOMESTIC VIOLENCE NO-CONTACT ORDERS: AN INSTRUMENT OF PROTECTION FOR CHILDREN

In most jurisdictions, where there has been a charge involving domestic violence, a criminal no-contact order is often issued as a condition of the defendant's pre-trial release. At first appearance, and prior to the issuance of bond, the prosecution may present a motion for a no-contact order in its presentation of evidence of a defendant's prior wrongdoings, including facts of the current and past instances of domestic violence. The court may also impose conditions of pre-trial release that include a no-contact order upon its own motion to protect the victim.

State laws addressing pre-trial no-contact orders in domestic violence criminal cases fall into two categories: (1) states that *mandate*⁸ or *permit*⁹ a court to issue a protective order prohibiting a defendant charged with domestic violence from contacting the victim and (2) states that permit a court to issue a protective order to cover the victim and any children that may be affected.¹⁰ Although state laws in the first category do not expressly permit inclusion of a victim's children, courts within those states have nevertheless been able to extend no-contact orders to the children.¹¹ Further, while the statutory language in the second category of states often focus solely on the safety of the victim, some of those states require that the court, before setting bail, consider the victim's children, family, and any other household member that may be affected by the domestic violence;¹² in these jurisdictions, children have been routinely included in criminal protective orders as well as other persons who may be in danger.¹³

A court may also issue a protective order during the pendency of a criminal proceeding, where the court has reasonable grounds to believe that harassment of a victim or witness in a criminal case exists, or that such order is necessary to prevent harm to a victim or witness.¹⁴ A protective order is-

sued on behalf of a victim or witness in a criminal proceeding is limited to the duration of the criminal proceeding and may also be re-issued at sentencing to include the period of time that the offender is incarcerated or on probation or parole. Thus, many no-contact orders will terminate at the close of the criminal case to which it was attached, for example by conviction or acquittal.¹⁵ Victims seeking further protection may also file petitions for domestic violence civil protection orders. Certain states allow an advocate from a prosecutor's office to be present with the victim during any court proceeding related to an injunction for protection against domestic violence, including civil proceedings.¹⁶

WHEN THE DOMESTIC VIOLENCE INCIDENT INVOLVES A CHILD

Although it seems obvious that a child injured during a domestic violence incident is in need of continued protection while the criminal cases arising from that incident is prosecuted, some courts are reluctant to limit a parent's access to a child and often overlook the extent of the seriousness of the resulting injury to a child. Unfortunately, as the earlier statistics indicate, children are often present during domestic violence incidents and these incidents too often involve some direct harm upon a child too – whether the harm is intentional or incidental.¹⁷

For example, some domestic violence defendants may intentionally injure children in an effort to further harm, intimidate, and control their adult victim. Children may be intentionally hurt while being used as an actual "weapon" against a victim,¹⁸ or more frequently, when they attempt to intervene in an assault to protect their non-abusive parent. This direct, intentional injury may result from threats or actual physical, emotional,¹⁹ or neglectful abuse. Usually, it constitutes a separate crime against the child, to which prosecutors may respond by filing additional charges of endangerment, abuse, or neglect. In these situations, it is logical to argue to a judge that the child or children of a domestic violence victim should be covered within a protective order for the pendency of the domestic violence criminal case.

Sometimes the injuries to children occur without the specific intent to harm the child. This also often occurs when children intervene to protect their parents from abuse, or

when the offender's method of assault puts the children at risk of injury.²⁰ For example, objects thrown with the intent to injure the victim may mistakenly injure the child.²¹ Injuries to children often result when the attack occurs while the victim is holding a child.

Criminal statutes permit prosecutors to file separate child abuse or endangerment charges²² to protect children from these common scenarios and hold offenders accountable for abuses towards the children. In most jurisdictions, prosecution under child abuse statutes does not require that the defendant deliberately intended to injure the child²³ nor that the defendant is the child's biological parent.²⁴ In these cases, prosecutors may have few challenges to their request for the issuance --or extension-- of a protection order to cover the child when presenting the facts that lead to a child's injury. Other scenarios, however, are not as clear, and may require persuasive argument and case law in order to provide the child with protection during the pending domestic violence criminal case. These will be discussed in more detail below.

WHEN THE CHILD WITNESSES OR IS EXPOSED TO THE AFTERMATH OF THE DOMESTIC VIOLENCE

Charging the commission of domestic violence in the presence of a child

State law varies in how prosecutors can respond in scenarios where a child has witnessed or is exposed to the aftermath of domestic violence, but was not physically injured during the incident. In a handful of states, including Delaware, Georgia, North Carolina, Oklahoma, and Utah, committing an act of domestic violence in the presence of a child constitutes a crime that can be charged separately from the underlying domestic violence incident.²⁵ While other states may not explicitly criminalize the commission of domestic violence in the presence of a child, per se, charging under child endangerment statutes may be necessary to hold offenders accountable for their acts. Child endangerment statutes are comprised of diverse language addressing conduct detrimental to a child's health and welfare²⁶ or "mental and moral welfare."²⁷ For example, in *People v. Smith*,²⁸ the defendant pointed a gun at the victim while her two young children stood behind her. The court found the defendant's conduct to be injurious to the health of the victim's children and noted that it "takes little imagination . . . to be aware

that pointing a gun at a person with the threat of using it will also endanger, frighten and traumatize a child standing alongside."²⁹ In another case, *People v. Parr*,³⁰ the court found that the defendant knowingly endangered the welfare of a child where the defendant anally raped a victim in front of her five-year-old child.

While prosecutors are encouraged to utilize these statutes to hold domestic violence offenders accountable for the negative impact their violent actions have on children present during an incident, careful analysis is also necessary to ensure that a non-abusive parent is not mistakenly charged. Just as courts might have difficulty assessing and differentiating between different forms of violence used between parties, law enforcement may also have mistaken force used in self-defense to be aggressive violence or battering. Thus, distinguishing a victim's single use of violence from a batterer's use of violence over many years requires responders to further consider the fear and actual impact an individual's use of violence has on a family. To ensure more accurate assessment of cases, law enforcement and prosecutors are encouraged to apply a predominant aggressor analysis and to properly determine whether the violence committed in the presence of a child was self-defense.³¹ In some instances, victims act in self-defense or defense of their children and therefore it is not appropriate to charge the victim with committing domestic violence in the presence of children or endangering the welfare of children types of crimes. In these instances, however, it may still be necessary to provide the child with an advocate to support and protect him or her.

In some instances, it may be necessary to provide advocate support and protection to the child, but may not be effective to further traumatize a victim by charging additional charges involving the children that the victim may have been attempting to protect.

Treating the commission of domestic violence in the presence of a child as an enhancer

In many states, domestic violence committed in the presence of a child is treated as an "aggravating circumstance" that can be considered at sentencing following a domestic violence conviction.³² As an "aggravating circumstance," a defendant convicted of a domestic violence crime that occurred in the presence of a child may face more severe pen-

alties including increased periods of incarceration and/or fines.³³ In addition to these increased penalties, some states will require the convicted defendant to undergo counseling and/or pay for any counseling that a child may require.³⁴ Even if this type of reimbursement is not specifically provided for by statute, a court might be able to order it pursuant to other restitution laws. Aggravating circumstances that would tend to call for a more severe sentence should logically be considered as aggravating factors in setting the amount and conditions of bail as well. In those jurisdictions recognizing domestic violence committed in the presence of a child as an aggravated circumstance, prosecutors can also argue that this factor warrants inclusion of the child in a protective order for the victim.

Arguing the effects of witnessing domestic violence in order to cover children in protective orders

There is substantial empirical research that exposure to domestic violence has a negative impact on children and leads them to “suffer deep and profound harms.”³⁵ Children exposed to domestic violence often experience the same levels of emotional and behavioral problems, including aggressive, fearful, anxious and depressed behavior;³⁶ trauma symptoms, including nightmares, flashbacks, hyper-vigilance, depression, and regression to earlier stages of development; and compromised social and academic development as children who are directly physically and sexually abused.³⁷ Studies on children who have witnessed domestic violence show that they are more likely to use violence when confronted with a problem.³⁸

“Specific problems vary depending on the age of the children, but exposure to violence has a developmental impact at every stage of a child’s life, including: interruption of brain development (birth-3 years), inappropriate messages that violence is a tool (3-6 years), rationalizing of violence and difficulty forming peer relationships (6-12 years), use of violence in dating relationships, risk-taking behavior and drug use (12+ years).”³⁹ These children display higher rates of post-traumatic stress disorder symptoms⁴⁰ and also often exhibit adult depression, low self-esteem, and low social adjustment.⁴¹ Children may also have an increased risk of health problems, including but not limited to insomnia, headaches, stomachaches, diarrhea, asthma, and peptic ulcers.⁴²

In response to the growing awareness of the effects that witnessing domestic violence can have on children, jurisdictions have created specialized courts to address the cross-over of these issues. Many judges serving in these courts are trained in the dynamics of domestic violence and can more appropriately respond to children who witness domestic violence. Unfortunately, many judges who lack training in domestic violence and its effect on children may not fully appreciate just how detrimental exposure to this violence is to children and do not clearly see the need to extend protective orders to a victim’s children. These judges may even be inclined to make special arrangements within the protective orders to ensure that children still have contact with defendants pending a domestic violence trial, unaware of the potential harm that this situation may pose.

It is especially critical for prosecutors practicing before these tribunals to be prepared to specifically articulate the effects of domestic violence on children in order to persuade judges to extend protective orders for victims of domestic violence to their children too. Where relevant, prosecutors should identify additional acts of the defendant, whether charged or uncharged, that involve the child as a victim of abuse by the defendant. If provided with this information, and an explanation of the social science research on the effects of witnessing domestic violence on children, a court may be more likely to issue a protective order for the safety of the victim and the victim’s children.

WHEN THE CHILD WAS NOT EXPOSED TO DOMESTIC VIOLENCE, BUT THE DEFENDANT STILL POSES A RISK TO THE CHILD AND THE VICTIM

Even where children were not present during or exposed to the aftermath of domestic violence, the defendant may continue to use children as instruments to further exert coercive control over the victim, exposing the children to violence, conflict, and stress.⁴³ Individuals who batter tend to be highly manipulative people⁴⁴ and may attempt to use the criminal justice system to control a victim as well. For example, domestic violence offenders often use the interaction required to facilitate a parenting time or visitation order as an opportunity to assault or intimidate the victim.⁴⁵ An offender will often use children to relay threats or harass their adult victim as well as threaten child custody litigation in order to gain compliance from the victim.⁴⁶ These offend-

ers also frequently engage in emotionally abusive behavior, using scare tactics or “mind games”⁴⁷ and often subjecting children to negative comments about the other parent or about the child.⁴⁸ Prosecutors should be prepared to argue that these communications could adversely impact a child’s self-worth⁴⁹ in situations where a court is refusing to extend a no-contact order to a child or even requiring the child to have contact with the defendant.

Where courts are reluctant to limit a defendant’s access to the children, prosecutors may need to educate the court that while it is not ideal to restrict a parent’s time with his or her child, a defendant’s violence against the child’s parent must be taken into consideration. Further, even in households where a child has not been the direct victim of physical abuse, the potential for the child’s victimization at the hands of a domestic violence abuser remains; there also are risks that the child will not be parented in a healthy manner. In these cases, prosecutors may cite to research demonstrating that physical violence against children may actually increase upon separation from the victim and that domestic violence offenders often parent in a controlling manner.

The research shows that domestic violence offenders tend toward neglectful and verbally abusive parenting.⁵⁰ They often parent in an authoritarian manner⁵¹ and may attempt to control the child to an unhealthy degree.⁵² In fact, domestic violence offenders may employ a variety of cruel and controlling behaviors in their parenting that often mirrors efforts to control their victim.⁵³ For example, they may not allow children to play or may confine them to certain areas of the home.⁵⁴ Domestic violence offenders may use intimidation tactics to control the children, including holding children and the non-abusive parent hostage, constantly staring at them, depriving children of sleep, telling children’s friends not to talk to them, and stalking.⁵⁵

Courts that issue no-contact orders for victims of domestic violence sometimes deliberately include exceptions in order to facilitate a defendant’s visitation with a child. Prosecutors should remind these courts of the potential dangers this arrangement may present. During visitation, five percent of abusive fathers threaten to kill the mother, thirty-four percent threaten to kidnap their children, and twenty-five percent threaten to hurt their children.⁵⁶ Regardless of whether an abuser carries out these threats, they create

anxiety and fear in children.

Continued contact with a domestic violence offender may have negative outcomes for children because the arrangement prolongs children’s exposure to violence.⁵⁷ Domestic violence offenders generally continue their abuse and violence and, if they lack access to the victim, children often become the main conduit for violence.⁵⁸ For this and similar reasons, many states have adopted presumptions *against* joint physical custody if domestic violence is present.⁵⁹

Research also indicates that domestic violence often begins and frequently escalates at the time of separation, not only for the victim, but also the children. When there is a pending criminal case, the pretrial phase can be an especially dangerous time for the victim and the child. This is often a time when the victim decides to leave the relationship.⁶⁰ Separation increases the risk to a victim⁶¹ and may increase the risk to the child as well due to the child’s close relationship with and proximity to the victim. In fact, even if the child did not witness the violence or become the subject of violence during prior episodes, he or she is not necessarily safe during a pending domestic violence criminal case. Children who are not directly abused may face a higher risk of being so at the time of parental separation.⁶² Violent interactions are likely to increase if the defendant feels a loss of control.⁶³ Some states’ laws acknowledge the increased period of danger for the victim immediately following separation and specifically enumerate “separation” as a factor for the court to consider in deciding whether to issue a no-contact order.⁶⁴ Prosecutors in these jurisdictions may argue that logically if there is an increased level of danger to the victim such that a no-contact order is required, there is also an increased level of danger to the child and so the no-contact order should include any children in the home. In light of the increased risks posed by separation, it is critical that advocates work closely with domestic violence victims to create a safety plan for them and their children.

CONCLUSION

Because children so often are direct victims of and exposed to domestic violence, and because children are also used by defendants to manipulate the victim during the pendency of trial, it is incumbent upon the prosecutors and other allied professionals working within the criminal justice system to protect the children who are at risk for such violence,

exposure, and manipulation. Prosecutors are in a critical position to seek added protection for children of victims of domestic violence by requesting that courts include children in no-contact orders that are already being imposed in these cases. With no-contact orders covering both the victim and any children at risk of violence, courts are in a powerful position to prevent a defendant from manipulating the court to ease access to a child in order to intimidate or harm them. In fact, judges that impose no-contact orders covering children have the ability to swiftly punish these exact tactics employed by defendants and more effectively hold them accountable for such behavior.

Prosecutors are encouraged to contact AEquitas for sample motions or advice on how to include children in no-contact orders for victims of domestic violence. AEquitas has sample motions that include the above referenced arguments and research and may serve as effective tools to persuade courts reluctant to extend such protection. An AEquitas Attorney Advisor can also assist in tailoring the motion to a specific jurisdiction, with applicable caselaw and statutory provisions.

(Endnotes)

- 1 Toolsi Gowin Meisner is an Attorney Advisor for AEquitas: The Prosecutors' Resource on Violence Against Women. Diana Korn is a Certified Legal Intern in the Intimate Partner Violence Assistance Clinic at the University of Florida, Levin College of Law.
- 2 Brief of Battered Women's Legal Advocacy Project and Battered Women's Justice Project as Amici Curiae Supporting Appellant, Connery v. Connery, 2011 WL 206139 (Min. Ct. App. Jan 25, 2011) (No. A100-531) citing Wolfe, D.W. et al., *The Effects of Exposure to Domestic Violence on Children: A Meta-Analysis and Critique*, 6 CLINICAL CHILD AND FAMILY PSYCHOLOGY REVIEW, 171-187 (2003).
- 3 Pagelow, M.D., *Effects of Domestic Violence on Children and their Consequences for Custody and Visitation Agreements*, 7(4) CONFLICT RESOLUTION QUARTERLY, 347-363(2007).
- 4 Gabrielle Davis, J.D. et al., *The Dangers of Presumptive Joint Physical Custody*, THE BATTERED WOMEN'S JUSTICE PROJECT (May 2010) citing C. McGEE, CHILDHOOD EXPERIENCES OF DOMESTIC VIOLENCE, 15 (Jessica Kinglsey Publishers 2000) (one of only a handful of studies designed specifically to study children's experiences of domestic violence, McGee interviewed 54 children and 48 abused mothers, 64 finding that in 41 of the families (85%) children were eyewitnesses to violence, 65 in 25 of the families (52%) children were physically abused, in 6 families (11%) children were sexually abused, in 29 families (60%) were emotionally abused, 15 families (31%) experienced controlling behavior, and in 28 families (58%), children overheard violence).
- 5 Jeffrey E. Edelson, *The Overlap Between Child Maltreatment and Woman Battering*, 5 VIOLENCE AGAINST WOMEN 134 (1999); Clare Dalton et al., *High Conflict Divorce, Violence, and Abuse*, 54 JUV. & FAM. CT. J. 11, 17 (2003)(providing information that more than 50% of batterers also abuse their children).

6 United States Department of Veterans Affairs <http://www.ptsd.va.gov> (2010); More recent studies indicate an increase to 3.3 million. America Bar Association, online survey of recent statistics, <http://new.abanet.org/domesticviolence/Pages/Statistics.aspx> (citing Sharmila Lawrence, National Center for Children in Poverty, Domestic Violence and Welfare Policy: *Research Findings That Can Inform Policies on Marriage and Child Well-Being* 5 (2002)); Bonnie Carlson *Children exposed to intimate partner violence: Research findings and implications for intervention*, 1 TRAUMA, VIOLENCE, AND ABUSE 321, 321-342 (2000) (research indicates that between 10 to 20 percent of children are exposed to domestic violence annually).

7 Silverman, J.G., *Child Custody Determinations in Cases Involving Intimate Partner Violence: A Human Rights Analysis*, 94 AMERICAN JOURNAL OF PUBLIC HEALTH 951 (2004) (courts frequently fail to consider documentation of domestic violence in custody determinations); Kernic, M.A., et al., *Children in the Crossfire: Child Custody Determinations Among Couples with a History of Intimate Partner Violence*, 11 VIOLENCE AGAINST WOMEN 991 (2005)(courts frequently fail to identify domestic violence and provide adequate safety protections in court orders, even where a history of substantiated violence is known to exist).

8 NEB. REV. STAT. §42-929 (court shall issue an order prohibiting contact with the victim); R.I. GEN. LAWS § 12-29-4(a)(1)(2010) (condition for pretrial release requires no contact with the victim); UTAH CODE § 77-36-2.5 (2010) (no pretrial release unless suspect consents to or the court orders no contact with the victim); 725 ILL COMP. STAT. 5/110-10(d)(2010)(bail conditioned on no contact with victim); COLO. REV. STAT 18-1-1001 (2010) (MANDATORY PROTECTION ORDER FOR ANY SUSPECT CHARGED WITH A CRIME INVOLVING DOMESTIC VIOLENCE); WIS. STAT. ANN. § 968.075 (2010)(suspect upon release shall not contact the victim).

9 N.C. GEN. STAT. § 15A-534.1 (2010) (authorizes the pretrial detainment of persons charged with crimes of domestic violence); 18 PA. CONS. STAT. § 2711(c)(2) (in determining bail the court shall consider the safety of the victim); MISS. CODE ANN. § 99-5-37 (2010); TEX. CODE CRIM. PROC. ARTS. §§ 17.15 & 17.152 (2010); N.J. STAT. ANN. § 2C:25-26(a)(2010) (the court may issue a No-Contact Order as a condition for bail); 2009 N.D. ALS 134, 1 (the court shall consider and may issue a protection order prohibiting contact with the victim); OR. REV. STAT. § 107.720(4)(2010); WASH. REV. CODE ANN. § 10.99.040(2)(2010)(the court authorizing release may issue a No-Contact Order).

10 See e.g., FLA. STAT. § 741.2901 (2010); CAL. PENAL CODE § 273.75 ALASKA STAT. § 12.30.027 (2010); MINN. STAT. §629.72 (2009); GA. CODE ANN. § 17-6-1 (f)(2)(2010); OHIO REV. CODE ANN. § 2919.25(B)(4); W. VA. CODE §§ 48-27-1002; CONN. GEN. STAT. § 54-64a.

11 See e.g. State v. Rodman, 94 Wash. App. 930 (Wash. Ct. App. 1999) (in a jurisdiction where a statute *permits* a court to issue a no-contact order as a condition of pretrial release from a charge involving domestic violence, and that statute is *silent* as to the victim's children, courts have relied on such a statute to *also* include the victim's children in the no-contact order, and a defendant violates such an order if defendant contacts the victim, or the victim's children, regardless of whether defendant is in jail).

12 See e.g., FLA. STAT. § 741.2901 (2010) (court shall consider the safety of the victim, the victim's children, and any other person who may be in danger if the defendant is released); CAL. PENAL CODE § 273.75 (the "court shall consider the safety of the victim, the victim's children, and any other person who may be in danger if the defendant is released"); ALASKA STAT. § 12.30.027 (2010) (the court shall consider the safety of the victim and the safety of the other household members); MINN. STAT. §629.72 (2009) (providing for conditions of release in cases of domestic assault or harassment to protect the victim or other household member); GA. CODE ANN. § 17-6-1 (f)(2)(2010) (no contact between victim and any member of victim's family); OHIO REV. CODE

ANN. § 2919.25(B)(4) (the court should consider the threat posed to any person); W. VA. CODE §§ 48-27-1002 (a domestic violence arrest is evidence that the “accused constitutes a threat or danger to the victim or other family or household members for the purpose of setting conditions of bail”); CONN. GEN. STAT. § 54-64a (pretrial release conditions shall assure the safety of any person).

13 See e.g. CAL. PENAL CODE § 273.75(a) (2009); FLA. STAT. § 741.28(3) (2010); See also statutes listed in FN 11, which are states in which children are routinely added in no-contact orders.

14 FLA. STAT. § 914.24; See also, CAL. PENAL CODE § 136.2 (2010) (during the pendency of a criminal proceeding when the court has a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, the court is authorized to issue a restraining order).

15 But see, TEX. FAM. CODE § 85.025(a) (Texas provisions allowing a no-contact order to extend beyond a criminal trial and allowing for a permanent protective order to stay in effect for the time period stated in the order up to a maximum of 2 years); TEX. FAM. CODE § 85.025(c) (allowing the protective order to be extended for one more year from the date of an abuser’s release from prison if the abuser is in prison on the date that the protective order is set to expire).

16 See e.g., FLA. STAT. 741.30.

17 *Supra* note 4, 19 (referring to the study where “physical abuse was present in more than half of the families in the study. Hitting the children was the most common form of reported physical abuse, followed by throwing the children, throwing objects at children, and pushing children who were trying to protect their mothers out of the way.” Other physically abusive behaviors included shaking a baby, strapping a child to a bed with a belt, pushing a child’s head into a dirty dishwasher, and dragging a child down stairs.)

18 For example, in some domestic violence incidents, abusers throw the children at the victim in efforts to injure either or both.

19 *Supra* note 4, 19 (Examples of emotional abuse that children reported include calling the child a “little slut,” telling the child they “should have been an abortion,” abusing the children’s pets; deliberately breaking the children’s toys; threatening to burn the house down; telling the children their mother/grandmother doesn’t love them; telling the children the mother was having an affair, had AIDS and was dying, and was a drug user.)

20 Judith G. Greenberg, *Domestic Violence and the Danger of Joint Custody Presumptions*, 25 N. ILL. U. L. REV. 403, 414 (2005).

21 *Supra* note 4, 19 (Study found that children were injured incidentally to the abuser’s attack against the mother, including a child who was burned when the abuser threw a kettle of boiling water at the mother.)

22 CAL. PENAL CODE § 273a (2010); N.Y. PENAL LAW §260.10 (2010); GA. CODE ANN. § 16-5-70 (2010); N.J. STATE ANN. § 2C:24-4 (2010); IDAHO CODE § 18-1501 (2010); NEV. REV. STAT. § 200.508 (2010); MICH. COMP. LAWS ANN. § 750.136b (2010); DEL. CODE ANN. tit. 11, § 1102 (2010); ARK. CODE ANN. § 5-27-206 (2010); TEX. PENAL CODE ANN. § 22.041 (2010); MO. REV. STAT. § 568.045 (2010); TENN. CODE ANN. 9-15-401 (2010); IND. CODE § 35-46-1-4 (2010).

23 See e.g. *People v. Campbell*, 23 Cal. App. 4th 1488 (3d DCA 1994) (general intent satisfies the requirement of the statute).

24 See e.g. *People v. Dallas*, 165 Cal. App. 4th 940, 942-943 (4th DCA 2008).

25 DEL. CODE ANN. TIT. 11, § 1102 (2010); GA. CODE ANN. § 16-5-70; N.C. GEN. STAT. ANN. § 14-33 (WEST 2010); OKLA. STAT. ANN. TIT. 21, § 644 (WEST 2010); UTAH CODE ANN. § 76-5-109.1 (2010).

26 See WYO. STAT. ANN. § 6-4-403 (2010); N.J. STAT. ANN. § 2C:24-4 (2010); MONT. CODE ANN. § 45-5-622 (2010); N.H. REV. STAT. ANN. §

639:3 (2010); 18 PA. CONS. STAT. ANN. § 4304 (2010); HAW. REV. STAT. ANN. § 709-904 (2010); MO. REV. STAT. § 568.045 (2010); TENN. CODE ANN. § 39-15-401 (2010); IND. CODE § 35-46-1-4 (2010).

27 See IDAHO CODE § 18-1501 (2010); NEV. REV. STAT. § 200.508 (2010); MICH. COMP. LAWS ANN. § 750.136b (2010); CAL. PENAL CODE § 273A (2010); DEL. CODE ANN. tit. 11 § 1102 (2010); MINN. STAT. § 609.378 (2010); ARK. CODE ANN. § 5-27-206 (2010); TEX. PENAL CODE ANN. § 22.041 (2010).

28 *People v. Smith*, 1995 N.Y. Misc. LEXIS 715 (N.Y. Crim. Ct. 1995).

29 *Smith*, N.Y. Misc. LEXIS at *715 (quoting *People v. Alexander*, 149 Misc. 2d 361 (N.Y. Crim. Ct. 1990)).

30 *People v. Parr*, 155 A.D. 2d 945 (N.Y. App. Div. 1989).

31 Jeffrey P. Greipp, Toolsi G. Meisner & Douglas Miles, *Intimate Partner Violence Victims Charged with Crimes Against Their Batterers: Justice and Accountability for Victims who Use Violence Against Their Batterer*, AEQUITAS: THE PROSECUTORS’ RESOURCE ON VIOLENCE AGAINST WOMEN (Dec. 2010).

32 ALASKA STAT. § 12.55.155 (2010); ARIZ. REV. STAT. § 13-702(C) (2010); CAL. PENAL CODE 1170.76 (2010); HAW. REV. STAT. ANN. 706-606.4 (2010); MISS. ANN. CODE § 97-3-7(3), (4) (2010); MONT. ANN. CODE § 45-5-206(v) (2010); OHIO REV. CODE ANN. 2929.12 (2010); REV. CODE WASH. (ARCW) § 9.94A.535 (2010). In Arkansas, Florida, Idaho, Louisiana, and Oregon a defendant who commits an offense of domestic violence in the presence of a child may receive a harsher sentence. ARK. ANN. CODE § 5-4-702 (2010); FLA. STAT. ANN. 921.0024 (2010); IDAHO CODE 18-918 (2010); LA. REV. STAT. ANN. § 14:35.3 (2010); OR. REV. STAT. 163.160 (2010).

33 See , ALASKA STAT. § 12.55.155 (2010); ARIZ. REV. STAT. § 13-702(C) (2010); ARK. ANN. CODE § 5-4-702 (2010); CAL. PENAL CODE 1170.76 (2010); FLA. STAT. ANN. 921.0024 (2010); HAW. REV. STAT. ANN. 706-606.4 (2010); IDAHO CODE 18-918 (2010); ILL. COMP. STAT. 720 § 5/12-3.2 (2010); MISS. ANN. CODE § 97-3-7(3), (4) (2010); MONT. ANN. CODE § 45-5-206(v) (2010); N.C. GEN. STAT. § 14-33(d) (2010); OHIO REV. CODE ANN. 2929.12 (2010); OKLA. STAT. ANN. tit. 21 § 644 (2010); OR. REV. STAT. 163.160 (2010); 8 P.R. LAWS ANN. 632 (2010); REV. CODE WASH. (ARCW) § 9.94A.535 (2010).

34 See e.g. 720 ILL. COMP. STAT. ANN. 5/12-3.2; NEV. REV. STAT. ANN. § 200.485 (WEST 2010); OHIO REV. CODE ANN. §§ 2929.12, 2929.17 (WEST 2010); OKLA. STAT. ANN. tit. 21 § 644 (WEST 2010).

35 Op. of the Justices, 427 Mass. 1201, 1203 (1998) (also noting that “parents’ interests in their relationships with their children are not absolute, because the overriding principle in determining the rights of a parent to custody must be the best interest of the child.”)

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