

Domestic Violence in Child Welfare Cases: Best Practices for Judges and Attorneys

SUPREME COURT OF TEXAS CHILDREN'S COMMISSION

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Speakers

- Hon. Aurora Martinez Jones, Judge of the 126th District Court, *Moderator*,
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- Lisa, Survivor Leader; and
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WHAT IS DOMESTIC
VIOLENCE?



Definitions: DV and Coercive Control

- Domestic violence, also referred to as family violence, can be described as a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner.
- Family violence is defined in **Tex. Fam. Code § 71.004**.
- Domestic violence can be physical, sexual, emotional, economic, psychological, or technological actions or threats of actions or other patterns of coercive behavior that influence another person within an intimate partner relationship.
 - This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.



Definitions: DV and Coercive Control, cont.

- Coercive control is a central dynamic in domestic violence situations. It can take the form of tactics to isolate, degrade, exploit, control, frighten, or hurt.
- Coercive control can also take the form of emotional and psychological intimidation without physical violence.
- What does this look like? Some examples are:
 - taking away access to resources and/or documents needed by the survivor parent and the children
 - making threats about the children, employment, or basic needs

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LISA'S EXPERIENCE



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**ELOISE'S
EXPERIENCE**

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PREVALENCE OF
DOMESTIC
VIOLENCE



Prevalence of Domestic Violence

- Co-occurrence of domestic violence and child neglect or abuse is common and domestic violence constitutes the single greatest precursor of child maltreatment fatalities.
- Texas DFPS' FY 2023 annual report on child fatality and near fatality documented that out of the 164 child abuse and neglect related fatalities in Texas, the following circumstances were present:
 - A documented history of domestic violence in was identified in 96 case reviews;
 - 68 families had active domestic violence present in their home environment; and
 - For the 50 child fatalities where the family had a history of domestic violence and reported active concerns for domestic violence, 60% of those fatalities were due to physical abuse.



Prevalence of Domestic Violence, cont.

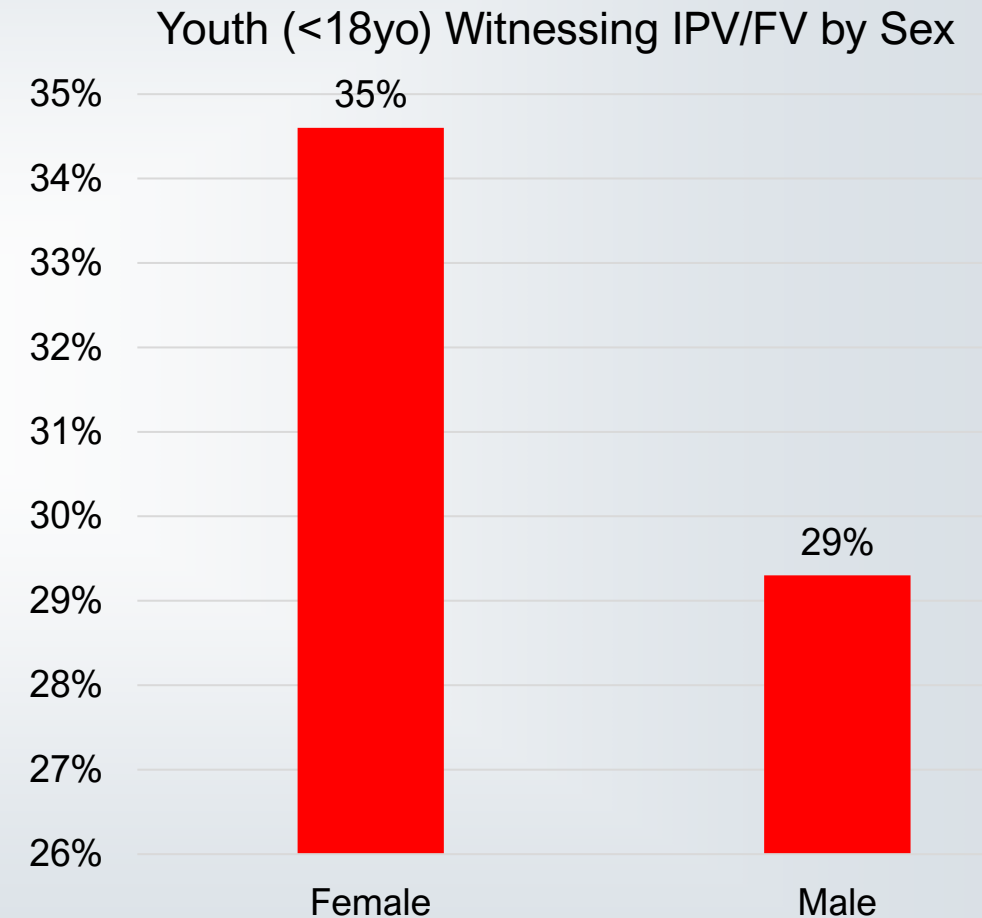
- In 2022, Texas Center on Family Violence (TCFV)'s Honoring Texas Victims report documented the second highest number of intimate partner homicides in the last decade:
 - 216 Texans were victims of intimate partner homicide;
 - Of these, 179 were women and 37 were men; and
 - Out of the total number of homicides, 153 victims were killed with a firearm.

Intimate Partner Violence/Family Violence and Child Welfare

Graph: More female youth (35%) witnessed IPV/FV in the home than male youth (29%). (Leemis, et.al. 2022)

This study also indicated:

- The prevalence of IPV/FV is disproportionately higher for women (47.3%) than men (44.2%).
- The prevalence of psychological aggression (i.e. psychological or emotional abuse) was higher for women (49.4%) than men (45.1%).
- The prevalence of IPV/FV is disproportionately higher for both men and women who are non-Hispanic multiracial, American Indian/Alaska Native, and non-Hispanic Black when compared with White counterparts.





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“WHY DIDN’T SHE
LEAVE?”

“Why Didn’t She Leave?”

- Threat or fear of loss of custody.
- Belief that the perpetrator will do more serious harm if the survivor parent tries to leave.
 - This can be due to threats to kill the survivor, their children, families, pets, friends, and/or to commit suicide.
- Threat or fear of loss of financial resources to care for the child, resulting in a loss of employment, housing, and childcare.
- Cultural practices or norms, religious pressures, language access issues, legal status of survivor and/or family members, and the desires of the children to stay/ return to their home.



“Why Didn’t She Leave?” cont.

- This question is also asked as “Why did she stay?” There are many reasons why survivor parents stay, including:
 - To provide stability for children by preventing removal from their home and preventing the trauma of being separated from the survivor parent
 - Reluctance to call law enforcement, request a protective order, or testify against the perpetrator
 - Co-occurrence of trauma such as PTSD
 - Concern that mental health challenges and/or substance use will be used against her



“Why Didn’t She Leave?” cont.

- Desire for their primary relationship to be healthy and for family to be intact
- Generational trauma
- No access to resources or awareness of resources
- No guarantee of safety for survivor or children
- Women who leave their abusive partners have a 75% greater risk of being killed than those who stay and there is a 75% increase of violence upon separation for at least two years.



“Why Didn’t She Leave?” cont.

- Why not ask questions such as “ *Why did someone choose to use violence? Why didn’t they stop? Why are they endangering the family?*”
- Consider how language indicates the roles and responsibility allocated to the survivor parent and the perpetrator of violence
- Consider framing the “ *Why didn’t she leave?*” discussion as a conversation about barriers for survivors to being able to safely leave
- Consider a trauma-responsive approach (including language choices)



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CLIENT
COMMUNICATION
AND SURVIVOR
ENGAGEMENT



Is there a “typical” survivor?

- No. There is no “typical survivor.”
- Survivors who “show up angry” can be identified as the aggressor.
- There is no single fix to address the complexity of domestic violence dynamics.
- Judges and attorneys may not know who is experiencing domestic violence in any particular case.
- Some survivors will not self-identify and some may not seek services.



Attorney – Client Communication

- Clear communication is critical
- Prepare for court and mediation
- Speak confidentially with survivor-parent in court and at mediation.
- Read the case file and ask questions to understand and challenge records as needed after careful scrutiny.
 - Reach out to an expert if you encounter challenges (ex: understanding survivor's trauma responses)



Engaging Survivors

- Focus on the survivor-parent's protective factors and strengths
- Ask questions about her experience:
 - What are you already doing that is helping to keep you and your children safe?
 - How can I support you to continue those protective strategies and actions?
 - What additional supports will help you keep yourself and your child safe and together?



Engaging Survivors, cont.

- Recognize the effects of trauma for the survivor parent
 - Listen
 - Be patient
- Request her input on supervised visitation
- Ask questions about needs:
 - *What support do you need to continue to parent and feel safer?*
 - *What support, services, or resources do you need to continue to run your home while continuing to keep your children safe?*
 - *Do you have access to a car or another mode of transportation?*
 - *Do you have the continued ability or inability to pay rent and buy food?*
 - *What other needs do you have?*



Best Interest of the Children

- Keeping children safe with protective parent provides normalcy for children and family preservation.
- Keeping children safe with proactive parents who provide safety and have support can have better outcomes for children.
- Supporting survivors can impact community positively and prevent additional intergenerational trauma.
- Ask survivor parent at the end of every hearing: what else can I do to support you and your family that is in your children's best interest?



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COURTROOM
DYNAMICS

Balancing Family Needs and Management of the Courtroom



The Judge MUST:

- ✓ Assess the issue at hand (i.e. purpose of the hearing)
- ✓ Assess how all the parties are presenting in the courtroom
- ✓ Maintain courtroom decorum and safety
- ✓ Be mindful of the impact YOU can make in this moment



Domestic Violence Cases: Issues



The Family

- Relationship dynamics
- Issues impacting the best interest of the child/youth
- Each parent's role in impacting the best interest of the child/youth

The Courtroom

- Consider where intimidation and undue influence are impacting the proceedings or evidence
- Assure positioning in the courtroom does not lend to actual or perceived power inequalities or an unsafe situation
- Admonishments
- Due process

Domestic Violence Cases: Tips



The Family

- Assess the circumstances of the relationship dynamics and not labels (e.g. “victim”)
- Understand how the dynamics between the parents impact the youth
- Consider that each parent may have individualized supports needed to improve the situation (different than the other parent’s)
- Consider if mental health, substance use, or any other challenges are impacting the dynamics

The Courtroom

- Be hypervigilant about how the parties are presenting in the courtroom towards the court and the other parties
- Discuss any safety concerns with courthouse security prior to the hearing and keep individuals apart as needed
- Be sure appropriate admonishments are given particularly if there is also a pending related criminal case
- Assure each parent has their “day in court” or time to be heard, especially if the dynamics are uncertain



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JUDICIAL BEST
PRACTICES



Judicial Best Practices

- Keep the children's safety in mind: it is common for the perpetrator to use the children to control the survivor parent. Perpetrators may threaten to gain sole custody, kill, kidnap, or otherwise harm children if the survivor parent leaves. Services, planning, and hearings should be conducted with the safety and well-being of the children as a primary concern and in the context of domestic violence dynamics.
- Keep the survivor parent's safety in mind: if virtual hearings or separate testimony/hearings are an option, consider allowing the survivor parent to make the decision about which hearing format suits their safety needs. In addition to upholding the victim-advocate privilege ([Tex. Fam. Code Chapter 93](#)), judges might consider holding separate hearings at different times to discuss each parent's individual portion of the case if there are concerns by the survivor parent about continued use of intimidation, threats, manipulation, or retaliation by the perpetrator. The child's safety and well-being are closely connected to that of the survivor parent.



Judicial Best Practices, cont.

- Service plans: judges can encourage a culture where the survivors' experiences are heard, valued, and considered in safety planning, and where the survivor parent's supports, strengths, and protective factors are identified and bolstered. Service plans should be tailored to address safety concerns and should include input from the survivor parent. Example: evaluating whether parenting classes are needed for the survivor-parent
- Include the survivor parent in placement decisions: when safe to do so, keeping the children and survivor parent safe and together is preferred. If separation must occur due to safety concerns, judges can request input from the survivor parent about placement for the children with relatives or fictive kin who the survivor parent trusts. This should be a time-limited placement that allows for safe visitation by the survivor parent and should address any safety concerns that the survivor parent identifies.
- Partner with survivor parent to educate judge and create support for survivors.
 - Example: Travis County Court Ordered Services Cases



Judicial Best Practices, cont.

- How can judges handle situations when the person using violence doesn't appear in court and/or won't engage in services?
 - Gather information about whereabouts
 - Inquire why the perpetrator didn't come to court
 - Ask survivor about level of danger to inform judicial decisions
 - Ask DFPS to hold accountable the person using violence by securing service if safe for survivor parent
 - Be mindful of the family situation in each case



Judicial Best Practices, cont.

- Address the trauma of removing children from the survivor parent: considerations may include placing the children with relatives or fictive kin that the survivor parent identifies as safe and supportive for the shortest duration while the survivor parent plans for their next step and seeks safety.
 - Placement with the perpetrator's family could lead to continuing coercion and/or collusion against the survivor parent by the perpetrator or the perpetrator's family depending on their relationship with the perpetrator.
- Order additional services for the perpetrator to address the parenting and behavior choices that they are inflicting on the survivor and the children
 - Include mental health support and substance use services as appropriate as well as ordering Batterer Intervention and Prevention Programs (BIPPs)



Judicial Best Practices, cont.

- BIPP programs: what are they?
 - Why are BIPP programs better than anger management classes?
 - DFPS pays for 12 sessions
 - Accountability for perpetrator
 - Facilitates hope
 - Persons using violence need access to supportive services



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MEDIATION
DYNAMICS



Mediation Dynamics

- Consider how to maintain safety in mediation: In cases involving domestic violence, judges and attorneys should ensure that the mediator has completed the required minimum four hours of training on family violence per the **Tex. Civ. Prac. & Rem. Code § 153.052** and consider selecting a mediator who has specific expertise or experience mediating with parents for whom domestic violence is an issue.
- Judges and attorneys should solicit feedback from the survivor parent about what precautions should be implemented and consider orders to ensure the safety of all parties participating in mediation.
- Resources: Texas Council on Family Violence Child Custody Mediators Training Series and Children's Commission Mediation Round Table Report.

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RESOURCES



Resources

- Children's Commission Bench Book
- Trauma Informed Lawyering
- *Nicholson* Brief Factors
- National Council on Juvenile and Family Court Judges Bench Cards:
 - Checklist to Promote Perpetrator Accountability in Dependency Cases Involving Domestic Violence
 - Navigating Custody & Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide
 - Reasonable Efforts Checklist for Dependency Cases Involving Domestic Violence
 - A Judicial Checklist for Children and Youth Exposed to Violence

Questions?

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CLOSING REMARKS

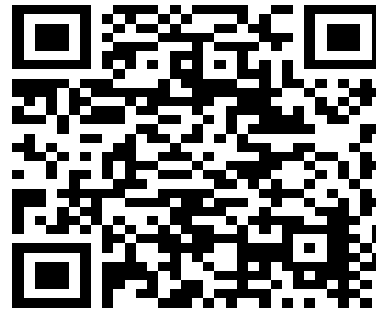


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THANK YOU

MCLE

MCLE # 174253646



Questions related to MCLE self reporting may be sent to: cctraining@txcourts.gov