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Review of Child Welfare System's Handling of Cases with Domestic Violence and Recommendations to Create a Safer System for Victims and their Children

March 2026

CHILDREN
NATIONAL LEGAL CENTER ON
CHILDREN AND DOMESTIC VIOLENCE

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I. Overview

In its 2022 reauthorization of the Violence Against Women Act ("VAWA"), Congress made findings that intimate partner violence and child abuse frequently overlap,[1] but the courts will often discount claims of abuse in custody matters on the basis of the abuser claiming alienation.[2] Congress also found that in one-third of cases, after a victim parent alleges abuse, the abusive parent receives custody.[3] To improve custody outcomes in child welfare cases with domestic violence, Congress ordered a study to review State laws, regulations, and practices.[4] This report aims to fulfill the requirements of that study.

Specifically, this report starts with a brief history of the child welfare system, summarizes trends in statutes and policies throughout all U.S. jurisdictions, highlights recurring themes in the case law, and provides information gathered from the listening sessions. The report concludes with recommendations that take into account the research and information obtained during listening sessions.

All fifty states and six territories now directly address domestic violence in their custody statutes. However, each jurisdiction treats custody determinations in families with domestic violence differently. Over the past two years the Battered Women's Justice project ("BWJP") reviewed how child custody and child welfare statutes, policies, and case law in all United States jurisdictions, address domestic violence. To supplement the research, BWJP also

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[1] "Intimate partner violence and child abuse overlap in the same families at rates between 30 to 60 percent." Violence Against Women Act Reauthorization Act of 2022, 117 S. 3623, Sec. 1502 (2)

[2] "Empirical research indicates that courts regularly discount allegations of child physical and sexual abuse when those allegations are raised in child custody cases, Courts believed less than ¼ of claims that a father has committed child physical or sexual abuse. With respect to cases in which an allegedly abusive parent claimed the mother "alienated" the child, courts believed only 1 out of 51 claims of sexual molestation by a father. Independent research indicates that child sexual abuse allegations are credible 50 to 70 percent of the time." Violence Against Women Act Reauthorization Act of 2022, 117 S. 3623, Sec. 1502 (6)

[3] "Empirical research shows that alleged or known abusive parents are often granted custody or unprotected parenting time by courts. Approximately 1/3 of parents alleged to have committed child abuse took primary custody from the protective parent reporting the abuse, placing children at ongoing risk." Violence Against Women Act Reauthorization Act of 2022, 117 S. 3623, Sec. 1502 (7)

[4] Violence Against Women Act Reauthorization Act of 2022, 117 S. 3623, Sec. 1508

conducted listening sessions with child welfare professionals to understand who obtains custody when child welfare identifies domestic violence in a family.

The research shows that two-thirds of the jurisdictions in the United States create a rebuttable presumption *against* an abuser obtaining custody of the parties' shared children. Yet, even states with that presumption do not have companion policies in their child welfare systems that keep children with the non-abusive parent.[5] The failure of many jurisdictions to carry the rebuttable presumption of child custody laws into the child welfare system endangers victims and their children by failing to recognize the protective capacities of the victim-parent. The case law reviewed also emphasizes the inability of the child welfare system and courts to properly address domestic violence in families with co-occurring issues of substance abuse, mental health issues, and poverty.

II. History of the U.S. Child Welfare System

To understand the current state of the child welfare system, we must understand how we arrived at our current model. The institutionalization of child protection began in New York City in 1875 with the establishment of the New York Society for the Prevention of Cruelty to Children ("NYSPCC") as a non-governmental entity.[6] Prior to the formation of NYSPCC, the legal field lacked any recourse to address child abuse. After the formation of the NYSPCC, 300 other private child welfare organizations formed across the United States.[7] Despite the growing number of private agencies many rural communities and cities lacked the infrastructure to assist children and families experiencing abuse.[8]

Although there was no formal connection or guidance between the different groups, they all reflected a growing public concern with child welfare. This trend would manifest in a new legal framework that brought the historically private family matter of child welfare into the

[5] See Appendix A – Child Welfare Domestic Violence Statutes and Policies and Appendix B – Child Custody Best Interest Statutes – Domestic Violence
[6] John E.B. Myers, *A Short History of Child Protection in America*, 42 Family Law Quarterly 3, 449–63 at 449. (Fall 2008).
[7] *Id.* at 452.
[8] *Id.*

public sphere. In 1899, Chicago formed the first juvenile court.[9] After several failed bills, Congress passed legislation creating the federal Children's Bureau in 1912, charged with investigating and reporting on child welfare matters across the United States.[10] charged with investigating and reporting on child welfare. The Social Security Act in 1935 created Aid to Dependent Children, which allowed for support of children's needs by state public-welfare agencies.[11] The Fair Labor Standards Act of 1938 brought the first legal restrictions on child labor.[12] Before this time, children separated from their parents were frequently sent to work on farms.[13]

Specific federal involvement in child welfare came in 1962, with an amendment to the Social Security Act that required states to make child welfare services available throughout their jurisdictions by July 1, 1975.[14] In 1978, the federal government became further involved with the creation of the Indian Child Welfare Act ("ICWA"), which aims to keep native children with their families and tribes.[15]

The Family First Prevention Services Act passed in 2018.[16] This allowed for States to receive reimbursement through Title IV-E to prevent foster care placement through mental health and substance abuse prevention and treatment services and in-home, trauma-informed parenting programs.[17] Despite the tremendous improvements made in the child welfare system, gaps still exist in assisting parents experiencing abuse in keeping custody of their children once child welfare becomes involved in the family.

Despite strides to improve outcomes in child welfare cases with domestic violence, many parents who experience abuse are still losing custody over their children. Understanding the

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[9] *Id.* at 454.
[10] Social Security Administration, *The Children's Bureau*. *Ssa.gov*, 2019, www.ssa.gov/history/childb1.html.
[11] *Id.*
[12] The Fair Labor Standards Act of 1938, 29 U.S.C. §§ 203(l)
[13] U.S. Department of Health & Human Services, Administration for Children & Families, *The Story of the Children's Bureau*, 2012, at 6, https://cwlibrary.childwelfare.gov/discovery/delivery/01CWIG_INST:01CWIG/1218259730007651
[14] Wilbur J. Cohen and Robert M. Ball, *Public Welfare Amendments of 1962 and Proposals for Health Insurance for the Aged*, 25 Social Security Bulletin 10, (October 1, 1962).
[15] Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901-1963.
[16] Title VII – Family First Prevention Services Act of 2018, Pub. L. No. 115-123, § 50702, (2018).
[17] Title VII – Family First Prevention Services Act of 2018, Pub. L. No. 115-123, § 50711, (e)(4)(B) (2018).

historical evolution of the child welfare process can help inform best practices for moving forward.

III. Review of State Laws and Regulations

Over the past year, BWJP completed an analysis of the laws and regulations regarding the intersection of custody, domestic violence, and child abuse in fifty-six (56) jurisdictions of the United States. Below are a series of matrices that group and summarize the findings made in review of the statutes and regulations. A full matrix regarding custody statutes with all information is attached as Appendix A. A full matrix regarding child welfare statutes and office policies with all information is attached as Appendix B.

In most jurisdictions, custody and child welfare statutes conflict with one another. To better help families move forward safely, all jurisdictions should create uniform custody statutes that apply in all family law cases, domestic violence matters, and child welfare cases. The statutes can account for abuse against the other parent, another person in the home, and the child. In each section we highlight states with current statutes that can serve as models to help guide jurisdictions in improving their laws.

a. Rebuttable Presumptions Against Abuser Having Custody[18]

Two-thirds (37/56) of the jurisdictions in the United States create a rebuttable presumption against a court awarding custody to a perpetrator of abuse. (See Table A). The jurisdictions without a rebuttable presumption all either require courts to consider domestic violence in the best interest determination or the safety of the children and abused parents when awarding custody and visitation. One study found that mothers' claims of domestic abuse were believed 41% of the time.[19] In the same study, the father received custody in 29% of cases even when the court found the father to be abusive because they found the mother to

[18] See Appendix A

[19] Joan S. Meir, *U.S. child custody outcomes in cases involving parental alienation and abuse allegations: what do the data show?*, 42 Journal of Social Welfare and Family Law 1, 92-105, at 96, (2020).

be alienating.[20] The language of statutes needs to be strengthened with clear guidance on what an abuser must do to rebut the presumption against them having custody to create safer outcomes for the victim parent and children.

Some jurisdictions' current policies create clear requirements to rebut the presumption against the abuser receiving custody. Not only does Louisianna have a rebuttable presumption, but they also require supervised visitation with the abusive parent.[21] Washington State takes it a step further and creates a presumption that supervised visits be supervised by a professional supervisor.[22] Hawaii specifically requires that a parent who committed domestic violence may only receive visitation if the order can provide for the physical and mental safety of the child and gives specific examples of how that may be accomplished.[23] Alaska law clearly states that a parent with a history of perpetrating domestic violence may not be awarded custody, but allows that parent to overcome the presumption with proof they engaged in a program.[24] Delaware similarly allows a parent to overcome the rebuttable presumption with proof that the parent stopped committing acts of domestic violence and completed a program of evaluation and counseling designed specifically for perpetrators of family violence.[25] A few statutes simply state a parent can rebut the presumption by a preponderance of the evidence. Section VI. d. iii. explores how all jurisdictions can modify their custody statutes to ensure they are not only accounting for domestic violence but creating statutory safeguards for children to have continued contact with the person who caused harm.

Below is a table that breaks down how all 56 jurisdictions dictate in statute how the court should determine whether an abuser may have custody. While 1/3 of jurisdictions do not include in statute a presumption against an abuser having custody, they still require the court to consider abuse before awarding custody.

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[20] *Id.* at 99.
[21] La. R.S. § 9:364 E.
[22] Wash. Rev. Code § 26.09.191 (d)(i)
[23] Haw. Rev. Stat. Ann. § 571-46 (10) and (11).
[24] Alaska Stat. § 25.24.150 (g) and (h).
[25] 13 Del. C. § 705A.

TABLE A:

How Jurisdictions Handle Presumptions for Abusers Having Custody

Jurisdictions with a Presumption Against Abuser Having Custody (37/56 or 2/3)		Jurisdictions without a Presumption Against Abuser Having Custody (19/56 or 1/3)	
Alabama	Minnesota	Connecticut [i]	
Alaska	Mississippi	Montana [i]	[i] must consider the effect of domestic violence on the child
American Samoa	Missouri	Nebraska [i]	
Alaska	Nevada	New Mexico [i]	
Arizona	New Hampshire	New York [i]	
Arkansas	New Jersey	Rhode Island [i]	[ii] must consider the effect of domestic violence on the child and the safety of the other parent
California	North Carolina	Georgia [ii]	
Colorado	North Dakota	Illinois [iii]	
Delaware	Northern Mariana Islands	Indiana [iii]	
District of Columbia	Oklahoma	Kansas [iii]	
Florida	Puerto Rico	Maryland [iii]	
Guam	South Dakota	Michigan [iii]	[iii] may consider abuse in determining best interest of children
Hawaii	Tennessee	Oregon [iii]	
Idaho	Texas	Pennsylvania [iii]	
Iowa	United States Virgin Islands	Ohio [iv]	
Kentucky	Vermont	South Carolina [iv]	[iv] must consider abuse in determining best interest of children
Louisiana	Washington	Utah [iv]	
Maine	Wisconsin	Virginia [iv]	
Massachusetts		West Virginia [v]	
		Wyoming [v]	[v] place conditions on parent who committed domestic violence

b. Failure-To-Protect – Children Removed if Domestic Violence in Home

Failure-to-protect statutes sometimes punish victim parents who do not remove a child from a home with domestic violence.[26] This means victims of domestic violence can be criminally prosecuted for staying with the children in the home with the abuser. Civilly, courts may remove children from the victims of domestic violence based on a finding of neglect. Unfortunately, in some jurisdictions with failure-to-protect laws victims can also be punished if they try to remove the children from the home based on their custody statutes. This leaves a victim with two options that result in punishment: they either stay in the home to protect the child, or they flee and lose custody to the abuser. These laws fail to consider the realities of co-parenting with an abuser and the well-being of the child.

In a review of the states with failure-to-protect laws, some states criminal statutes directly conflict with the child welfare policies. For example, Florida child welfare policies specifically highlights the protective capacity of the parent experiencing harm in determining if the children can remain in the home with the victim parent.[27] The Florida criminal statute, however, does not consider a child welfare finding of a parent's protective capacity as a defense.[28] In contrast, Texas does specifically provides an affirmative defense in their criminal statutes for persons who are a victim of family violence.[29] West Virginia includes a provision in their child welfare manual that children should remain with the non-maltreating parent unless that parent knowingly allowed the abuser to harm the children, with clear guidance on what "knowingly allow" means.[30]

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[26] *See* the recent report, National Center to Advance Peace for Children, Youth, and Families. *Betrayed by the System: How Failure-to-protect Laws Harm the Families They Promise to Save*. 2025, which explores the dynamics of failure-to-protect laws and families that experienced domestic violence.

[27] State of Florida Department of Children and Families, CF Operating Procedure No. 170-1: Florida's Child Welfare Practice Model 2.7. Caregiver Protective Capacities. June 26, 2024

[28] Fla. Stat. sec. 827.03(1)(e)2.

[29] Tex. Penal Code § 22.04.

[30] West Virginia Department of Human Services, Child Protective Services Policy, at 105 (September 2025), https://bss.wv.gov/media/20976/download?inline

Ultimately, failure-to-protect laws that only punish a parent who did not leave a home where they experienced abuse, fails to consider the realities of domestic violence. Some victim parents choose to stay rather than leave so they can continue to provide supervision of the abusive parent's interactions with children. Other victim parents stay because the abusive parents threaten to harm them or the children. Victim parents further stay because they do not have a safe place to go or the means to leave. Contradictions between civil statutes and criminal law can create a legal landscape victims cannot navigate. All states should follow the model of Texas, which creates an affirmative defense against failing to protect a child for victims of abuse.

c. Child Welfare Specific Policies and Practices[31]

Most jurisdictions' child welfare offices include specific guidance on how to handle cases where they identify domestic violence within their child welfare policies and procedures for their caseworkers. Issues arise when the child welfare policy is in opposition to civil or criminal statutes. Even when child welfare policies take into consideration the specific dynamics of domestic violence, if the relevant statutes do not, parents still face loss of custody or criminal charges for remaining in a relationship with violence.

Oklahoma's custody statutes include a rebuttable presumption that a perpetrator of domestic violence not receive custody of the children because it is contrary to their best interests.[32] Yet, their child welfare policies consider it failure to protect when a non-abusing parent refuses to report the abuse.[33] The failure to protect language fails to consider the realities of living with domestic violence and the fear many parents face of either losing their children or being unable to supervise visitation with the abusive parent.

[31] See Appendix A and Appendix B
[32] 43 Okl. St. § 109
[33] Oklahoma Department of Human Services, Safety Guidebook: a guide for all programs to assist in making sound safety decision, (December 31, 2024)

Alabama instructs the judge in custody cases to consider the safety of the victim parent in awarding custody.[34] Alabama also has a statute that a child can be removed from a home with domestic violence.[35] A child can be removed in Alabama if a parent who experienced abuse is unlikely to change their condition in the foreseeable future.[36] The child welfare statutes directly conflict with the custody statute that considers the safety of the victim parent. This leads to differing outcomes depending on whether child welfare becomes involved in the case.

Below is a table that breaks down which of the 56 jurisdictions include child welfare policies that specifically address domestic violence. Only 9 of the 56 jurisdictions do not include explicit policies in their child welfare manuals on how a child welfare worker should handle a case with domestic violence.

For further information on child welfare policies across the jurisdictions in the United States, please refer to Appendix A - Child Welfare Domestic Violence Statutes and Policies. The Appendix includes all statutes and child welfare policies and procedures that address domestic violence in each jurisdiction.

[34] Code of Ala. § 30-3-132.
[35] Code of Ala. § 12-15-306.
[36] Code of Ala. § 12-15-319.

TABLE B:

Child Welfare Specific Policies Addressing Domestic Violence

Jurisdictions with policies that address DV (47/56)		Jurisdictions whose policies do not address DV (9/56)
Alabama	Missouri	American Samoa
Alaska	Montana	Arkansas
Arizona	Nebraska	Guam
California	Nevada	Hawaii
Colorado	New Hampshire	Northern Mariana Islands
Connecticut	New Jersey	Puerto Rico
Delaware	New Mexico	South Dakota
D.C.	New York	U.S. Virgin Islands
Florida	North Carolina	Wyoming
Georgia	North Dakota	
Idaho	Ohio	
Illinois	Oklahoma	
Indiana	Oregon	
Iowa	Pennsylvania	
Kansas	Rhode Island	
Kentucky	South Carolina	
Louisiana	Tennessee	
Maine	Texas	
Maryland	Utah	
Massachusetts	Vermont	
Michigan	Virginia	
Minnesota	Washington	
Mississippi	West Virginia	
	Wisconsin	

d. Child Welfare Policies on Placement of the Children

Child welfare policies create four possible solutions for placements of children in cases with domestic violence that do not remove the children from the home, shown in Table C. Every jurisdiction's child welfare agency does not include a policy for their workers to assess if the child can remain with the victim-parent. The states that do not currently include the option should review the policies of those jurisdictions in Table C and work to address ways to keep the child with the victim parent, while considering the overall safety and well-being of the child.

Delaware explicitly includes a policy in their child welfare manual to screen every case for domestic violence.[37] Screening in every case can ensure safety concerns and proper services can be provided to every family. Massachusetts created a family preservation project that focuses on providing services to keep children with their family, including education, housing, benefits, and legal services.[38] Colorado created an entire guide for child welfare cases with domestic violence after consulting victim lived-experience experts.[39] The policies in these states show how child welfare agencies can work to keep the child with their family by specifically identifying and addressing domestic violence.

Below is a table that places each of the 56 jurisdictions into one of five categories; states with specific policies to keep children with victim-parent, states with policies to keep children with their family, states that remove the perpetrator of harm from the home, states that consider the harm caused by the perpetrator in making placement decisions, and state with policies that remove the child based on the presence of domestic violence in the home.

[37] State of Delaware, Division of Family Services – Policy Manual, B-2. (February 2021)
[38] Family Preservation Project, *How the FPP Works*, 2025, www.familypreservationproject.org/about-us/#howitworks.
[39] Colorado Department of Human Services Division of Child Welfare and Domestic Violence Program. *Domestic Violence Practice Guide for Child Protective Services,* 2013.

TABLE C:

Child Welfare Placement Policies Once Domestic Violence is Identified

States with policies to keep children with victim-parent	State with policies to keep children with their family	States that remove perpetrator of harm	States that consider harm caused by perpetrator	States with policies to remove child based on DV
Alaska Arkansas (does not specify that it is in situations of DV) Colorado District of Columbia Georgia Indiana Kansas Minnesota Montana Nebraska New Jersey New York Northern Mariana Islands Oklahoma Oregon Puerto Rico Tennessee Texas Vermont Virginia West Virginia Wisconsin	American Samoa Connecticut Florida Guam Hawaii Illinois Louisiana Massachusetts New Mexico North Carolina North Dakota South Carolina South Dakota US Virgin Islands Washington Wyoming	Idaho Michigan	Alabama Arizona New Hampshire Utah	Alabama Missouri Nevada Ohio Pennsylvania Rhode Island

IV. Case Law Review

Review of case law in all fifty-six jurisdictions failed to provide a clear picture of what happens day to day in the courtroom in child welfare cases that involved domestic violence. Appellate cases are not representative of what happens day-to-day at the trial level because it only shows cases where one party had the means to and filed an appeal. As such, most of the appeals involved termination of parental rights issues. Based on the information gained from the available case law, it is likely that victims do not have the resources to appeal or are not represented at the lower level and thus not counseled that they may have a meritorious appeal. Despite the limitations, the case law does underscore recurring issues in child welfare cases with domestic violence which are explored below.

a. Co-Occurring Issues

A review of termination of parental rights cases showed that the parent who experienced abuse often loses custody due to co-occurring issues, such as substance abuse, mental health issues, or systemic poverty. Unfortunately, the timelines for permanency for children do not always allow a parent to complete recovery or other services to avoid removal.[40] The prevalence of co-occurrence of these issues highlights the need for child welfare cases that involve domestic violence to provide support to the victim parent. Substance use coercion can be an abuse tactic used to further control a partner.[41] Mental health issues often arise as a response to experiencing violence, including post-traumatic stress disorder, depression, and anxiety.[42] One of the main ways an abuser maintains control over their partner and keeps them from leaving is financial dependence and abuse.[43]

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[40] Amin, Surina A. *CHILD WELFARE TIMELINE for SUBSTANCE USE DISORDER TREATMENT and OTHER PARTNERS REGIONAL PARTNERSHIP GRANTS*.
[41] Warshaw, Carole, and Erin Tinnon. "Coercion Related to Mental Health and Substance Use in the Context of Intimate Partner Violence: A Toolkit for Screening, Assessment, and Brief Counseling in Primary Care and Behavioral Health Settings." 2018.
[42] Ferrari, G., Agnew-Davies, R., Bailey, J., Howard, L., Howarth, E., Peters, T. J., Sardinha, L., & Feder, G. S. (2016). Domestic violence and mental health: a cross-sectional survey of women seeking help from domestic violence support services. *Global Health Action*, *9*(1), 29890. https://doi.org/10.3402/gha.v9.29890
[43] National Network to End Domestic Violence. (2025, February 6). *About financial abuse*. NNEDV. https://nnedv.org/content/about-financial-

Responses to address these issues, by child welfare when they become involved with a family or by the court at the trial level, may allow more children to stay with victim parents and remain with their family unit.

b. Indian Child Welfare Act

The purpose of the ICWA is "...to protect the best interest of Indian Children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children and placement of such children in homes which will reflect the unique values of Indian culture... "(25 U.S. C. 1902).[44] Despite the statutory safeguards put in place by ICWA, the jurisdictional case law analysis showed an overwhelming number of child welfare cases with domestic violence also included ICWA and the children's removal from their families.

The ICWA cases that involved domestic violence showed failure of some courts to comply with the terms of ICWA. Multiple cases were remanded from state appellate courts for failure of the court below to properly notify the tribe under the requirements of ICWA.[45] *In re I.T.S.*, the court committed reversible error by discharging mother's counsel before the petition to terminate.[46] The ICWA cases also demonstrated the need for training across the board for all professionals involved in the child welfare and family court system. The cases make findings that show a clear lack of the dynamics of domestic violence and blame the person who experienced harm.

In re N.R. involved a family where the father committed domestic violence against the mother and one of the children.[47] The state removed the children after another incident of domestic violence where the mother refused to speak to law enforcement in the immediate

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abuse/#:~:text=Financial%20abuse%2C%20while%20less%20commonly,99%25%20of%20domestic%20violence%20cases.

[44] U.S. Department of the Interior Indian Affairs. *Indian Child Welfare Act*, 2018, www.bia.gov/bia/ois/dhs/icwa.

[45] *See In re Welfare of L.N.B.-L*, 157 Wn. App. 215 (2010), *In the Interest of R.R.*, 294 S.W.3d 213 (Tex. App. – Fort Worth 2009, no pet.), and *G.L. v. Dep't of Children & Families,* 80 So. 3d 1065 (Fla. 2012).

[46] 2021 OK 38.

[47] 242 W. Va. 581, 585-86 (2019).

aftermath.[48] The removal of the children exhibits a lack of understanding of the dynamics of domestic violence and why a person who experienced harm may still engage with the perpetrator of harm.

In a similar case the courts stated, "The trial court could have also determined that S.T. did not believe or find credible S.A.'s allegation that D.T. attempted to drown her and could have returned to a relationship with D.T. after the trial." *In the Int. of S.A.*, 665 S.W.3d 59,78. (Tex. App. – Tyler 2022, pet. denied). Ultimately, the appellate court affirmed removal since S.T. only stopped using illegal drugs and left the abusive relationship two months before trial and not sooner. *Id.* A justice trained in the dynamics of domestic violence would understand why a person who experienced harm returned to an abusive relationship after a life-threatening incident.

The ICWA cases highlight issues that arise across the board in child welfare cases involving domestic violence. ICWA does not specifically address domestic violence. The failure to acknowledge the unique dynamics of domestic violence may contribute to higher rates of removal in ICWA cases with domestic violence. The ICWA cases also show the lack of consideration for co-occurring issues that often arise for parents who experience harm.

c. Racism

Research shows that child welfare policies are enforced inequitably depending on the race of the children and families engaged in the system. Families of color experience higher rates of child welfare involvement and more negative outcomes once engaged in the system.[49] Black and minority children are more likely to be placed in foster care than their white counterparts for the same familial issues.[50] Some courts directly addressed the continued

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[48] *Id.* at 586.

[49] National Conference of State Legislatures, *Disproportionality and Race Equity in Child Welfare*, (January 26, 2021), www.ncsl.org/human-services/disproportionality-and-race-equity-in-child-welfare.

[50] American Bar Association, *Race and Poverty Bias in the Child Welfare System: Strategies for Child Welfare Practitioners*, (December 17, 2019), www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2019/race-and-poverty-bias-in-the-child-welfare-system---strategies-f/?login., *citing* Dorothy

prevalence of racism within the child welfare system and enforcement of child welfare policies.

The Michigan Supreme Court in, *In re Dixson*, discussed racial disparities in the child welfare system at length.[51] The court points out how throughout every stage of child welfare, non-white children are more likely to be involved in the system.[52] Research shows that co-occurring issues of poverty contribute to racial enforcement because the system often views poverty as neglect.[53] Additionally, child welfare workers may view familial that differ from their own experience as neglect.[54] The court ultimately recommends that child welfare case workers view families holistically to try to combat racial disproportionality in cases that involve non-white families.[55]

The ACLU and NAACP filed amicus briefs *In re M.T.* arguing that child welfare policies are disproportionately applied to marginalized groups.[56] Ultimately, the court did not directly confront the issue of racism because the mother did not raise it in her appeal, but noted that the information in the amicus would benefit the legislature in creating child welfare policy. *Id.* at 362.

Child welfare often makes recommendations on improvements a family can make to avoid losing custody of their children. Race is not something a family can change. The cases mentioned highlight the research and findings that racism leads to more negative outcomes for non-white families in the child welfare process. For families experiencing intimate partner violence, race is a compounding factor that can lead to increased child welfare involvement or termination of parental rights. Training to allow child welfare workers to better understand

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Roberts. *PBS Frontline Essay: Race and Class in the Child Welfare System.* https://www.pbs.org/wgbh/pages/frontline/shows/fostercare/caseworker/roberts.html

[51] 510 Mich. 1030, 1038-1039 (2022).

[52] Id. at 1039, citing to, *Racial Disproportionality and Disparities in the Child Welfare System: Why Do They Exist, and What Can Be Done to Address Them*? 692 Annals Am Acad Pol & Soc Sci, 253, 255 (2020).

[53] *Id.* at 1039.

[54] *Id.*

[55] *Id.* at 1040.

[56] 285 N.C. App. 305, 362 (2022).

cultural differences and systematic oppressions that lead to increased involvement of families of color to become involved in the child welfare system can help address this issue.

d. Socio-Economic Status

As mentioned in, *In re Dixson*, the child welfare system can mistake poverty for neglect.[57] Low-income families are more likely to experience food insecurity, inability to afford childcare, inadequate housing, and limited access to medical care, which are all triggers for child welfare involvement.[58] Family law practitioners, including child welfare case workers and judges, often conflate poverty with neglect, which can increase the chance of removal where resources could keep the child with their family.[59]

In re L.B. highlights California's pending legislation that specifies poverty alone does not give a dependency court jurisdiction over a child.[60] The court ultimately affirmed jurisdiction over the mother because she continued to reside with the child's father, who committed domestic violence against the mother.[61] The mother argued that she continuously returned to her abuser because experienced homelessness with nowhere else to go for help.[62] The mother's argument highlights the courts failure to consider, despite its discussion of poverty and child welfare, the prevalence of economic abuse in domestic violence cases. Economic abuse can leave parents who experience harm trapped in an abusive relationship.[63]

The Center for Disease Control's definition of domestic violence does not include economic abuse.[64] Yet, 76%-99% of victims of domestic violence experience economic

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[57] 510 Mich. 1030, 1039 (2022).
[58] National Council of Juvenile and Family Court Judges, *Distinguishing Poverty Experienced by Families from Child Neglect and Latinx Youth in Systems of Care,* 2021, https://bartoncenter.net/wp-content/uploads/2023/10/PL-Distinguishing-Poverty-1.pdf
[59] *Id.*
[60] 88 Cal. App. 5th 402, 415 (2023).
[61] *Id.* at 417.
[62] *Id.* at 407.
[63] Surviving Economic Abuse*, Preparing to Leave an Abuser, Surviving Economic Abuse,* (January 2023) *https://survivingeconomicabuse.org/i-need-help/de-linking-from-the-abuser/preparing-to-leave-an-abuser/*.
[64] CDC, *About Intimate Partner Violence*, (February 11, 2026), www.cdc.gov/intimate-partner-violence/about/index.html.

abuse.[65] Multiple cases, across jurisdictions, highlight the barriers to reunification between low-income parents and their children.[66] Lack of sufficient economic resources can lead to instable housing, utilities being shut off, and parents having to decide between buying food or paying a bill. When a victim of domestic violence experiences economic abuse, and lacks financial resources or a work history, these issues can be compounded.

V. Listening Session Responses

BWJP conducted listening sessions with professionals who work or recently worked in the child welfare system with families that also experienced domestic violence. While statutes, polices, and case law provide information regarding how each jurisdiction handles child welfare cases with domestic violence, listening sessions give insight into the reality for families. The listening sessions provided important information on what happens day-to-day in child welfare cases.

BWJP met with practitioners from different jurisdictions who practice across the United States, including tribal jurisdictions. The professionals brought personal experience in direct client services or roles within child welfare. Throughout the listening sessions we learned the practitioners encountered similar problems in their work and cases. Common themes included no clear screening to identify domestic violence, lack of funding for resources, lack of training and experience for child welfare case workers and the attorneys' representing parents, and an overall lack of understanding of domestic violence.

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[65] Laura Johnson, et al. *Examining the Impact of Economic Abuse on Victims of Intimate Partner Violence: A Scoping Review,* BMC Public Health, vol. 22, no. 1, 19 May 2022, pp. 1–19,

[66] *See, In re SK,* 2024 WY 25, 30 (Wyo. 2024) (footnote 2: finding that while poverty alone did not prohibit custody, a parent must show they can provide for their children's needs to maintain custody.), *In re E.M.*, 4 N.E.3d 636, 654-55 (Ind. 2014) (As some commentators have noted, an overemphasis on permanency in the child welfare context can in some cases produce undesirable results. See, e.g., Paul Anthony Wilhelm, Note, Permanency at What Cost? Five Years of Imprudence Under the Adoption and Safe Families Act of 1997, 16 Notre Dame J.L. Ethics & Pub. Pol'y 617, 618-19 (2002) (asserting that the shift in national social policy focus from reunification to expeditious resolution of child welfare cases in the name of permanency has contributed to the breakup of families of lower socio-economic status), *State in the Interest of E.O.,* 272 So. 3d 552, 559 (La. App. 1 Cir. 02/06/19) (affirming termination of mother's parental rights based on mother's lack of stable income, lack of stable housing, and continuous engagement with a romantic partner who committed domestic violence), and *In the Interest of R Children*, 145 Haw. 477, 480 (2019) (The court found mother to be a suitable placement for the children after she secured a job at a restaurant that allowed her to pay for both rent and utilities at a low-income apartment.)

To properly address domestic violence in a family, child welfare needs to identify that domestic violence occurs within the family. Some practitioner's cases received a referral to child welfare because of the domestic violence in the family. However, cases typically receive referrals for co-occurring issues and then child welfare identifies domestic violence once they are involved with the family. In cases where the domestic violence contributed to the co-occurring issues, the parent experiencing harm lost custody before receiving assistance for the domestic violence. In one jurisdiction, the child welfare intervention worker estimated children were removed from 98% of abused parents before they received any services. Without uniform and systematic screening child welfare makes decisions without knowing there is domestic violence is the case.

One common experience is that child welfare would remove the children from the home before trying to create a safety plan to keep the children with the victim parent. Practitioners found inequitable enforcement of child welfare removals against native children and children of color. Even in states with policies to try to keep the child with a parent, rates of removal remained high. Some of these roadblocks include: the waitlists for domestic violence services, delays in receiving benefits, lack of domestic violence training for the professional assessing and making decisions, lack of resources, inexperience of child welfare appointed attorneys, and the failure of judicial officers to address domestic violence. These are just some of the issues that lead to placement away from the parent who experienced harm.

Practitioners across jurisdictions also shared that families face barriers to maintaining custody when child welfare ceases involvement with the family if the victim parent obtained a civil protective order. Closure of the case means that families will not receive the support they may need. Additionally, the family court may not receive any information from child welfare other than a letter that the case was closed and "unfounded" when, in reality, child welfare only closed the case because of the issuance of the protective order.

In jurisdictions that try to keep the children with the victim parent, the case often does not go to child welfare court even without the victim parent obtaining a civil protective order. Child welfare advises the victim-parent to keep the abuser away or risk losing custody of the

children. This directly contradicts statutes and child welfare policies that recognize domestic violence dynamics often do not allow a victim parent to keep the abuser away from the children. When the onus is put on the victim parent it can also mean services are not offered to the family or abuser to address the domestic violence. In jurisdictions where child welfare offers services, they usually focused on the victim attending domestic violence classes or mental health services since they retained custody of the children. Without appropriate services that address the domestic violence and focus on the abuser, the family may not receive the tools they need to move forward safely.

When services are "recommended," but the parent fails to complete the services, many practitioners explained that parents lost custody for noncompliance. Misinformation is compounded with turnover in the system and attorneys who cannot keep up with their caseloads. Jurisdictions also do not extend the time before termination to allow parents that are waiting to get into programs, since they cannot afford to obtain services without assistance from child welfare.

Practitioners recommended that federal funding be conditioned on jurisdictions meeting certain requirements and specifications regarding child welfare cases with domestic violence. Practitioners recommended requirements that include domestic violence coalition member or expert to serve on child welfare boards and provide a report to the federal government every three years. Financial services such as food stamps, housing, and childcare would also allow more victim parents to retain custody of their children. Another recommendation is for higher education or experience requirements set by the federal government for child welfare case workers in social work. In multiple practitioners' jurisdictions, if child welfare followed the language of their policies and the statutes the victim parent would retain custody. Overall, the listening session highlighted the differences in child welfare case outcomes from the language of jurisdictions statutes and policies, leading to custody results against the legislative intent of the jurisdiction.

VI. Recommendations

A partner that leaves their abuser faces a seventy-five percent greater risk of murder than partners that stay.[67] Child welfare policies that require the victim parent to leave do not consider the reality of what this means for the safety of the entire family. Child welfare statutes and policies must connect with the studies and facts to keep children and the victim parent safe while providing assistance to the abusive parent. All professionals need tailored training on domestic violence and child welfare as well as supports for the potential vicarious trauma that can occur when engaging with this work. Below are recommendations for changes that can be implemented at each stage of the child welfare process.

a. Data Collection

Further research is needed to systematically collect data so that effective policies and legislation can be developed to assist families experiencing domestic violence who engage with the child welfare system. The federal government should supply grant funding for an organization to track child welfare cases with domestic violence to identify how often victims lose custody when the only issue identified for that parent is domestic violence. Included in the funding should be mandatory screening across all cases to systematically collect data on family circumstances and co-occurring issues. The study can expand of the Meier's study referenced in Section II. a. above. The funding can further support the organization in collecting data on when co-occurring issues are related to domestic violence, and the victim-parent still loses custody of the children. The data collection should look at cases that enter child welfare courts as well as cases that either do not enter the court system at all or where child welfare instructs the victim to file an action in family court.

Funding should also support the collection of data regarding the cost to remove a child versus the cost to provide services to a family, to determine if reallocation of resources can better promote the victim parent maintaining custody. The prevalence of economic abuse in

[67] Susan D. Rose, Difficult Decisions: Staying, Leaving in Challenging Global Gender Violence: The Global Clothesline Project, 48-69 at pg 50, (Palgrave Pivot, NY 2014)

domestic violence relationships requires well-funded resources for housing, food, medical services, and other basic needs that can assist victim parents in creating a safe and stable environment for their children.

Collection of data will provide a more complete picture of what happens day-to-day in child welfare cases where the family experiences domestic violence. More data will allow both the federal government and individual jurisdictions to create responsive statutes and policies that address domestic violence in custody and child welfare cases.

b. Courts

The burden of reform does not lie solely with child welfare agencies and the legislature. The need for judicial training and cohesion across courts became clear throughout the statute and case law review as well as the listening sessions. A lack of understanding on the dynamics of domestic violence leads to inaccurate credibility determinations in family courts where fact-finder's fail to understand why a person would stay in a relationship with domestic violence. Inadequate training also leads to misunderstandings regarding co-occurring issues and how domestic violence can directly cause co-occurring issues. The failure of courts to communicate with one another or review orders from other courts also leads to contradictory orders that result in a parent being punished in one court for complying with the order of another.

Given that the appellate case law is not dispositive of what occurs at the trial level, more research should be conducted into orders issued at the trial level for child welfare cases involving domestic violence. This can be accomplished either through further listening sessions, court watch programs, or requesting child welfare agencies to track the data.

To address these deficiencies in the court system, the federal and state governments should require judicial training of all child welfare judicial officers on the intersection of intimate partner violence and children. Each jurisdiction can also identify how each docket – criminal, family, child welfare, or civil protective order – can communicate and review orders issued by other dockets to ensure they remain consistent and are based on all available

evidence. One way to address the issues that arise from multiple dockets is the use of integrated domestic violence courts that handle all complaints that arise within the same family.

c. Custody

As highlighted in section III. a. above, every jurisdiction in the United States considers domestic violence in determining custody of the children. However, when professionals who engage in the family court system do not receive training on the dynamics of intimate partner violence, the presumption does not provide the intended safeguards for the children. For the rebuttable presumption to serve its intended purpose, the decision-maker needs to be able to identify domestic violence and the dangers posed to the victim parent and child. Below are recommendations on how jurisdictions can strengthen their custody laws to better protect a family who experienced domestic violence.

If domestic violence is found in a case, there should be a rebuttable presumption against the abusive parent obtaining custody, and for supervised visits by a certified supervision center. Custody statutes dealing with a rebuttable presumption should use clear and unambiguous language, guiding judicial officers on how to make decisions around parenting time after making findings of abuse. For example, Louisiana's statute sets out three specific requirements to rebut the presumption, which are, completion of a court-monitored domestic abuse program by the abusive parent, the abusive parent not abusing alcohol or illegal substance, and the victim parent being unavailable to maintain custody of the children.[68] Louisianna highlights an important factors in their guidance; that the domestic abuse program be court-monitored. Otherwise, if the statute does not dictate what kind of program, abusers can find a one-hour, unaccredited, domestic violence intervention program online and rebut the presumption.[69]

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[68] La. R.S. § 9:364

[69] Open Path Wellness Education*, Free Promotional Classes,* https://mentalhealth.openpathcollective.org/batterers-intervention/free-class/ - highlights that each lesson is equivalent to one hour or one week of class and provides 52 if you are specifically ordered to take 52 hours of anger management classes.

Jurisdictions that currently lack explicit guidance should create stronger requirements to overcome the presumption against an abuser having custody. The requirements can include accredited batterer's intervention programs, engagement with individual therapy by the abusive parent, addressing any co-occurring issues, such as substance abuse counseling, and giving children a voice before requiring contact with the person who caused harm.

Creating stronger statutory safeguards for a court ordering a child to engage with an abusive parent can help prevent further harm. Clearer custody statutes will also protect families in cases where child welfare closes their investigation upon issuance of a family court or civil protection order. Each jurisdiction should also review all statutes relating to custody across all potential dockets to ensure they do not contradict one another.

d. Child Welfare

Child welfare programs across the United States need to acknowledge the unique circumstances of a household with domestic violence. The goal for all programs should be to help the entire family move forward as safely as possible. One of the easiest things programs can do is work with the victim parent to ensure the child's safety. Child welfare statutes and policies also need to compliment, rather than contradict their jurisdictions' custody statutes. A quick way to accomplish this goal would be for all child welfare policies to mirror the rebuttable presumption or best interest factors requiring an analysis of domestic violence when identifying a care giver. Child welfare policies can identify protective factors and plans for when a victim parent stays in the home with the abusive parent.

When a child cannot safely stay with the victim parent, child welfare should first and foremost try to find a familial placement. When looking for a family placement child welfare should use an expansive definition that is not based in blood relation but people that provide a continuous presence in the lives of the children and can continue cultural and familial traditions.

Child welfare agencies should partner with local domestic violence programs for immediate referrals when they identify domestic violence within a family and then defer to

the domestic violence agency on what programs will assist a victim parent in maintaining the safety of the children.

Child welfare professionals need to receive training on the dynamics of domestic violence to better identify and address the needs of a family. Child welfare agencies should create robust screening processes to use for all families to identify the presence of domestic violence. In cases where child welfare identifies domestic violence, they should work to address the actual nature, context, and effect the violence has on the family. The recommendations and requirements placed on a family should directly relate to the cause of child welfare's involvement. In families experiencing domestic violence, the recommendations and requirements should directly address the unique dynamics of domestic violence and the individual family's needs to move forward safely. One tool child welfare can use is the SAFeR Child Protective Service DV Screening & Assessment tool.[70]

i. Co-Occurring Issues

Domestic violence contributes to mental health issues, substance abuse, or poverty.[71] To prevent removal of children when co-occurring issues arise in child welfare cases involving domestic violence, the abused parent should be given an opportunity to either keep the children while attending services or more time to work towards reunification.

To properly address co-occurring issues, each jurisdiction should identify services that are co-located to address all issues. When parents only need to attend one service, there will be higher levels of compliance. The co-occurring issues are often interrelated, so addressing each separately may be less effective and not allow the parent to move forward and heal.

One issue that victim parents face is the lack of services that allow parents to bring their children to treatment programs, which can lead to foster care placement. For example, if

[70] See Appendix C – Child Protective Services DV Screening & Assessment Tool for La Crosse County, WI (NLCCDV developed this tool after extensive observations and work within the community. This tool derives from the SAFeR approach, an evidence informed tool created by BWJP: https://bwjp.org/our-work/children/).
[71] Jasmine Isobe, Lucy Healy, & Cathy Humphreys, *A Critical Interpretive Synthesis of the Intersection of Domestic Violence with Parental Issues of Mental Health and Substance Misuse*, Health & Social Care in the Community, vol. 28, no. 5, (2020)

a parent experiencing harm abuses substances, they cannot find treatment centers that allow them to bring their children.[72] Jurisdictions can identify domestic violence specific programs to better address co-occurring issues with the victim parent.

Reallocating funds from removal to resources families that experience poverty need to meet their child's needs can help increase the number of children than can stay with their family of origin. Wisconsin reallocated funds to housing families after finding a decrease in removals during the COVID eviction moratorium.[73] Wisconsin found more children could remain with their families when child welfare provides financial support for housing.[74] Wisconsin can serve as a model for how using existing resources to support maintaining the family can lead to less cases of removal and better outcomes for the entire family.

All professionals that engage in the child welfare system should receive training on the prevalence of co-occurring issues and how domestic violence can lead to higher rates of mental health issues, substance abuse, and poverty. Focusing services on addressing the interrelationship between these various issues will help create safer outcomes that allow the children to remain with their victim parent.

ii. Federal Statutes

Federal law requires states that receive federal grant funds to form collaborations between child protective services and domestic violence services.[75] However, there is no further guidance for what actions those services should take when working together. To strengthen responses in child welfare cases where the family is experiencing domestic violence, specific suggestions should be included to guide states. Those requirements can include a domestic violence expert or coalition member sitting on each jurisdiction's child welfare advisory boards, child welfare referring families to identified domestic violence

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[72] Soshana Walter, *Why Mothers Usually Can't Access Rehab*, (December 9, 2025) https://www.themarshallproject.org/2025/08/14/women-drug-addiction-treatment-rehab

[73] Bryce Covert, *This Is How the Child Welfare System Becomes Less Traumatizing*, The Nation, (November 24, 2025), www.thenation.com/article/society/child-welfare-family-first/.

[74] *Id.*

[75] 42 USCS § 5106(b)(14)

services for each jurisdiction, and annual training for all professionals that engage in the child welfare system from child welfare case workers to judges.

A lack of funding for services that families need once they engage with the child welfare system is an issue across jurisdictions. Funding provided to support domestic violence services and that requires certain policies be put in place to better protect victim parents from losing custody can help create broad improvements in child welfare across the United States. Federal funding should be conditioned on service providers that offer co-located services, allow children to attend in-patient treatment with the victim parent or provide childcare for out-patient treatment, and collaboration between child welfare agencies and the domestic violence specific programs in the jurisdiction. With funding to implement changes, the child welfare system can directly address the removal of children from families that experience domestic violence.

iii. State Statutes

States should include clear, unambiguous language in their statutes for how child welfare case workers handle cases with domestic violence. States must ensure the language of their civil statutes and criminal statutes do not conflict with one another. Child welfare agencies should then ensure their policies align with the statutes, so whenever possible the child can remain with the victim parent if domestic violence is identified by child welfare. To ensure parents can comply with orders, there must be uniformity across criminal, civil, and child welfare statutes and policies.

Legislatures can bolster already existing statutes to create safer outcomes for families that engage with the child welfare system and experience domestic violence. States with rebuttable presumptions against an abusive parent receiving custody must create clear parameters on how the presumption can be overcome that directly accounts for the safety of the children. States with criminal and civil failure-to-protect statutes should explicitly include an affirmative defense for parents who experience domestic violence. States should never recommend or require couples counseling in cases with domestic violence.

iv. Looking to Other Countries

In many jurisdiction across the United States, statutes, policies, and case law show that child welfare agencies have prioritized parental rights or legal formalities over the lived realities of trauma, often failing to adequately distinguish between perpetrators and protectors within the family unit.[76] This can lead to the child welfare system failing to recognize the victim parent as a safe placement for the children. [77] This practice not only punishes victim parents for the abuse they have endured but may also retraumatize children by severing critical bonds during vulnerable periods. Looking towards other countries that reformed their child welfare systems can assist the United States in creating policies and statutes that address the issue of victim parents losing custody over their children.

Several countries have implemented legislative and procedural safeguards that ensure children remain with the victim parent whenever possible, and that the abusive parent is restricted from continuing to exert control or cause harm. This section looks at how the United States can implement the policies of five such countries, Sweden, Canada, Australia, New Zealand, and the United Kingdom. These countries provide instructive examples of how state intervention, judicial reforms, and social service coordination can be used to promote child safety without unnecessarily disrupting family unity

Sweden, Canada, Australia, New Zealand, the United Kingdom, and Germany all ratified the United Nations Convention on the Rights of the Child ("UNCRC).[78] To date, the United States has not signed on to the UNCRC. The child welfare policies in the six countries discussed in this section incorporate the focus of the UNCRC by centering the safety and voice of the child in their processes. The United States should consider ratifying the UNCRC to help strengthen our child welfare systems.

Canada custody statute specifically mentions the safety of the child and victim parent in determining contact between the child and abusive parent and reviewing any steps taken

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[76] Joan S. Meier & Sean Dickson, *Mapping Gender: Shedding Empirical Light on Family Courts' Treatment of Cases Involving Abuse and Alienation,* 35 L. & INEQUALITY 311 (2017).
[77] *Id.* at 312-13.
[78] Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

by the abusive parent to prevent further abusive behaviors.[79] Australia's Family Law Act requires all courts to ensure protection from family violence and protect the rights of children.[80] In determining custody Australia requires every court to ensure the order does not expose any member of the family to the risk of family violence.[81] These countries policies are distinguishable in their consideration of not only the child's exposure to violence but also the victim parent. By including specific language about the safety of the victim parent courts and child welfare agencies can create orders that the family can more easily comply with and help the family move forward more safely.

Australia also codified that the views of the child are considered in determining an award of custody.[82] Sweden also requires participation on the child in the child welfare process by giving them a chance to express their views and wants.[83] New Zealand created a very unique approach by implementing family group conferences, which include the child, parents, family members, care coordinator, and person who reported the family to child welfare, to assist in developing plans for how the family can move forward in the safest way possible.[84] While some jurisdictions in the United States consider the child's wants in their best interest factors, statutes can require that child welfare speak directly with the child in cases where the family facts potential removal to understand the wants of the child. Modeling New Zealand's model also creates a system where all parties involved are in agreement about the care plan and puts the burden to ensure the family follows the plan on a third party.[85]

Similarly to New Zealand, Sweden's social services require voluntary engagement from the family and removing a child from their parents is always the final option.[86] By

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[79] Divorce Act – R.S.C. 1985, c 3 (2nd Supp.) Section 16(4)
[80] Family Law Act 1975 (Cth) s 43.
[81] Family Law Act 1975 (Cth) s 60cg.
[82] Family Law Act 1975 (Cth) s 60cd.
[83] David Pålsson, Pernilla Leviner, & Stefan Wiklund, *Children's Right to Participation in Swedish Child Welfare – the Extent, Nature and Determinants of Child Interviews During Investigations*, Child Abuse & Neglect, 162 Child Abuse & Neglect 1, Article 107000(2025)
[84] Oranga Tamariki Act 1989 No 24, Sections 20-38 (as at 1 August 2025) (NZ).
[85] Oranga Tamariki Act 1989 No 24, Sections 35 (as at 1 August 2025), (NZ).
[86] Ministry of Health and Social Affairs, *Every Child in Sweden Has the Right to a Safe, Secure and Bright Future*, *Government Offices of Sweden*, (July 25, 2023) (SE).

making it clear in statutes that services are voluntary the United States can avoid parents losing custody for not engaging in voluntary services. Clearly stating that removal is a last resort and what needs to happen before a child is removed from the family can also help keep children with their family, and mainly the victim parent, in child welfare cases involving domestic violence in the United States.

The United Kingdom recently completely removed the presumption that contact with both parents is in the best interest of the child from the national family code.[87] To reach their decision the United Kingdom Ministry of Justice conducted research on how courts used the presumption that both parents maintain continued contact with a child unless it puts the child at risk of suffering harm.[88] They found that courts ordered contact with a parent even when a child felt unsafe and did not want contact.[89] The decision in the United Kingdom shows how more current research can help inform policies that center the safety of the child and further take into account the wants of the child.

The United States has over fifty different child welfare systems with differing statutes, policies, and guidelines. However, this does not mean that overarching policies cannot help each jurisdiction create safer outcomes in child welfare cases with domestic violence. Focusing on safety of both the victim parent and child, giving the children a voice in the process, and creating stronger presumptions against abusive parents receiving custody can help build child welfare systems that allow the entire family to move forward more safely.

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[87] Hannah Al-Othman, *Family Law Shift Hailed as Victory for Children Facing Domestic Abuse*, The Guardian, October 21, 2025, www.theguardian.com/uk-news/2025/oct/21/family-law-shift-hailed-as-victory-for-children-facing-domestic-abuse?CMP=share_btn_url.

[88] Ministry of Justice, *Review of the Presumption of Parental Involvement Final Report*, at iii, (October 2025) https://assets.publishing.service.gov.uk/media/68f5f5c206e6515f7914c7e3/Review_of_the_Presumption_of_Parental_Involvement_Final_Report_.pdf

[89] Ministry of Justice. *Deciding what's best for children when parents live apart: Research summary for young people*, at 2, https://assets.publishing.service.gov.uk/media/68f5f7a728f6872f1663f084/Summary_for_children_and_young_people_-_Review_of_the_presumption_of_parental_involvement.pdf

VII. Conclusion

The safety of children is the crux of child welfare policies, civil statutes, and criminal statutes that address the well-being of children. To best address the mental, physical, and emotional well-being of children the systems families engage in must be reformed to reflect an understanding of the dynamics of domestic violence. Creating statutes and policies that help the entire family - victim parent, abusive parent, and children - move forward as safely as possible without terminating parental rights should be the goal of all reforms.

Each jurisdiction in the United States addressed domestic violence in some capacity in their custody orders. To ensure that children remain safe and are not removed from a safe parent, child welfare and state statutes and policies must reflect current research and directly address domestic violence with detailed language. A major step all jurisdictions can take is continuing training on the dynamics of domestic violence for any professional who engages in the family court or child welfare process.

Model statutes and policies exist in both the United States and abroad to help shape reforms that can address the issue of children being removed from the custody of a victim parent in child welfare cases with domestic violence. Each jurisdiction should place the safety of both the child and victim parent at the forefront with the goal of keeping the child with at least one parent. With more robust research and reform, we as a society can create safer outcomes for the entire family in custody cases that involve domestic violence.