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# **A Review of Policies to Address Children/Youth Exposed to Domestic Violence**

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## **A Review of Policies to Address Children/Youth Exposed to Violence**

In response to the growing concern that children are adversely affected by being exposed to domestic violence, changes have been made to policies and legislation in both criminal and civil areas in many parts of the Western world. While the majority of changes are to internal child welfare policies and protocols, some jurisdictions have also amended their child protective legislation to include childhood exposure to domestic violence in their definitions of child maltreatment. Other jurisdictions utilize civil legislation (i.e., family violence legislation) to provide emergency protection orders as a way to protect children.

This document reviews and analyzes these policies and legislation in Canada, the United States, the United Kingdom, Australia, and New Zealand. This document is not an exhaustive review of child welfare legislation, policies and practices. The intent is to provide a general analysis of how the issue of childhood exposure to domestic violence has been addressed within a policy context, using examples from a number of jurisdictions in developed countries.

This policy scan is background information for the upcoming International Policy Forum on Family Violence, a follow up event to the 2005 World Congress on FV held in Banff Alberta. The forum, scheduled for the November 1st and 2nd, 2006 in Calgary Alberta, will plan for the further implementation of the recommendations arising from the World Congress.

Despite the well-intended nature of efforts to protect children, a number of authors have raised concerns about the unintended consequences of such legislation and policies. In 2003, Canadians Jaffe, Crooks and Wolfe recommended a moratorium on legislation to address children exposed to domestic violence until evaluations and reviews of both the unintended and unintended impacts could be conducted. The International Policy will provide a venue to initiate such analysis.

As background for the policy analysis, the document presents a review of the research on the effects of exposure to domestic violence on children. The policy analysis outlines four major approaches that have been developed to address the problem: (1) amending or using existing child welfare legislation to define exposure to domestic violence as a form of child maltreatment; (2) adopting internal changes within child protection policies or procedures to protect children exposed to violence; (3) utilizing provincial/state civil legislation to provide emergency protection orders for women and children or children alone in cases of domestic violence including children as victims needing protection within family violence legislation; and (4) increasing the criminal penalties associated with violence committed in the presence of children. The following sections discuss the above legislation and policies in more detail, including their unintended consequences and implementation challenges.

### **1.0 The Problem: Children and Youth Exposed to Domestic Violence**

Concern about children exposed to domestic violence has emerged as the significant problem of women being abused by intimate partners gained societal recognition. Violence against women is a serious problem that results in injury, emotional

harm and, at worst, death. Significant responses to address woman abuse have developed by the justice, health, mental health and social services institutions<sup>1</sup>.

Respected international organizations including the World Health Organization, the United Nations Development Program, and the United Nation's Development Fund for Women (UNIFEM) and Amnesty International have highlighted violence against women as of significant concern. As United Nation's Secretary General Kofi Anan recently stated (UNIFEM, Nov. 25, 2005):

Violence against women remains pervasive worldwide. It is the most atrocious manifestation of the systemic discrimination and inequality women continue to face, in law and in their everyday lives, around the world. It occurs in very region, country, and culture, regardless of income, class, race or ethnicity.”

When women are abused by partners, the children and youth in the family are often exposed to the violence, whether actually witnessing the abuse, hearing the conflict or seeing the resultant bruises or injuries. What impact does such exposure have on children in the short and long term? What policy initiatives have been developed to address such situations to protect children from harm? These questions are the substance of the current policy review.

In the last two decades since acknowledging that children can be affected by exposure to domestic violence, researchers have identified ways that such abuse can affect a child's emotional and physical wellbeing (Jaffe, Wolfe, & Wilson, 1990). Nevertheless, Edleson (2006) suggests that a starting point for discussion of policy and legislative responses to children exposed to domestic violence is recognizing that not all children exposed to domestic violence have the same experiences. Acts of domestic violence vary considerably from one perpetrator to another, as do the ways in which children are exposed.

Children who witness domestic violence often exhibit symptoms similar to children who have been physically, sexually, and/or emotionally abused (Hershorn & Rosenbaum, 1985; Jaffe, Wolfe & Wilson, 1990), and exposure to domestic violence may be related to depression, low self-esteem, withdrawal, aggression, rebellion, hyperactivity and delinquency (Dawson, 1990; Jaffe, et al., 1990; Moore, Pepler, Weinberg, Hammond, Wadell, & Weiser, 1989).

More recently, researchers have conceptualized the previously listed symptoms as representing the effects of trauma, reporting that at least some children exposed to domestic violence have Post-Traumatic Stress Disorder (Jaffe et al., 1990; Rossman & Rosenberg, 1997; Rossman & Ho, 2000). Importantly, though, not all child witnesses develop PTSD. Two studies by Lehmann (1997) and Devoe and Graham-Bermann (1997, cited in Rossman & Ho, 2002) found rates of diagnosable PTSD at 56% and 51%, respectively. This means that the other half of the sample did not show symptoms at a level consistent with a trauma diagnosis.

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<sup>1</sup> Although men can also be abused by women partners, serious woman abuse is more common.

Other academics have presented an intergenerational transmission of violence hypothesis that purports that male children who witness domestic violence are at an increased risk of becoming perpetrators as adults (Jaffe, et al., 1990; Tutty, 1999).

Many children exposed to domestic violence have also been physically or sexually abused by the abusive parent, most often fathers (Edleson, 1999; Farmer & Owen) In fact, those most severely affected have most commonly experienced another form of child abuse whether physical, sexual or neglect (Hughes & Barad, 1983; Hughes & Luke, 1998). One critique of the previously described research on children exposed to violence is that children and youth may not have been asked whether they had endured other forms of abuse, which would overestimate the effects of witnessing violence alone. As such, the critical issue for consideration by child protection workers is whether exposure to domestic violence, without the child having experienced other forms of child abuse, creates the level of harm necessary to warrant intervention.

Other limitations of this research support the need to interpret the findings cautiously (Edleson, 1999; Kerig & Fedorowicz, 1999; Wolfe, Crooks, Lee, McIntyre-Smith, & Jaffe, 2003). The identified limitations include (1) problematic definitions of witnessing and inadequately assessing the nature of violence (Edleson, 1999; Kerig & Fedorowicz, 1999); (2) using clinical samples drawn mostly from children in shelters (Parkinson & Humphreys, 1998); (3) not distinguishing children who have been physically abused in addition to witnessing from those who have only witnessed intimate partner violence (Edleson, 1999); (4) failing to factor out other negative events in children's lives that may contribute to negative symptoms (5) most studies have been correlational, making it difficult to determine whether exposure to domestic violence caused the problematic symptoms and behaviours.

Further, almost all of the studies that document the harmful effects of exposure to violence on children have also identified children (sometimes as many as half) who have *not* been affected (Hughes & Barad, 1983; Hughes & Luke, 1998; Jaffe et al., 1990; Rosenbaum & O'Leary, 1981). It is clear that not all children are affected by exposure to violence. Many children appear to be resilient (Kolbo, 1996) and may, in fact, not have any problems (Edleson, 2004; Jaffe et al., 1990; Rosenbaum & O'Leary, 1981).

Other researchers have focused on factors that may protect children from the negative consequences of witnessing domestic violence. Children who believe that they are in control of their lives and who have higher self-esteem may be less affected by violence that they witness ([Grych et al., 2000](#), cited in Guile, 2004). Conversely, children who perceive the conflict between their parents as more threatening and blame themselves for the conflict report higher levels of internalizing problems (depression, anxiety). Researchers have also suggested that a nurturing, supportive mother-child relationship and/or positive sibling relationships may protect the child and minimize the negative effects of the violence ([Moore et al., 1990](#) & [Osofsky, 1999](#), cited in Guile, 2004).

Research on resiliency, which is defined as “good outcomes in spite of serious threats to adaptation or development” (Masten, p. 228, cited in Martin, 2002), has identified factors such as parenting qualities, cognitive functioning, socioeconomic status, and a positive self-image as correlated with positive adaptation to adversity. Other

important protective factors include average or higher than average intellectual ability, good attention, good interpersonal skills, talent, religious affiliation, socioeconomic advantage, and connections with people that are nurturing. In domestic violence situations, the better the mother's mental health and the less frequent the violence, the better are the outcomes for children (Martin, 2002)

## **2.0 Domestic Violence and the Child Protection System**

In Canada, provincial and territorial jurisdictions have the legislative responsibility for child and family services except for Aboriginal peoples with status who fall under the *Indian Act*. Although variations exist, each province and territory has specific legislation definitions, policies and services providing protection for neglected and abused children. A detailed description of child and family services can be found in the report, *Child Welfare in Canada 2000*.

Child and family services includes involvement by authorities and services to assist children in need of protection from abuse and neglect, and their families. Oftentimes, child and family service protection cases warrant a parallel criminal investigation prosecuted under the *Criminal Code of Canada* in all jurisdictions save Quebec which is covered by the *Quebec Civil and the Youth Protection Act*.

Within the child and family services legislation families are considered the basic units of society, responsible for the care, nurturing, supervision and protection of their children. Children have the right to be protected from abuse and neglect, and governments have the responsibility to protect children from harm through the mandate of the child and family services authorities.

The role of the child and family services authorities is to investigate allegations or suspicions of child abuse, and when appropriate provide protective and preventive services which vary between jurisdictions, but typically ranging from counselling and support to removing the child from the home on an immediate basis (apprehending) to ensure his or her safety and well-being. The best interests of the child is a primary consideration, and the least intrusive form of intervention is preferred.

Domestic violence has been a concern in child protection work since the beginning of the child welfare profession. Gordon's (1988) seminal work on the history of family violence in the United States reveals that wife-beating was "common in [child welfare] case records" during the period from 1870-1960 (p.7). Today, intimate partner violence remains a common occurrence within child protection work. The recent *Canadian Incidence Study of Reported Child Abuse and Neglect* noted that child welfare workers reported that the most common risk factor affecting mothers or other female caregivers in cases of substantiated child maltreatment was domestic violence: for 51% of victims, their mother or female caregiver was a victim of domestic violence (Trocmé, Fallon, MacLaurin, Daciuk, Felstiner, Black, Tonmyr, Blackstock, Barter, Turcotte, & Cloutier, 2003). American studies have also revealed that approximately one-third of child welfare cases involve domestic violence (Magen & Conroy, 1998, cited in Magen, 1999).

Across developed countries, child welfare responses to children exposed to domestic violence have ranged from a narrowly defined approach in which child

protection services are only to become involved when children have been directly abused or when emotional harm to the children has been demonstrated, to a broad-based approach in which any child exposed to domestic violence is deemed to be in need of protection (Jaffe et al., 2003). The policies differ with respect to the type of statute that is amended, with reforms taking place in child abuse reporting statutes, statutes regulating the processing of child maltreatment cases, and in family court statutes (Weithorn, 2001).

The following questions will be considered in the subsequent review of legislations:

- 1) Is “childhood exposure” directly defined in the legislation as a concern warranting child protection? If so defined, do the legislation/policies provide any descriptions that clarify when exposure to domestic violence causes harm to or does not harm children?
- 2) Beyond defining exposure, are there other provisions within the legislation that address the issue? Although childhood exposure to domestic violence may not be explicitly defined in the definition of child abuse and neglect in child welfare legislation, it is often included within the broader statutory responsibilities of child protection.
- 3) Are there provincial/state protocols or agency mandates that address the issue? Thus it may be addressed through internal policies in child protection offices. Both instances will be discussed in the following sections.
- 4) Does the legislation/ policies define “domestic violence”? Within the wide-spread institutional responses to intimate partner violence, little discussion has focused on defining “domestic violence”. The default is that any intervention by police, for example, by its presence alone, defines the couple as experiencing domestic violence. Have any provinces or states defined domestic violence within their legislation or directives to staff?

## 2.1 Canadian Child Welfare Responses to Children Exposed to Domestic Violence

To date, six of ten Canadian provinces and two territories have expanded the statutory definitions of child maltreatment to include children who have witnessed domestic violence: Alberta, Saskatchewan, Prince Edward Island, Newfoundland, New Brunswick, Nova Scotia, Northwest Territories and Nunavut.

Two provinces, New Brunswick and Newfoundland simply note that the security or development of a child is in danger when “The child is living in a situation where there is domestic violence.” The other provinces and territories clarify that the exposure to domestic violence has resulted in physical or emotional harm. Alberta’s *Child, Family Youth and Family Enhancement Act* of 2004 states the following:

For the purposes of this Act, (a) a child is emotionally injured (i) if there is impairment of the child’s mental or emotional functioning or development, and (ii) if there are reasonable and probable grounds to believe that the emotional injury is the result of (C) exposure to domestic violence or severe domestic disharmony.

As another internal caveat to its legislation, the Alberta government issued the following direction for workers to support family members staying together when possible. In Alberta, any person making a decision on behalf of a child according to the Family Enhancement Act (2004) must do so in accordance with “Matters to be Considered”, which are legislated guiding principles intended to guide decision-making in the child welfare system. These guiding principles specifically include a provision with respect to families affected by domestic violence: decision-makers must place priority on “providing supports that reduce the risk to the child and keep the abused family members together” (Overview of Changes to the Child, Youth and Family Enhancement Act – August 2004).

Saskatchewan includes the proviso that the exposure is “likely to result in physical or emotional harm to the child”, introducing the possibility that, although there is no current obvious physical or emotional harm, this might occur in future. In addition to other statements, The Northwest Territories and Nunavut also allude to the possibility of future harm:

The child has been exposed to repeated domestic violence... and there is substantial risk that the exposure will result in physical or emotional harm to the child and the child’s parent fails or refuses to obtain services, treatment, or healing process to prevent the harm.”

While Ontario’s legislation does not specifically refer to children being exposed to domestic violence, the province utilizes a Risk Assessment Model (Eligibility Spectrum) for referrals to child protective services. A section on Adult Conflict defines domestic violence and states that the emotional maltreatment section of the Child and Family Services Act (CFSA) should be interpreted to include adult conflict as “violence in the family has a severe emotional impact on children and is a form of child maltreatment” (Ontario Child and Family Services Act References, 1990):

Within the Eligibility Spectrum of the Risk Assessment Model, adult conflict is rated as either “extremely severe” (adult conflict causing physical harm and conflict causing emotional harm); “moderately severe” (adult conflict causing risk that the child is likely to be physically harmed and conflict causing risk that the child is likely to be emotionally harmed); and “minimally severe” (adult conflict – minimal risk that the child is likely to be emotionally or physically harmed) and “not severe” (minimal adult conflict). According to the Eligibility Spectrum, CAS intervention is warranted if adult conflict is either moderately or extremely severe (Ontario Child and Family Services Act References, 1990).

In summary, four Canadian provinces (British Columbia, Manitoba, and Ontario) and one territory (Yukon) have not explicitly defined child exposure to domestic violence within their child welfare legislation, although Ontario’s Risk Assessment processes certainly identify the issue as central and guide child welfare authorities to intervene.

## 2.2 US Child Protection Responses to Children Exposed to Domestic Violence

In the U.S., child abuse and neglect are defined by both federal and state laws. The Child Abuse Prevention and Treatment Act (CAPTA) is the federal legislation that sets out the minimum standards for the definition of child abuse and neglect that all states

must incorporate into their own protective legislation (Child Welfare Information Gateway, 2005). Currently, childhood exposure to domestic violence is not included in the minimum standards of CAPTA, and so the standard for what constitutes child abuse and neglect varies among states. Harm to children is defined within categories of maltreatment (i.e., physical abuse, sexual abuse/exploitation, neglect, emotional/psychological/mental abuse, and abandonment).

Only one US State and one American territory include exposure to domestic violence in the definition of child abuse and neglect in their legislation. Montana includes situations of exposure to violence in its definition of emotional abuse:

*Emotional Abuse*

*§ 41-3-102*

- *Psychological abuse or neglect means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including acts of violence against another person residing in the child's home.*

Puerto Rico also includes childhood exposure to domestic violence within its definition of child abuse and neglect:

*Emotional Abuse Tit. 8 § 441*

- *Abuse means any intentional act or omission of such a nature whereby a minor is inflicted or in jeopardy of suffering harm or prejudice to his or her health and physical, mental, emotional, and/or moral integrity including, but not limited to emotional harm inflicted by witnessing acts of domestic violence.*

Alaska does not include exposure to domestic violence in its definition of child abuse and neglect but does include it in another section regarding child maltreatment (47.10.011.): *The court may find a child to be a child in need of aid if it finds by a preponderance of the evidence that the child has been subjected to any of the following:*

*ii) exposure to conduct by a household member, as defined [as domestic violence] against another household member*

*(iii) repeated exposure to conduct by a household member, as defined [as domestic violence] against another household member*

However, the repercussions in several states after having implemented such legislation are instructive. One significant issue was not anticipating the effect of broadening the definition of child abuse on child protective services, especially with no new funding in place. Florida, for example, passed a statute in 1999 that mandated the filing of a dependency petition in domestic violence cases. Subsequent to the passing of this statute, Florida was flooded with so many cases that the child protection system's ability to intervene in *any* maltreatment cases was virtually paralyzed. Consequently, the statute was amended the following year (Weithorn, 2001). In the new section, domestic violence was listed as one of several factors that the department may consider in determining whether a case is high-risk (Weithorn, 2001).

Similarly, in 1999, Minnesota passed a law that incorporated childhood exposure to domestic violence into the definition of neglect in the state's maltreatment reporting law (Weithorn, 2001). The State amended the definition of neglect to include domestic violence within sight or sound of the child (Christian, 2002). However, no specific funding was set aside to deal with the increased number of child welfare reports (Edleson, 2006). Since Minnesota laws require an immediate response to child welfare reports, there were large increases in cases for many county agencies.

Implementation of the law resulted in a 100% increase in cases reported to Minnesota's child welfare system, with an estimated cost of approximately \$31 million dollars per year. In fact, full implementation of the statute would have resulted in a 500% increase in cases across the state (Weithorn, 2001). Due to the large increases in resources being devoted to assessment and investigation, not as many resources were available to serve the needs of children most at risk (Edleson, 2006). Agencies were inundated with a flood of new cases, interventions were unnecessarily intrusive, and families in most need missed out on services (Weithorn, 2001). Expanded reporting requirements also were of concern to battered women's advocates, who raised concerns that mothers were blamed for the violence of their partners (Edleson, 2006).

Due to the many problems with the legislation, the Minnesota legislature repealed the change in 2000, and most counties decided to drop the requirement for reporting exposed children (Edleson, 2006). On July 1, 2001, Minnesota instituted a new law that will only go into effect if additional funding is authorized for its implementation. So far, no funding has been allocated. The wording of the new law is quite different than the previous statute in that there are now provisions to differentiate the extent to which children are harmed by exposure, and there are narrower definitions of children's exposure to domestic violence (Weithorn, 2001).

Although childhood exposure is no longer included in the Minnesota's definition of child maltreatment, it is included elsewhere in the Statute. In the section pertaining to the mandatory duties of local child welfare agencies, including the mandatory procedures for conducting family assessments and investigations, domestic violence is referenced. The Statute (Subd. 10 [4]) states that:

"In conducting a family assessment or investigation, the local welfare agency shall gather information on the existence of substance abuse and domestic violence and offer services for purposes of preventing future child maltreatment, safeguarding and enhancing the welfare of the abused or neglected minor, and supporting and preserving family life whenever possible".

Minnesota's department of Human Services is also implementing policies that are in the same spirit of the revised legislation. This includes diverting families to an Alternative Response program, which provides assessment and services on a voluntary basis. The department also has established guidelines for intervention, which states "the preferred way to protect children in most domestic violence cases is to join with the adult victim in safety planning and to hold the abusive partner accountable" (Weithorn, 2001, p. 109).

In New York and California, existing child maltreatment statutes have been used by the courts to incorporate childhood exposure to domestic violence, using the neglect

provisions (Weithorn, 2001). Weithorn pointed out that using the neglect provisions refers to parental omissions rather than commissions, and effectively hold the victim responsible for the actions of the perpetrator. A number of abused mothers whose children were removed by New York City's Administration for Children's Services (ACS) because of failure to protect their children from domestic violence, launched a successful class action law suit against the ACS, discussed in more detail later in this review.

An initiative that could prevent children being inappropriately removed from their mother's care was enacted in Alaska. While Alaska does not include exposure to domestic violence in its definition of child abuse and neglect, it does include it in another section regarding child maltreatment, as mentioned previously. Importantly, the legislation specifically disfavours removing a child from the custody of the domestic violence victim and makes protection of the domestic violence victim as well as the child a departmental mandate. Further, it makes clear that if anyone should be removed from the home, it should be the offender and not the child (Weithorn, 2001). The legislation also requires the state to make internal changes, providing training for its child protective services workers, developing protocols guiding case assessment and intervention, and building collaborative relationships with community domestic violence agencies (Weithorn, 2001, p. 112).

### 2.3 Other Country's Child Protection Policies for Children Exposed

Several other developed countries have adopted legislation to address children exposed to domestic violence including England and Wales from the United Kingdom, and Australia. While we conducted a search for legislation in the other Western nations such as Scandinavia, we found no specifics. No innovations beyond what has already been described in the document thus far were identified.

England and Wales recently acknowledged childhood exposure to domestic violence as a significant child protection concern in England and Wales. In January 2005, an amendment to the meaning of harm (made through the Adoption and Children Act 2002) took effect and includes "impairment suffered from seeing or hearing the ill treatment of another" (Department for Constitutional Affairs, 2004). According to Harrison (2006), "how this is interpreted and applied will be crucial if it is to benefit women and children, rather than to increase a focus on women's failure to protect" (p.140). Nonetheless, children in England and Wales who are affected by domestic violence are defined as in need of protection and may be subject to child protection procedures.

Australia has three districts that incorporate considerations with respect to children exposed-New South Wales, Western Australia and Tasmania. The New South Wales child protection legislation, *The Children and Young Persons [Care and Protection Act (1998)* states that:

*A child or young person is at risk of harm if current concerns exist for the safety, welfare and well-being of the child or young person because of the presence of one or more of the following:*

*(d) the child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm*

New South Wales also provides directions in its Interagency guidelines which direct all mandated reporters (including health and welfare workers, police and child care workers) to report to the Department of Community Services (DoCS) if they suspect a child under 16 years has been abused or is at risk of being abused. The policy of the police services in New South Wales is that all children present at situations of domestic violence where police attend must be assumed to be at risk of serious harm, and therefore report to the Department of Community Services (Department of Community Services, New South Wales Interagency Guidelines, 2005).

Neither Tasmania nor Western Australia included definitions of children exposed in their legislation, but both focus on mandatory reporting. The Department for Community Development in Western Australia has issued several considerations that are to inform policy in the area of child protection, some relating to childhood exposure of domestic violence. The following statement illustrates the need to consider exposure to domestic violence as a contemporary child protection concern. “Exposure to family and domestic violence can affect children’s, particularly very young children’s, short and long term wellbeing and in some situations be very harmful and require a statutory child protection response. However, the well-being of most children experiencing family and domestic violence will be achieved through the positive promotion and strengthening of the capacity of capable and protective parents, care givers and other members in the community. Where appropriate, supporting and protecting one of the parents to leave the violent relationship can be a child protection strategy” (Department for Community Development, 2004).

Similarly, Tasmania child protection authorities have mandatory reporting requirements that require professionals working with children and employees or volunteers working with the Tasmania government or government funded organizations to report if they have “reasonable grounds to believe or suspect that a child is suffering, has suffered, or is likely to suffer abuse or neglect, or is being exposed to domestic violence“ (Bromfield & Higgins, 2005).

### **3.0 An Analysis of Child Welfare Policy Responses**

As is noted in the previous section, a number of jurisdictions world-wide have conceptualized the exposure of children and youth as a serious issue for child protection, by incorporating the definition into existing child welfare legislation or developing internal or interagency protocols to address the issue. While some of the definitions automatically define children who are in the presence of domestic violence to be in need of protection, a number include the caveat that there must be emotional or physical harm as a result of such exposure to be considered in need of protection. How to assess the existence of harm is not commonly addressed.

None of the legislation that was found actually define domestic violence, although the Ontario Eligibility Spectrum provides guidelines of how to classify or categorize the severity of domestic violence occurrences. Not defining the term leaves it to the

discretion of the individual workers to assess whether the violence is ongoing and of a serious nature.

A relatively new response has been to explicitly direct child welfare workers to remove perpetrators rather than children and to attempt to keep non-abusive parents and children together where possible. However, this may be difficult to do when the perpetrator has no legal or biological guardianship of the child (i.e., mother's boyfriend or dating partner) as child welfare authorities do not have the mandate to intervene with non-guardians.

The changes in child welfare policies, legislation and protocols that essentially define children exposed to domestic violence as maltreated children have been the subject of considerable debate in the literature. A number of authors have expressed concerns that services were not developed or funded to accompany legislative changes, and that the guidelines, protocols and policies do not address the complexities inherent in domestic violence cases. Other concerns are that there have been serious, unintended consequences of these policies, including further victimizing abused women, ignoring male perpetrators, and ultimately, failing to protect children. These concerns are outlined in further detail in the section below.

### 3.1 Services Not Developed to Accompany the Legislative Changes

Referring to the Canadian National Incidence of Child Maltreatment study, Trocmé and Siddiqi (2002) highlight that the most dramatic increases in child welfare cases from 1993 to 1998 are in the area of emotional maltreatment, largely due to investigations of exposure to domestic violence. However, these authors also conclude that the provision of adequate services has not kept pace with the increased focus on children exposed to domestic violence.

Simply defining exposure to domestic violence as child maltreatment is likely to overwhelm the system and target families for intervention for which child protection is neither necessary nor appropriate (Weithorn, 2001). As mentioned previously, the legislative changes instituted by both Minnesota and Florida resulted in an overwhelming flood of new referrals to their child protection systems. Child protection administrators in Minnesota argued that the new legislation was, in effect, an "unfunded mandate" by the legislature (Edleson, 2006), as there were not adequate resources available to meet the demands for services.

### 3.2 Lack of Clear Guidelines, Protocols and Policies

Trocmé and Siddiqi (2002) purport that most protocols or policies do not adequately address the complexities specific to domestic violence cases in the child protection system. They identify a lack of clear guidelines specifying the grounds on which to intervene in such cases, resulting in considerable room for interpretation by workers or agencies.

Echlin and Marshall (1995), two Canadian authors who work in the child protection system, concur that there is no clear mandate for child protective services' role in Canada nor clear guidelines as to what would justify child welfare involvement. They

identify the following problems implementing the legislation when children have been exposed to intimate partner violence:

1. workers are required to assess whether the exposure to violence might lead to harm – a subjective process that could lead to inappropriate interventions;
2. to be effective in these cases, workers require a thorough knowledge of domestic violence, which they often do not have;
3. some statutory definitions require that workers prove children's emotional harm was caused by exposure to domestic violence, which is very difficult;
4. a lack of judicial support for these statutes in some Canadian provinces, and;
5. child welfare services are already overburdened. As such, they are unlikely to take on cases if there is an unclear mandate, and if they have limited expertise in the area.

### 3.3 Further Victimizing Abused Women

Concerns have also been reported with respect to the child protection system's focus on abused mothers as the target of intervention. In a small qualitative study conducted by Nixon (2002), eight Canadian child protection workers viewed the children as their primary client and believed that the best way to protect children was to focus on the mother's behaviour. Mothers were blamed for the actions of perpetrators, who were ignored by workers in the child welfare system. Nixon (2002) reported that mothers were held responsible for the abuse, "when, in fact, others should have been: her ex-partner for abusing her, the police for not laying charges or arresting the perpetrator, and child welfare also for not intervening with the perpetrator" (p. 72). Statements by the child welfare workers indicated a focus on the abused woman's inadequacies, including a perceived lack of parenting skills, an inability to protect her children, a lack of awareness of the impact of abuse on children, and an inability to choose healthy partners (Nixon, 2002). In fact, Nixon (2002) reported that abused women are, on average, no different in their parenting abilities than non-abused women. Swift (1998) found that child protection workers frequently held mothers solely responsible for child neglect.

Miccio (1995) and Nixon (2001) argue that by focusing interventions on abused mothers, the problem of domestic violence becomes framed as what the mother failed to do rather than the perpetrator's violent actions. Women are perceived as having the power to stop the abuse perpetrated upon them by their partners. For most child protection workers, stopping the abuse translates into the expectation that women separate from the abuser as a means of keeping the children safe (Nixon, 2001). Jones and Gross's (2000) study examining the perceptions and practices of child protection workers similarly found that over 40% of the workers believed that the abused woman should leave the abusive relationship. Miccio (1995) wrote that:

It defies logic that the state would hold a mother liable for failing to stop her own abuse. We, as a society, are holding mothers accountable for conduct they did not engage in, conduct that, until recently, was socially permissible and conduct that authorities are still loath to stop. (p. 1090).

Callahan (1993) noted that abused women often experience child protection intervention as punitive and alienating, which has serious implications for both them and their children. Of most concern is that battered women may be reluctant to disclose their abusive situation to helping professionals, notably the police and shelter workers, if they believe that their children could be apprehended (National Council of Juvenile and Family Court Judges Family Violence Department, 1999). Further, child protection workers' threats of removing children from the mother do not deter the batterer, in fact, they may be yet another way for him to intimidate and control his partner (Aron & Olson, 1997).

Some evidence supports the concern that abused women will not seek help for fear of losing their children to the child protection system. In the Framework for Action against Family Violence 2001 Review conducted in Nova Scotia, participants noted that abuse victims who seek help expose themselves to charges of failing to protect their children and risk having their children removed from their care (Department of Justice, 2001). In Massachusetts, the Department of Social Services found that by identifying domestic violence as an indicator of child abuse, without any additional training or support to workers, there was both an increase in child abuse reports and a decrease in battered women seeking services (The Failure to Protect Working Group, 2000).

Several researchers and battered women advocates strongly oppose the expectation on the part of child protection workers that women should leave an abusive relationship. Research has confirmed that abused women commonly stalked, harassed, assaulted and are often at higher risk of injury or death when they leave violent partners (Campbell, 1992; Echlin & Osthoff, 2000; Fleury, Sullivan, & Bybee, 2000; Magen, 1999; Mahoney, 1991).

Further, some argue that it is problematic to assume that leaving is a viable solution to the abuse and that leaving is appropriate and an option for all women (Mahoney, 1991; Magen, 1999; The "Failure to Protect" Working Group, 2000). Echlin and Osthoff (2000) outline various reasons why women remain in abusive relationships, including the potential retaliation from the abuser, abused women's fear for her and her children's safety, child custody issues, lack of appropriate resources, and cultural conditioning. The literature suggests that the child protection system does not fully acknowledge such barriers to women and instead frequently assumes that battered women have a range of viable options available to them or assume that battered women "choose" to place themselves in dangerous situations (Krane, 1997; Nixon, 2001).

In Nixon's (2001) small qualitative study, eight Alberta child protection workers often characterized battered mothers as "unable" and "unwilling" to protect their children. The women's decision-making skills were considered faulty as women were seen as "choosing" abusive partners over their own children and continuing to "pick" abusive men to engage in relationships with. The viewpoint that battered women are inadequate or deficient is especially prevailing when applied to class and race. Poor women, women of colour, and Aboriginal women are likely to be viewed as even more inadequate and dysfunctional (Pulkingham & Ternowetsky, 1997). A growing body of literature casts serious doubts on the prevailing assumption held by the child protection system that battered women are bad or neglectful parents (Levendosky, Lynch & Graham-Bermann (2002); Schechter & Edleson, 1994; Sullivan, Nguyen, Allen, Bybee, & Juras, 2000).

As mentioned previously, a number of abused mothers whose children were removed by New York City's Administration for Children's Services (ACS) because of failure to protect their children from domestic violence were successful in a class action law suit against the ACS. In making its ruling, the court highlighted six premises that should be followed in child welfare practice in domestic violence cases (Greenbook National Evaluation Team, 2004, p. 8):

- Mothers should not be accused of neglect for being victims of domestic violence.
- Batterers should be held accountable.
- Children should be protected by child welfare agencies by offering battered mothers appropriate services and protection.
- Separating battered mothers and children should be the alternative of last resort.
- Child welfare employees should be adequately trained to deal with domestic violence.
- Agency policy should provide clear guidelines to caseworkers.

The following is an excerpt from the ruling:

In January 2002, the District Court granted a preliminary injunction, concluding that the City "may not penalize a mother, not otherwise unfit, who is battered by her partner, by separating her from her children; nor may children be separated from the mother, in effect visiting upon them the sins of their mother's batterer." The court found that ACS unnecessarily, routinely charged mothers with neglect and removed their children where the mother—who had engaged in no violence themselves—had been the victims of domestic violence; that ACS did so without ensuring that the mother had access to the services she needed, without a court order, and without returning these children promptly after being ordered to do so by the court; that ACS caseworkers and case managers lacked adequate training about domestic violence, and their practice was to separate mother and child when less harmful alternatives were available; that the agency's written policies offered contradictory guidance or no guidance at all on these issues..." (USCOA, 2 No. 113 Sharwline Nicholson, &c. et al., Respondents, v. Nicholas Scoppetta, & c., et al., Appellants. Nat Williams, et al., Defendants, p. 2-3)

#### 3.4. Ignoring the Perpetrators of the Domestic Violence

Holding abused women legally responsible for failing to protect their children from exposure to domestic violence shifts the liability from those who perpetrated the violence to the victims of such violence, who also tend to be the children's primary caregivers (Weithorn, 2001). Such policies are "eerily consistent with the psychological messages that domestic violence perpetrators send explicitly and implicitly to their victims; messages that she is inadequate, incompetent, and blameworthy" (Weithorn, 2001, p. 126).

By making abused women the focus of child welfare intervention, the actual perpetrators of the intimate partner violence have largely been ignored. A number of authors suggest that in cases of domestic violence male abusers are frequently invisible in

child welfare intervention (Beeman, Hagemeister & Edleson, 1999; Edleson, 1999; Farmer & Owen, 1995; Humphreys, 1999; Humphreys, 1997; Miccio, 1995; Milner, 1993; Nixon, 2001; Stanley, 1997). This problem is exacerbated when the abuser is not the child's legal guardian since child welfare acts typically address maltreatment by the "guardian" of the child. It may be that many child welfare systems are unable to intervene with perpetrators because they lack the legislative clout to hold male perpetrators accountable, especially when they are not the biological father.

The invisibility of male perpetrators within the child welfare system is evident in a variety of ways. First, in terms of even defining the problem of domestic violence and children being at risk, men's abusive behaviour is not seen as the problem. Instead, the father's abusive behaviour is viewed in the context of what the mother failed to prevent (Miccio, 1995).

Second, male perpetrators are missing in case labelling and tracking. According to Edleson (1999), it is not standard child welfare practice to maintain service plans for abusive males as a means to enhance safety for the family members they have victimized. This is especially true if the man has no biological or other legal relationship to the child (i.e. not recognized as a "legal guardian"). Instead, case service plans are placed in the abused mother's name and assume that she is the one primarily responsible for the safety and well being of the children (Edleson, 1999). In Nixon's (2001) interviews with eight child protection workers, most of the workers stated that they did not work with the abuser and, in fact, they frequently deliberately excluded him in the case planning by not contacting or meeting him, not involving him in case planning discussions, and not insisting that he deal with this abusive behaviour (i.e. by attending counselling).

Weithorn (2001) suggests that child protection agencies must take an active role in preventing the perpetrators of domestic violence from continuing their violence. In some cases, child protection agencies need to involve the police in order to stop the perpetrator's violence. Weithorn (2001) and Mathews (1999) have suggested that if anyone should be removed from the family home, it should be the perpetrator of the violence, not the children. Several American states have passed laws that discourage removing children from homes in which domestic violence occurs, focusing instead on the safety of the adult victim and children (Mathews, 1999). In California, for example, recent legislation requires courts to look at the option of removing the perpetrator from the home rather than the child (Mathews, 1999). In Alaska, a statute passed in 1998 makes it clear that the perpetrator should be removed from the home rather than the child (Weithorn, 2001).

### 3.5 Failing to Protect Children

One criticism of the child welfare's system's approach to intimate partner woman abuse is that it fails to protect and support children. According to some, child welfare intervention can often be unsupportive and even detrimental to children (Callahan, 1993; Parkinson & Humphreys, 1998). Abused women, who are already under a tremendous amount of stress because of the abuse they experience, may be further traumatized by child welfare involvement. This additional stress could further compromise their parenting ability and reducing their capacity to meet their children's emotional needs (Parkinson & Humphreys, 1998).

Child welfare interventions in situations of domestic violence have also been criticized for potentially exacerbating violent situations. In cases where there is little risk of future harm, professionals may overreact and take an inappropriate aggressive response that can “needlessly heighten tension and exacerbate relationships” (Bala, 2000).

Child welfare workers often insist that abused women leave their abusive partner; for many women this means leaving their home and neighbourhood. Consequently, children may experience the stress associated with leaving their home, neighbourhood, school and friends, and moving into unfamiliar surroundings (Parkinson & Humphreys, 1998). Additionally, separation from the abusive partner is often accompanied by financial hardship (Parkinson & Humphreys, 1998). Callahan (1993) noted that the child protection system can do little to assist mothers financially. If abused women are financially disadvantaged then so, too, are their children. As noted earlier, abused women and children are at greatest risk of injury and death when they separate from the abuser (Campbell, 1992; Fleury et al., 2000). Therefore, child protection’s common expectation that women leave their partners can be dangerous and even lethal to children.

If abused women believe that their children could be apprehended when they disclose their own victimization, this could result in women not accessing critical services. For example, Zink, Kamine, Musk, Sill, Field, & Putnam (2004) report from their research that many women who sought help through a domestic violence support group or shelter were cognizant of the impact of the violence on their children, however they were afraid to disclose the domestic violence to a health care provider for fear of losing their children. Many researchers have raised the concern that mandatory reporting of children exposed to violence may prevent women and children from getting the protection and support that they require (Zink et al., 2004; Jaffe et al., 2003; Trocmé & Siddiqi, 2002).

Removing children from the non-abusive mother often has severe and long-lasting effects on children (The “Failure to Protect” Working Group, 2000). Zink et al. (2004) state that many researchers do not support removing children from the adult victim in these situations. Children who have witnessed violence against their mother are already victimized by fear and struggle with feelings of anger, grief, anxiety, and responsibility for the abuse. By removing them, they are victimized again by their increased fear of abandonment and/or being separated from their mother, who is often their primary caregiver. Additionally, if a child is apprehended adjustment difficulties may be created in reaction to this or already present problems could be exacerbated (Armitage, 1993). Such increased traumatization could result from the removal of the child from the home, uncertainty of child welfare proceedings, or even simply the added stress to the family system when child welfare workers become involved with the family. Therefore, removing the child from the home can be emotionally damaging.

Finally, legislation that expands the definition of child maltreatment to include exposure to domestic violence may divert resources away from children most in need, leading to an increased risk for children who are physically and sexually abused (Edleson, 2006).

The following tables summarize the arguments for and against such legislative changes to the definition of child maltreatment. Note that the authors cited after each bulleted point may not necessarily support each argument, but have outlined them in their articles on the subject.

Table 1: Pros and Cons of Developing Legislation to Address Children Exposed

<p>Arguments for legislation addressing child exposure to domestic violence:</p> <ul style="list-style-type: none"> <li>▪ Greater ability to identify children exposed to domestic violence (Weithorn, 2001)</li> <li>▪ Leads to early intervention for children exposed to violence (Weithorn, 2001)</li> <li>▪ Compels parents to take action to protect their children from exposure to violence (Jaffe et al., 2003; Weithorn, 2001)</li> <li>▪ Better able to protect children exposed through child protective services (Weithorn, 2001)</li> <li>▪ Promotes consistency in handling of domestic violence cases among the various agencies involved (Weithorn, 2001)</li> <li>▪ Educates front-line professionals to focus more on the plight of children exposed to domestic violence</li> <li>▪ Sends a clear message that DV is harmful to children, and society will not tolerate it (Jaffe et al., 2003; Weithorn, 2001)</li> <li>▪ Improves access to counselling resources for traumatized children (Jaffe et al., 2003)</li> <li>▪ Since there is a high incidence of child abuse in domestic violence families, the legislation “red flags” some families and leads to better assessment &amp; intervention (Jaffe et al., 2003)</li> <li>▪ Leads to better cooperation and collaboration between domestic violence and Child Protection – sharing of expertise and training</li> </ul>
<p>Arguments against:</p> <p><i>A. Infrastructure not in place to be able to implement legislative changes:</i></p> <ul style="list-style-type: none"> <li>▪ Increasing the referrals to Child Welfare will overload a system that is already stretched. CW workers will have caseloads impossibly high, and not be able to attend to the most serious situations (Jaffe et al., 2003; Edleson, 2006; Zink, Kamine, Musk, Sill, Field, &amp; Putnam, 2004; Weithorn, 2001)</li> <li>▪ Child protective services have typically not acted in the best interests of children or adult victims (Weithorn, 2001)</li> <li>▪ Services have not been developed nor funded to keep pace with legislative changes (Trocmé &amp; Siddiqi, 2002)</li> <li>▪ Neither adequate services nor protocols and policies developed that address the complexities of domestic violence cases (Trocmé &amp; Siddiqi)</li> <li>▪ No clear guidelines outlining the grounds for child welfare intervention, leaving a considerable room for interpretation by workers and agencies (Trocmé &amp; Siddiqi)</li> <li>▪ The statutory definitions require workers to assess the extent to which the exposure to DV might lead to emotional harm for children. This is subjective and leads to inconsistencies and sometimes inappropriate actions by workers (Echlin &amp; Marshall, 1995)</li> <li>▪ To be effective in helping children in these cases, workers require a lot of knowledge of DV. This is not typically part of the CW worker’s training (Echlin</li> </ul>

& Marshall,1995)

- Some statutory definitions require that workers prove their emotional harm was caused by exposure to DV. This is obviously very challenging. (Echlin & Marshall ,1995)
- A lack of judicial support for these statutes in some Canadian provinces (Echlin & Marshall ,1995)

*B. Re-victimizes abused women, and may put women (and children) at greater risk of harm:*

- The policies and legislation effectively blame battered women for their victimization (Miccio, 1995; Nixon, 2001)
- Laws that criminalize breaches of parental duties fail to take into account the complexities of domestic violence. By criminalizing breaches of parental duties, victims of domestic violence can potentially face criminal sanctions for remaining in the battering relationship (Stone & Fialk, 1997).
- Since professionals are mandated to report abused women to Child Welfare services, abused women will be afraid to seek help from agencies or to disclose abuse to outsiders. They may not leave an abusive situation and go to an emergency shelter, for fear of having her children apprehended. This has increased risk to adult victims and children (Weithorn, 2001; National Council of Juvenile and Family Court Judges Family Violence Department, 1999; Trocmé & Siddiqi, 2002; Stone & Fialk, 1997)

*C. The perpetrator of violence is not held accountable in the child welfare system*

- Including exposure to domestic violence in the neglect provisions of child maltreatment statutes focuses upon parental omissions rather than commissions. With respect to domestic violence, this ends up blaming the victim, and not holding the offender accountable (Weithorn, 2001).
- The perpetrator of violence is almost invisible in the child welfare system – all attention is focused on the victim (Beeman, Hagemester & Edleson, 1999)

*D. Fails to protect children*

- Not all children exposed to domestic violence appear adversely affected (Edleson, 2006; Jaffe et al., 2003)
- Child welfare involvement may add stress to battered women, which negatively impacts children (Parkinson & Humphreys, 1998).
- Child welfare involvement in domestic violence situations may heighten existing tensions (Bala, 2000)
- Women and children are at increased risk of serious injury or homicide when they leave an abusive partner. Child welfare's expectations that they leave may place them both in danger (Campbell, 1992)
- Children are further traumatized if they are removed from their abused parent's custody (The "Failure to Protect" Working Group, 2000)
- The child welfare system cannot accurately filter those children who are harmed from those who are functioning normally (Jaffe et al., 2003)

#### **4.0 Improving the Child Welfare Response to Children Exposed**

Canadian jurisdictions have attempted to improve their child welfare response to children exposed to domestic violence. Such innovative practices include specialized

training programs, domestic violence specialist housed in child protection organizations, and protocols with women's emergency shelters, police and other community agencies, to name only a few. For instance, in addition to developing a standard protocol for responding to cases of domestic violence, Alberta Children's Services has also developed standardized domestic violence training for new child protection workers and has also conducted a pilot on-line training program for child protection supervisors across the province (this was developed with the assistance of the Faculty of Social Work, University of Calgary).

Similarly, in 2000, the Ontario Association of Children's Aid Societies (OACAS) developed a joint training program for Children's Aid Society (CAS) staff and Violence Against Women (VAW) agency service providers. The goal of the joint training is to have workers in both sectors working more collaboratively to enhance safety for vulnerable children and women.

Some American states have made changes to the child protection system to better serve children exposed to domestic violence that have not been accompanied by specific legislative changes (Weithorn, 2001, p. 119). For example, in Massachusetts, the Social Services department implemented a domestic violence training program for their child protection workers, and also hired a battered women's advocate to serve as a consultant to their program. This resulted in an increase in domestic violence being recognized in cases, and the advocate worked with child protection teams to help adult victims and children with safety planning and referrals to community resources. They also have developed a Domestic Violence protocol for child welfare staff (Weithorn, 2001).

Similarly, in Michigan, domestic violence services have collaborated with in-home intervention services. All in-home workers were trained in domestic violence, and links were developed between women's shelters and child protection services. In Michigan, state administrators felt that changes in service delivery are most effective when made through changes in policy and funding priorities, rather than legislative changes (Weithorn, 2001).

Weithorn (2001) outlines guidelines for reforming child protection services to more effectively help children exposed to domestic violence. These include:

- working to develop trust between domestic violence and child protection services;
- training child protection workers in domestic violence issues;
- having individuals with expertise in domestic violence available to child protection workers;
- developing domestic violence protocols for screening and case management; changing policies so that the safety of the adult victim is synonymous with the safety of the child;
- holding the batterer accountable for the violence;
- providing appropriate services to family members; and,
- ensuring adequate funding for services.

## 5.0 Civil Domestic Violence Legislation to Address Children Exposed

In addition to the child protection system, many provinces and American states have attempted to protect children exposed to domestic violence within domestic violence legislation. Six jurisdictions in Canada have now proclaimed civil domestic violence legislation, Alberta (*Protection Against Family Violence Act*, 1999; revised 2006), Saskatchewan (*Victim's of Domestic Violence Act*, February 1995), Prince Edward Island (*Victim's of Family Violence Act*, December 1996), Manitoba (*Domestic Violence Stalking, Prevention, Protection and Compensation Act*, September 1999) and Yukon (*Family Violence Prevention Act*, November 1999) (Roberts, 2002) ); and Nova Scotia (*Domestic Violence Intervention Act*, April, 2003). Ontario (2000) has passed but not yet proclaimed similar legislation. New Brunswick, Quebec and the Northwest Territories are reportedly considering implementing similar legislation (The Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation 2003).

Reviews of civil domestic violence legislation have taken place in Saskatchewan (Turner, 1995), Prince Edward Island (1998) the Yukon (Bala & Ringseis, 2002) and Alberta (Tutty, Koshan, Jesso & Nixon, 2005). The data collection methodology of these reviews included surveys, file reviews and interviews with justice stakeholders (JP's, police, community and legal resources), focus groups (Yukon review) and victim interviews were conducted in the Saskatchewan and Alberta reviews.

The majority of states in the US have adopted domestic violence legislation that specifically addresses children exposed to domestic violence. Approximately<sup>2</sup> 40 States<sup>3</sup>, the District of Columbia, and the U.S. Territories Guam, Northern Mariana Islands, and Puerto Rico include children as a class of protected persons within their definitions of domestic violence (National Clearinghouse on Child Abuse and Neglect Information, 2004). Typically, a child who is member of the household or a child of either adult in the violent relationship is protected the legislation. Further, five states (Arizona, Hawaii, Ohio, Utah and Vermont) include child abuse in their definition of domestic violence; four states (Arizona, North Carolina, Virginia, and Washington) specifically include grandchildren as protected persons, and three states (Georgia, Louisiana, and Texas) include foster children. Approximately<sup>4</sup> 20 States<sup>5</sup> and Puerto Rico have enacted legislation that specifically includes children who witness domestic violence as a protected class of persons.

Witnessing is typically defined as being in the presence of or having witnessed domestic violence when the violence occurred. However, in some states<sup>6</sup>, the definition of witnessing is more specific, stating that witnessing by a child occurs when the perpetrator commits an act of violence "in the physical presence of the child or knowing that the child is present and can see or hear" the act of violence. Further, Minnesota

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<sup>2</sup> This information is current only from March 2004.

<sup>3</sup> Colorado, Iowa, Kansas, Massachusetts, New Hampshire, New Jersey, Oregon, South Carolina, Wisconsin, and Wyoming do not currently include children in their definitions of domestic violence.

<sup>4</sup> This information is current only from March 2004.

<sup>5</sup> Alaska, Arizona, Arkansas, California, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Minnesota, Mississippi, Montana, North Carolina, Ohio, Oklahoma, Oregon, Utah and Washington.

<sup>6</sup> Alaska, Arizona, Arkansas, California, Florida, Georgia, Hawaii, Idaho, Illinois, Mississippi, Oklahoma, Oregon and Utah.

includes the chronic and severe use of alcohol or a controlled substance by a parent as part of its definition of “exposed to domestic violence” (National Clearinghouse on Child Abuse and Neglect Information, 2004).

As reported in Tutty et al. (2005), over the past twenty years, a number of studies have evaluated such civil protection orders. Although many took place in the United States, their results can be seen as applicable to the Canadian context given the paucity of such research in this country. Of seventeen studies, thirteen support the effectiveness of protection orders (Carlson, Harris & Holden, 1999; Kaci, 1994; Keilitz, Hannaford & Efke, 1997; Ptacek, 1999; Holt, Kernic, Lumley, Wolf and Rivara, 2002; Holt, Kernic, Wolf & Rivara, 2003; Fischer, 1992; Kinports & Fischer, 1993; Fischer and Rose, 1995; Johnson, Luna & Stein, 2003; Gist, McFarlane, Malecha, Willson, Watson, Fredland, Schultz, Walsh, Hall & Smith, 2001; McFarlane, Malecha, Gist, Watson, Batten, Hall & Smith, 2004; Humphreys & Thiara, 2003).

The results of three studies suggest that civil protection orders are not effective (Harrell & Smith, 1996; Klein, 1992; Adhikari, Reinhard & Johnson, 1993) and one reported mixed results (Grau, Fagan & Wexler, 1985). Several of these studies suggest on the whole that women experience less domestic violence with protection orders in place, based upon self reports, police reports, and reports from key stakeholders.

Children may be affected by EPO’s applied for on their behalf by a staff member from the Ministry of Children’s Services.

- persons designated by the regulations (peace officers and persons acting on behalf of an agency authorized by the Minister of Children’s Services to apply for emergency protection orders), with the consent of the alleged victim.

In Alberta, the *Prevention Against Family Violence Act* is Alberta’s domestic violence legislation that came into effect in 1999. Its’ purpose is to protect all family members from family violence. This legislation compliments the *Enhancement Act – Matters to be Considered* by supporting the abused family members to remain together with the assistance of a Protection Order, and by affording them protection from the abusive family member. Under this *Act*, an application for an Emergency Protection Order can be made by either the person who claims to be a victim of violence by a family member or a person, on behalf of the person who claims to be a victim of violence by a family member – with that persons’ consent or a person, on behalf of the person who claims to be a victim of violence by a family member – without that persons’ consent upon approval by a judge. Child protection workers, police, family members, and community members can apply on behalf of abused family members – adults and children. The Queen’s Bench Protection Order is a non-emergency order and requires the victim only to directly make an application to the court.

In the Alberta review of over 900 files from 2002 until June 2004, the majority of the applications (75.6%) had children named on them (737 applications of 975). The number of children named ranged from none to seven. The age of the oldest child (noted on 726 files) ranged from below one year of age to 49 years (average of 9.3 years; standard deviation of 5.5).

Representatives from the Ministry of Children's service made only three applications. This represents a small number of cases accessing the PAFVA legislation on behalf of children by agents of the Ministry and raises questions about the practical utility of the legislation for cases of children exposed to domestic violence.

A possible unintended consequence, raised by an Alberta stakeholder in the PAFVA evaluation (Tutty et al., 2005), is that if victims seeking an emergency protection order for situations when children were present, that authorities are mandated to report to Child Welfare authorities. When a woman in central Alberta was so informed, she subsequently decided not to pursue an EPO.

England and Wales' Family Law Act (FLA) 1996 has introduced a new provision which may be attached to an Emergency Protection Order (EPO) or an interim care order (both under the auspices of the Children Act 1989) enabling the authorities to remove the alleged perpetrator from the family home instead of the child. The court will only order the exclusion of the alleged perpetrator if strict criteria are met. For example, the court may require a statement from the local authority to the effect that there are reasonable grounds to believe that the child is likely to suffer significant harm if the alleged perpetrator is not removed from the home (Department for Constitutional Affairs, 2004).

In New Zealand, children are recognized as potential victims of domestic violence and can be given protection through protection orders under the Domestic Violence Act (1995) of New Zealand. Domestic violence is committed "against a child" if the child is abused or witnesses the abuse of a person with whom they share a domestic relationship. Further, the perpetrator who committed violence "against a child" and the Court is satisfied that the child is not safe, then the Court will only allow "supervised access" to the perpetrator in respect of that child

In summary, the available research on civil remedies has primarily focused on whether it adequately offers protection to adult victims of domestic violence not children. As such, the utility of such civil legislation for use with children and youth exposed to domestic violence is unclear at present.

## **6.0 Criminal Law Responses to Children Exposed to Domestic Violence**

A number of American states have made changes in criminal law that reflect a desire to hold perpetrators accountable for the harm to children by exposing them to domestic violence. A conviction of a domestic violence act committed in the presence of a child may result in harsher penalties. Thus when a child is present during domestic violence is considered to be an "aggravating circumstance" and can result in harsher penalties such as longer jail or prison terms or an increased fine (Child Welfare Information Gateway, 2005).

At least 18 American states have passed legislation that increases sanctions against perpetrators of domestic assaults that are committed in the presence of children (Edleson, 2006). For example, in Utah, the commission of adult domestic violence two or more times in the presence of a child is a separate criminal offence from the assault itself (Edleson, 2004; Jaffe et al., 2003). In California, the presence of children may bring enhanced criminal penalties in adult assault cases (Edleson, 2004). In Oregon, a misdemeanour assault may be elevated to a felony if minors were present (Edleson,

2004). Oregon’s statutes define domestic violence in the presence of children as a separate criminal offense (Jaffe et al., 2003), for which specified penalties are available (Weithorn, 2001).

Idaho has a statute that doubles the penalties for domestic violence assaults that take place when a child is present (Weithorn, 2001). Puerto Rico provides for enhanced penalties when a domestic violence offence is committed in the presence of a child. Minnesota includes a statute on children exposed to domestic violence (626.552 section of Criminal Statutes) that defines childhood exposure and links it to other government statutes, including child protection Statutes (626.556), the domestic assault Statute (609.2242), and the Domestic Abuse Act (518B.01). Illinois and Nevada require domestic violence perpetrators to pay for any counseling that a child victim may require. In Delaware, committing domestic violence is considered an act of child endangerment and is a class A misdemeanor and in Georgia childhood exposure to domestic violence is considered cruelty to children. Finally, Indiana requires the non-custodial parent who is convicted of domestic violence in the presence of a child to have visitation with the child supervised for a least one year and not more than two years following the domestic violence incident (Child Welfare Information Gateway, 2005).

### 6.1 Increasing Criminal Consequences to Batterers for Exposing Children

Increasing the criminal consequences to batterers for exposing children to domestic violence is believed to have a number of benefits, however a number of objections have also been raised. The rationale for increased criminal penalties to batterers, as well as objections that have been raised are outlined in the tables below. Note that the authors cited may not necessarily support each argument, but have outlined them in literature on the subject:

Table 2: Pros and Cons of Criminalizing Child Exposure to Domestic Violence

<p>Rationale for increasing criminal penalties to batterers</p> <ul style="list-style-type: none"> <li>○ Research indicates that criminal prosecution can send a very powerful message to abusers, particularly if the system treats the crime seriously (Kershaw, 1998)</li> <li>○ Children have increased access to programs to help them cope with the effects of witnessing violence (through victim compensation funds and programs) (Weithorn, 2001)</li> <li>○ Police officers, prosecutors, and courts more likely to focus attention on children when they are present during domestic assaults, enabling children’s needs to be better met (Edleson, 2006; Weithorn, 2001)</li> <li>○ Increased referrals to Child Protection for screening (Weithorn, 2001)</li> <li>○ If children are direct victims, civil protective orders can be issued to protect them (Weithorn, 2001)</li> <li>○ If adult victim doesn’t testify but there were children involved, prosecution of offenders is more likely to occur (Weithorn, 2001; Stone &amp; Fialk, 1997)</li> <li>○ The state has more power to impose stiffer penalties on perpetrators of violence who put children at risk (Weithorn, 2001; Edleson, 2006)</li> <li>○ Criminal prosecution of the batterer is an option that places accountability on the batterer (Failure to Protect Working Group, 2000)</li> <li>○ Makes a strong public statement about society’s unwillingness to tolerate domestic violence and its effects on children (Stone &amp; Fialk, 1997; Weithorn, 2001)</li> <li>○ Shifts the responsibility for the violent acts appropriately to the one who committed them; holding batterers accountable (Stone &amp; Fialk, 1997; Weithorn, 2001)</li> </ul>
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- Criminalizing the exposure of a child to domestic violence would have a positive effect on civil custody proceedings, making it more difficult for abusive fathers to gain custody of their children – i.e. if a father was convicted of exposing his children to domestic violence- it would be hard for a judge to deem him the best caregiver for the children (Stone & Fialk, 1997)

#### Objections to increasing criminal penalties to batterers

- A fear that children will increasingly be witnesses in court. It can be very traumatic for them to testify against a family member (Weithorn, 2001; Jaffe et al., 2003; Edleson, 2006).
- Concern that extending the batterer’s criminal liability for his actions will also impact the victim, and expand her liability as well (Weithorn, 2001).
- Expanding the definition of direct victims of violence to include witnesses is a risky trend, and that it will start to include other witnesses to violence as direct victims. (Weithorn, 2001).
- Concern about possible contempt of court charges for victims who won’t testify; charges of perjury against victims for changing their stories (Jaffe et al., 2003)
- Training of police and court officers in domestic violence has not kept pace with new legislation (Jaffe et al., 2003)
- Court system does not tend to understand children’s needs and developmental level (Jaffe et al, 2003)
- The above may lead to children and adult victims being reluctant to disclose abuse (Jaffe et al., 2003).
- There is a concern that, since law enforcement resources are scarce, attention will focus primarily on cases where there are children present because of the increased likelihood of convictions/ guilty pleas. Women without children may receive less attention because their cases will be seen as weaker (Edleson, 2006)
- Battered women’s advocates suggest that if current laws were better enforced, there would not be a need to have additional laws (Edleson, 2006) For example, despite passage of laws that require police to arrest perpetrators of domestic violence, and to identify the primary aggressor, police response often still results in no arrests or dual arrests (Failure to Protect Working Group, 2000)
- Concern that some legislation (i.e. Utah’s) will be used against abused women for failing to protect their children (Edleson, 2006).

## 6.2 Criminal Charges against Women for Failure to Protect Children

In the United States, there have been several court decisions regarding criminal charges of failure to protect against mothers who are victims of domestic violence (Lemon, 1999). Many states’ statutory definitions of child abuse and neglect parallel state criminal laws, which may strongly influence child welfare system responses to cases involving domestic violence (Matthews, 1999).

Matthews explains that “all but 12 states in the U.S. have child abuse and neglect laws that criminalize omissions as well as affirmative acts of harm, and the trend in state legislation is moving in the direction of increased liability for some of these omissions” (p. 57). Some agencies and courts have interpreted a battered parent’s failure to protect a child from exposure to harm by the abusive parent as a punishable omission. This type of criminal finding may cause mothers who are unable to protect their children from harm

by the batterer to lose custody of their children, without any help from the state to reunify with their children (Matthews, 1999).

Laying criminal charges against abused women for failing to protect their children from exposure to harm by the perpetrator may not take into consideration the complex dynamics of domestic violence (Matthews, 1999). Such statutes do not allow for the particular circumstances of abused women, many of whom lack the resources to escape from abusive situations, lack the resources to be able to provide for their children on their own, and face increased danger should they leave a batterer. Many abused women endure abuse because they cannot safely leave the situation. There are only three American states that have laws that allow the courts to consider evidence that abused women often cannot protect their children without further injury to themselves or their children (Matthews, 1999).

Enos (1996) argues that the application of criminal statutes that punish battered women for the injuries inflicted upon children by others has “rendered unjust results for battered women and their children” (p. 239). Enos (1999) criticizes the uniform application of these statutes without regard for the complexities of domestic violence situations. Enos (1996) argues that often court decisions are often based on false assumptions about domestic violence, including “(1) that a mother who has knowledge of abuse is always capable of doing something to prevent the abuse; (2) a battered woman’s fear is exaggerated and unbelievable; and (3) parents should be treated as a unit” (p. 240).

Enos (1996) argues that legal and social policies may inadvertently be creating further barriers that force women and children to suffer ongoing violence. These policies must change in order to better protect abused women and their children, and to hold batterers accountable for their behaviour. The following section examines some of the proposed policy changes recommended by scholars in order to provide better assistance to victims of family violence.

## **7.0 Recommendations for Future Policy and Practice Directions**

This paper has presented arguments on both sides of policy and legislative reform to protect children exposed to domestic violence. Edleson (2004) suggests it is possible to find common ground in these differing arguments for future policy reform. He suggests there are three major tenets that can form the foundation of future policy:

“(1) childhood exposure to adult domestic violence should not automatically be defined as maltreatment under the law; (2) many children and their families should not be referred for forensic child protection investigations and interventions that carry the possibility of legal action against the parents. Rather, they should be offered voluntary, community-based assessments and services; and, (3) some children exposed to adult domestic violence are at great risk for harm and should be referred to the child protection system for assessment and intervention with their families” (p. 20).

In an effort to prevent some of the unintended consequences of legal responses, and to best protect children exposed to domestic violence, several researchers have made recommendations for future policy.

Weithorn (2001) suggests that a statute that simply defines children exposed to domestic violence as maltreated is likely to have numerous unintended consequences, and is also not likely to be effective. It is critical to ensure that an expansion of the definition of child maltreatment is part of a wider effort at policy reform.

A basic premise of any policy reform should be to acknowledge that not all children exposed to violence are maltreated children, in that children exposed to domestic violence witness varying levels of violence, and children have different strengths and coping abilities (Edleson, 2006). It is important to develop protocols and policies to ensure that attention is focused on the cases where children are most at risk (Weithorn, 2001).

Edleson (2006) envisions a continuum of care in which there are various levels of responses depending upon the severity of the situation. Child protective services would intervene in the small number of cases where children are both maltreated and exposed, and in a very small number of cases, courts would become involved. Early intervention services would be provided to families where there has not been direct child abuse, and the majority of cases would be referred to voluntary community-based programs. Informal social support networks are important resources to mobilize, since this is the source to which women most often turn for assistance. Other agencies also play an important role in responding to children exposed, such as child care centres and health care professionals.

In deciding whether children should be referred to child protection or voluntary community agencies, Edleson suggests that perhaps the capacity of child advocacy centres, custody evaluators or court appointed advocates could be enhanced to take on this role. To filter cases in which children are at high risk of harm from those who are at lower risk, protocols and assessment instruments need to be developed in child protection agencies (Edleson, 2004). Risk factors may include, for example, domestic violence involving the use of weapons, the proximity of the child to the violence, the actions taken by the child during violence, substance abuse problems in the caregiver, and repeated, severe perpetration of violence by the abuser (Edleson, 2004).

Edleson, Ellerton, Seagren, Schmidt, Kirchberg and Ambrose (2006) purport that no satisfactory assessment tools are currently available for workers to adequately measure children's exposure to domestic violence. Numerous factors appear to impact children's adjustment when they are exposed to domestic violence. For instance, concurrent victimization, a child's gender and age, the nature and extent of the abuse, the child's relationships with the perpetrator and the victim, and the child's coping abilities may all influence the extent to which the child is harmed by exposure to violence (Edleson et al., 2006). A proper assessment of children exposed should include direct questions about the exposure to violence and the manner in which the children was exposed, the co-occurrence of direct forms of abuse, the child's coping abilities, and the child's perception of the violence. Edleson and colleagues are in the process of developing such a tool, the "Child Exposure to Domestic Violence Scale" (p. 15).

It is also critical that child protection agencies provide support and safety planning to abused mothers and children (Edleson, 2004). Initial research has demonstrated that intervening with the adult victim to enhance her safety not only has

positive results for the victim but also her children (Weithorn, 2001). There is consensus among key stakeholders in the United States that the safety of the adult victim is synonymous with the safety of the child (Weithorn, 2001). It is also critical to intervene with the perpetrator of violence (Edleson, 2006), and for child protective services to take an active role in preventing the perpetrator from continuing his violence (Weithorn, 2001).

A child's relationship with the adult victim is a critical factor in a child's adjustment, and a positive relationship can mitigate against the harm caused by exposure to the perpetrator's violence (Weithorn, 2001). The removal of a child from the non-abusive parent should be avoided as much as possible, and should be an intervention reserved for only a small portion of cases in which the child is at high risk of immediate harm (Weithorn, 2001; The Failure to Protect Working Group).

Weithorn (2001) suggests that changes in child welfare statutes be coordinated with other relevant court systems, such as criminal and child custody courts. She also suggests that adequate funds accompany any legislative changes, including the costs of providing domestic violence training and hiring staff with appropriate expertise.

Lemon (1999) reports that many trial court judges do not address domestic violence issues in cases, and in fact, some are antagonistic to doing so. Lemon (1999) emphasizes the need for the judiciary and other court personnel to have an increased understanding of the dynamics of domestic violence.

Stone and Fialk (1997) advocate for laws that criminalize exposure of children to domestic violence in order to hold batterers accountable for their actions. They propose model legislation that specifically penalizes the batterer, avoids penalizing the victim, and penalizes only the most violent criminal conduct of perpetrators.

Professionals seem to agree that the values that ought to lay the foundation for policy reform aimed at protecting children exposed to domestic violence include ensuring the safety and well-being of all family members, holding the perpetrator accountable for the violence; ensuring services are available to children and families from different access points, improving the responses of various systems through coordination, cross-training, communication, and structural changes within systems; and, analyzing the potential consequences of any policy prior to its institution (Edleson, 2006).

There also appears to be professional consensus about the need for research on the impact of legal reforms in this area (Weithorn, 2001; Edleson, 2006; Jaffe et al., 2003). It is critical to know whether children and their non-abusive parent are better off as a result of policy reforms (Weithorn, 2001), yet very little research has been carried out to date.

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**Table of Legislation and Policies on Children Exposed to Domestic Violence<sup>7</sup>**

Province/ State/ Country	Level of Policy	Scope of the Policy & Definition of children exposed	Civil Legislation, Internal & Interagency Protocols, organizational policies, coordinated responses
<b>Canada</b>			
Alberta: Child, Youth and Family Enhancement Act (2004)	Dependency court (Family Court) jurisdictional statutes	<p>--For the purposes of this Act, a child is in need of intervention if there are reasonable and probable grounds to believe that the survival, security or development of the child is endangered because of any of the following: (f) the child has been emotionally injured by the guardian of the child;(g) the guardian of the child is unable or unwilling to protect the child from emotional injury;</p> <p>--For the purposes of this Act, (a) a child is emotionally injured (i) if there is impairment of the child’s mental or emotional functioning or development, and (ii) if there are reasonable and probable grounds to believe that the emotional injury is the result of (C) <u>exposure to domestic violence or severe domestic disharmony.</u></p>	<p>--“Matters to be Considered”, legislated guiding principles to guide child welfare decision-making, include a provision about families affected by domestic violence: decision-makers must place priority on “providing supports that reduce the risk to the child and keep the abused family members together” (Overview of Changes to the Child, Youth and Family Enhancement Act – August 2004).</p> <p>--Civil legislation: <i>Protection Against Family Violence Act</i>, (1999; revised 2006). Child protection workers, police, family members, &amp; community members can apply on behalf of abused family members – adults and children. persons designated by the regulations (peace officers and persons acting on behalf of an agency authorized by the Minister of Children’s Services to apply for emergency protection orders), with the consent of the alleged victim. In determining whether an order should be granted, the court must consider, but is not limited to considering (d) the best interests of the claimant and any child of the claimant or any child who is in the care and custody of the claimant (Section (2)(d)).</p> <p>--In some Alberta jurisdictions, police must report all cases of domestic violence involving children to Alberta Children’s Services.</p>
Saskatchewan: The Child and Family Services Act	Dependency court (Family Court) jurisdictional	A child is in need of protection where: As a result of action or omission by the child’s parent: The child has been exposed to domestic violence or severe domestic disharmony that is likely to result in physical or emotional harm to the child.	--Civil legislation: <i>Victims of Domestic Violence Act</i> , February 1995. In determining whether an order should be made, the best interests of the victim and any child of the victim or any child who is in the care and custody of the

<sup>7</sup> Prepared by RESOLVE Alberta for the Alberta Centre for Child Families and Community Research, October 2006

	statutes		victim shall be considered (Section 3, (2) (d).
Manitoba			Civil legislation: <i>Domestic Violence Stalking, Prevention, Protection and Compensation Act</i> , September 1999. The Act creates two different types of orders: Protection Orders, obtained from a designated Justice of the Peace of the Provincial Court of Manitoba, and Prevention Orders, obtained from the Court of Queen’s Bench.
Ontario: (not in legislation –see adjacent columns)	Not in legislation	No specific reference to domestic violence in Ontario’s Child and Family Services Act (CFSA).	--A section of the Risk Assessment Model (Eligibility Spectrum), used for referrals to local CAS offices,. on Adult Conflict states that the emotional maltreatment section of the Child and Family Services Act (CFSA) should be interpreted to include adult conflict, as “violence in the family has a severe emotional impact on children and is a form of child maltreatment” Adult conflict is rated as either “extremely severe” (adult conflict causing physical harm and conflict causing emotional harm); “moderately severe” (adult conflict causing risk that the child is likely to be physically harmed and conflict causing risk that the child is likely to be emotionally harmed); and “minimally severe” (adult conflict – minimal risk that the child is likely to be emotionally or physically harmed) and “not severe” (minimal adult conflict). CAS intervention is warranted if adult conflict is either moderately or extremely severe (Ontario Child and Family Services Act References, 1990). --In Ontario, police routinely contact child welfare if children are in a home where domestic violence has been identified. Community agencies, such as shelters and schools also routinely report their concerns about children witnessing domestic violence. (Jenney, et al., 2006). --Civil legislation: Ontario (2000) has passed but not yet proclaimed the <i>Domestic Violence Protection Act</i> . An intervention order may contain a number of provisions that the court considers appropriate in the circumstances for the protection of any person or property that may be at risk of harm or damage or for the assistance of the applicant or any child. (Section 3 (2) )
Prince Edward	Dependency	A child is in need of protection where: The child has suffered physical or	--Civil legislation: <i>Victim’s of Family Violence Act</i> ,

Island: Child Protection Act	court (Family Court) jurisdictional statutes	emotional harm caused by being exposed to domestic violence	December 1996. In determining whether to make an order, the court shall consider the best interests of the victim or a child or other person in the care of the victim (Section 4 (2) (d). Where a child is identified on an emergency protection order or a victim assistance order, the Registrar shall provide a copy of any emergency protection or victim assistance orders made by the justice of the peace or by the court to the Director of Child Welfare (Section 8 (6).
Nova Scotia: Children and Family Services Act (1990)	Dependency court (Family Court) jurisdictional statutes	(2) (i) A child is in need of protective services where: (i) the child has suffered physical or emotional harm caused by being exposed to repeated domestic violence by or towards a parent or guardian of the child, and the child's parent or guardian fails or refuses to obtain services or treatment to remedy or alleviate the violence;	--Nova Scotia has protocols specific to reporting children exposed to domestic violence between child protection services, transition homes, men's intervention programs and the police. Child protection agencies must have a protocol with police. Some professionals note that the policies and protocols may not be current, practice is inconsistent, there is a lack of training on these protocols and a lack of reciprocal reporting between police and child protection services (Department of Justice, 2001). --Civil legislation: <i>Domestic Violence Intervention Act</i> , April, 2003. 7(1) In determining whether to make an order, the justice of the peace shall consider, but is not limited to considering, (d) the best interests of the victim and any child of, or in the care and custody of, the victim (Section 6 (2)(d) )
New Brunswick: Family Services Act (1983)	Dependency court (Family Court) jurisdictional statutes	The security or development of a child may be in danger when "The child is living in a situation where there is domestic violence;	--Protocols in NB: when abused women come into contact with Family and Community Services, employees must ask about the safety of the women's children. If the women abuse is such that the security and development of a child is believed in danger, a child protection referral is made to the local child welfare office. Such referrals are mandatory under Section 30(1) of the Family Services Act. (Department of Family and Community Services, 2004)
Newfoundland: An Act Respecting Child, Youth and Family Services (1998)	Dependency court (Family Court) jurisdictional statutes	A child is in need of protective intervention where the child "is living in a situation where there is violence"	

Northwest Territories & Nunavut: NWT: Children and Family Services Act (1998) Nunavut: adopted NWT's Act	Dependency court (Family Court) jurisdictional statutes	A child is need of protection where: "The child has suffered physical and emotional harm caused by being exposed to repeated domestic violence and the child's parent fails or refuses to obtain services, treatment or healing processes to remedy or alleviate the harm; The child has been exposed to repeated domestic violence... and there is substantial risk that the exposure will result in physical or emotional harm to the child and the child's parent fails or refuses to obtain services, treatment, or healing process to prevent the harm."	
Yukon			-- <i>Family Violence Prevention Act</i> , Nov. 1999. In determining whether an order should be made, the designated justice of the peace shall consider, but is not limited to considering, the following factors: .(d) the best interests of the victim and any child of the victim or any child who is in the care and custody of the victim (Section 4 (2)(d)).
<b>United States</b>			
Alaska	Incorporated children's exposure to domestic violence into its statute governing grounds for the juvenile court's dependency jurisdiction	--Legislature passed a statute that states if alleged acts of domestic violence "placed the child at substantial risk of mental injury" and it fit into one of the enumerated categories of offenses cross-references from Alaska's criminal statutes, the court could find the child to be dependent. --Domestic violence in not included in Alaska's definition of child abuse but is in the section regarding child maltreatment (47.10.011.): "The court may find a child to be a child in need of aid if it finds by a preponderance of the evidence that the child has been subjected to any of the following: i) exposure to conduct by a household member, as defined [as domestic violence] against another household member (ii) repeated exposure to conduct by a household member, as defined [as domestic violence] against another household member; (iii) repeated exposure to conduct by a household member, as defined [as domestic violence] against another household member --In additional, childhood exposure is addressed in additional subsections of the legislation. If during an investigation of child abuse or neglect it is determined that: (1) the child is in danger because of domestic violence or that the child needs protection as a result of the presence of domestic violence in the family, the department shall take appropriate steps for the protection of the child; in this paragraph, "appropriate steps" includes; (A)	Alaskan legislation disfavors removing a child from the custody of the domestic violence victim & makes protection of the domestic violence victim as well as the child a departmental mandate. If anyone should be removed from the home, it should be the offender, not the child (Weithorn, 2001). The legislation requires the state to make internal changes: training for its child protective services workers, protocols guiding case assessment and intervention, & building collaborative relationships with community domestic violence agencies (Weithorn, 2001, p. 112).

		reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is not a domestic violence offender; (B) reasonable efforts to remove the alleged domestic violence offender from the child's residence if it is determined that the child or another family or household member is in danger of domestic violence; and (C) services to help protect the child from being placed or having unsupervised visitation with the domestic violence offender until the department determines that the offender has met conditions considered necessary by the department to protect the safety of the domestic violence victim and household members	
California	Criminal Code. California courts have used existing child welfare legislation to target children exposed to DV	The presence of children may bring enhanced criminal penalties in adult assault cases (Edleson, 2004) Offenders are charged with one count of child abuse for each child who witnesses the assault, along with the felony charge of domestic abuse under California Penal Code section 273.5.	
Connecticut	Juvenile Court	Juvenile courts are authorized to consider evidence of the children's exposure to domestic violence in the various stages of the proceedings.	
Florida	Statute regulating the processing of child maltreatment cases	1) A 1999 statute mandated the filing of a dependency petition in high risk cases, such as domestic violence. Statute amended in 2000 due to problems with implementation (flood of new cases). 2) In 1998, Florida amended its juvenile court jurisdictional statute "to include within the definition of "harm" – when any person ...engages in violent behaviour that demonstrates a wanton disregard for the presence of a child and could reasonably result in serious injury to the child" (Weithorn, 2001, p. 25).	Statute was repealed "after compliance with the statute nearly paralyzed the state's ability to respond to any maltreatment cases" (Weithorn, 2001, p. 23)
Kentucky	Juvenile Court	Juvenile courts are authorized to consider evidence of the children's exposure to domestic violence in the various stages of the proceedings.	
Massachusetts	Child welfare internal changes		The Social Services Dept. implemented a DV training program for their child protection workers, & hired a battered women's advocate to consult to their program. This resulted in an increase in DV being recognized. The advocate worked with child protection teams to help adult victims and children with safety planning and referrals to community resources. They also have developed a Domestic Violence protocol for child welfare staff (Weithorn, 2001)

Michigan	Child welfare internal changes		Domestic violence services collaborate with in-home intervention services. All in-home workers were trained in DV, and links were developed between DV shelters and child protection services. In Michigan, state administrators felt that changes in service delivery are most effective when made through changes in policy and funding priorities, rather than legislative changes (Weithorn, 2001).
Minnesota	Reporting statutes: Maltreatment of Minors Reporting Act- Implemented 1999, Repealed in 2000	Legislation – no longer in effect: expanded definition of child neglect to include exposure to adult domestic violence as a type of neglect. Numerous problems ensued: the legislation was repealed in 2000. While child exposure is no longer in the definition of child maltreatment, domestic violence is referenced in the section pertaining to the mandatory duties of local child welfare agencies, including the mandatory procedures for conducting family assessments and investigations. The Statute (Subd. 10 [4]) states: “In conducting a family assessment or investigation, the local welfare agency shall gather information on the existence of substance abuse and domestic violence and offer services for purposes of preventing future child maltreatment, safeguarding and enhancing the welfare of the abused or neglected minor, and supporting and preserving family life whenever possible”.	Despite the fact that the revised state has not been implemented in Minnesota, the state’s dept of Human Services is implementing policies that are in the same spirit of the legislation. This includes diverting families to an Alternative Response program, which provides assessment and services on a voluntary basis. The Dept also has established guidelines for intervention, which states “the preferred way to protect children in most domestic violence cases is to joint with the adult victim in safety planning and to hold the abusive partner accountable” (Weithorn, 2001, p. 109).
Montana		Montana includes situations of domestic violence in its definition of emotional abuse but does not explicitly state the term “domestic violence”: Emotional Abuse§ 41-3-102: Psychological abuse or neglect means severe maltreatment through acts or omissions that are injurious to the child’s emotional, intellectual, or psychological capacity to function, including acts of violence against another person residing in the child’s home	
New York	Article 10 of the Family Court Act	Courts have used existing child maltreatment statutes incorporate childhood exposure to DV, using the neglect provisions to target children exposed to DV. For the court to find neglect, the parent must have failed to exercise a minimum degree of care that resulted in physical, mental or emotional impairment or imminent danger of impairment to the child (The Failure to Protect Working Group, 2000)	A class action suit against the City of New York for removing children from the custody of abused mothers for failing to protect their children from witnessing DV was successful.
Puerto Rico	Definition of Child Abuse includes exposure to domestic	Puerto Rico also includes childhood exposure to domestic violence within its definition of child abuse and neglect and the term is explicitly used in the category of emotional abuse. Emotional Abuse Tit. 8 § 441 Abuse means any intentional act or omission of such a nature whereby a minor is inflicted or in jeopardy of suffering harm or prejudice to his or her	

	violence	health and physical, mental, emotional, and/or moral integrity including, but not limited to <u>emotional harm inflicted by witnessing acts of domestic violence</u> .	
<b>United Kingdom</b>	Adoption and Children Act 2002	In January 2005, an amendment to the meaning of harm (made through the Adoption and Children Act 2002) took effect and includes “impairment suffered from seeing or hearing the ill treatment of another” (Department for Constitutional Affairs, 2004).	The Family Law Act (FLA) 1996 has introduced a new provision which may be attached to an Emergency Protection Order (EPO) or an interim care order (both under the auspices of the Children Act 1989) enabling the authorities to remove the alleged perpetrator from the family home instead of the child. The court will only order the exclusion of the alleged perpetrator if strict criteria are met (Department for Constitutional Affairs, 2004).
<b>Australia:</b> New South Wales	The Children and Young Persons [Care and Protection] Act 1998)	A child or young person is at risk of harm if current concerns exist for the safety, welfare and well-being of the child or young person because of the presence of one or more of the following: (d) the child or young person is living in a household where there have been <u>incidents of domestic violence</u> and, as a consequence, the child or young person is at risk of serious physical or psychological harm	All mandated reporters (health, welfare workers, police & child care workers) required to report to the Department of Community Services (DoCS) if they suspect a child under 16 years has been abused or is at risk of being abused. New South Wales police policy: all children present at situations of domestic violence where police attend must be assumed to be at risk of serious harm and reported to the Department of Community Services (DoCS). (Department of Community Services, New South Wales, Pg. 34).
Australia: Western Australia			The Department for Community Development in Western Australia issued several considerations for child protection policy, some relating to childhood exposure of domestic violence. “Exposure to family and domestic violence can affect children’s, particularly very young children’s, short and long term wellbeing and in some situations be very harmful and require a statutory child protection response. However, the well-being of most children experiencing family and domestic violence will be achieved through the positive promotion and strengthening of the capacity of capable and protective parents, care givers and other members in the community. Where appropriate, supporting and protecting one of the parents to leave the violent relationship can be a child protection strategy” (Department for Community Development, 2004).

Australia: Tasmania			Tasmania child protection authorities have mandatory reporting requirements: professionals working with children / employees or volunteers working with the Tasmania government or government funded organizations are to report if they have “reasonable grounds to believe or suspect that a child is suffering, has suffered, or is likely to suffer abuse or neglect, or is being exposed to domestic violence?” (Bromfield & Higgins, 2005)
<b>New Zealand</b>	Domestic Violence Act (1995)		Children are recognized as potential victims of domestic violence and can be given protection through protection orders under the Domestic Violence Act (1995) of New Zealand. Domestic violence is committed “against a child” if the child is abused or witnesses the abuse of a person with whom they share a domestic relationship. Further, the perpetrator who committed violence “against a child” and the Court is satisfied that the child is not safe, then the Court will only allow “supervised access” to the perpetrator in respect of that child (New Zealand Domestic Violence Act, 1995)