

Domestic Violence & Child Protective Services Mandated Reporting

INTENDED AUDIENCE:

Domestic violence victim advocates, Child Protective Services (CPS) workers, mandated reporters.

ISSUE:

Mandated reporters, including domestic violence advocates, workers at domestic violence residential agencies, medical personnel, and others are often instructed by agencies and organizations that they must report victims of domestic violence to Child Protective Services through the mandatory reporting process for potential child abuse or neglect in situations where a child is exposed to an incident of domestic violence.

APPLICABLE LAW AND POLICY:

Family Court Act, Domestic Relations Law, Social Services Law, NYS CRR

Domestic violence as a form of child neglect or maltreatment falls under the catch-all phrase of "inadequate guardianship," or a general failure to exercise a minimum degree of care by "unreasonably inflicting or allowing to be inflicted [mental/emotional] harm or a substantial risk thereof."¹

There are three elements to abuse or maltreatment, particularly with regard to emotional harm as related to domestic violence. All three must be present:

- Impairment or immediate danger of impairment of a child's condition **AND**
- Parent must have failed to exercise a minimum degree of care **AND**
- Link or causal connection between a failure to exercise a minimum degree of care and danger to the child

Mental or emotional harm is defined as "a state of substantially diminished psychological or intellectual functioning."²

OCFS "Summary Guide for Mandated Reporters in NY"³

Nothing in this guide addresses reporting in situations where a child is exposed to domestic violence, but not physically or mentally harmed. In discussing indicated reports and examples of maltreatment or neglect, exposure to domestic violence is not provided as a specific example of a failure to exercise a minimum degree of care.

Office of Child & Family Services Manual:

Domestic violence is a risk element for child abuse or neglect, but alone, is *not* enough without showing actual or imminent harm.⁴ The presence of DV should be taken into account when creating intervention plans and assessing risk to children. For a report to be indicated, CPS investigation must result in a finding meeting the standard of a "fair preponderance of the evidence" that the neglect or abuse occurred.⁵ The Manual provides two examples where exposure to domestic violence may rise to the level of neglect:⁶

- A victim knew of repeated violence and had a reason to fear the offender, but allowed the offender to return to the home several times
- A child was regularly or continuously exposed to extremely violent conduct *and* there is proof of fear or distress on the part of the child.

Nicholson v. Scoppetta, 3 N.Y.3d 357 (2004)

DV victim should not be charged with neglect solely on the basis of being a DV victim and that the child was exposed to the violence.

The state must show at a trial, by a preponderance of the evidence, that children were *actually* or *imminently harmed* by reason of caregiver's *failure to exercise minimum care*. More than merely witnessing abuse is required to substantiate a finding of harm.⁷

There is no blanket presumption in favor of removal. Emotional harm is NOT per se present with DV.

Particularized evidence **MUST** exist to justify a court order to remove a child, including evidence of efforts made to prevent removal.

¹ N.Y. Fam Ct. Act § 1012(f)(i)(B) (McKinney 2019).

² N.Y. Fam Ct. Act § 1012(h).

³ New York State Office of Child and Family Services, Summary Guide for Mandated Reporters in New York State (2019), <https://ocfs.ny.gov/main/publications/Pub1159.pdf>.

⁴ New York State Office of Children & Family Services, Child Protective Services Manual Ch 6, Section N (2020)

<https://ocfs.ny.gov/main/cps/manual/2020/2020-CPS-Manual-Ch06-2020Mar.pdf>.

⁵ N.Y. Soc. Serv. Law § 412-17 (McKinney 2022).

⁶ *Id.* at N-7, N-8.

⁷ Nicholson v. Scoppetta, 3 N.Y.3d 357, 368 (2004).

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IMPLICATIONS:

Disconnect between OCFS policies & agency guidance

Liability containment and gray areas lead to policies and guidance that err on the side of caution to report in all situations where a child is exposed to domestic violence, as opposed to only those situations meeting the criteria for neglect or maltreatment.

OCFS policies do not mandate reporting for a single incident of exposure of children to domestic violence, but local agency guidance often does.

Mandated reporters are trained to make the report; and there is insufficient training that duty to report does NOT include mere child exposure to DV.

Criminal sanctions and civil liability are possible for a mandated reporter's failure to report.

Collateral consequences of overreporting

Undermines victim attempts to leave abusive relationships, as the advocates, health professionals, and others they are seeking help from may be the ones who are making reports against them.

An indicated report in the SCR, revealed in many employer background checks, may impair a survivor's ability to obtain employment in childcare, nursing, volunteering with children, and other career fields.⁸

Overreporting may impact a victim's ability to achieve financial independence and autonomy by limiting employment options. An indicated report of abuse stays in the SCR until the individual's youngest child is 28. An indicated report of neglect is sealed after 8 years.

Leaving is the most dangerous time for a victim. 75% of femicide victims and 85% of women who experienced severe but nonfatal violence left or tried to leave their abuser in the past year.⁹ A CPS investigation as a result of overreporting may force a victim to leave an abuser before he or she is ready and has an adequate safety plan in place, increasing the danger.

Overreporting creates additional challenges for victims in trying to leave an abuser through ongoing CPS investigations, proceedings, and the possible need to challenge indicated reports or family court proceedings. Indicated reports are available to courts in other family law proceedings, including custody cases, potentially harming a victim's case.

Balancing negative consequences of removing children with negative consequences of exposure to domestic violence must be considered. Removing children may be just as damaging as exposure to domestic violence.¹⁰

COURSES OF ACTION:

Remove disconnect between policy and practice

Education and training for mandated reporters on how to appropriately respond to child maltreatment in a DV context. Clarify requirements for mandated reporters and when it is necessary to report exposure to DV, both through interpretation of statutes or guidance and through possible use of risk assessments to determine when exposure to DV reaches a level that necessitates reporting, such as the Child Exposure to Domestic Violence (CEDV) scale.¹¹

Mitigate negative consequences of reporting & utilize mandated reporting to provide support and services to victims

Provide education and training for child welfare workers, judges, and advocates.

Promote collaboration between domestic violence providers and child welfare agencies. Shift the focus from the victim to a "perpetrator pattern-based approach," reconciling competing goals of domestic violence advocates and CPS workers, e.g. "Safe & Together Model."

Effectively screen reports at the SCR level in line with OCFS policies and promote redirection of appropriate cases to alternative response approaches, such as the Family Assessment Response.¹²

⁸ A fair hearing does now provide for a relevancy analysis as a requirement, which would determine whether the finding was relevant and reasonably related to employment, and offer a chance to show rehabilitation and seal records. N.Y. SSL § 422 (McKinney 2022).

⁹ Carolyn Rebecca Block, *How Can Practitioners Help an Abused Woman Lower her Risk of Death?*, NIJ Journal, Issue 250, 6 (2003) <https://www.ncjrs.gov/pdffiles1/jr000250.pdf>.

¹⁰ See, e.g., Kate Ballou, *Failure to Protect: Our Civil System's Chronic Punishment of Victims of Domestic Violence*, 31 Notre Dame J.L. Ethics & Pub. Pol'y 355, 372, 379 (2017).

¹¹ Megan R. Holmes et. al., *Research Foundations of Greenbook Interventions to Address the Co-Occurrence of Child Maltreatment and Adult Domestic Violence*, 70 JUV. & FAM. CT. J., no. 4, 2019, at 22 (citing J. L. Edleson et. al., *Measuring Children's Exposure to Domestic Violence: The Development and Testing of the Child Exposure to Domestic Violence (CEDV) Scale*, 30 CHILDREN & YOUTH SERVICES REV., no. 5, 2008, at 502).

¹² Office of Children and Family Services, *Family Assessment Response*, CHILD PROTECTIVE SERVICES, <https://ocfs.ny.gov/main/cps/assessmentResponse.asp> (last visited 8 December 2020).