THEY ARE NOT DAMAGED GOODS:
PROTECTING CHILDREN FROM THE PSYCHOLOGICAL
AND EMOTIONAL CONSEQUENCES OF EXPOSURE
TO DOMESTIC ABUSE

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# TABLE OF CONTENTS

I. INTRODUCTION......................................................................................................................... 1  
II. A BRIEF HISTORY OF CHLD MALTREATMENT ........................................................................ 3  
III. RECOGNIZING THE SIGNS AND SYMPTOMS OF INDIRECT CHILD ABUSE.......................... 5  
IV. CREATING A COMPREHENSIVE REMEDY FOR CHILDREN WHO SUFFER PSYCHOLOGICALLY  
    FROM EXPOSURE TO VIOLENCE............................................................................................ 14  
V. CONCLUSION.......................................................................................................................... 19
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I. INTRODUCTION

That child abuse occurs at alarming rates in American society is undeniable. According to one scholar, every day, nearly 2,500 children are abused or neglected.1 A national study also reveals that as many as 8.8 million children under the age of seventeen suffer serious physical injury at the hands of their parents or other caretakers.2 Abuse is sometimes so severe that more than 1,500 children a year die from their injuries.3 Moreover, 3.3 million children are emotionally and psychologically damaged as indirect victims of domestic abuse by either witnessing physical abuse being perpetrated against their siblings or by watching abuse between their parents.4 It should be clear that these are not “cookie cutter” children. They do not all exhibit the same symptoms; the harm differs depending on the extent and kind of exposure, the age of the child and whether there is proper intervention.

With few exceptions we have no difficulty identifying acts of physical abuse. Indeed, when severe child abuse comes to light, we are outraged. We demand justice for the child and harsh punishment for the abuser. But what is our response when a child suffers abuse inflicted by his parent where the parent or caregiver has not made physical contact with him? Do we respond with the same horror or urgency? Consider the following scenarios:

Ten year old Jason wants to be like his friends. He wants to fit in; he wants the kind of stable and peaceful life they have. From all appearances his life seems “normal.” He attends school and plays sports. His friends often invite him to their homes to play video games or to have dinner. He never invites his friends to his home, however. He is afraid they will discover the volatile environment, in which he lives—that his father frequently beat his mother. Sometimes the abuse becomes so severe that his mother blacks out with nearly one-third of the deaths attributed to child neglect).


2 Id. (noting that some experts indicate that every ten seconds, a child will be abused in some manner in America).

3 Id. Wright indicates that the number of children who have died from child abuse has increased exponentially since 1989 when there was an estimated 600 such deaths. By 2004 the number of deaths increased to 1,500. Wright further indicates that these overwhelming figures are conservative since deaths from parental abuse might be incorrectly determined to be accidental or as a result of sudden infant death syndrome. See U. S. DEPT. OF HEALTH AND HUMAN SERV., ADMINISTRATION ON CHILDREN, YOUTH & FAMILIES, CHILD MALTREATMENT 2004 65 (2004), available at http://www.acf.hhs.gov/programs/cb/pubs/cm04/cm04.pdf [hereinafter CHILD MALTREATMENT 2004] (estimating that 1,490 children die due to child abuse,

pain. He sees his mother’s bruises and black eyes. He hears her cries and screams but feels helpless. He finds no comfort that his father does not beat him like he beats his mother and sometimes his younger brother. Even when he seeks refuge in sleep, his brain can not quiet the noise, nor can he escape the constant fear that haunts him.

Suppose that instead of witnessing his father’s abusive behavior, Jason lives in a neighborhood where gun fire and other violence are common occurrences. He has seen more than one of his friends lying in the street dying, having been shot by a rival gang member. He can not concentrate on his homework at home due to the constant barrage of bullets and screams he hears. He knows that failing to be home by dark places him at risk for being victimized by a random bullet. And he is well aware that a random bullet could come through his window and strike a member of his family. When he tries to sleep, he can not quiet the sounds of gunfire. He can not escape the possibility that he will one day be killed by a bullet meant for someone else. Jason has lost all hope; he does not look forward to the future; he can not imagine the possibility that he will reach his twentieth birthday.

In either scenario, the violence emanates from two different sources, both indirect. The familial aggression is an internal source of abuse. The external source of fear and anxiety derives from Jason’s neighborhood and surrounding community. The commonality between them, however, is that in either case, a child is being subjected to severe emotional and psychological abuse. More importantly, this kind of trauma may result in the child’s suffering serious physiological and psychological damage. In this paper, I address the impact of abuse on a child who witnesses abuse, whether the source is internal or external. I explore the consequences of failing to intervene and treat children who are exposed to abuse, regardless of its source. Although the impact of indirect violence on children has been acknowledged for a number of years, these victims of abuse have been, largely, invisible. Indeed, a number of children who witness or who are exposed to indirect violence suffer post-traumatic stress disorder. Often, however, they were neither seen nor heard, but they were nonetheless being scarred, sometimes so deeply that the harm is irreparable.

As I address below, Dr. C. Henry Kempe identified the severe abuse children suffer at the hands of a parent or caregiver by coining the term “battered child syndrome.” The syndrome initially developed as a physical diagnosis for describing abuse and determining the intent of the abuser. Researchers expanded the term to include psychological use to identify the emotional impact on children who suffered from the syndrome. What is critical is that our failure to detect and protect child abuse victims who experience syndrome-like trauma may have dire consequences: either a parent or caregiver will be prosecuted for killing or seriously injuring a child or the abused child will face prosecution for killing an abusive parent or caregiver.

Child abuse does not occur in a vacuum. Frequently, a parent, usually a mother, is being abused by a spouse or intimate partner. This indicates that children often

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7 See Wright, supra note 1, at 76-78 (noting the frequency of abuse of women and children in the
will be in harm’s way, even if they are not being physically or sexually abused. With this knowledge, there is responsibility on the part of parents, social workers, law enforcement, lawyers and judges to try to prevent or minimize the harm to children before serious, perhaps even irreparable, harm occurs. Even after children have endured the abuse, we are still responsible for intervening where possible and helping them to develop into healthy adults. They are not damaged goods. We can not treat them as though they have no potential to become productive members of society. When society fails to come to the aid of psychologically abused children, we leave them open to continued victimization, becoming adult victims of abuse; they will likely become victimizers; and, in extreme cases, they may even kill.

In Part II of this article, I briefly discuss the history of child maltreatment in this country, noting that it was deemed a private matter leading parents and caregivers to treat children as they saw fit. Further, I briefly examine the term “battered child syndrome,” its origins and its present applications particularly during trial. In Part III, I address the long and short term consequences for children when the indirect child abuse goes untreated. In Part IV, I provide suggestions for parents, social workers, law enforcement, lawyers and judges. While indirect child abuse seems to be a private matter, it, like other forms of child abuse, is no less a public concern. Ignoring the harm to children exposed to violence will continue to have grave consequence-for both abused children and for society.

II. A BRIEF HISTORY OF CHILD MALTREATMENT

Maltreatment of children is not a new phenomenon. However, settlers, colonists and early Americans did not recognize child abuse as a problem requiring public intervention. Rather, “Corporal punishment was routine as the recommended practice for promoting children’s obedience and moral development. The prerogatives of parents, guardians, and other adults to use discretion in the discipline and training of children within their charge were rarely questioned.”

Prior to 1874, little attention had been given to any form of child abuse in American society. In early American law, relatively few children successfully alleged child abuse by a parent or guardian. Indeed, many writers point to the case of Mary Ellen Wilson as the turning point in bringing the need for child protection to the public arena. Here, Mary Connolly was prosecuted and convicted for starving and severely beating her ten-year-old stepdaughter, Mary Ellen. As there were no existing agencies established to protect abused children, the court asked the Society for Prevention of Cruelty to Animals to assist with the case. Following the

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9 Id. (noting that there were, generally, informal mechanisms to deal with orphaned, abandoned, and other dependent children).
10 Id. at 42.
12 Wright, supra note 1 at 79 (indicating that the President SPCA compared a children to an animals, indicating that even if there was no justice for

Even after the decision in the Mary Ellen Wilson case, the medical profession was slow to recognize that children were being physically abused by their parent or caregiver. Instead, they often concluded that the multiple fractures sustained by infants and small children were the result of parental accident, child’s being accident prone, or a rare metabolic condition in the child.

It was not until 1962 that Pediatrician Henry C. Kempe coined the term “battered child syndrome” to describe a clinical condition in very young children who had received serious physical injury, usually at the hands of a parent or caregiver. His ground breaking work assimilated the data of a nationwide survey and identified two components of battered child syndrome: clinical manifestations and psychiatric aspects. Moreover, Dr. Kempe identified children as a human being, they should at least have the same rights as stray animals on the street and could not be abused. See also Weithern, supra note 1, at 49-50; Copps, supra note 11, at 499.

Copps, supra note 11, at 499. Copps notes that within forty years, nearly 500 similar societies had been created. Further, she indicates that the government enacted the Social Security Act of 1935 which established the Aid to Dependent Children program. The Act increased the government’s involvement in social welfare, establishing the policy that it was better to provide financial aid to families than to remove children from their home. Id. at 499-500.

Wright supra note 1, at 79.

Kempe, supra note 5, at 17. See also Baldwin, supra note 6, at 61 and accompanying n. 10.

Kempe, supra note 1, at 17-18. See Baldwin, supra note 6, at 61 (noting that Dr. Kempe based his three characteristics in the clinical context: that battered child syndrome could occur at any age, but generally occurred to children younger than three; that there was generally a noticeable discrepancy between the caretaker’s explanation and the medical findings; and that there existed a history of previous injuries, indicating that someone intentionally injured the child. Critically, Dr. Kempe cautioned doctors who began using the term “battered child syndrome” as a diagnostic tool “to have a high level of suspicion of the diagnosis of the battered child syndrome in instances of subdural hematoma, multiple unexplained fractures at different stages of healing, failure to thrive, when soft tissue swelling or the skin are present, or in other situations where the degree and type of injury is at variance with the history given regarding the occurrence.”

Apart from clinical factors, Dr. Kempe stressed the importance of evaluating psychiatric aspects to determine whether a parent intentionally injured his child or whether it was merely an accident. He found that caretakers who injured a child often had been victims of abuse as children, had a low level of intelligence, lacked maturity and generally denied any involvement in the abuse.

Although Dr. Kempe directed his attention to the physiological characteristics of finding on a nationwide survey of 71 hospitals which documented 302 cases of BCS during one year. Of these cases, 33 children died; 85 suffered permanent brain damage.

Baldwin, supra note 6, at 61; Kempe, supra note 5, at 17. Dr. Kempe indicated that BCS should be considered in any case where the child exhibits evidence of possible trauma or neglect such as fractured bones, subdural hematoma or multiple soft tissue injuries, or when there are clear discrepancies between the clinical findings and the historical data supplied by the parents. Id. at 24.

Wright supra note 1, at 79.

Baldwin, supra note 6, at 62.

Id. And see Kempe, supra note 5, at 18-19.
battered child syndrome, he acknowledged that psychological abuse could have far greater consequences. They focused on its psychological aspects to describe the impact on children who endured prolonged child abuse, comparing it to battered woman syndrome. Researchers found that as a result of sustained abuse, children suffering from battered child syndrome display, among other symptoms, hypervigilance, constantly monitoring their safety and becoming accustomed to signs of danger that other do not see. Moreover, researchers argue that like battered women, abused children learn “helplessness,” meaning they do not have the ability to predict what effect their actions have on their safety. They exhibit signs of post-traumatic stress disorder. Courts have recognized both the physiological and psychological components of battered child syndrome and have been willing to admit evidence regarding the battered child syndrome to prove a parent or caregiver intentionally committed child abuse. Generally, judges have not been willing to admit such evidence to prove justification where a defendant asserts the act was in self-defense.

III. RECOGNIZING THE SIGNS AND SYMPTOMS OF INDIRECT CHILD ABUSE

The sources of child abuse are distinct. And while there is some overlap in the symptoms of abuse, they differ depending on the age of the child and the length of time a child is exposed to the abuse. In this section I primarily explore the impact of emotional and psychological abuse on children exposed to violence, particularly those who have not been physically abused. These children have been referred to as “invisible victims” because they exhibit no external scars. Yet they are no less victimized by exposure to internal and external violence.

A. Internal Violence: Childhood Exposure to Domestic Abuse

Millions of children are physically abused each year by a parent or caregiver. Rightfully, we have focused our attention on this form of abuse. Because it is easier to detect, it receives far greater attention due to its physical manifestations. Yet emotional and psychological abuse deserves far greater attention than it has received historically because long after physical wounds have healed, psychological scars continue to endure. It should be of concern, particularly since studies show that it can be psychologically damaging for very young children who witness violence against someone to whom they are attached, such as a parent or caregiver. In fact, witnessing violence against a parent has a much greater impact on a child than does witnessing violence perpetrated against a stranger.

21 Id.
22 Baldwin supra note 6, at 63; Wright, supra note 1, at 76-78.
24 Id.
25 Baldwin, supra note 6, at 64.
26 Parker, supra note 23, at 435; see also Robert Hegadorn, Clemency: Doing Justice to Incarcerated Children, 55 J. MO. B. 70, 71 (1999). Hegadorn asserts that while battered child syndrome has long been used in prosecutions for child abuse, its use has been severely limited in homicide cases to demonstrate a defendant acted in self-defense.

Relying on a 2005 study by the Children’s Defense Fund, one scholar found that as many as ten million children each year witness domestic violence. In support of the findings as to the potential injury to children who are exposed to abuse, in In re Edward C., the California Appellate Court described the plight of two brothers, ages six and nine, who watched their father brutally beat their seven year old sister. He warned them that the beatings were commanded by the Lord. The Court concluded that “it was difficult to conceive that the brothers could not be emotionally or psychologically abused by witnessing the constant acts of cruelty upon their sister.” Professor Nancy Wright powerfully concludes that “Even un-abused children who witness domestic violence suffer from collateral damage, and experience the same psychological problems as children who are directly abused.” They exhibit the same physical and psychological behaviors as children who were directly abused.

B. External Violence: Exposing Children to Community and Neighborhood Violence

The degree to which children are exposed to different types of violence varies. Some children, particularly those living in low-income areas, experience what has been called “chronic community violence,” meaning they endure frequent and persistent exposure to the use of guns, knives and drugs in their community. It is now common to find children in urban elementary schools who have relayed stories about witnessing shootings and beatings as if they were ordinary occurrences. Similar studies support that both children and adolescents living in poor urban areas regularly endure this kind of violence. Though children who do not live in lower socioeconomic neighborhoods experience far less community violence, they do not escape exposure to violence through other sources. Research indicates that these children are exposed to aggression in the media—through television, the movies and the internet. Virtually every child is touched by this form of violence. The consequences of this kind of exposure to community violence may have significant effects on children as they develop and as they form their own personal relationships in both childhood and adulthood.

28 Wright, supra note 1, at 80; Jeffrey L. Edleson, et al., Assessing Children to Adult Domestic Violence, 29 CHILDREN AND YOUTH SERVICES REVIEW 961, 962-63 (2007) available at www.sciencedirect.com (last visited July 17, 2010). Edleson found that studies estimate the number of children exposed to domestic violence annually to be between 7 to 14 million. However, his research indicates that these numbers are based on rough estimates, relying on imprecise definitions, retrospective accounts, or indirect measurement.
29 Id.
30 Id. (citing Joy. D. Osofsky, Children who Witness Domestic Violence: The Invisible Victims citation omitted).
31 Id. See also Seth C. Kalichman, Mandated Reporting of Suspected Child Abuse, ETHICS, LAW & POLICY 12-17 (2d ed. 1999).
32 Kalichman, supra note 31, at 12-17.
34 Id.
36 Id. (citing an American Psychiatric Study which indicates the typical American child watches approximately 28 hours of television per week; by the age of 18, he will have watched nearly 16,000 simulated murders and 200,000 other acts of violence. Moreover, they have access to violence through video sales and rentals, pay-per-view and cable TV and video games).
C. Consequences of Exposing Children to Domestic Abuse and Other Forms of Indirect Violence

1. General impact of psychological maltreatment

Between the 1960’s and the 1990’s, there was widespread professional and public concern about children who were physically abused.37 At present, however, a number of “major professional organizations, such as the National Council of Juvenile and Family Court Judges, the American Bar Association, the American Psychological Association, and the American Medical Association, as well as government agencies, have sponsored conferences, convened task forces, commissioned reports, or published recommendations addressing the policy issues related to protecting and assisting children exposed to domestic violence.”38 This shifting focus toward child exposure reflects a greater concern about psychological or emotional maltreatment. Since the mid 1990’s, researchers and practitioners began to realize that exposing children to family violence is a form of psychological abuse.39 Undeniably, children suffer deep psychological and emotional injury from indirect exposure to violence, even when they simply witness violence between their parents.40 In 1992, Dr. Judith Herman found that repeated trauma in an adult’s life wears away the personality already formed.41 More importantly, however, she indicates children trapped in an abusive environment face the formidable tasks of adaption. They must “find a way to preserve a sense of trust in people who are untrustworthy, safety in a situation that is unsafe, control in a situation that is terrifying, power in a situation of helplessness.”42

Research demonstrates that virtually all children know their mother is being abused. Reports by battered mothers indicate that nearly ninety percent of the time, children witness both the physical and sexual abuse perpetrated by their fathers, stepfathers or a mothers’ boyfriend.43 And whether they are physically abused or are merely eyewitesses to the abuse, their mothers’ abuse severely impacts them.44 This kind of exposure to violence may cause substantial physical, mental and emotional harm with long-term effects that may last even into adulthood.45

A number of scholars and researchers have consistently indicated that children exposed to domestic violence exhibit a wide variety of emotional and psychological effects. One study powerfully describes the devastating impact psychological maltreatment has on children. Researchers found that these children felt unloved, unwanted and inferior;
they displayed low self-esteem; they held a negative view of the world. These effects also include depression, thoughts of suicide, anxiety, fear, insomnia, low self-esteem, bed-wetting, hypervigilance, and desensitization to other forms of violence.

They may also experience post-traumatic stress disorder. The Diagnostic and Statistical Manual of Mental Disorders describes PTSD as the development of characteristic symptoms following one’s “exposure to extreme traumatic stressors involving personal experience of an event that involves actual or threatened death or serious injury, or other threat to one’s physical integrity; or witnessing an event that involves death, injury, or threat to the physical integrity of another person….” PTSD symptoms can occur in children who witness the serious injury or unnatural death of another person. It can occur at any age, including childhood. In addition, one’s response must involve intense fear, helplessness or horror, which in children may be expressed by disorganized or agitated behavior.

Children who experience PTSD do not all respond the same. The results present differently depending on the age of the child. Infants and very young children who experience abuse may show a fear of strangers or be afraid to leave their parent. They may repeat the themes of trauma in their play. They may become “more fussy, irritable, fussy, aggressive or reckless.” They may also exhibit regressive behaviors, losing skills they once had such as toilet training or returning to previous habits such as sucking their thumb. Early trauma over a period of time also affects brain development. Stress can lead to changes in parts of the brain that control and manage feeling, which intern may have long-term effects on a young child’s physical, mental and emotional growth. Young children may also have attachment disorders if they do not develop a proper emotional relationship with parent or primary caregiver.

Children and adolescents experience trauma differently. Elementary school children do not have flashbacks as do adults, but they do experience time-skew, and omen formation. They also engage in posttraumatic play or reenactment.

Very Young Trauma Survivors: The Role of Attachment 1-2 at (UNITED STATES DEPARTMENT OF VETERANS AFFAIRS, NATIONAL CENTER FOR PTSD) [hereinafter Very Young Trauma Survivors] at http://www.ptsd.va.gov/public/pages/very_young-trauma_survivors.asp (last reviewed/updated June 15, 2010) (indicating that because children from ages 1-3 are not able to verbally describe how they feel, other diagnostic tools have been created to determine whether they suffer from PTSD). See also Ososky, supra note 27, at 3-4.

Very Young Trauma Survivors, supra note 53, at 1-2. See also Weithorn, supra note 8 and text accompanying note 374; Gayla Margolin & Elana B. Gordis, Children’s Exposure to Violence in the Family and Community, 13 AM. PSYCHOL. SOC’Y 152, 153 (2004).

Very Young Trauma Survivors, supra note 52, at 3-4.

Id. at 2-3 (indicating that children who receive the proper attachment relationship are secure and readily explore their environment; if not there are characterized as either anxious-ambivalent, anxious-avoidant or disorganized).

See PTSD in Children and Adolescents 2 (UNITED STATES DEPARTMENT OF VETERANS AFFAIRS, NATIONAL CENTER FOR PTSD), 3 at
Adolescent and teen responses to trauma more closely model adult PTSD. There are a few differences, however. For example, they are more likely to engage in traumatic reenactment in which they incorporate aspects of the trauma into their daily lives. They are also more prone to exhibit impulsive and aggressive behavior.

It should also be noted that not all children are harmed by exposure to violence. One study found that eighty percent of children exposed to family violence retained their overall psychological integrity. Even when children were affected, the effects tended to dissipate over time when the batterer was removed from the home. Whether a child will ultimately experience the emotional and psychological effects of exposure to domestic violence depends on a number of factors which include: “(1) nature, severity, and frequency of exposure; (2) nature of the child’s involvement in incident; (3) whether the child has been multiply victimized; (4) the degree to which the adult victim is affected; (5) the child’s relationship to the batterer; (6) the child’s age and gender; (7) “risk” factors such as poverty and parental substance abuse.”

For those children who do not escape the emotional and psychological scars from indirect abuse, there may be both short-term and long-term effects which I explore briefly below.

2. Specific consequences of exposure to violence

a. Short-term effects of exposure to violence

Even if a child’s exposure to violence is limited, it may still impact the child emotionally and psychologically. Of equal importance, there are common short-term effects, whether the violence is physical, sexual or psychological. Studies demonstrate that when children are exposed to violence of any sort there may be displays of behavior problems such as aggression and delinquency in adolescents. They also suffer mood disorders including depression and anxiety, post-traumatic disorders like exaggerated startle, nightmares, and flashbacks. Children may also experience health-related problems that include somatic symptoms and sleep disorders, as well as academic and cognitive problems.

http://www.ptsd.va.gov/professional/pages/ptsd_in_children_and_adolescents_overview_for_professionals.asp (indicating that “time skew” refers the child’s mis-sequencing trauma-related memory when recalling the event while “omen formation” relates to the belief that there were warning signs that predicted the trauma. Children often believe they recognize future warning signs, thereby avoiding future trauma). (last revised/updated May 14, 2010).

58 Id. (differentiating posttraumatic play from posttraumatic reenactment and indicating that while the former is a literal representation of the trauma, involving compulsive repeating of some aspects of the trauma, which does not tend to relieve anxiety; the latter is more flexible and “involves behaviorally recreating aspects of the trauma” such as carrying a weapon after exposure to violence).

59 Id. at 3.

60 Id.

61 DSM-IV-TR, supra note 48, at 501.

62 Id.
Childhood exposure to family and community violence is consistently linked with aggressive behavior. One theoretical perspective links this conduct to social learning theory which posits that children learn from the aggressive models in their environments. "Victimization may compromise children’s ability to regulate their emotions, and as a result they act out aggressively." Moreover, studies reveal that children also have problems with depression and anxiety because they may interpret family and community violence to mean there is no place of safety for them and that they are unworthy of protection. This in turn engenders a feeling of helplessness, leading to negative self-perceptions.

b. Long-term effects from exposure to violence

Relatively few studies have examined the prospective effects upon children exposed to violence. One 20-year prospective study by Ehrensaft and others found that children who were exposed to violence between their parents were, as a consequence, more likely to commit violence against an adult partner and more likely to be abused by an adult partner than were children who were not exposed to violence. Other prospective studies concluded that while exposure to violence increases the rate of abuse toward children from 5% to 30%, 70% of children exposed to violence do not perpetrate abuse as adults. In addition, while childhood victimization increases the risk of criminal behavior and mental health problems, the cycle of violence was neither determinative nor inevitable.

But we must consider the 30% of children who actually suffer emotional and psychological harm due to prolonged exposure to violence. Their shroud of invisibility has now been removed. The latest revelations about the long-term impact of exposing children to violence are astounding. Recent studies indicate that such children are more likely to become juvenile delinquents and adult offenders. They are more likely than other juveniles to be re-arrested, and more than half of those juveniles in the study who were released from state incarceration were arrested and convicted of criminal activity shortly after having been released. In addition, the study found that nearly twenty-five percent of juveniles who commit offenses between the ages of 16-17 and re-offend at ages 18-19 will likely commit a subsequent violent assault as an adult.

Researchers confirm that psychological and emotional abuse provides negative social modeling. They have found that exposure to childhood trauma is one of “the most significant predictors of adult ischemic heart disease, cancer, chronic lung disease, skeletal fractures, and liver diseases...that

**Notes:**

67 Id.
68 Id.
69 Id.
70 Id.
71 Id.
72 Id.
74 See Juvenile Victoms and Offenders, supra note 73 at 71; Gonzales & Corbin, supra note 73, at 8.
75 See Juvenile Offenders and Victims, supra note 73 at 71.
are often fatal.” Research demonstrates a clear connection between environmental factors and learned violence. As one writer powerfully observes, while the emotional and psychological results of harm to abused children is alarming, “the cyclical nature of family violence may be the phenomenon with far reaching consequences for society.” The conclusion is that “Growing up in a violent family creates problems in a child’s later life because of the values, attitudes, and coping mechanisms that such an environment teaches. Children subjected to domestic violence learn that violence is the basis of power and control. When raised in a violence family without outside intervention, children believe that power lies in the wrongdoer. Children who witness their own parents engage in violence are more likely to engage in violence and are more likely to abuse their mates and are more likely to abuse their elderly parents in later years.” Sociological and psychological theorists agree that “violence is a problem that begins at home.” Moreover, “witnessing violence in the home appears to be one of the strongest predictors of juvenile homicide.” One of study of homicidally aggressive children found nearly two-thirds lived in households where the father had been physically abusive to their mothers, as compared with only thirteen percent of the non-homicidal children studied.

A recent article by Professor Jane Rutherford supports the finding that environmental factors affect children’s behavior. According to Professor Rutherford, science demonstrates that learned violence produces notable differences in the brain activity of violent individuals when compared with nonviolent individuals. In the study of children between the ages of nine and twelve who had been abused, researchers found these minors were more likely to be arrested than other minors. Further, she found that exposure to abuse, “also alters brain chemistry and, if prolonged, alters the very anatomy of the brain.”

There is further reason for concern when children are exposed to violence. Research shows that considerable numbers of juvenile offenders have a long history of abuse, exposure to violence, and child maltreatment. As juveniles, they are more likely to commit violent sex crimes. And in later life, they are more likely to commit rape, violent crime and murder.

83 See Jane Rutherford, Community Accountability for the Effect of Child Abuse in Juvenile Delinquency in the Brave New World of Behavioral Genetics, 56 DePaul L. Rev. 949, 976 (2007); Gonzalez & Corbin, supra note 73, at 5-6. See also Edgar Garcia-Rill & Erica Beecher-Monas, Gatekeeping Stress: The Science and Admissibility of Post-Traumatic Stress Disorder 24 U. Ark. Little Rock L. Rev. 9, 18-21 (2001) ( noting that continuous exposure to a traumatic occurrence, including re-experiencing the traumatic event results in brain damage caused by a bad memory from which one can not escape).
84 Rutherford, supra note 83, at 976.
85 Id.
86 Gonzalez & Corbin, supra note 73, and text accompanying notes 60-61.
87 Id. See also Deborah Epstein, Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System, 11 Yale J. L. & Feminism 3, 8 (1999).
These studies ought to cause us great alarm. These “invisible victims” of domestic are clearly visible. Even if the number of children and juveniles exposed to violence is but a fraction of the numbers reported in recent studies, the message is unmistakable: we are raising children who may become violent predators simply because we did not recognize, and when recognized, did not respond to their psychological needs.

3. Explaining children's deadly responses to psychological abuse

A dangerous outgrowth of our failure to recognize the impact exposure to domestic abuse has on children and adolescents is that some of them respond by killing an abusive parent. Relying on abused women’s relatively successful use of expert testimony on the “battered woman syndrome” to explain the psychological impact on domestic abuse, attorneys who represent children who have committed parricide may attempt to present expert testimony on “battered child syndrome” to explain the psychological effects of prolonged child abuse and how it alters a child’s perceptions, mitigate criminal mens rea, and to explain why a child acted in self-defense.

Two of the earliest cases to assert the defense were the case of the Dutton brothers who shot their father after years of abuse and the Melendez brothers who shot and killed both parents alleging years of physical and sexual abuse by their father.

State v. Janas was the first appellate case to sanction the use of the battered child syndrome as a defense. The court, in comparing battered woman syndrome to battered child syndrome, found that the difference between the two was insignificant. The court noted that while both women and children suffer post-traumatic stress disorder under these circumstances, the effects on children are likely to be greater. However, it noted expert testimony could not eliminate the defendant’s requirement to prove imminent harm. Even so, the court found that a lapse in time between the triggering event and the abuse would not necessarily negate the child’s perception of imminence. It found that an otherwise harmless comment which occurred days before the homicide could have great relevance when the evidence demonstrates this kind of comment “inevitably signaled the beginning of an abusive episode.” Writers have noted that battered children might be so terrorized by years of abuse that they might genuinely read menace “into a look, gesture, [or] an ambiguous word an outsider might not consider dire.”

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89 Baldwin, supra note 6, at 73-79. See also Jennifer James, Turning the Tables: Redefining Self-Defense Theory for Children Who Kill Abusive Parents, 18 LAW & PSYCHOL. REV. 393, 402 (1995) (indicating that without expert testimony on the child’s altered perception of abuse, the jury will be left to its own devices to determine the “victim-offenders [sic] actions.”).
90 Parker, supra note 22, at 431-432 (noting that the while in the case of the Dutton brothers, case a number of people, including state officials, knew about abuse but failed to intervene, the Melendez brothers stood to gain a substantial inheritance upon the death of their parents).
91 805 P. 2d 495 (Wash. 1993).
92 Id. at 502.
93 Id. at 502-03. See also Baldwin, supra note 6, at 74.
95 Id.
96 Id.
97 Baldwin, supra note 6, at 75.
Although Janas is touted as a landmark decision for analogizing battered woman syndrome to battered child syndrome and for recognizing it as a defense in non-confrontational killings, courts have been reluctant to admit expert testimony under these circumstances. The only other state supreme court decision to admit this kind of evidence in parricide cases is State v. Nemeth, where a sixteen-year-old boy shot his abusive mother in the head five times with a bow and arrow while she lay on the couch. Similar to Janas, the court admitted expert testimony on the battered child, concluding that such evidence would help to show that Nemeth’s behavior was “consistent with that of an abused child and would lend support to his testimony that he had been abused both generally and just prior to the killing.”

While a number of state appellate courts have permitted expert testimony in these instances, most courts are reluctant to admit such evidence. A primary reason is that battered child syndrome deviates from traditional defense standards in a critical way: most abused children kill their abusers in non-confrontational situations where the abuser's back is turned or when she is otherwise unaware. As a result, courts fear that such killings are not responses to danger. Rather, they are acts of revenge.

In cases of homicide, Texas permits the accused to introduce evidence of the circumstances surrounding the killing. Under the Texas Penal Code, a defendant, whether child or adult, may offer evidence of the relationship between the accused and the deceased along with all relevant facts to show “the condition of the mind of the accused at the time of the offense.” Moreover, where a defendant raises justification as a defense under Sections 9.31, 9.32, or 9.33 of the Code, a defendant may offer evidence that he was a victim of family violence at the hand of the deceased as well as relevant expert testimony as to the condition of the defendant’s mind at the time of the offense. In the case of child defendants, this provision permits the jury to hear the history of abuse a child suffered and helps jurors to understand the child’s circumstances prior to the killing. What is critical is that Texas statutes do not use the term “battered child syndrome,” arguably permitting greater flexibility where a child’s behavior does not fit squarely into the parameters of the syndrome.

One scholar persuasively argues that courts should adopt “domestic abuse syndrome” to decrease the number of syndromes and to recognize the commonalities of family abuse. A more compelling argument, however, is that courts should rely solely on expert testimony regarding PTSD. Scholars indicate that in Daubert v. Merrell

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98 Id. at 77.
100 Id.
101 Wright, supra note 1, at 85; Baldwin, supra note 6, at 75.
102 Baldwin, supra note 6, at 73.
103 Id. Baldwin argues that the majority of courts rightly exclude such expert testimony in order to maintain clearly defined standards of conduct. Moreover, “regardless of the child’s abusive history, the child committed murder in a manner that is usually premeditated, non-confrontational, and gruesome.”
104 TEX. CRIM. PROC. CODE ANN. 38.36 (West 2010).
105 Id. at § (a).
106 Id. at § (b) (1) and (2).
107 Baldwin, supra note 6, at 77.
108 See generally Wright, supra note 1 (providing a detailed discuss of domestic abuse syndrome as well as persuasive arguments for its adoption).
Dow Pharmaceuticals, Inc., General Electric Co. v. Joiner, and Kumho Tire Co. v. Carmichael, the Supreme Court set forth gatekeeping standards for admission of scientific evidence. Daubert requires that judges “examine the proffered testimony for falsity, error rate and the existence of protocols, peer review, and publication, and general acceptance. Joiner insists that the testimony fit within the facts of the case, and Kumho Tire extends the validity in all types of expert testimony, including psychology.” As PTSD meets all of these standards and has been included in DSM-IV, it meets the evidentiary standard for admissibility. Conversely, these scholars argue that there is little scientific basis for syndrome testimony, primarily because there is “shaky” empirical support, the error rate is high, and the survey evidence on which it is based is fraught with errors. As a result, most syndrome testimony cannot meet the standard set for in the trilogy of cases starting with Daubert.

IV. CREATING A COMPREHENSIVE REMEDY FOR CHILDREN WHO SUFFER PSYCHOLOGICALLY FROM EXPOSURE TO VIOLENCE

Family violence historically has been seen as only violence against women. Yet its dynamic is far more complex. A more comprehensive definition describes “domestic violence” as “a malevolent act by one family member against another with the intent of causing physical, sexual, or psychological damage.” It acknowledges that family violence includes psychological harm perpetrated against children. Rather than its being viewed in a largely narrow context, its repercussions are far reaching. As one writer notes, “it is the gateway for future violence and abuse within the family and future generations.”

When seeking to protect children who live in homes rife with domestic violence, it seems that we are fractured in our responses, resulting in damage to the children who must count on us to help them. A holistic approach must be considered to protect a child’s psychological and emotional wellbeing.

A. Law Enforcement

Law enforcement plays a critical role in children’s perception of violence against a parent. As first responders, they are well aware that domestic violence calls are among the most dangerous calls they face. They must protect themselves while protecting adult victims of abuse and any children who might be present and traumatized by the abuse. Police have been criticized for failing to take these calls seriously. They either fail to respond or refuse to make arrests, even when a protective order is in place. As one scholar notes, police ought to be more proactive in making arrests, treating

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113 Rill & Beecher-Monas, supra note 105, at 28.
114 Id. at 20-30.
115 Id.
116 Id.
117 Id.
119 Gonzalez & Corbin, supra note 73, at 10.
120 Ososky, supra, note 27, at 8.
domestic violence with the utmost urgency. In addition, studies demonstrate that when a batterer spends time in jail, it has a preventative effect. Arresting an abuser may prevent further harm to the child, even homicide, after the abuser has been released from jail.

Often, however, police are unaware that a child has been exposed to abuse and do not understand the impact their response might have on a child who sees either or both parents dragged from the home in handcuffs, particularly when one parent is the victim abuse. Arresting the batterer is often critical to defusing a volatile situation, but police must be educated about the family dynamics of violence as well as conflict resolution strategies, particularly the impact violence has on a child’s development.

One model for police education incorporates three components: training all incoming police recruits about principles of child and adolescent development; providing clinical fellowships for veteran officers who hold field supervisory roles; and providing a 24-hour consultation service for officers responding to calls where children are the direct or indirect victims of domestic violence. Groundbreaking studies have found that these measures have helped to create trust between parents and police, which leads to strengthening positive attitudes in the child. “With increased education on alternative ways to respond, police may have the opportunity to develop more proactive and helpful strategies for interacting with the community and dealing with children witness domestic disputes.”

B. Health Professionals

Health care professionals are more likely to recognize signs of physical and sexual abuse. They, therefore, occupy key positions in violence prevention, yet they are ill equipped to handle these roles. When health professionals fail to assist victims of domestic violence it is often because they did not correctly recognize the signs of abuse. “Emergency room physicians often failed to recognize when women had been beaten.”

Studies have found health providers “lacked the knowledge of the extent, impact, and symptomatology of violence.” And because they may be unaware of the dynamics and complexities of intimate family violence, they may fail to correctly identify the signs of psychological and emotional abuse. Health professionals may further present barriers to screening and, ultimately, treatment for abused women and child, because they may be afraid of offending the patient by asking questions about domestic abuse. Moreover, providers hold some of the same prejudices and stereotypes about abuse that are held by

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122 Id. Wilson, supra note 121, at 319.
123 Id. at 319-20. Wilson also cautions that other studies supported by statistics demonstrate that making an arrest may result in backlash by the abuser, resulting in his killing women or his children.
124 Ososky, supra note 27, at 7-8
125 Id.
126 Id.
127 Id. at 9.
128 Id.
members of society in general, including that it is a private matter. As a result, they ignore the signs of abuse. They are also frustrated by the repetitive nature of abuse, questioning why abused women do not leave the abusive environment. Although they are legally mandated to document abuse, they may be reluctant to do so fearing that the abused woman will lose her insurance coverage.

Providers must be willing to accept their role as gatekeepers for abused women, and ultimately, for their children. They are one of the first lines of defense. Like law enforcement officials, health professionals must be educated about the dynamics of family violence. Where not presently implemented, nursing schools and medical schools must include domestic violence classes in their standard curriculums. They must also have the opportunity to gain practical experience by reinforcing the knowledge in a clinical setting and by working in places like women’s shelters, prosecutors’ offices, and batterer rehabilitation programs. Education and implementation are imperative. Studies show where physicians and nurses do not acknowledge woman’s abusive experiences, “their silence is often psychologically damaging and is a factor in the development of subsequent pathology.” Health providers, who know about the abuse but remain silent, magnify the abuse victim’s anxiety, feelings of hopelessness fear and shame. Directed education would keep them from unwittingly further victimizing those already harmed by family violence.

C. Social Services Workers

More complicated issues arise when social services, attorneys and judges intervene, endeavoring to do what is in the best interest of the child. In this section I provide a brief treatment of an area which is far more complicated.

One of the first responses to finding a child has been exposed to abuse is to remove the child from the abusive environment. Often courts and social services agencies believe that removing a child from an abusive environment is in the child’s best interest. Indeed, as one scholar notes, the “mammoth bureaucracy that has become the nation’s web of child protective services agencies has been the target of criticism for its overly-zealous intervention in families…”

At times, social services agencies remove children without regard to findings that a child’s well being is strongly tied to the well-being of the non-abusing parent, and that “providing services to increase the safety and functioning of the non-abusive parent can improve the well-being of the child.” On the other hand, “removing the child from the non-abusive parent can have an extremely detrimental effect on the child. Children who have been exposed to domestic violence often view ‘their immediate universe as unpredictable and unsafe’ and removal for them may be more traumatic than for other children.”

136 Id.
137 Id.
138 Id.
139 Id. at 5.
140 Id.
141 Id. at 5-6.
142 Copps, supra note, 11 at 501-02. See also Weithorn, supra note 8, at 59 (indicating that social services workers are also criticized for their failure to intervene).
143 Id. at 501.
144 Copps, supra note 11, at 501.
145 Id. (noting that “these children are at a heightened risk for separation anxiety disorder and may experience self-blame and anxiety about the safety of their parent.”). See also Evan Stark, The Battered Mother in the Child Protective Service Caseload:
Clearly, removing children from the home rather than removing the abuser may have far greater consequences for the child.\textsuperscript{146}

Moreover, when children are removed from the non-abusive parent, they are at greater risk of harm in foster care.\textsuperscript{147}

Children placed in foster care, compared with the general population, are at a seventy-five percent higher risk of child maltreatment, twice as likely to die from abuse, and four times as likely to be sexually abused. Children placed in foster care are also more likely to have health problems and receive inadequate medical care, to have problems in school, and to have behavior and emotional problems.\textsuperscript{148}

There should be no blanket presumption in favor of removing from the home a child who has been exposed to domestic violence because the child may be further damaged by the removal.\textsuperscript{149}

This argument is further strengthened when one considers there are financial incentives in removing children from their homes and placing them in foster care. This clearly conflicts with doing what is in the best interest of abused children.\textsuperscript{150}

A similar concern arises when child protective services and other government actors intervene to assist abused children. Federal and state laws have succeeded in bringing a substantial number of cases of child maltreatment to the attention of government authorities.\textsuperscript{151} As one scholar notes, however, they are “‘driven’ by their mandate to investigate and report cases with the result that ‘investigation often seems to occur for its own sake, without any realist hope of meaningful treatment to prevent recurrence of maltreatment or to ameliorate its effects, even if the report of suspected maltreatment is validated.’”\textsuperscript{152} Further, The U.S. Advisory Board on Child Abuse and neglected found that child protection policy in the United States is principally “unplanned; it has consisted of primarily ad hoc responses to crisis.”\textsuperscript{153} The conclusion is that we have created a response to child abuse and neglect that is failing.\textsuperscript{154} Critically, one writer observes that nearly fifty percent of the children who die each year from maltreatment by a parent previously had been reported to child protection agencies,\textsuperscript{155} “reminding us reports of child maltreatment are meaningless if not followed by an effective response.”\textsuperscript{156} Little attention has been given to how to intervene

\textsuperscript{146} Copps, supra note 11, at 502.
\textsuperscript{147} See id.
\textsuperscript{148} Id. (indicating that children’s lives are further disrupted when they are removed from their homes because they are separated from their school, community, siblings and friends).
\textsuperscript{149} Id. Although Copps primary focuses her analysis on Nicholson v. Williams (citation omitted) a case from the appellate courts of New York, it is no less powerful in shedding light on the detrimental impact on child who removed from their home simply because they have been exposed to domestic violence.
\textsuperscript{151} Weithorn, supra note 8, at 58.
\textsuperscript{152} Id. and text accompanying notes 243-44.
\textsuperscript{153} Id.
\textsuperscript{154} Id.
\textsuperscript{155} Id. (citing Lela B. Costin ET AL., THE POLITICS OF CHILD ABUSE IN AMERICA 117-132 (1996) (QUOTING Douglas Besharov, CONTENDING WITH OVERBLOWN EXPECTATIONS, PUBLIC WELFARE, WINTER 1987, AT 7-8)).
\textsuperscript{156} Id. at 59.
effectively to help families. And when one includes cultural biases against non-white segments of society and racial and ethnic minorities, it should not be difficult to understand why there are concerns about whether social service agencies are acting in the best of psychologically abused children by removing them from the non-abusive parent.

D. Child Custody and Visitation

One of the most compelling issues in domestic cases arises in child custody and visitation cases. Attorneys are required to advocate for their clients, yet such zealous advocacy for one's client may be detrimental to the child when there is clear evidence of ongoing family violence by the parent seeking some form of custody. Extending custody to the abuser under these circumstances places in danger both the child and his abused parent.

In the context of domestic violence, two dominant approaches to child custody and parental visitation arise. One perspective is asserted by advocates of battered women and children. They “point to the detrimental psychological and emotional effects of witnessing domestic violence on children. They worry about the physical effects on children who witness domestic violence because these children are abused at a rate fifteen hundred times higher than then the national average. These advocates oppose awarding either sole or joint custody to batterers, believing that the best way to protect battered women and their abusers is to put some distance between them.

A second perspective arises from supporters of the father’s rights movement who believe that children benefit psychologically from continued contact with their fathers after divorce. They believe courts have discriminated against them by traditionally preferring maternal custody.

Judges who are undereducated about the dynamics of domestic violence are reluctant to impose restrictions on the abuser’s access to his family. They may see joint custody as a good compromise in custody disputes. Domestic violence advocates also argue that these judges place abused women and children in potentially dangerous situations by ordering mediation where the mediators do not understand the dynamics of abusive relationships.

Texas has taken a progressive approach to child custody concerns when a child has been exposed family violence. § 153.004 of the Texas Family Code makes clear that a family court judge must consider a parent’s use of intentional physical force against a spouse, parent of a child, or child within two years of the filing or pendency of a custody suit. In addition, the court may not award joint custody if the person seeking “joint managing conservatorship” over the child has a recent history of domestic violence.

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157 Id.
158 Id.
160 Id. See also Quirion, supra note 40, at 508-09.
There is a reputable presumption that doing so would not be in the best interest of the child.\textsuperscript{169} The Texas Family Code, further, does not presume that one’s status as parent gives a presumptive right to visitation. Rather, it requires judges to consider family violence when deciding whether to deny, restrict, or limit visitation by an abusive parent.\textsuperscript{170} Importantly, it requires a battered spouse or intimate partner seeking to deny or restrict custody or visitation to provide appropriate evidence of the abuse.

V. CONCLUSION

The complex nature of family violence makes it difficult to craft a comprehensive remedy. The task seems insurmountable. A remedy must be found to prevent child victims of psychological and emotional abuse from becoming adult predators. Even when children have reached adolescence or early adulthood, there is still opportunity for treatment. A number of constituencies must be in place. Critically there must be an open channel of communication among all actors. All must be willing to work together as tight-fitting armor for child victims of psychological abuse. Parents play a crucial role in how successfully children exposed to abuse will recover. Abused parents in particular must be educated as to how their own coping mechanisms impact their children. Judges, prosecutors, law enforcement, social workers, and health providers must also receive training, but must also understand the necessity of implementing what they learn. As a society, we must be willing to invest more in the welfare of our children.\textsuperscript{171} We are failing when we are willing to expend greater resources on confining and punishing children rather than seeking to help them adjust and, where possible, recover from exposure to family violence. They are not damaged goods. We must not treat them as though they are.

\textsuperscript{169} Id.
\textsuperscript{170} Id. at § (c)

\textsuperscript{171} Rutherford, supra note 83, at 994-95 (for a detailed discussion of remedies to for protecting children psychological and emotional abuse).