

Domestic Abuse* Information for Child Custody and Parenting Time Evaluators

Why should Custody Evaluators screen for domestic abuse in every case?

Effective and accurate evaluations require knowledge of all relevant facts. Domestic abuse not only affects those who are abused, but also has a substantial effect on children, family members, friends, co-workers, other witnesses, and the community at large. **Children who grow up witnessing domestic abuse are among those seriously affected by this behavior.** Identifying the existence of domestic abuse and its past, present, and continuing impact children is critical to recommending safe and appropriate parenting plans. Frequent exposure to abuse in the home impacts children and youth neurologically, psychologically, socially, academically, and behaviorally, likely resulting in trauma, diminished health, and other life challenges.

- By the time children in the U.S. are between 14-17 years of age, 27% have been exposed to intimate partner violence.¹
- In the same study, when courts included self-reporting, the incidence of domestic violence was 78%.²
- A National Center for State Courts study suggested that up to 24% to 27% of disputed custody cases have court documented domestic violence (based on history of protective orders or criminal domestic violence cases).³ These are the most physical and reported incidences.
- Locally, 36% of Multnomah County Family Court Services' mediation clients report on intake paperwork that they have concerns for their safety. Staff report they are able to identify domestic abuse in about 50% of cases.⁴
- Exposure to abusive behavior can be as damaging as being directly abused.

Due to the prevalence noted above and the important implications for custody and parenting time decisions, Oregon law (ORS 107.137; (1) (d)) specifically requires the consideration of "the abuse of one parent by the other" as a factor in deciding the custody of minor children. New information has emerged regarding best practices for assessing domestic abuse in custody cases and nationwide surveys indicate that many evaluators have not updated their competency in this area.

Additionally, the National Association of Social Workers (NASW), the Association of Family and Conciliation Courts (AFCC), and the American Psychological Association (APA) require that custody evaluators understand and follow the laws governing parenting decisions about children. NASW, AFCC, and Oregon's State Family Law Advisory Council (OFLAC) specify that custody evaluators receive training about intimate partner abuse. NASW considers domestic abuse one of six Areas of Evaluation. The AFCC recently published guidelines and several national organizations have devoted grant money and conference time to ensuring that Custody Evaluators have access to resources to update their training in this area.

* Domestic Abuse is used throughout this document to include coercive, power and control dynamics, instead of solely criminal, physical violence. When statistics are cited related to intimate partner or domestic violence, they do include all forms of abuse, not just physical.

¹ Futures Without Violence Fact Sheet: *The Facts on Children's Exposure to Intimate Partner Violence.*

<https://www.futureswithoutviolence.org/userfiles/file/Fact%20sheet%20on%20Children%20Exposed%20to%20IPV%202013.pdf>

² Susan Keilitz et al., *Domestic Violence and Child Custody Disputes: A Resource Handbook for Judges and Court Managers*, prepared for the National Center for State Courts State Justice Institute, NCSC Publication Number R-202, at 5.

³ Ibid.

⁴ Moyer, Judith. Multnomah County Family Court Services Statistics. May 2016

Therefore, credible evaluations require investigating domestic abuse. Asking if there is domestic abuse is only the first step. Parties (including children) may not wish to discuss abuse for a variety of reasons, including worry for safety, discomfort, trauma response, shame, and fear of retaliation. Additionally, victims may fail to recognize their partner's behaviors constitute domestic violence. Often people in abusive situations will use euphemisms when describing abuse, such as anger, communication problems, fighting, controlling, behaviors, or high conflict. Peter Jaffe found that about 20% of cases in family court are labeled as "high conflict," but the majority of these have domestic abuse as a significant issue.⁵ People that are abused, often take responsibility for abuse by saying things like "I push buttons" or "I have a mouth on me."

Also, important to note that there is not a psychological profile for people that are abusive. An abusive person's profile on tests such as the MMPI often look normal, while an abused person's profile looks abnormal due to trauma from the abuse.

Without understanding of domestic abuse, adaptive coping mechanisms can be seen as bad or impaired parenting. Once a frame of domestic abuse dynamics is imposed on the case, those coping mechanisms are seen as savvy. Also, take note of what is driving the disclosure, concern for the child(ren) or contempt of the other parent.

It is important that Custody Evaluators recognize the characteristics of abuse so they do not overlook or misunderstand behaviors that might further jeopardize child or parent's safety. Keep in mind that clients are more likely to disclose if they:

- Know you are talking about this subject with all of your clients -- they are not being singled out;
- Know why the information is important to their case;
- Understand how the information will be used;
- Know that they will be heard and understood;
- Are confident the evaluator understands the impact of domestic abuse on families; and
- Are confident that disclosure will not lead to further abuse to them or their children.

Effective evaluations address domestic abuse directly. The goal in each case in which domestic abuse is identified is to:

- Understand the nature of the abuse;
- Understand the context of abuse;
- Make factual findings that support the existence of abuse;
- Determine the implications of abuse; and
- Account for the abuse in conclusions and recommendations.

When domestic abuse is identified, it is important to be very specific in your report regarding the procedures used to identify the features of the abuse enumerated above, to identify the impact on the children, and to write a specific plan to address safety. Be specific about details in safety focused parenting plans and leave as few things up for negotiation as possible. Plan multiple options for items that may likely need to change, like if a family member is supervising exchanges, think of a secondary contact. In general, parenting plans that have flexibility can be easier for families, but in domestic violence each opportunity for negotiation offers opportunities to manipulate or exert control. It is perfectly acceptable to acknowledge uncertainties, but equally important to account for them in your recommendations. Also, be prepared to make appropriate referrals and address any immediate safety concerns for parents and their children. Information about resources and relevant laws is included below.

⁵ PETER JAFFE, MICHELLE ZERWEER, AND SAMANTHA POISSON, CENTRE FOR CHILDREN AND FAMILIES IN THE JUSTICE SYSTEM, ACCESS DENIED: THE BARRIERS OF VIOLENCE AND POVERTY FOR ABUSED WOMEN AND THEIR CHILDREN AFTER SEPARATION 1 (2004).

Finally, the presence of domestic abuse has safety implications not only for the victim and their children, but also for you and your staff. Being aware of the issue will help you identify and address potential safety concerns. Information about safety planning is included below. Domestic abuse not only affects those who are abused, but also has a substantial effect on family members, friends, co-workers, other witnesses, and the community at large. **Children who grow up witnessing domestic violence are among those seriously affected by this behavior.** Frequent exposure to violence in the home can impact children and youth psychologically, socially, academically, and behaviorally, resulting in trauma, diminished health outcomes, and low academic achievement. By the time children in the U.S. are between 14-17 years of age, 27% have been exposed to intimate partner violence.

What is domestic abuse?⁶

Domestic abuse is a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over the other partner. It may or may not be illegal behavior. Domestic abuse can be physical, sexual, emotional, economic, stalking, or psychological actions or threats of actions that influence another person or used to gain/maintain power and control. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. Below are some examples, these are used in service of power and control.

Physical Abuse: Hitting, slapping, shoving, grabbing, pinching, biting, hair pulling, etc. are types of physical abuse. This type of abuse also includes denying a partner medical care (chronic issues, injuries from abuse, reproductive care, hormones or surgery for a transgender partner), or forcing alcohol and/or drug use upon them.

Sexual Abuse: Coercing or attempting to coerce any sexual contact or behavior without consent. Sexual abuse includes, but is certainly not limited to, marital rape, attacks on sexual parts of the body, forcing sex after physical violence has occurred, or treating someone in a sexually demeaning manner. Sexual abuse can also include consequences for not having sexual contact, such as not allowing a partner to sleep or not allowing access to family money for food and hygiene items. These may be times victims/survivors say “yes” but only because they did not feel as if they could say “no” without consequence.

Emotional Abuse: Undermining an individual's sense of self-worth and/or self-esteem is abusive. This may include, but is not limited to constant criticism, diminishing the other person's abilities, name-calling, or damaging the other parent's relationship with their children.

Economic Abuse: Preventing an individual from acquiring, using, or maintaining financial resources by maintaining total control over financial resources, withholding someone's access to money, forbidding one's attendance at school or employment, ruining the family's credit/rental history, or not spending family money responsibly.

Psychological Abuse: Elements of psychological abuse include - but are not limited to - causing fear by intimidation; threatening physical harm to self, partner, children, or partner's family or friends; destruction of pets and property; causing the individual to feel “crazy” and confused; and forcing isolation from family, friends, school or work.

Domestic violence can happen to anyone regardless of race, age, sexual orientation, religion, or gender. Domestic violence affects people of all socioeconomic backgrounds and education levels. Domestic violence occurs in both opposite-sex and same-sex relationships and can happen to intimate partners who are married, living together, or dating.

⁶ Sources: National Domestic Violence Hotline, National Center for Victims of Crime, WomensLaw.org., and Futures Without Violence. Copied from: <http://www.justice.gov/ovw/domestic-violence> with modifications.