

CHAPTER 11

CHILD ABUSE AND NEGLECT CASES WHERE DOMESTIC VIOLENCE IS A FACTOR

This chapter is intended to alert the reader to the impact of domestic violence in child maltreatment (e.g. [RCW 26.34](#), [RCW 26.44](#), and [RCW 13](#)) cases and emphasize that judicial officers should determine if domestic violence exists in the families involved in every child abuse and/or neglect proceeding, even if social workers have not made note of it.

Over the last decade, communities across Washington State have begun work to create a more coordinated response to cases where both child maltreatment and domestic violence exist. Some communities have followed a model protocol template developed in 2005 by state leaders in the fields of child welfare, domestic violence, and the courts. It is based in part on national efforts through the “Greenbook” initiative.¹ The goals of such a response include (1) increased safety for children, (2) support for parents who are victims of domestic violence, and (3) accountability for perpetrators of domestic violence.²

In addition, Washington State’s Department of Social and Health Services (DSHS) has developed internal policies to improve its response to cases in which domestic violence is a primary concern or a complicating factor.³ Courts should familiarize themselves with DSHS’ policies and protocols relating to child welfare cases involving domestic violence, to determine whether appropriate assessments have been conducted and relevant services have been provided as a part of permanency planning, and make informed decisions about the placement of children.

This chapter is not intended to serve as a manual for abuse and neglect proceedings, but it is intended to provide guidance on dependency cases in which domestic violence is a factor.

I. THE EFFECTS OF DOMESTIC VIOLENCE ON CHILDREN

Many studies have identified the potential negative impact of exposure to domestic violence on children. In Chapter 2, VI, Dr. Anne Ganley, PhD, describes how domestic violence puts children at risk for physical, psychological, developmental, and emotional damage. Department of Justice research indicates that 43 percent of the time in which women were victims of intimate

¹ The statewide model template can be found at: <http://www.courts.wa.gov/committee/docs/protocolTemplate.doc>. This template was developed following the model promoted by the National Council of Juvenile and Family Court Judges. See, Susan Schechter & Jeffrey Edleson *Effective Intervention in Domestic Violence & Child Maltreatment Cases: Guidelines for Policy and Practice*, National Council of Juvenile and Family Court Judges (1999).

² The *Coordinated Response to Child Maltreatment and Domestic Violence Guidelines* is posted at <http://www.kingcounty.gov/kcsc>, and the document is entitled DV response guidelines.

³ A. Ganley & M. Hobart, *Social Workers’ Practice Guide to Domestic Violence*, Washington State Department of Social and Health Services, Children’s Administration (2010 and revised in 2016), available at: <https://www.dshs.wa.gov/sites/default/files/SESA/publications/documents/22-1314.pdf>. A summary of this guide is available in Appendix A.

partner violence, children were residents of the household.⁴ Other research suggests that in an estimated 30 to 60 percent of the families where either domestic violence or child maltreatment is identified, it is likely that both forms of abuse exist.⁵ A Washington State study of child maltreatment reports made to Child Protective Services (CPS) revealed that domestic violence was present in 20 percent of referred cases. And, 47 percent of the cases were assessed as having a moderate to high risk.⁶

In 2006, the National Council of Juvenile and Family Court Judges and the Office of Juvenile Justice and Delinquency Programs published a comprehensive report, *Children's Exposure to Domestic Violence: A Guide to Research and Resources*, providing an overview of existing research and model practices in providing services for children.⁷ Studies indicate that exposure to domestic violence itself may not cause physical injury to a child, yet statistically it increases the probability that the child will become a victim of child abuse or neglect.⁸

Between 1997 and 2013 in Washington State, of the 485 domestic violence victims killed by abusers or their associates, at least 36 percent of the victims had children living in the home with them at the time they were murdered. The majority of the victims' children were present at the time of the homicide and 30 percent witnessed the murder. Abusers killed 54 children alongside their mothers.⁹

The studies that generated these statistics and many similar studies and statistics emphasize the exposure large numbers of children have to domestic violence. When the child is the direct victim of an assault or battery by a family member, the physical harm to the child is obvious; however, when the child is exposed to domestic violence, the ramifications often are undetected. For example, child welfare agencies maintain child abuse statistics in general categories or referral types such as parental drug/alcohol abuse; sexual abuse; and neglect (which in Washington is taken to include physical abuse, medical neglect, and chronic neglect).

⁴ S. Catalano, Ph.D., *Intimate Partner Violence in the United States*, Bureau of Justice Statistics, <http://www.ojp.usdoj.gov/bjs/intimate/ipv.htm> (December 2006).

⁵ H. Lien Bragg, *Child Protection in Families Experiencing Domestic Violence*, Child Abuse and Neglect User Manual Series, U.S. Department of Health and Human Services (2003). To obtain a copy of this manual, contact 800-393-3366 or order on-line at the Child Welfare Information Gateway, <http://www.childwelfare.gov/pubs/usermanual.cfm>.

⁶ English, D.J., Edleson, J.L. & Herrick, M.E., Domestic violence in one state's child protective caseload: A study of differential case dispositions and outcomes. *Children and Youth Services Review*, 27, 1183-1201. (November 2005).

⁷ A. Summers, *Children's Exposure to Domestic Violence: A Guide to Research and Resources*, The National Council of Juvenile and Family Court Judge's Permanency Planning for Children Department (PPCD), in collaboration with the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) Safe Start Demonstration Project, (2006). See, <http://www.ncjfcj.org/sites/default/files/Childrens%20Exposure%20to%20Violence.pdf>

⁸ D. J. English, D. B. Marshall, and A. J. Stewart, "Effects of family violence on child behavior and health during early childhood," *Journal of Family Violence*, 18(1), special Issue: LONGSCAN and family violence, 43-57 (2003); For resources on Adverse Childhood Experiences and trauma, see, http://www.nctsn.org/sites/default/files/assets/pdfs/judge_bench_cards_final.pdf

⁹ Jake Fawcett, *2013 Domestic Violence Fatalities in Washington State*, WASHINGTON STATE COALITION AGAINST DOMESTIC VIOLENCE, 2014, available at <http://dvfatalityreview.org/2014/03/17/2013-domestic-violence-fatalities/>

Exposure to trauma, including domestic violence, has short- and long-term consequences. Factors, depending on the child's age, gender, stage of development, and role in the family, may exacerbate or ameliorate the effects of domestic violence on children. Pre-school children exposed to domestic violence may suffer from nightmares, inability to control bladder and/or bowel movements, excessive clinging, and fear of abandonment, all, in turn, affecting the child's mental health, adjustment, and ability to learn. At this stage, many of the symptomatic behaviors will be seen only within the immediate family and reporting to the legal system would thus be minimal. The consequences of early exposure may subsequently be noticed in testing and developmental assessments, but the causes may not be so obvious.¹⁰

Exposure to domestic violence can be extremely traumatic for children.¹¹ Some of the more subtle effects, which will not be apparent in testing and assessment, include the belief that violence is an appropriate method of trying to resolve conflict, especially in the context of an intimate relationship, or viewing physical aggression as an acceptable way to get respect or control. Children may tend to feel responsible for family violence, and take upon themselves the role of protector. Again, this type of behavior may inhibit academic performance, social adjustment, and self-esteem.

Research also shows that some children do not demonstrate negative effects when exposed to domestic violence. Several reasons might factor into the lives of children who show great resiliency in the face of exposure to violence, including secure attachment with a caregiver, or strong connection to an extended family network.¹²

A. CHILD MALTREATMENT AND DOMESTIC VIOLENCE

Historically, the reasons for court involvement in the parent-child relationship have been based on the legal concepts of abandonment, or abuse and neglect. Earlier definitions of abandonment encompassed circumstances that showed a "willful substantial lack of regard for parental obligations." *In re Adoption of Lybbert*, 75 Wn.2d 671, 453 P.2d 650 (1969). Parental obligations include: (1) expressions of love and affection for the child; (2) expressions of personal concern over the health, education, and general well-being of the child; (3) the duty to supply the necessary food, clothing, and medical care; (4) the duty to provide an adequate domicile; and (5) the duty to furnish social and religious guidance. *Id.*

¹⁰ See S. Hill "Through the Eyes of the Infant," in *Child Neglect and Infant Mental Health*, program materials from the Superior Court Judges' Association 2007 Spring Conference at <http://inside.courts.wa.gov/index.cfm?fa=controller.showBceConferences>.

¹¹ In 1988, in Snohomish County, seventeen-year-old Andrew Janes murdered his stepfather after years of exposure to domestic violence, direct and indirect. The case is cited for its rulings on the battered child syndrome, and also provides a real and graphic portrait of the effects of domestic violence on children and the failure of the system to intervene. *State v Janes*, 121 Wn.2d 220, 850 P.2d 495 (1993).

¹² C. Dalton, L.M. Drozd, & F.Q.Wong, *Navigating Custody and Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide*. National Council of Juvenile and Family Court Judges (2004); M.K. Alvord & J.J. Grados, *Enhancing Resilience in Children: A Proactive Approach*, Professional Psychology; Research and Practice, 36(3), 238-245 (2005).

The parent-child relationship is so significant that it is protected in terms of fundamental rights and constitutional due process and “[i]t is the general rule that courts zealously guard the integrity of the natural relation of parent and child.” *Lybbert*, at 674. However, when the rights of the parents and the rights of the child come into conflict, there is a clear and emphatic requirement that the rights and safety of the child prevail. *In re Matter of Allen*, 139 Wash. 130, 245 P. 919 (1926); [RCW 13.34.020](#).

With early refinements of the child welfare statutes, the advent of mandated reports, and heightened public awareness of the effects of domestic violence on children, complaints of domestic violence concerns to Child Protective Services (CPS) were likely to be unaddressed. It is now understood that child maltreatment encompasses exposure to domestic violence, where a child’s health, welfare, or safety are harmed. [RCW 26.44.020\(1\)](#).¹³

II. JUDICIAL DECISIONS: CHILD WELFARE PROCEEDINGS WITH DOMESTIC VIOLENCE FACTORS

Child abuse and neglect proceedings in the State of Washington are governed by [RCW 13.34](#) *et seq.* The juvenile court has *exclusive, original jurisdiction* over the child once an [RCW 13.34](#) petition has been filed. [RCW 13.04.030](#). This means the placement, parental contact, visitation, and services for the child cannot be addressed in another court including proceedings for parenting plan orders or protective orders. *In re Marriage of Perry*, 31 Wn. App. 604, 644 P.2d 142 (1982). The juvenile court may, and in appropriate circumstances should, grant concurrent jurisdiction with another court.

The juvenile courts are empowered to issue orders for:

- Emergency removal
- Temporary shelter care
- Dependency fact finding and disposition
- Permanency planning
- Return home
- Termination of parental rights
- Adoption
- Court-approved placement, guardianship; third party custody,

Any of these proceedings might involve placement or visitation. The court may be called upon to make or approve a change of placement between or among relatives, foster care, group care, or

¹³ In the landmark case of *In re Nicholson*, the New York Administration for Children Services’ (ACS) practice of removing children from parents solely because they were victims of domestic violence was found unconstitutional. While this case is specific to New York law, the case has implications for states that treat children’s exposure to domestic violence, without more, as a form of child neglect warranting removal. *In re Nicholson*, 181 F. Supp. 2d 182 (E.D.N.Y. Jan 3, 2002) (NO. CV 00-2229) opinion supplemented by *Nicholson v. Williams*, 203 F. Supp. 2d 153 (E.D.N.Y. Mar. 18, 2002); question certified by *Nicholson v. Scoppetta*, 344 F. 3d 154 (2d Cir. 2003); certified question accepted by *Nicholson v. Scoppetta*, 807 N.E. 2d 283 (2d Cir 2003); certified question answered by *Nicholson v. Schoppetta*, 820 N.E. 2d 840 (2004).

independent living. The success of a placement depends on the fit of the placement and the child. Accordingly, the court should strive to understand the child's background and circumstances, as well as the safety and suitability of the placement resource.

A. Definitions of Dependency

[RCW 13.34.030\(6\)\(a\)-\(c\)](#) provides:

“Dependent child” means any child who:

- (a) Has been abandoned;
- (b) Is abused or neglected as defined in [Chapter 26.44 RCW by a person legally responsible for the care of the child](#);
- (c) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development; or
- (d) is receiving extended foster care services, as authorized by RCW 74.13.031.

The cross-referenced definition of abuse and neglect in [RCW 26.44.020\(1\)](#) states:

“(1) ‘Abuse or neglect’ means sexual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety, excluding conduct permitted under [RCW 9A.16.100](#); or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.” [RCW 26.44.020](#).

Further, [RCW 26.44.020\(16\)](#) provides that negligent treatment or maltreatment includes acts or omissions, which “evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the child's health, welfare, or safety.... *Poverty, homelessness, or exposure to domestic violence as defined in [RCW 26.50.010](#) that is perpetrated against someone other than the child does not constitute negligent treatment or maltreatment in and of itself.*” (Emphasis added). The intent of this 2007 amendment is to ensure that courts did not remove children from the non-abusive parent solely because she/he was a victim of domestic violence.

B. Emergency Removal

[RCW 13.34.050\(1\)\(a\), \(b\)](#) provides that the court may order law enforcement, CPS, or a probation counselor to take a child into custody when a dependency petition has been filed alleging that the child is dependent and that “the child's health, safety, and welfare will be seriously endangered” if not taken into custody and one of the supporting allegations “demonstrates a risk of **imminent** harm to the child.” (*Emphasis added.*)

Thus, in an ex parte pick up order, some more immediate and pressing risk than the secondary or developmental effects discussed above seems to be required. (Obviously, if the child is alleged to be the direct victim of an assault, this is established.)

C. Shelter Care

A child picked up pursuant to a court order must be placed in shelter care and a hearing held within seventy-two hours, excluding weekends and holidays. The shelter care hearing, conducted pursuant to [RCW 13.34.060](#), addresses whether there is reasonable cause to believe the child's health, safety, or welfare is in jeopardy. "Jeopardy" might reasonably be construed as danger or risk. All child welfare proceedings are concerned with risk to some degree, but pick-up requests and shelter care hearings especially are concerned with imminent risk.

1. Domestic Violence Identification and Risk Assessment at Intake

Washington CPS policies direct intake workers to screen every child abuse or neglect report for domestic violence, inquiring whether or not any adult in the household has been violent or threatening to any other adult. If the answer is yes, then CPS policies direct intake workers to conduct specialized domestic violence assessments¹⁴ at intake interviews and during service planning, monitoring, and review to determine the risk that domestic violence poses to the child. In determining whether to "screen in" a case for further investigation, the Department considers "domestic violence which physically harms a child or puts a child in clear and present danger" to constitute child abuse. If an intake involves domestic violence but there is no indication of direct child abuse and or neglect or that there is no clear and present danger of harm, intake will document the domestic violence information and "screen out" the intake.¹⁵

2. "Screened In" Domestic Violence Cases

Because domestic violence may pose a significant risk to both a child's physical and mental health, the Department must does not have to "stay its hand until actual damage to the endangered child has resulted." In re Welfare of Frederiksen, 25 Wn. App. 726, 733, 610 P.2d 371, 375 (1979). When the danger of serious damage is evident, the Department may properly intervene to protect a child's "right to conditions of minimal nurture, health and safety." Frederiksen at 733.

Failure to provide an emotionally nurturing, stable home can be considered neglect, particularly if the cumulative effects of a pattern of conduct, behavior, or inaction, that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the child's health, welfare, or safety, [RCW](#)

¹⁴ A. Ganley & M. Hobart, *Social Workers' Practice Guide to Domestic Violence*, Washington State Department of Social and Health Services, Children's Administration (2010 and revised in 2016), available at: <https://www.dshs.wa.gov/sites/default/files/SESA/publications/documents/22-1314.pdf>; A summary of CPS practice guide for social workers is provided in Attachment 1 of this chapter as a reference for the court to assist in determining whether the Department has fulfilled its obligation in providing services. See also, Appendix A for more detailed information relating to domestic violence assessment.

¹⁵ Washington State Children's Administration, *Practices and Procedures Guide*, Chapter 2000, section 2220, available at <https://www.dshs.wa.gov/ca/publications/practices-and-procedures-guide>.

[26.44.020\(14\)](#); *In re Welfare of Dodge*, 29 Wn. App 486, 628 P.2d 1343 (1981). It is the perpetrator of domestic violence who should be held accountable for the behavior that causes emotional harm to the child, not the adult victim/survivor.

At the shelter care stage hearing, the court will typically have little information beyond the facts alleged in the verified petition and the testimony of those witnesses available on short notice. Social history will not have been collected, assessments have not been yet ordered, let alone completed, and a Court Appointed Special Advocate (CASA) has not been appointed. Whatever placement is being considered, if there is a hint of domestic violence concern, a domestic violence database screen should be required. (See Chapter 9 for instructions on using the Judicial Access Browser (JABS)). Shelter care placement can be with the parents with court-imposed conditions including ordering the perpetrator to leave the home, mandating that the adult victim-parent-custodian enter a shelter approved by the CPS worker, or requiring a suitable relative to move into the home.

If the perpetrator is incarcerated, and there appears time to accomplish it before release, the juvenile court can grant the non-abusing parent an order excluding the perpetrator from their shared residence in order to protect the children from further harm or coercion. Child welfare workers may also request a protective order requiring the perpetrator to leave the home in the context of a shelter care hearing. The non-abusive parent may be encouraged to obtain a domestic violence protection order. The court may also restrict the perpetrator's access to the child when "it is alleged that a child has been subjected to sexual or physical abuse." [RCW 26.44.063](#). A concurrent jurisdiction order should also be entered if the perpetrator has any legal rights with respect to the child.

D. Dependency, Fact Finding, and Disposition or Termination

Shelter care is a legal status as well as a physical placement. It lasts until the dependency petition is granted or dismissed. If granted, pursuant to stipulation or fact-finding, the court is required to enter a disposition order. [RCW 13.34.130](#). The purpose of the disposition is to address parental deficiencies to reunite the family. Compliance of the parent and the social service agency with court ordered service plans is monitored through the permanency planning process. If the reunification appears unlikely, an alternative permanent plan including termination of parental rights is developed. [RCW 13.34.145](#).

In order to terminate parental rights, the court must follow a three-step process. First, the court must determine whether the child is dependent. [RCW 13.34.030\(6\)](#). Second, the State must hold a review hearing every six months to review the progress of the parties and determine whether court supervision should continue, and allow parents to remedy their deficits. [RCW 13.34.138](#). Third, the State must prove six factors by clear, cogent, and convincing evidence. [RCW 13.34.180](#), [RCW 13.34.190](#). These factors are:

- (a) That the child has been found to be a dependent child;
- (b) That the court has entered a dispositional order pursuant to [RCW 13.34.130](#);

- (c) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency;
- (d) That the services ordered under [RCW 13.34.136](#) have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided;
- (e) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the future. . . ; and
- (f) That the continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

If these steps have been followed, and the court continues to find the child dependent, the court focuses on the best interests of the child, which must be proven by a preponderance of the evidence. *In re Dependency of K.N.J.*, 171 Wn.2d 568, 257 P.3d 522 (2011).

It should be noted that Washington law allows the state to terminate the parental rights of one parent while the other parent's rights remain intact. "The rights of one parent may be terminated without affecting the rights of the other parent and the order shall so state." [RCW 13.34.200](#). This may be of particular interest in cases involving domestic violence, as one parent may be capable of parenting while the other may be unfit to parent.

1. Current Unfitness Must Be Shown

In order to determine whether a child is dependent under [RCW 13.34.030\(6\)](#), the trial court must make an explicit finding that the parent is currently unfit. In *In re Dependency of B.R.*, 157 Wn. App 853, 239 P.3d 1120 (2010). In *B.R.*, the mother appealed the trial court's decision to terminate her parental rights after one of her children had been taken to the hospital for a head injury, which the doctor said was consistent with the type of injury caused by being shaken. The trial court identified the parental deficiency as the mother's relationship with abusive partners (her inability to set limits with abusive partners) and her failure to substantially improve the deficiencies within twelve months following the entry of the dispositional order. However, the mother completed all of the court-ordered services. The Court of Appeals reversed the order terminating the mother's rights, finding that DSHS had not met its burden of establishing current parental unfitness by clear, cogent, and convincing evidence.

See also, In re Welfare of A.G., 160 Wn. App. 841, 248 P.3d 611 (2011), where the trial court terminated the mother's parental rights, the Court of Appeals affirmed, and the Supreme Court remanded to Court of Appeals for reconsideration. On remand the Court of Appeals held the trial court's findings were insufficient to support an implied finding of current unfitness. Trial court's findings were insufficient to support an implied finding that mother was presently unfit to parent, as required for termination of mother's parental rights absent an express finding of unfitness; although trial court found that it was unlikely that conditions of child neglect, drug

abuse, domestic violence, and mental illness would be remedied so that children could be returned in the near future, trial court did not find that mother currently neglected children, found that mother was nurturing and had healthy interactions with children, and that mother's chemical dependency was apparently in remission and it was not clear from trial court's findings that mother's domestic violence and mental illness deficiencies were relevant to her ability to parent.

In *In re Welfare of A.B.*, 168 Wn.2d 908, 232 P.3d 1104 (2010), the father was not found to be unfit when he had a history of drug abuse and domestic violence and there was evidence that he was a drug dealer at one point. He was not unfit because he had completed drug treatment, had been clean and sober for four years, was willing to continue counseling and treatment, and had been engaged in the child's life.

But see, In re Dependency of S.M.H., 128 Wn. App 45, 115 P.3d 990 (2005) the mother was unwilling to appreciate the risk her relationship with the children's father posed to the children. Both children's fathers were known to engage in sexually deviant behavior and the mother chose to maintain a relationship with one of the fathers. The mother's parental rights were terminated for the children's best interests.

a. History of Domestic Violence

At any stage of proceedings, a history of domestic violence is as important as a current act of domestic violence for two reasons. First, in child welfare cases the entire history of parenting is before the court, not just the specific acts that are alleged in the petition. *In re Ross*, 45 Wn.2d 654, 277 P.2d 335 (1954). Second, past history is a factor to be considered in assessing current parental fitness. *In re Dependency of J.C.*, 130 Wn.2d 418, 924 P.2d 21 (1996) (case involving a history of substance abuse). In the context of domestic violence, it is important to understand the history of domestic violence because it provides information about the likelihood that the perpetrator will continue to use violence in the future. Research indicates that though many perpetrators understand that their abusive behavior has negative impacts on their children, and express concern about the effects on their children, such statements of concern are poor indicators of their intentions to refrain from abusive behavior.¹⁶ In addition, children who have been exposed to domestic violence may be afraid of the domestic violence perpetrator, and understanding the history of domestic violence may indicate what steps, if any, should be taken to mend the relationship between the children and the domestic violence perpetrator.

However, the state cannot solely rely on a history of domestic violence to demonstrate current unfitness. *In re Welfare of C.B.* 134 Wn. App. 942, 143 P.3d 846 (2008) (State cannot rely solely on past substance abuse to prove current unfitness when the evidence shows the parent is responding to treatment). In the

¹⁶ E.F. Rothman, D.G. Mandel, & J.G. Silverman, "Abusers' Perceptions of the Effect of Their Intimate Partner Violence on Children," *Violence Against Women*, Nov. 13 (11): 1179-91 (2007).

context of domestic violence victimization, research indicates that many domestic violence survivors parent as effectively as possible in difficult contexts, and their children feel attached to, and safe and supported with their non-abusing parents, even in the context of the abuse.¹⁷ Understanding the history of domestic violence is important to place parenting challenges in context, and to understand what the parent has done to protect the children.

2. Disposition

Shelter care is a legal status as well as a physical placement. It lasts until the dependency petition is granted or dismissed. If granted, pursuant to stipulation or fact-finding, the court is required to enter a disposition order. [RCW 13.34.130](#). The purpose of the disposition order is to address parental deficiencies to reunite the child with one or more parents who can care for that child. Compliance of each parent and the social service agency with court ordered service plans is monitored through the permanency planning process. If the reunification with one or both parents appears unlikely, an alternative permanency plan including termination of one or more parent's parental rights is developed. [RCW 13.34.145](#).

Washington law allows the state to sever one parent's rights while maintaining the other parent's. [RCW 13.34.200](#). Thus, if a victim of domestic violence is able to parent, and the primary disruption to the children's safety and stability is the continued presence of another parental figure committed to engaging in violent behavior, the state can move to sever the abuser's parental rights while maintaining the parental rights of the abused parent.

3. Services

Dependency dispositions and permanency plans emphasizing reunification should be tailored to address domestic violence concerns. The specialized domestic violence assessment adopted by DSHS is intended to provide social workers and courts with specific information on the nature and the impact of the abuse, so that the court may understand not only the risk each adult poses to the child, but also the way in which the history and pattern of domestic violence may negatively impact the adult victim's ability to remediate other concerns. DSHS policy requires social workers to conduct separate specialized domestic violence assessments.¹⁸ It is appropriate for the court to order that DSHS provide tailored services to each caregiver based on the findings from the specialized assessments. For example, DSHS should provide different reconciliation services for each parent, such as trauma-informed mental health counseling for the non-abusing parent, and separate home-based services that serve to strengthen the attachment between the children and non-abusive parent. In addition,

¹⁷ C. Sullivan, et. al, "Beyond Searching for Deficits: Evidence that Physically and Emotionally Abused Women are Nurturing Parents" *Journal of Emotional Abuse* Vol. 2, Issue 1, pp. 51-71, (2001).

¹⁸ See Appendix A regarding assessment of risk posed to children by domestic violence

domestic violence perpetrator treatment, as well as parenting classes for parents who have used violence against their partners, might be included as part of a plan for the abusive parent.¹⁹

Furthermore, referral to services to assist abused parents in addressing their concrete needs such as legal representation in child custody matters, housing, or childcare supports may help alleviate some of the “life-generated risks” facing abused parents (e.g., housing instability, need for child support, lack of income), in addition to the potential risks posed by an abusive partner.²⁰

4. Termination

If the three steps have been followed, and the court continues to find the child dependent, the court focuses on the best interests of the child, which must be proven by a preponderance of the evidence. *In re Dependency of K.N.J.*, 171 Wn.2d 568, 257 P.3d 522 (2011).

5. Aggravated Circumstances to Terminate Parental Rights

Reasonable efforts to reunify the family may be forgone where there is clear, cogent, and convincing evidence that aggravated circumstances exist. [RCW 13.34.132\(4\)](#) identifies several such circumstances without mention of domestic violence. The court may order DSHS to file a termination petition when any aggravating circumstances make it unlikely that the provision of services to the parent would lead to the family’s reunification. *In re Dependency of J.W.*, 90 Wn. App. 417, 953 P.2d 650 (1969).

Furthermore, aggravated circumstances to expedite termination of parental rights are not limited to those enumerated in [RCW 13.34](#). Any aggravating circumstances that make it unlikely that the provision of services to the parent would lead to the family’s reunification may be used. *In re Dependency of J.W.*, 90 Wn. App. 417, 953 P.2d 104 (1998). Findings of aggravated circumstances must be based on clear, cogent, and convincing evidence. [RCW 13.34.132\(4\)](#).

In *In re Dependency of C.B.*, 79 Wn. App. 686, 904 P.2d 1171 (1995), the father was imprisoned for domestic violence manslaughter of the mother, and his parental rights

¹⁹ F. Mederos, *Accountability and Connection with Abusive Men-A New Child Protection Response to Increasing Family Safety*, Family Violence Prevention Fund, (2004), available at: <http://www.thegreenbook.info/documents/Accountability.pdf>

²⁰ However, the trial court lacks authority to order State to provide housing funds. *In re Welfare of J.H.*, 75 Wn. App. 887, 880 P.2d 1030 (1994). The court should be aware of separation of power *issues* between the executive and judiciary if considering ordering DSHS to perform specific actions in abuse and neglect cases. *E.g.*, *In re Welfare of Lowe*, 89 Wn.2d 824, 576 P.2d 65 (1978); *In re Detention of W.*, 70 Wn. App. 279, 852 P.2d 1134 (1993).

were terminated after his release from prison. The trial court used the aggravating factor “murder or manslaughter of the parent’s spouse.” Father claimed this amounted to an “automatic” termination in violation of his due process rights. The Court of Appeals held that it is not the fact of the aggravating circumstance that compelled the termination; rather, the aggravating circumstance triggers application of a more stringent standard of proof on the key issue of whether the parental deficiencies could be remedied in “the near future.”

E. Practice Tips²¹

The two most important things a judge can do in a child abuse or neglect case are to ask questions and craft appropriate orders.

1. Ask questions

a. For the agency social worker:

Is there domestic violence in this case? Were family members interviewed separately? Did you conduct a domestic violence assessment? If so, who is the domestic violence perpetrator? Who is the adult victim?

What was the nature of the child’s exposure to domestic violence? Was there physical or emotional abuse by the alleged abusive parent? Was there physical or emotional abuse by the adult victim of domestic violence?

Does the domestic violence perpetrator’s abusive behavior toward the adult domestic violence victim place the child at imminent risk of serious harm?

Did you or your agency consider the risks to the child of removal, such as separation anxiety, sibling loss or school change? In what ways did the risk of harm outweigh the trauma of removal?

Is the alleged perpetrator of domestic violence also the alleged primary perpetrator of abuse or neglect? If the victim parent is not the primary perpetrator of abuse or neglect, can it be made safe for the child to return home with the victim parent?

How does the domestic violence perpetrator’s abusive behavior toward the adult victim impact the ability of the family to address issues of concern for the child?

How have you worked with the family to minimize the domestic violence perpetrator’s ability to control and abuse his or her intimate partner, and therefore, the child?

²¹ An excellent resource to consult in cases involving domestic violence and dependency is: L. Goodmark, *Reasonable Efforts Checklist for Dependency Cases Involving Domestic Violence*, National Council of Juvenile and Family Court Judges (2008), available on at: http://www.ncjfcj.org/sites/default/files/reasonable_efforts_checklist_web2010.pdf

How have you worked to increase the capacity of the adult domestic violence victim to create safety for herself or himself and the child?

b. For the parent:

What is the last thing you did to get your child back?

c. For both:

Inquire about other adults and children that may be in the child's environment.

Use the domestic violence database in the Judicial Access Browser (JABS) for placement resources that are not known to the DSHS. DSHS does not have access to this database and requires several days at best to get a criminal history report.

2. Craft appropriate orders

Where there is domestic violence in child protection cases, judges should make orders which include:

- a) Keeping the child and parent victim safe;
- b) Keeping the non-abusive parent and child together whenever possible;
- c) Holding the perpetrator accountable;
- d) Identifying the service needs of all family members, including all forms of assistance and help for the child; safety, support, and economic stability for the victim; and rehabilitation and accountability for the perpetrator;
- e) Creating clear, detailed visitation guidelines which focus upon safe exchanges and safe environments for visits;^{22, 23} and,
- f) Being consistent with other orders involving the parties and involved persons.

²² Recommendation No. 57, *Effective Intervention in Domestic Violence & Child Maltreatment Cases*, (National Council of Juvenile & Family Court Judges, 1999).

²³ Courts should consider whether supervision is warranted for visitation, where the parent has not abused or neglected the children, but rather the risk is posed by the domestic violence perpetrator.

ATTACHMENT 1

PROMISING JUDICIAL PRACTICES IN DEPENDENCY AND DOMESTIC VIOLENCE CASES

Recommended practices during child dependency court hearings (shelter care, probable cause, disposition, and review) when domestic violence may be present.

1. Identify whether or not domestic violence is an issue in each case.
2. Within the resources of your court, establish a one judge-one family rule.
3. Provide competent and trained public defense counsel.
4. Recognize the tribe as a key partner in Indian Child Welfare Act cases.
5. Encourage cultural awareness among court personnel and culturally appropriate access throughout the dependency process.
6. Create a secure and safe environment in the court.
7. Establish court procedures that increase the likelihood that all relevant information is before the court in timely manner.
(Enforce statutory deadlines for filing reports to the court. Continue the matter if the caseworker assigned to the case is not in court. Continue hearings if appropriate domestic violence screening and /or assessment information is not included in the reports.)
8. When domestic violence is identified in a dependency case, evaluate/assess the specific risk posed by the domestic violence to the child and the adult victim.
9. Determine if reasonable efforts have been made in both assessments and services that increase the safety of the child and adult victim and that hold the domestic violence perpetrator accountable.
10. Create court orders in dependency cases that increase safety of both adult victim and child and that hold the domestic violence perpetrator accountable.
11. Consider setting 60- or 90-day reviews in certain cases rather than the statutory six-month review process.
12. Encourage cross training on domestic violence for all dependency court professionals.
13. Increase collaboration with all dependency court professionals, community-based resources, and domestic violence advocates.

List compiled by the faculty for the *Promising Judicial Practices in Dependency and Domestic Violence Cases* training. See *Chapter 5: Courts, Effective Intervention in Domestic Violence and Child Maltreatment Cases* in *Guidelines for Policy and Practice, Recommendations from the National Council of Juvenile and Family Court Judges, (The Greenbook)* <http://www.ncjfcj.org/>, 1-775-784-6012