

5-2021

## How to End the Cycle of Domestic Violence: Policies Focused on Children

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### Recommended Citation

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Available at: <https://lawpublications.barry.edu/cflj/vol9/iss1/3>

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## How to End the Cycle of Domestic Violence: Policies Focused on Children

### Cover Page Footnote

J.D. Texas A&M University School of Law, 2020. I would like to thank Professor Susan Ayres for her encouragement and assistance through the writing of this article.

## How to End the Cycle of Domestic Violence: Policies Focused on Children

*Ashley Phillips\**

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## ABSTRACT

There is an alarming amount of people who witness childhood domestic violence, and when children are exposed to domestic violence, they are subjected to a cycle of violence and trauma that exists in families for generations.<sup>1</sup> However, society does not focus on trauma-exposed children to help break the cycle of domestic violence, even though child witnesses and victims become future abusers and prison inmates. This paper explains the cycle of domestic violence and its traumatic effects, examines the problems and limits of the law in respect to family intervention, and concludes with policy solutions focused on assisting children exposed to domestic violence in order to break the detrimental cycle. Just by witnessing domestic violence in their homes, children are subject to traumatic experiences and can become future abusers and victims because they fall into the cycle of domestic violence. What if society's solutions focused on the children? The next generation? The seeds of the cycle?

### I. INTRODUCTION

More than three million children are affected by domestic violence each year in the United States, a number that has been on the rise.<sup>2</sup> Furthermore, more than forty million adults in the United States were once these children.<sup>3</sup> With these startling statistics, there is an even more startling issue: children are not the focus of stopping the cycle of domestic violence. Domestic violence can be a repetitive cycle because abuse between parents or against children can be passed down through generations. In the worst situations, this cycle can be repeated for many generations.

The children who are subjected to the cycle of domestic violence become "trauma-exposed." Trauma-exposed children are children who grow up with physical and sexual child abuse and witness domestic violence.<sup>4</sup> Because these children are the most likely to end up perpetrating violence and abuse on others, populating our prisons, and experiencing violence and abuse themselves, professionals should focus

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<sup>1</sup> *10 Alarming Domestic Violence Statistics*, CHILDHOOD DOMESTIC VIOLENCE ASS'N (June 6, 2011), <https://cdv.org/2011/06/10-alarming-domestic-violence-statistics/> (last visited Apr. 29, 2021).

<sup>2</sup> *Id.*

<sup>3</sup> *You Are Not Alone*, CHILDHOOD DOMESTIC VIOLENCE ASS'N, <https://cdv.org/what-is-cdv/you-are-not-alone/> (last visited Nov. 8, 2020).

<sup>4</sup> CASEY GWINN, CHEERING FOR THE CHILDREN: CREATING PATHWAYS TO HOPE FOR CHILDREN EXPOSED TO TRAUMA 62 (2015).

on where the cycle starts, rather than ineffective solutions on how to help the violence once it occurs.<sup>5</sup> We need to make children the center of our efforts to stop the cycle.

Domestic violence<sup>6</sup> needs a preemptive approach rather than theories and solutions that showcase the responses necessary after incidents of violence have already occurred. There are many procedures and policies currently in place that try to help decrease domestic violence, but they only take place after the violent incident.<sup>7</sup> Focusing anti-domestic violence efforts on children will help to break the cycle at the onset rather than when it is too late.

This paper observes the traumatic effect domestic violence has on children and how that effect causes the cycle of domestic violence. It also focuses on the need for society to intervene and what the limits and concerns are for intervening with families. Finally, this paper suggests some possible solutions, or at least places to begin, for helping trauma-exposed children in order to break the cycle of domestic violence.

## II. THE TRAUMATIC EFFECT OF DOMESTIC VIOLENCE ON CHILDREN WHO ARE WITNESSES OR VICTIMS

Children subjected to domestic violence experience traumatic events that affect their lives and behavior, which can lead to alcohol abuse, depression, illicit drug use, intimate partner violence, smoking, suicide attempts, and adolescent pregnancy.<sup>8</sup> These children fall into the cycle of domestic violence, especially when there are no positive people present in their lives to help them refrain.<sup>9</sup>

### A. Childhood Trauma

Other than witnesses or victims of domestic violence, childhood trauma can result from numerous experiences.<sup>10</sup> Adverse childhood experiences that lead to trauma include physical, emotional, and sexual

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<sup>5</sup> *Id.*

<sup>6</sup> When this paper mentions “domestic violence,” it is referring to any violence (including physical, sexual, and emotional abuse) between partners, significant others, and the family. For purposes of this paper “domestic violence” encompasses family violence and intimate partner violence, which are other terms often times used to describe domestic violence as well.

<sup>7</sup> Danielle D. Swerin et al., *Police Response to Children Present at Domestic Violence Incidents*, 23(4) SAGE J. 417, 419 (2018).

<sup>8</sup> These problems are taken from results of Adverse Child Experience (ACE) studies and reflect some of the social and health problems that result when children are exposed to trauma. See Mary Boullier & Mitch Blair, *Symposium: Social Pediatrics, Adverse Childhood Experiences*, 28 Pediatrics & Child Health, 134-35 (2018).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

abuse, physical and emotional neglect, alcohol or drug abuse by a parent, mentally ill parent, divorce, incarceration of a parent, and childhood domestic violence.<sup>11</sup> Any type of trauma can launch the cycle in a child's life.<sup>12</sup> Even divorce and witnessing emotional abuse between parents can create a traumatic experience for a child.<sup>13</sup> Although not as visibly impactful, divorce does have a profound impact on a child's life and can cause high levels of stress.<sup>14</sup> Physically and emotionally harmful or threatening experiences that occur in a child's life contribute to his or her adverse childhood experiences, which in turn increase his or her trauma.<sup>15</sup>

Despite everything that instigates childhood trauma, domestic violence is a leading cause.<sup>16</sup> More than three million children witness domestic violence each year in the United States.<sup>17</sup> Childhood trauma, including domestic violence, is one of the top predictors of "misbehavior in teenagers, major health issues, poor academic performance, substance abuse, risky sexual behaviors, criminality, and juvenile and adult incarceration in the county, state, or federal jail and prison system."<sup>18</sup> Additionally, research has found trauma to affect children's physical health, as well as mental health.<sup>19</sup> For instance, childhood trauma has been found to impact gene structure, which results in health issues later in life.<sup>20</sup> Furthermore, trauma victims have a lower life expectancy because many will make poor health choices and fail to address chronic health issues.<sup>21</sup>

Regardless of which type of trauma children experience, they are subject to a life-long journey of problems.<sup>22</sup> Domestic violence is a major

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<sup>11</sup> These experiences are taken from Adverse Child Experience (ACE) studies and reflect some of the experiences that cause childhood trauma. *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Additionally, many children still report trauma from the divorce years later. Gwinn, *supra* note 4, at 51.

<sup>15</sup> It is important to note that trauma can occur whether the experiences are an event, series of events, or set of circumstances. That means, that only *one instance* can have traumatic effects on children, not to mention a series of continuous abuse. *Id.* at 10.

<sup>16</sup> When reading "childhood trauma" throughout the rest of this paper, keep in mind a leading form of childhood trauma is experiencing domestic violence, including physical, sexual, and emotional abuse.

<sup>17</sup> See *Rates of Childhood Abuse and Exposure to Domestic Violence*, RCDV:CPC, <https://www.rcdvpc.org/rates-of-child-abuse-and-child-exposure-to-domestic-violence.html>, (last visited Apr. 29, 2021).

<sup>18</sup> Gwinn, *supra* note 3, at 255.

<sup>19</sup> Boullier, *supra* note 8, at 133.

<sup>20</sup> *Id.* at 135.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 133-34.

contributor to childhood trauma and has proven cyclical results in an affected child's life.<sup>23</sup> The cycle could be present for as long as the children do not receive help through positive influences in their life.

### *B. The Cycle of Domestic Violence*

Once children witness or become victims of domestic violence, they immediately enter into the cycle of domestic violence. Children exposed to domestic violence are at risk for "anxiety, depression, social isolation, increased physical and psychological aggression, and propensity to perpetuate the cycle of domestic violence."<sup>24</sup> Domestic violence is cyclical because most children who are subjected to it become victims or abusers themselves as they age.<sup>25</sup> For example, "children growing up in violent homes have a six times higher likelihood of attempting suicide, a twenty-four percent greater chance of committing sexual assault crimes, a seventy-four percent increased incidence of committing crimes against the person, and a fifty percent higher chance of abusing drugs and/or alcohol."<sup>26</sup>

The cycle is easy to understand when considered in terms of the child's experience. If a child sees violence in his or her environment, the child cannot be expected to know that violence is not the normal relationship response or the way that society functions. When conflict is met with violence and abuse over and over again, children learn that they should handle their problems with violence and abuse.<sup>27</sup> Children who have witnessed violence as the preferred method of conflict resolution within their homes may have no concept of non-abusive alternatives.<sup>28</sup> It is essential to intercede in the cycle early with children and focus on teaching them that abuse and violence, especially within the family, is not normal or appropriate. Educating children at an early age on the proper ways to deal with conflict, especially when they are exposed to violence at home, is also essential.

The cycle of domestic violence can become apparent in a child as early as grade school when his or her violent propensities are released through bullying classmates. Most bullies have learned violence as a power and control tactic from a parent and release violence at school

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<sup>23</sup> *Id.*

<sup>24</sup> Chan M. Hellman & Casey Gwinn, *Camp HOPE as an Intervention for Children Exposed to Domestic Violence: A Program Evaluation of Hope, and Strength of Character*, 34 CHILD ADOLESCENT SOC. WORK J., 269 (2017). Emphasis added.

<sup>25</sup> Sarah M. Buel, *Why Juvenile Courts Should Address Family Violence: Promising Practices to Improve Intervention Outcomes*, 53 JUV. & FAM. CT. J. 1-2 (2002).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 6.

<sup>28</sup> *Id.*



through bullying.<sup>29</sup> These children take out their frustrations against other students, and sometimes teachers, in the only way they have learned how: violence observed between their parents. These violent propensities can occur even if the child is not abused; it is enough for the child to merely witness one adult abusing another.<sup>30</sup>

Unfortunately, in many situations, the cycle becomes evident in a child's teenage years when he or she ends up in the juvenile system, where there is no focus on the trauma the child has experienced.<sup>31</sup> Violent tendencies can be shown by teenagers through violence against their parents, dating partners, and other peers.<sup>32</sup> Instead of educating teenagers about the trauma they have experienced and why it is wrong, the teenagers are prosecuted, sometimes even as adults, and thrown into the legal system without learning that violence is not the answer to their problems.<sup>33</sup>

There is also a correlation between domestic violence witnesses and victims and mass shooters.<sup>34</sup> Violence can be shown in multiple ways and just as bullying and abuse toward family occurs, mass shootings are another way the cycle of violence can present itself.<sup>35</sup> "Fifty-four percent of mass shootings that occur in the United States are related to domestic or family violence. In forty-two percent of these killings, the perpetrator had exhibited warning signs, including known violent behavior toward an intimate partner, children and other relatives."<sup>36</sup> These facts suggest that ending the cycle of domestic violence could decrease the number of mass shootings.

Additionally, there is a correlation between childhood trauma and Post-Traumatic Stress Disorder ("PTSD"), which is proven by surveys on war veterans.<sup>37</sup> "Initial research from the Iraq and Afghanistan wars seems to show much more significant post-traumatic stress issues in war veterans with a history of childhood trauma than in war veterans with no history of childhood trauma."<sup>38</sup> Moreover, children who witness

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<sup>29</sup> "Bullies are made, not born." Gwinn, *supra* note 4, at 214.

<sup>30</sup> Buell, *supra* note 24, at 2.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Scott M. Karson, *Mass Shootings and Domestic Violence*, 90 N.Y. St. B.A. J. 8, 10 (2018).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 9.

<sup>37</sup> Elizabeth E. Van Voorhes et al., *Childhood Trauma Exposure in Iraq and Afghanistan War Era Veterans: Implications for Posttraumatic Stress Disorder Symptoms and Adult Functional Social Support*, 36 CHILD ABUSE & NEGLECT 423, 432 (2012).

<sup>38</sup> *Id.* at 424.

domestic violence have the same brain abnormalities as soldiers suffering from PTSD.<sup>39</sup> Perhaps combatting cyclical domestic violence could be accomplished through treating childhood trauma with a similar approach as war veterans who experience PTSD.

Regardless of when the cycle begins in a child's life, trauma-exposed children often end up in the prison system. Childhood trauma, including domestic violence, is highly predictive of homicidal conduct later in life, which will land these perpetrators in the prison system.<sup>40</sup> Furthermore, "the large majority of all inmates in the prison system . . . grew up in homes with some mix of child abuse, domestic violence, and/or drugs and alcohol."<sup>41</sup> Even if the cycle of domestic violence does not end in the prison system for an individual, it can cause damages in other areas of life. For instance, domestic violence can cycle into parenting difficulties within a witness's or victim's own family.<sup>42</sup> These difficulties are an expected result of living in an abusive relationship.<sup>43</sup>

In the same way that children become future abusers, they can also become victims of domestic violence later in life by significant others. In fact, the majority of victims of domestic violence grew up in homes with domestic violence.<sup>44</sup> Additionally, victims of childhood sexual and physical abuse make up the largest segment of the human trafficking population in the United States.<sup>45</sup> The effects of domestic violence not only create abusers, it also creates more victims.

Whether future abuser, victim, or both, there is an overwhelming traumatic effect on children, regardless of what responses they display to society. Facts regarding children and domestic violence speak for themselves and provide explicit evidence that there is a cycle woven into domestic violence. There is a definite need to focus on children in ending this cycle. Family intervention and other assistance from society to children is a good place to begin.

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<sup>39</sup> Tanya J. Peterson, *PTSD from Domestic Violence, Emotional Abuse, Childhood Abuse*, HEALTHY PLACE (Feb. 3, 2016), <https://www.healthyplace.com/ptsd-and-stress-disorders/ptsd/ptsd-from-domestic-violence-emotional-abuse-childhood-abuse>.

<sup>40</sup> Gwinn, *supra* note 4, at 60.

<sup>41</sup> *Id.* at 43.

<sup>42</sup> Janet R. Johnston, *A Child-Centered Approach to High-Conflict and Domestic-Violence Families: Differential Assessment and Interventions*, 12 J. OF FAM. STUD. 15, 23 (2006) ("Sadly, victims of domestic abuse are also at higher risk for parenting difficulties.").

<sup>43</sup> *Id.* at 24.

<sup>44</sup> Gwinn, *supra* note 4, at 52.

<sup>45</sup> Karen Countryman-Roswurm & Brien L. Bolin, *Domestic Minor Sex Trafficking: Assessing and Reducing Risk*, 31 CHILD ADOLESCENT SOL. WORK J. 521, 526 (2014).

### III. THE LINE BETWEEN PARENTS' RIGHTS TO RAISE THEIR CHILDREN AND STATE INTERVENTION

This section covers the current process and state responses to domestic violence, the need for family intervention, and critiques of family intervention. Family intervention is one approach to stopping the cycle of domestic violence. "Intervention" is typically a word with a strong connotation; here, intervention refers to families receiving help through an outside source when their relationships are unhealthy. Children exposed to domestic violence need help, and "in the absence of strategic intervention, these experiences will manifest into potentially negative psychological and behavioral reactions that make life difficult."<sup>46</sup> In other words, the absence of strategic intervention is leading to children entering the cycle of domestic violence.

#### *A. Current Process and State Responses*

Law enforcement and community programs have significantly improved in responding to domestic violence in recent decades.<sup>47</sup> However, the appropriate response is still undeveloped, especially in cases where children are involved.<sup>48</sup> For instance, there are currently no requirements for law enforcement officers to even speak to the children who are home during an episode of violence.<sup>49</sup>

Current procedures for law enforcement responding to domestic violence lack the needed training and education. In recent studies, police officers have expressed reservations about speaking with children due to a lack of confidence and training on the matter.<sup>50</sup> Children present at domestic violence incidents are often viewed as observers on the sidelines, rather than primary or secondary victims of violence.<sup>51</sup> A recent survey reveals a serious lack of police concern regarding the harms experienced by survivors of domestic violence with "eighty-three percent of polled service providers report[ing] that their clients called the police only to find that [the police] 'sometimes or often' did not take allegations of domestic violence seriously."<sup>52</sup> There are also instances where police officers do not arrest perpetrators or even force them to

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<sup>46</sup> Hellman, *supra* note 24, at 274.

<sup>47</sup> Swerin, *supra* note 7, at 417.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 418.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 418-19.

<sup>52</sup> Donna Coker et al., *Responses from the Field: Sexual Assault, Domestic Violence, and Policing*, ACLU 1, 3, (Oct. 2015), <https://www.aclu.org/report/highlights-responses-field>.

separate from the victim, despite research suggesting that childhood trauma is lowest when offenders are required to leave after accidents.<sup>53</sup> When police actually do make arrests, there are sometimes mistakes in who gets labeled the victim and who gets labeled the primary aggressor, which results in further trauma within families.<sup>54</sup>

In addition to law enforcement, the legal system's reactions and punishments for perpetrators has room for improvement. For instance, seventy-seven percent of people incarcerated for assault to a *stranger* receive sentences that are longer than two years.<sup>55</sup> In sharp contrast, only forty-five percent of people incarcerated for assault to *family* receive sentences longer than two years.<sup>56</sup> The current punishments for stranger versus family assault imply that committing assault against a complete stranger is more serious than committing assault against a family member. These existing punishments inadvertently continue the cycle of domestic violence.

Current programs that have been implemented are lacking in development for children affected by domestic violence. While numerous states have treatment programs for batterers,<sup>57</sup> these programs are still not being applied in courts or by law enforcement that arrive at a home where there are obvious family violence issues.<sup>58</sup> "Courts that truly care about addressing the cyclical nature of family violence should create the linkages that will provide children with mental health services."<sup>59</sup> If courts would work on applying the treatment programs for batterers and requiring counseling for children present in the relationship between the victim and perpetrator, there would be significant improvement in stopping the cycle of domestic violence. "By providing a child with a voice and with the tools to use that voice in a non-violent, confident matter, the legal system would do much to prevent the next generation from suffering as this one has."<sup>60</sup>

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<sup>53</sup> Swerin, *supra* note 7, at 422.

<sup>54</sup> "A particularly thorny assessment issue is dealing with allegations of mutual violence, trying to figure out if there was a principal aggressor and whether the other party was essentially responding in defense. However, it is helpful to obtain a detailed account of the event from each party separately to examine the clarity, specificity, and plausibility of the incident." Johnston, *supra* note 42, at 19.

<sup>55</sup> Deborah Epstein & Lisa A. Goodman, *Discounting Women: Doubting Domestic Violence Survivors' Credibility and Dismissing Their Experiences*, 167 U. PA. L. REV. 399, 442 (Jan. 2019).

<sup>56</sup> *Id.*

<sup>57</sup> [Hereinafter batterer intervention programs].

<sup>58</sup> Leigh Goodmark, *From Property to Personhood: What the Legal System Should Do for Children in Family Violence Cases*, 102 W. VA. L. REV. 237, 331 (1999).

<sup>59</sup> *Id.* at 338.

<sup>60</sup> *Id.*

*B. The Need to Intervene in Known Domestic Violence Situations*

Although there has been improvement in the last few decades, there is a significant need in implementing strategic intervention programs into families suffering from domestic violence issues in order to stop the cycle of domestic violence. Police departments and community programs need to focus on intervention policies that educate and reconnect people involved in domestic violence, which will protect children from entering into the damaging cycle.

As the first to respond to a domestic violence incident, police officers have an important opportunity to enhance the welfare and safety of the children who are present.<sup>61</sup> Recent studies have found that children who were spoken to and offered support by police officers expressed more positive attitudes about their experience with the police.<sup>62</sup> Additionally, most youth who interact with officers view the contact favorably.<sup>63</sup> As a result, in-person police response significantly reduced trauma symptoms among children present.<sup>64</sup>

A requirement for police officers to talk to any children present at the home during a violent incident could be a huge step in preventing a child from entering into the cycle of domestic violence. But when officers come to the home after a domestic violence call, they generally do not worry about the children who did not see anything and sometimes do not even speak to the children.<sup>65</sup> However, there are senses available to children other than sight. Hearing, or even seeing the aftermath such as scratches and bruises, can cause children to experience traumatic events as if they were watching the abuse directly.<sup>66</sup> The children who have domestic violence present in their day to day lives need the same attention as children who directly witness the violence. When instances of domestic violence occur, it is necessary to interact with the children who witness the violence indirectly the same way as those that witness it directly, and it is also necessary to give advice for coping with trauma and finding alternative, non-violent ways to deal with their issues.

Research suggests that conversations with children can be encouraging and impactful in a child's life.<sup>67</sup> Even a simple thirty-minute visit with a psychiatrist or a Child Protective Service ("CPS") worker within a few weeks after the incident could help children understand the

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<sup>61</sup> Swerin, *supra* note 7, at 418.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 419.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 418.

<sup>66</sup> Goodmark, *supra* note 58, at 244.

<sup>67</sup> Swerin, *supra* note 7, at 418.

consequences of violence and why it is not appropriate. A small, short home visit by a state or government worker could greatly benefit a family and potentially prevent more violence from occurring within that family. Even if that would not stop that particular abuser from committing acts of violence, it could at least educate the children on why they should not develop the same actions as the abuser.

Other than just helping children, intervention has shown that it can positively affect other victims as well.<sup>68</sup> Adult victims of violence, for example, may have psychological reasons to ignore their children's responses or underestimate their vulnerability; as a result service providers don't always rely on battered women to report their children's problems.<sup>69</sup> Through intervention, not only is there an increased likelihood that the children's responses could be better understood but also the "positive police interaction with children at the scene may also serve as a powerful message to the protective parent that the situation is negatively influencing their children, subsequently increasing the likelihood that the victim will seek additional help."<sup>70</sup>

There should be policies set in place that help families preemptively, thus keeping them from entering the court system. The unfortunate, but realistic truth is that many children who witness domestic violence are first identified when their parents engage the court system.<sup>71</sup> Bearing that in mind, there should be extra precautions taken when law enforcement *first* gets involved in families (either through a victim calling or someone else reporting it) when there are children involved. If intervention programs can be executed upon first contact with a family affected by domestic violence, there is an early start advantage in helping and encouraging these families.<sup>72</sup>

Research makes it clear that early intervention through police and community programs would tremendously accelerate stopping the cycle of domestic violence.<sup>73</sup> However, it seems the only actions we have in place to start helping children are for those children who come into the shelters with their parents, or who have already been thrown into the legal system. Typically, at that point, the abuse has already become so bad that the victim felt they had no choice but to leave the home and

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<sup>68</sup> *Id.* at 419.

<sup>69</sup> Goodmark, *supra* note 58, at 335.

<sup>70</sup> Swerin, *supra* note 7, at 419.

<sup>71</sup> Goodmark, *supra* note 58, at 337.

<sup>72</sup> Janet Seden, *Family Assistance Orders and the Children Act 1989: Ambivalence About Intervention or a Means of Safeguarding and Promoting Children's Welfare?*, 15 *Int'l J. L.* 226, 237 (2001).

<sup>73</sup> *Id.*

bring the children with them.<sup>74</sup> These are the most common cases and the cases brought to society's attention most frequently. But, for example, there are instances when the violence does not become severe enough to require going to a shelter and the parents are able to divorce and resolve their issues through the legal system. The children that are put through these circumstances are just as affected by the violence—both physically and emotionally—as the children that witness domestic violence continuously.<sup>75</sup>

By intervening in families exposed to domestic violence, there will be a break in the cycle.<sup>76</sup> The children that witness violence between their parents can be helped through intervention by being taught that violence is not the right solution to their problems. If children learn this sooner rather than later, they could be able to reassess how they should treat others, understand they are subject to certain problems posed by experiencing that trauma, and have a healthy family themselves.

#### IV. ADDRESSING CRITICISMS OF FAMILY INTERVENTION

There are many criticisms of intervention because of the rights infringed upon the family; the issues of re-victimization and further emotional turmoil; and the lack of intervention training. There are ways, however, to correct the disapproval that can make intervention acceptable in families experiencing domestic violence, especially when children are present.

##### *A. State Interests versus Parents' Rights*

The Constitution makes no mention of the family unit nor the rights of children and parents.<sup>77</sup> Therefore, the job of interpreting the

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<sup>74</sup> Earnest N. Jouriles et al., *Children Exposed to Intimate Partner Violence: Conduct Problems, Interventions, and Partner Contact with the Child*, 47(3) J. CLINICAL CHILD & ADOLESCENT PSYCH. 387, 407 (2018).

<sup>75</sup> Gwinn, *supra* note 4, at 5.

<sup>76</sup> "Clinical intervention can reduce the short- and long-term effects of witnessing domestic violence and can reduce the likelihood that children will be victimized as adults. Through intervention, children improve their self-esteem, their ability to develop trusting relationships, and their ability to act appropriately in social situations. They learn techniques for non-violent conflict resolution and to reject violence as a means of dispute resolution. Given the obvious benefits, children who witness family violence should receive specialized mental health services and social service intervention. Yet anecdotal evidence suggests that child witnesses are not being evaluated to assess their need for services and are not receiving needed services." Goodmark, *supra* note 58, at 335.

<sup>77</sup> For an in-depth discussion of the emphasis on parents' rights and the state's rights to children see Barbara Bennett Woodhouse, *Constitutional Rights of Parents and Children in Child Protective and Juvenile Delinquency Investigations*, INT'L SOC. FAM. L.: N. AM. REG'L CONF. 409, 412 (2011).

Constitution's broad principles in specific application to cases involving parents and children has fallen to courts.<sup>78</sup> Through case law, an understood obligation for the state to protect the rights of children has become what is known as the "best interest of the child."<sup>79</sup> Even though state workers would be "intervening" in families, interveners are educating them and encouraging safe family principles which should be considered in the best interest of the children.

The state has the responsibility to always do what is in the best interest of the child.<sup>80</sup> Sometimes, however, the parents have a different idea of what the best interest of the child is. In domestic violence cases, especially where there has been abuse against the children themselves, it is important that the state can intervene to protect children from what their parents think is best for them. For example, a mother may believe that it is in the child's best interest for them to stay with her abusive husband, so the child has a father and "complete" family. However, if domestic violence is cyclical, it will not be in the child's best interest to witness domestic violence between his or her parents. On the contrary, staying in an abusive relationship will subject the child to the cycle of domestic violence. Perhaps the best interest of the child is for the state to intervene, support and educate the family with courses on violence and how it negatively affects children, and provide the child with an idea of how to have healthy relationships.

There are also issues with parents declining the state's help entirely and falling further into domestic violence. A possible solution for high intensity violent families, who would likely be most resistant to outside intervention, is to allow a step-down program where the process would become less intrusive the more the family cooperates. If these highly intrusive interventions are what these families need, then any restrictions on a parent's access must include explicit goals with behavioral criteria that need to be met in order for the parent to graduate to a less restrictive option.<sup>81</sup> Even though the state's interests and parents' rights may conflict, the state is only looking out for the child's best interest and should be able to intervene when necessary.

### 1. Re-Victimization and Further Emotional Turmoil

Some evaluations suggest that subjecting children to the legal system, or bringing in people from outside the family, and having to re-describe their stories will be re-victimizing or re-traumatizing the

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<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 411.

<sup>81</sup> Johnston, *supra* note 42, at 31.



children and other victims.<sup>82</sup> However, if state workers can intervene at the first sign of domestic violence within the household, then it protects the children or victims from even entering the legal system and subjecting them to further victimization. Through early intervention, at the first signs of family violence, the family can potentially heal before entering into the legal system becomes necessary. Intervention would be both a short and long-term effect to helping families break the cycle of domestic violence.

There is also the issue of emotional turmoil on the children who will be subject to intervention.<sup>83</sup> For instance, when a perpetrator is taken from a child's home, the loss of the relationship could cause significant emotional distress;<sup>84</sup> however, if child advocates can intervene early and encourage the family to work together (with appropriate supervision if necessary), then these issues could be solved by an early intervention.

## 2. Lack of Intervention Training

Disturbingly, it is uncommon for many police stations to have trainings on how to approach children in domestic violence incidents.<sup>85</sup> Training state intervenors to focus on both the children's and the parents' rights in domestic violence situations, creates an opportunity to correct the issues that occur in some intervention cases. In addition to educating the officers about a child's potential reaction to domestic violence, trainings could also give the officers more confidence in their approach to helping children.<sup>86</sup> The need for intervention is important enough to overcome the few issues presented, especially when they can be fixed through educating and training state intervenors.

## 3. One Approach to Intervene in Families with Domestic Violence Issues

A child advocate proposes four tasks for intervening in families where there are allegations of domestic violence.<sup>87</sup> The first proposed task is a screening for dangerousness and patterns that signify an abusive relationship in order to start safety plans.<sup>88</sup> The second proposed task is to undertake a good assessment of the nature of the family conflict and

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<sup>82</sup> "Children exposed to trauma are often re-traumatized and re-victimized by well-meaning adults, care providers, and even professionals who don't understand the impact of the trauma." Gwinn, *supra* note 4, at 255.

<sup>83</sup> Jouriles, *supra* note 74, 407.

<sup>84</sup> *Id.*

<sup>85</sup> Swerin, *supra* note 7, at 419.

<sup>86</sup> *Id.*

<sup>87</sup> Johnston, *supra* note 42, at 29-30.

<sup>88</sup> *Id.*

violence focusing on determining how the parenting has been compromised.<sup>89</sup> The third proposed task is to connect the family with relevant community services.<sup>90</sup> The fourth proposed task is to provide case management to help implement the court-ordered access arrangements.<sup>91</sup> This approach solves many of the issues associated with intervention that could be a great start in implementing interventions in communities and, in turn, helping children suffering through instances of domestic violence.

Even with the criticisms associated with family intervention, there are ways to correct these issues and create helpful programs to stop the cycle of domestic violence. Through focusing on the best interest of the children, intervening early, and training professionals, family intervention can be improved and benefit families suffering through the cycle of domestic violence.

#### V. BREAKING THE CYCLE—ASSISTING CHILDREN EXPOSED TO DOMESTIC VIOLENCE

It is easier and less expensive to help children while they are young rather than putting them through the justice system when they are older.<sup>92</sup> If we can step in before the cycle begins, we can affordably save children from their likely future of continuous abuse and victimization and possible jail or prison time. Furthermore, society can prevent future family generations from becoming destructive by helping the children overcome their traumatic experience, which will in turn help parents with children who exhibit behavioral or attitude problems.

##### *A. Society's Approach with Children*

The decrease of domestic violence should begin with children, and the sooner society can start encouraging, educating, and providing therapy to trauma-exposed children, the sooner domestic violence will stop haunting millions of families in the country today. One thing society needs to understand is that each child is unique and should be approached differently. In any attempt to assist trauma-exposed children, it is necessary to understand each child individually and realize the uniqueness of his or her own situation.<sup>93</sup> In order for police training and

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<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> "Abused children are at risk of engaging in criminal behavior earlier in life than non-abused children and at greater risk of continuing that criminal behavior into adulthood." Gwinn, *supra* note 4, at 47-48.

<sup>93</sup> *Id.*

other interventions to improve, individuals who work with children need to be trained on the children's unique characteristics by child specialists or psychologists. Even within the same family, there are multiple ways a child may react to traumatic experiences and each child needs to be approached in the appropriate manner.

Additionally, society needs to understand that the need to work together and understand each child's individuality is very important between government programs, nonprofits, and the judicial system. "The future needs to be all about collaborating agencies, coordinated responses among government and non-government agencies, and faith-based organizations getting serious about investing in the lives of trauma-exposed children in much larger numbers."<sup>94</sup> Without community programs, police stations, and legal departments working together, society's influence on domestic violence will not be impactful.

Society has been unsuccessful in responding at the necessary level to the children impacted as witnesses or victims of domestic violence. In order to have a significant impact on stopping the cycle of domestic violence, society needs to approach the cycle with the understanding that each child, even those within the same family, should be treated differently, and that collaboration is crucial to stop the issue.

### *B. Legal System and Children*

Collaboration between the legal system and child advocates is essential. The legal system includes statutes, judges, and prosecutors. There needs to be greater overlap within the legal system, but also with community programs the legal system could implement to potentially stop the cycle of domestic violence.

#### *1. Undeveloped Laws*

The laws involved with domestic violence have much room for improvement, this varying from the the laws applicable to when an abuser's prosecution is deferred, and laws applicable when an abuser is prosecuted but later released. When an abuser is not prosecuted but the case was reported, the necessity for intervention remains, especially in cases where children are involved. Research has shown that even if the intervention is a short visit in which the children can be educated on how wrong domestic violence is, it is still beneficial for the children.<sup>95</sup> These details have been approached in earlier in this paper, but the suggestion here is to enact laws that require some sort of communication with

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<sup>94</sup> *Id.* at 69.

<sup>95</sup> Swerin, *supra* note 7, at 418.

children who have witnessed or have been victims of domestic violence even in situations when the perpetrator was not prosecuted.

Another concern with the laws are those regarding released perpetrators. Once abusers have gone through the legal system and have been prosecuted, they are eventually released. Due to the high rate of recidivism, even in cases where the abuser is prosecuted, it seems there could be a benefit for having stricter laws enforced on perpetrators even once they are released.<sup>96</sup> For example, if an abuser is sentenced to jail for two years, there is nothing stopping such abuser from going back to his family upon release and committing acts of violence again.

While a victim can petition and receive a protective order, there should not be any delay in obtaining one, rather, there should be something already set in place for the victims, especially when children are involved. Further, once an abuser has been released, the law can be set for the abuser to only have limited contact with the children. For example, the law could state the released abuser can only have supervised visitation with their children for a certain amount of time. Implementing laws with such limitations could help protect families after instances of domestic violence have occurred and help educate children on appropriate responses to difficult situations instead of resorting to violence.

Another way that laws could be improved is by enacting a higher punishment if children are involved in domestic violence cases, either as witnesses or victims. For instance, if the standard punishment for in a domestic violence case is two to five years in jail, the punishment could be raised to five to seven years in jail if there are children within the family, even if the children are not a direct witness of the abuse.

While enacting stricter laws and higher punishments could bring success to stopping the cycle of domestic violence, there will still be an opportunity for defense attorneys to negotiate and try to get the charge reduced. However, just because a defense attorney negotiates for a lesser punishment or lesser charge, does not mean they will be successful. Prosecutors and judges still have a strong influence on enacting the laws and can enforce them as necessary despite a perpetrator's defense.

## 2. Judges and Prosecutors

Judges and prosecutors that work in domestic violence cases need to collaborate with community programs and society as a whole in order

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<sup>96</sup> For more information on recidivism see Robin Fitzgerald & Timothy Graham, *Assessing the Risk of Domestic Violence Recidivism*, 189 CONTEMP. ISSUES IN CRIME AND JUST., 5-6 (2016).

to stop the pattern of domestic violence. Current practices in the courtroom are not focused on the patterns of abuse.<sup>97</sup> By failing to focus on the patterns of abuse, the cycle continues. Perpetrators are released, or have their charges lessened or dismissed, and are able to reenter the community with no education on how to handle violence.

Educational classes that teach perpetrators and victims about the traumatic effects on domestic violence should be required by judges as punishment and should not be negotiable by defense attorneys. There is a critical need for specialized parent education and counseling as well as parent-child reunification therapy as a stepping stone to repair relationships involving incidents that violated a child's trust in a parent.<sup>98</sup> If judges implement community courses for families within the legal system, there will be more access to opportunities to keep families together and healthy, instead of releasing them back into their patterns of domestic violence. The judges can also ensure that children have access to essential mental health services by requiring such programs and courses.<sup>99</sup>

In addition to educational classes, there are certain ways family courts can require families to work together in order to halt the cycle of domestic violence.<sup>100</sup> Family courts could set explicit behavioral goals and treatment contracts with families who are court-ordered to interventions.<sup>101</sup> Setting these goals would not only help improve family relationships, it could also help demonstrate the importance of intervention to the families by teaching them what a healthy relationship resembles and then setting goals for the family to reach. In addition to requiring programs, judges and court personnel should implement more coordination with different parts of the justice system. Coordination is "essential to avoid contradictory court orders, or the case falling through the cracks."<sup>102</sup> Without collaboration between courts and community agencies, interventions run the risk of further fragmenting vulnerable families.<sup>103</sup> Intervention will not likely be successful if there is no organization and collaboration behind the entities working together to break the cycle of violence within families.

Coordination between courts could also give courts information about abusive patterns behind the perpetrator. Courts typically only look

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<sup>97</sup> Epstein, *supra* note 53.

<sup>98</sup> Johnston, *supra* note 42, at 32.

<sup>99</sup> Goodmark, *supra* note 58, at 83.

<sup>100</sup> Johnston, *supra* note 42, at 33.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at 30.

<sup>103</sup> *Id.* at 33.

at whether the children have been harmed in the past.<sup>104</sup> By not focusing on—or sometimes not even having access to—a perpetrator’s history of violence, the courts could be allowing a violent person to remain within a family even though there may not be evidence of physical abuse against the children in that certain family. Through coordination of courts and cases, the controlling court could have access to an individual’s history or patterns and be able to save even more families from being subjected to violence.

By implementing educational classes, setting goals, and coordinating courts in domestic violence cases, judges and prosecutors can improve the laws behind domestic violence. Improving laws by coordinating with community programs and helping families to set goals in order to reconnect in a healthy manner will help children process and potentially heal from the violence they have experienced.

### *C. Step Up to Encourage and Love Children*

In addition to judges and prosecutors working towards improving the laws, there is a necessity for community programs and mentors to step up in order to help encourage and love children. This is especially true regarding the children with adverse childhood experiences, such as those witnessing or falling victim to domestic violence.

#### *1. The Need to Encourage Children Who Are Subjected to the Trauma of Domestic Violence*

Children exposed to trauma may be subject to a long, hard life of struggle to be their best self despite their circumstance, thus, to ease that struggle, society needs to help children exposed to any level of trauma within their homes. Home is the place that children are supposed to feel safe, and if they cannot feel safe at home, they need mentors, educators, and others to help them feel safe when they can. Every child needs a positive, encouraging influence<sup>105</sup> in their life, especially children exposed to trauma since they are not likely getting any positive influence from their parents.

There is no evidence that adverse childhood experiences are decreasing in the United States, rather they are increasing. Without individuals, elected officials, and communities, stepping up to help, it most likely will not decrease. There are always children suffering adverse experiences. From children who witness domestic violence in their homes to children who move within the foster care system, there are

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<sup>104</sup> Goodmark, *supra* note 58, at 19.

<sup>105</sup> Gwinn, *supra* note 4 (refers to these positive influences as “cheerleaders.”).

problems that need to be addressed. For instance, there are currently children being exposed to trauma who are entering the United States from Mexico because they are separated from their families or any known adults by policies enforcing family separation. Additionally, acts similar to VAWA (Violence Against Women Act) need to be prioritized in order to have grant money coming in to protect children. Even through minimal work on these two current issues, or many other constant and pressing matters, people can help address the problems facing children suffering from adverse childhoods.

## 2. How to Encourage Children

Individuals can become mentors for children and help increase the education, love, and encouragement given to children who experience adversity in their childhood. Teachers are a group of individuals that have a huge impact on children. Teachers should have more power to talk to school counselors if they are concerned with a child's behavior as a reflection of his or her home life. If a school counselor could talk to a child and be a positive influence in their life, that is one more person than what the child had in his or her past. Right now, there are limitations regarding questioning a child about abuse.<sup>106</sup> Schools usually deny requests to investigate a reported case absent parental consent or a court order.<sup>107</sup> A simple conversation with a child subjected to domestic violence could show that someone cares about them enough to spend time talking to them and make them feel loved, but schools are not required to allow these important conversations.

Encouragement can start by having programs put into our schools that educate children on the effect of trauma and violence at an earlier age and provide healthy avenues for conflict resolution. In turn, this can lower the rate of trauma-exposed children that never receive the help they need and potentially lower the rates of bullying in schools. By implementing educational programs about violence in a similar way that sexual education programs are implemented, more children can learn the effects of violence and why it is wrong.

Besides teachers and schools, communities can step up to help children as well. For instance, there are shelters in many communities that allow victims of domestic violence to stay while they get back on their feet. However, a shelter is not a permanent solution. There is a gap in protection after the victims leave those shelters that can result in the abuser finding the victims. It is paramount to identify ways to reduce

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<sup>106</sup> 2 Education Law § 6D.01 (2018).

<sup>107</sup> *Id.*

partner aggression following shelter departure.<sup>108</sup> Community programs, such as women's shelters and homeless shelters, need to work to educate victims that come through their doors in order to help them find long term solutions so they don't become victims again. Individuals, schools, and community programs can all play a role in order to help children. Through the help and encouragement of those around them, children can work towards resolving their trauma and become healthy adults who exit the cyclical pattern of domestic violence.

#### VI. CONCLUSION

Domestic violence is a cycle. The children who fall victim to it, learn patterns of behavior that they may not be able to break on their own. As a result, the detrimental cycle of domestic violence can be stopped by focusing efforts on children who are witnesses or victims of domestic violence. The trauma induced on these children can be overcome by strategic education and encouragement. Society needs to encourage these children in order for them to accept and understand their trauma. In order to do so, society needs to educate children on what a functioning family resembles and on proper coping mechanisms, among others. In the end, "[w]e need all children to define themselves around their significance, irrespective of things that are done to them or things they might do to themselves."<sup>109</sup> To break the cycle, we need to be their cheerleaders because every child needs one.

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<sup>108</sup> See Jouriles, *supra* note 74.

<sup>109</sup> Gwinn, *supra* note 4, at 246.