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Reviving the *Greenbook* In the Context of Failure To Protect: Assessing Risk of Harm In Domestic Violence Situations To Best Assist Battered Mothers and Their Children

Nikki Viavant*

ABSTRACT

This paper examines the typical responses and approaches our child welfare agencies and juvenile courts take when handling dependency cases involving families experiencing domestic violence that fall under California Welfare and Institutions Code section 300(b). All too often, when a child is exposed to domestic violence, their mothers, survivors of the domestic abuse, are adjudged to have acted negligently for “failing to protect” their children adequately from domestic violence. Unfortunately, jumping rashly to this jurisdictional finding results in the removal of countless children from their battered yet otherwise fit mothers, and, in some instances, can ultimately lead to the termination of the mothers’ parental rights.

To prevent both unnecessary removals and the revictimization of battered women, this paper calls for an excavation of the “Greenbook,” a project initiated by the National Council of Juvenile and Family Court Judges (NCJFCJ) to develop practice and policy guidelines for cases where domestic violence and child maltreatment overlap, to serve as a guide once more. The hope is that child welfare agencies and juvenile courts can adhere to the Greenbook’s relevant recommendations when determining whether juvenile court jurisdiction is in fact necessary in the context of domestic violence. Ultimately, this paper sets forth a comprehensive, but not all-inclusive, risk assessment tool that establishes different tiers for intervention, considering the dynamics of domestic violence, the level of the child’s exposure to domestic violence, as well as any present protective and

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lethality factors. Perhaps this tool may assist child welfare agencies and dependency courts in determining when intervention is necessary, leading to better long-term safety outcomes for mothers and their children.

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INTRODUCTION

The co-occurrence of child maltreatment and domestic violence within a traditional family unit consisting of male-female partners has been studied closely in recent years.¹ Approximately thirty to sixty percent of cases involving domestic violence also involve child maltreatment.²

Despite the seemingly clear overlap between domestic violence and child maltreatment, historically, domestic violence advocates and child welfare workers have adopted different responses and approaches when engaging with families experiencing domestic violence, resulting in a bit of tension between the two groups.³ On one hand, child protection workers focus primarily on maintaining the child's safety and therefore may be more prone to question why a mother is unable to shield her child from harmful exposure to domestic violence.⁴ Conversely, battered women's advocates have long argued that it is in the best interest of children to keep their mothers safe, and preservation of the mother-child unit is paramount absent extenuating circumstances.⁵ These differences in perspective may have prevented the groups from finding any common ground as allies rather than competitors, leaving both groups unsatisfied in the handling of dependency cases involving domestic violence.⁶

In 1999, the National Council of Juvenile and Family Court Judges (NCJFCJ), collaborating with domestic violence advocates and child welfare and law enforcement agencies, published *Effective Interventions in Domestic Violence & Child Maltreatment Cases: Guidelines for Policy and Practice*,⁷ referred to as the “Greenbook” due to its green cover,⁸ with the

1. H. LIEN BRAGG, U.S. DEP'T OF HEALTH AND HUM. SERVS., CHILD PROTECTION IN FAMILIES EXPERIENCING DOMESTIC VIOLENCE 7-9 (2003), <https://www.childwelfare.gov/pubpdfs/domesticviolence.pdf> [<https://perma.cc/RJL9-BDZQ>]; see also SHARON G. SMITH, ET AL., CTRS. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY (NISVS): 2010-2012 STATE REPORT 1-6 as reprinted in D. KELLY WEISBERG, DOMESTIC VIOLENCE: LEGAL AND SOCIAL REALITY, 34 (2nd ed. 2019) (indicating domestic violence is more prevalent in the male-female dynamic because it is more likely for a male partner to abuse a female partner).

2. Jeffery L. Edleson, *The Overlap Between Child Maltreatment and Woman Battering*, 5 VIOLENCE AGAINST WOMEN 134, 136 (1999).

3. Susan Schechter & Jeffery L. Edleson, *In the Best Interest of Women and Children: A Call for Collaboration Between Child Welfare and Domestic Violence Constituencies*, 11 MISS. VOICES FOR CHILD. & YOUTH 11, 11-13 (1996).

4. *Id.* at 12.

5. *Id.* at 12-13.

6. *Id.* at 12.

7. LEIGH GOODMARK, J.D. & ANN ROSEWATER, NAT'L COUNS. OF JUV. & FAM. CT. JUDGES, BRINGING THE GREENBOOK TO LIFE: A RESOURCE GUIDE FOR COMMUNITIES 4 (2008), <https://www.ncjfcj.org/wp-content/uploads/2019/10/bringing-the-greenbook-to-life.pdf> [<https://perma.cc/58G5-38QV>] [hereinafter BRINGING THE GREENBOOK TO LIFE].

8. Berkeley Soc. Welfare, *Twenty Years Later: The Impact of Jeffery Edleson's "Greenbook" on Effective Interventions For Domestic Violence and Child Maltreatment*,

goal of formulating a coordinated intervention response.⁹ A large part of the *Greenbook* delved into the links between domestic violence and neglect and called for cooperation and cross-dialogue among child welfare systems, dependency courts, and domestic violence advocates when responding to children's exposure to domestic violence in an effort to better support abused mothers and their children as a cohesive family unit.¹⁰ Specifically, the *Greenbook* advised child protection services, domestic violence and community-based services, as well as juvenile courts to design interventions to "create safety, enhance well-being, and provide stability for children and families."¹¹ Among the major recommendations underscored in the *Greenbook* included removing children from the homes of their abused mothers only as a last resort, offering appropriate services and protections to battered mothers to best protect them and their children, and concentrating interventions on the removal of batterers to hold them accountable for their actions.¹²

In 2001, the federal government selected and funded *Greenbook* pilot programs in six communities across the country, including ones in Santa Clara County and San Francisco County, California, with the objective of implementing the *Greenbook's* visionary policies in practice.¹³ At the program sites, domestic violence advocates and child welfare professionals shadowed one another and underwent cross-training in hopes of peeling away prior misconceptions about one another in order to improve outcomes for families experiencing violence.¹⁴ The *Greenbook* site participants across the country applied the policy recommendations recommended within its operational guide.¹⁵ Most relevant to our discussion are the *Greenbook* Recommendations 59 and 60, discussed in turn below, in Part II.¹⁶

Part I of this paper discusses the dynamics of domestic violence and their effects on the battered mother, as well as the intersection between domestic violence and childhood maltreatment and neglect. Part II of this paper reviews the roles of both child welfare agencies and dependency courts post-*Greenbook* and explores alternative responses to removal to reduce the number of unnecessary removals that may not be in the best interest of the child and the family unit. Part III explores California

U.C. BERKELEY (July 16, 2020), <https://socialwelfare.berkeley.edu/news/twenty-years-later-impact-jeffrey-edleson's-'greenbook'-effective-interventions-domestic> [https://perma.cc/EGR8-F62W].

9. BRINGING THE GREENBOOK TO LIFE, *supra* note 7, at 4.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* at 4-5.

14. *Id.* at 6-7.

15. *Id.* at 5.

16. *See infra* Sections II.A, II.B.

dependency law post-*Nicholson* on failure to protect and considers distinguishing factors courts may look to when determining whether there is substantial or imminent risk of harm to the child. Finally, Part IV suggests a responsive and case-specific risk assessment and family safety tool that may steer social workers and dependency courts in their decision-making whether to remove children from their abused parents.

I. THE DYNAMICS OF DOMESTIC VIOLENCE AND CHILD WITNESSES

A. WHAT IS DOMESTIC VIOLENCE?

Domestic violence (DV) is a worldwide public health issue and is defined as “a pattern of assaultive and coercive behaviors, including physical, sexual, and psychological attacks, as well as economic coercion, that adults use . . . against their intimate partner.”¹⁷ Domestic violence includes “[a]ny abusive, violent, coercive, forceful, or threatening act or word inflicted by one member of a family or household on another.”¹⁸ Family or household members include spouses or former spouses, persons who have or had a dating relationship, or current or former intimate partners.¹⁹

Domestic violence cuts across diverse segments of the population, reaching all ages, races, and socioeconomic classes; however, eighty-five to ninety percent of domestic violence survivors are female.²⁰ The Centers for Disease Control and Prevention (CDC) reported 4.8 million annual incidents of domestic violence against women eighteen years or older, compared with 2.9 million incidents against men.²¹ To collect further data about intimate partner violence and other forms of violence, the CDC conducted the National Intimate Partner and Sexual Violence Survey (NISVS), which surveyed 15,152 women and 12,149 men between

17. SUSAN SCHECHTER, M.S.W. & ANNE L. GANLEY, PH.D, THE FAMILY VIOLENCE PREVENTION FUND, DOMESTIC VIOLENCE: A NATIONAL CURRICULUM FOR FAMILY PRESERVATION PRACTITIONERS 191 (Janet Carter, M.S. ed., 1995).

18. CHILD.'S BUREAU, U.S. DEP'T OF HEALTH & HUMAN SERV., CHILD MALTREATMENT 2021 24 (2023), <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2021.pdf> [<https://perma.cc/Q93P-HDNR>] [hereinafter CHILD MALTREATMENT].

19. See *id.* (listing “other” nonparent perpetrators of domestic violence); see also *Domestic Violence/Domestic Abuse Definitions and Relationships*, NAT'L CONF. OF STATE LEGISLATURES, <https://www.ncsl.org/human-services/domestic-violence-domestic-abuse-definitions-and-relationships> [<https://perma.cc/9PQD-9FSA>] (June 13, 2019) (listing different state provisions that define “the relationships where that conduct may be considered domestic violence or abuse”).

20. BRAGG, *supra* note 1, at 15.

21. Judith A. Wolfer, *Top 10 Myths About Domestic Violence*, 42 MD. BAR J. 38, 39 (2009).

September 2016 and May 2017.²² The NISVS findings indicated that forty-one percent of women disclosed having experienced physical violence by an intimate partner during their lifetime.²³ Due to the large scope of DV, Congress passed the Violence Against Women Act (VAWA) in 1994, which signified the federal acknowledgement of and the government's commitment to addressing the urgency of domestic violence as a public issue rather than a private one.²⁴

In abusive relationships, there are often presentations of early warning signs and cycles of domestic violence, such as “nonviolent verbal abuse” and “attentive and loving behavior,” that commonly precede the actual onset of physical aggression.²⁵ Early warning signs that may rise to the surface in the relationship to indicate an inclination to commit domestic violence include behavior by the abuser that is intrusive, isolating, possessive, jealous, and overly angry.²⁶ An abusive partner may aggressively inquire into the woman's whereabouts, discourage her from socializing with friends and coworkers, or display excessive and constant jealous and outraged reactions. Batterers may also employ a collection of coercive tactics to control their partners such as micro-surveillance and regulating their lives to the point of almost singlehandedly controlling their access to money, community, and freedom.²⁷ Likewise, abusive men may treat their partner as property that “belongs” to them.²⁸

Furthermore, intimate relationships plagued with domestic violence rest on a foundation of power, coercion, and control of the battered woman by her abuser. This foundation is known as coercive control, a term coined by psychologist and sociologist Evan Stark in 2007.²⁹ According to Stark, coercive control is a type of abuse that should be reframed as a liberty crime because it is a systematic oppression of an individual akin to the treatment of prisoners of war and its “harms tend to be cumulative rather than incident specific and include the suppression of autonomy and basic liberties as well as violations of physical integrity.”³⁰ One of the strategies of coercive

22. RUTH W. LEEMIS, ET AL., CTRS. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2016/2017 REPORT ON INTIMATE PARTNER VIOLENCE 1 (2022), https://www.cdc.gov/violenceprevention/pdf/nisvs/nisvsreportonipv_2022.pdf [https://perma.cc/9F9B-AGUM].

23. *Id.* at 10 (noting that forty-one percent is 51.2 million or two in five women in the United States).

24. BRAGG, *supra* note 1, at 24.

25. Angela Browne, *Violence in Marriage: Until Death Do Us Part?* in VIOLENCE BETWEEN INTIMATE PARTNERS: PATTERNS, CAUSES, AND EFFECTS 48, 56-58 (Albert P. Cardarelli ed., 1997).

26. *Id.*

27. Wolfer, *supra* note 21, at 38-39.

28. *Id.* at 39.

29. WEISBERG, *supra* note 1, at 200.

30. See Evan Stark, *Coercive Control* in ENCYCLOPEDIA OF DOMESTIC VIOLENCE 166, 166-71 (Nicky Ali Jackson ed., 2007) as reprinted in WEISBERG, *supra* note 1, at 200-02.

control is to undermine a partner's sense of herself as an intelligent and competent person and an able parent.³¹ The abuser's coercive control not only affects his partner, but it also has a significant impact on the children.

B. BATTERED MOTHERS AS PARENTS

While most battered women can parent capably, domestic violence can take both a "psychological and physical toll," affecting their ability to properly nurture their children.³² For instance, battered mothers may be prone to being less emotionally available to their children due to their constant preoccupation with the domestic violence they experience, anxiety surrounding safety planning, or because they are suffering from depression and trauma.³³ In the National Intimate Partner and Sexual Violence Survey (NISVS), the impact of domestic violence by an intimate partner was tracked, and the most commonly reported effects and outcomes associated with domestic violence reported by female victims included a sense of fear, concern for their own personal safety and that of their children, and symptoms of post-traumatic stress disorder.³⁴

i. "WHY DID SHE STAY?" IS NOT THE APPROPRIATE QUESTION

At the heart of many failure-to-protect cases, is the underlying assumption and overly simplistic question: If she is being abused by her spouse or partner, why did the mother stay? Battered women are faced with having to decipher a conflicting calculus in their decision-making, one that requires them to weigh the costs and benefits of staying with their abusive partners versus leaving them altogether.³⁵ Contrary to popular belief, battered women possess many rational and legitimate reasons for remaining with their abusive partners.³⁶ But there is an unfortunate myth that if a woman chooses to stay with her abuser, she must not actually be afraid of him; however, one of the primary reasons women may be reluctant to leave an abusive relationship is because leaving itself entails considerable risks and terrifying consequences.³⁷ In such circumstances, the act of an abused woman remaining with her abuser should be viewed as an active protective

31. See *id.* (explaining the components of coercive control in abusive relationships).

32. JOHN E. B. MYERS, CALIFORNIA FAMILY LAW: A PRACTICE FOCUSED CASEBOOK 507 (2nd ed. 2022).

33. See Lucy Salcido Carter, et al., *Domestic Violence and Children: Analysis and Recommendations*, 9 THE FUTURE OF CHILDREN 4, 6 (1999).

34. SHARON G. SMITH, ET AL., CTRS. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY (NISVS): 2010-2012 STATE REPORT 3 (2017), <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf> [<https://perma.cc/2BEV-EAYT>].

35. Wolfer, *supra* note 21, at 40.

36. *Why People Stay: It's Not As Easy As Simply Walking Away*, NAT'L DOMESTIC VIOLENCE HOTLINE, <https://www.thehotline.org/support-others/why-people-stay-in-an-abusive-relationship/> [<https://perma.cc/R3AD-EUKN>].

37. *Id.*; see also Wolfer, *supra* note 21, at 40.

act rather than a passive neglectful one. The battered mother may have an “objectively reasonable fear” that the batterer will carry out threats to harm her or her children, harbor genuine concern that she will lose her children to the abuser in a custody battle, or she may not possess the economic resources needed to support herself or her children if she leaves.³⁸ Of note, the likelihood of severe abuse and possibly even lethal abuse, has been shown to increase markedly when a woman actually separates from her abuser.³⁹ The harsh reality is that leaving an abusive relationship does not necessarily bring an end to the abuse, and many battered women do in fact attempt to leave their abusive partners multiple times throughout the course of their relationships.⁴⁰ Some factors which are explored in greater detail in Part IV,⁴¹ such as financial insecurity, battered women’s syndrome, and fear of separation abuse, are intertwined with reasons for why battered women decide to remain with their abusers.⁴²

ii. BATTERED WOMAN’S SYNDROME AND LEARNED HELPLESSNESS

Perhaps another chief reason why women remain with their abusers in addition to the fear of losing custody of their children to the abuser or the terror of escalated violence following separation is that the non-offending parent suffers from Battered Woman’s Syndrome (BWS) and/or learned helplessness. According to Dr. Lenore Walker, renown for her work and extensive research on the battered women’s syndrome and in 1978 for proposing to use the theoretical construct of *learned helplessness* to explain why women had difficulties leaving or escaping an abusive relationship, BWS is a “pattern of the signs and symptoms that have been found to occur after a woman has been physically, sexually, and/or psychologically abused in any intimate partner relationship.”⁴³

Battered women’s syndrome is identified with the following seven factors, the first four of which are the same clinical symptoms of post-traumatic stress disorder (PTSD) listed in the *DSM-5*, and the last three factors are characteristics shared among victims of intimate partner violence (IPV) that Walker has interviewed and studied throughout her research.⁴⁴ The seven groups of BWS symptoms are as follows: (1) reexperiencing the trauma events intrusively; (2) hyperarousal and high levels of anxiety; (3) high levels of avoidance and numbing of emotions

38. Wolfer, *supra* note 21, at 40.

39. *See generally id.* (noting research shows women are “most at risk” for abuse at the hands of their abuser when she leaves).

40. *Id.*

41. *See infra* Sections IV.B, IV.C.

42. *See generally* Wolfer, *supra* note 21 (explaining common assumptions about domestic violence and why women stay in abusive relationships).

43. LENORE E. A. WALKER, EDD, *THE BATTERED WOMAN SYNDROME* 49-50 (4th ed. 2017).

44. *Id.* at 506.

such as depression, dissociation, minimization, repression, and denial; (4) mood and cognitive difficulties; (5) disruption in interpersonal relationships due to the batterer's power and control tactics; (6) physical health and body image problems; (7) sexual intimacy issues.⁴⁵ Walker described the typical trauma response of the battered woman as one that triggers her to be "hyperaroused" and then to psychologically escape using a variety of methods including denial, minimization, repression, dissociation as a means of avoiding and protecting her "from experiencing the full-blown trauma response" as a type of learned helplessness.⁴⁶

Victims of DV who exhibit the symptoms of BWS may also exhibit "often counterintuitive behavior" that is difficult for those who do not understand the dynamics of domestic violence to even fathom.⁴⁷ Examples of such counterintuitive behavior include an 80-year-old abused woman like Darlene Green, who after a decade of abuse by her husband, William, falsely confessed to shooting him dead even though William shot and killed himself during their final altercation.⁴⁸

C. CHILDREN'S EXPOSURE TO DOMESTIC VIOLENCE CAN CONSTITUTE NEGLECT

As stated earlier, domestic violence often coexists with child abuse, and when one is present, there is an increased risk that the family will also experience the other due to the significant overlap between the two, an occurrence rate of thirty percent to sixty percent.⁴⁹ This paper is particularly focused on children's exposure to domestic violence, and it is estimated that eleven to sixteen percent of children witness domestic violence each year, accounting for approximately three million child witnesses every year in the United States alone.⁵⁰

Children experience emotional consequences after exposure to domestic violence, such as isolation, fear, guilt, shame, and low self-esteem as well as long-reaching psychological and behavioral consequences.⁵¹ Psychological consequences child witnesses of domestic violence endure in the wake of exposure to domestic violence include anxiety, depression, and post-traumatic stress disorder.⁵² Behavioral consequences include attitudinal problems like anger and poor impulse control, internalizing behaviors, and externalizing behaviors such as a propensity to engage in

45. *Id.*

46. *Id.* at 52.

47. *Id.* at 530.

48. *See id.* at 452.

49. Jonathan Thackeray et al., *Intimate Partner Violence: The Role of the Pediatrician*, 125 PEDIATRICS 1094, 1095 (2010).

50. MYERS, *supra* note 32, at 502.

51. *Id.* at 502-03.

52. Thackeray et al., *supra* note 49, at 1095.

future violent behavior themselves.⁵³ Furthermore, childhood exposure to domestic violence carries with it risk factors for medical issues such as depression, obesity, smoking, suicide attempts, and physical inactivity.⁵⁴ Therefore, the effects of children's exposure to domestic violence are noticeable and apparent and must be taken into consideration in the lens of failure to protect.

II. MANDATORY REPORTING REQUIREMENTS, INVESTIGATIONS, SCREENING PROCEDURES POST-*GREENBOOK*

A. THE *GREENBOOK* RECOMMENDATION 59⁵⁵

In recommendation 59, the *Greenbook* emphasizes that juvenile court jurisdiction should be established solely on the basis that children have witnessed domestic violence “only if the evidence demonstrates that they suffered significant emotional harm from that witnessing,” and the non-abusive parent is unable to protect them from emotional abuse even with aid from child protection services.⁵⁶ The *Greenbook* noted that in order to preserve some semblance of stability for affected children, child welfare workers and juvenile court personnel should attempt to keep children afflicted by maltreatment and domestic violence in the care and custody of the non-offending parent, usually the mother, whenever it is feasible.⁵⁷ The rationale behind this recommendation is that child welfare agencies can best protect children by offering appropriate services and assistance to their battered mothers, underscoring the underlying principle that separating battered mothers from their children should only be done as a last resort.⁵⁸

B. THE *GREENBOOK* RECOMMENDATION 60⁵⁹

Under this *Greenbook* recommendation, “[t]he juvenile court should “prioritize removing any abuser before removing a child from a battered mother.”⁶⁰ This recommendation reflects the growing concern that a child may be removed from a parent who is also a victim and who may be doing much to protect her child.⁶¹ Likewise, this recommendation underlines the message the *Greenbook* Recommendation 59 championed: that removal of

53. *Id.*

54. *Id.*

55. SUSAN SCHECHTER & JEFFERY L. EDLESON, NAT'L COUNS. OF JUV. & FAM. CT. JUDGES, EFFECTIVE INTERVENTIONS IN DOMESTIC VIOLENCE AND CHILD MALTREATMENT CASES: GUIDELINES FOR POLICY AND PRACTICE 109 (1999), <https://www.ncjfcj.org/wp-content/uploads/2012/03/Effective-Intervention-in-DV-and-Child-Maltreatment-Cases-Final.pdf> [<https://perma.cc/DTP7-A9GL>] [hereinafter THE *GREENBOOK*].

56. *Id.*

57. *Id.*

58. BRINGING THE *GREENBOOK* TO LIFE, *supra* note 7, at 5.

59. THE *GREENBOOK*, *supra* note 55, at 110.

60. *Id.*

61. BRINGING THE *GREENBOOK* TO LIFE, *supra* note 7, at 4.

a child from their battered mother should only occur as a last resort,⁶² such as if the circumstances in the home have placed or are substantially likely to place the child in harm's way emotionally, physically, or mentally due to their exposure to domestic violence and the failure of either parent to exercise reasonable due care.⁶³

C. *NICHOLSON V. SCOPPETTA*⁶⁴ APPLIES THE *GREENBOOK* REGARDING FAILURE TO PROTECT CASE

In the landmark case, *Nicholson v. Scoppetta*, the New York Court of Appeals applied the *Greenbook* principles in Recommendation 59 to determine that establishing neglect requires proof of a parent's failure to exercise a minimum degree of care.⁶⁵ The court found that a child's exposure to domestic violence does not presumptively establish child neglect nor justify removal of a child because actual removal of a child requires particularized evidence that the child's physical, mental, or emotional condition "was impaired or [is] in imminent danger of becoming impaired."⁶⁶

The New York Court of Appeals perceptively concluded that the proper inquiry in matters involving domestic violence and alleged failure-to-protect is whether "a mother—and domestic violence victim" has met the standard of the reasonable and prudent person in similar circumstances:

What. . . constitutes a [survivor of domestic violence] parent's exercise of "minimum degree of care" may include such considerations as risks attendant to leaving; if the batterer has threatened to kill her if she does; risks attendant to staying and suffering continued abuse; risks attendant to seeking assistance through government channels, potentially increasing the danger to herself and her children . . . and risks attendant to relocation.⁶⁷

Nicholson v. Scoppetta was particularly monumental for battered mothers and battered women's advocates because the highest New York court utilized the *Greenbook* recommendations when defining the contours of neglect caused by failure-to-protect, which necessitates more than the fact that a child witnessed their mother being abused, but "rather because a preponderance of the evidence establishes that the children were actually or imminently harmed by reason of her failure to exercise even minimal care in providing them with proper oversight."⁶⁸

62. *Id.*

63. THE *GREENBOOK*, *supra* note 55, at 109-10.

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

65. *Id.* at 369-72.

66. *Id.* at 369.

67. *Scoppetta*, 3 N.Y.3d at 371.

68. *Id.* at 372.

D. HOW STATES CIRCUMVENT THE UNNECESSARY REMOVALS OF CHILDREN IN FAILURE TO PROTECT CASES

All fifty states, the District of Columbia, and the Commonwealth of Puerto Rico, have mandatory child abuse and neglect reporting rules that require certain institutions and professionals, including, but not limited to medical examiners, hospital personnel, social workers, teachers, school administrators, and police officers, to refer suspected maltreatment to Child Protective Services (CPS).⁶⁹ While each state espouses its own definition of neglect and child abuse, the Child Abuse Prevention and Treatment Act (CAPTA)⁷⁰ defines child abuse and neglect as: “any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm.”⁷¹

The Child Abuse Prevention and Treatment Act (CAPTA) was amended in 1988 to direct the secretary of Health and Human Services (HHS) to establish a national data collection and analysis program, the National Child Abuse and Neglect Data System (NCANDS), which gathers and evaluates data regarding all maltreatment and abuse allegations within the United States.⁷² The data is voluntarily submitted by the fifty states, as well as D.C. and Puerto Rico, and subsequently analyzed by the Children’s Bureau in the Administration of Children, Youth and Families within the HHS.⁷³

Once a child abuse allegation is made to CPS, the referral may be screened in or screened out.⁷⁴ Referrals involving significant abuse or neglect that meet CPS’s criteria, subsequently referred to as “reports,” are screened in to the agency for investigation.⁷⁵ Usually, any cases deemed to involve severe abuse such as near-death incidents, sexual abuse, or physical abuse and neglect where a child has either experienced harm or is at substantial risk of harm if they are to remain in the home, are screened-in and trigger an investigation response.⁷⁶ The goals of the investigation are (1) to ascertain if the child was maltreated or (2) to decide if services are necessary and which services to offer.⁷⁷ On the other hand, referrals that do not meet the agency’s criteria, either because they do not involve child abuse and neglect or because they do not contain sufficient information for a CPS response to transpire, should be screened out or redirected to other

69. CHILD MALTREATMENT, *supra* note 18, at ix, xi.

70. *Id.* at 17.

71. CAPTA Reauthorization Act of 2010, Pub. L. No. 111-320, 124 Stat. 3459 (codified as amended at 42 U.S.C. §§ 5101-5119c).

72. *Id.* at ix.

73. CHILD MALTREATMENT, *supra* note 18, at ix.

74. CHILD MALTREATMENT, *supra* note 18, at 6.

75. *Id.*

76. *Id.*

77. *Id.* at 6, 17-18.

community agencies.⁷⁸ In 2021, forty-six states provided their screened-in and screened-out referral data, and the cumulative average revealed the participating states screened in 51.5% and screened out 48.5% of referrals.⁷⁹

i. ALTERNATIVE RESPONSES TO INVESTIGATIONS AND INTERVENTIONS

Some states offer alternate approaches, also known as alternative or differential responses, to traditional investigations of neglect or abuse.⁸⁰ Alternative response provides a flexible track of preventive services that allows for more family engagement than do the traditional investigations to reports of abuse or neglect, while still championing the safety of the children as much as possible.⁸¹

Of relevance here, alternative responses typically engage with suspected neglect cases involving domestic violence that are of lower risk and do not allege serious harm, so allegations are not substantiated, dispositions are not employed, and a finding of maltreatment is not made.⁸² Instead, community based DV and children's organizations and child welfare agencies converge on identifying each family's specific needs, navigating the family toward a tailored and sustainable safety plan.⁸³ Preventive services offered may include family and individual therapy, in-home or outpatient parenting skills classes, housing assistance and shelter provisions, medical and legal advocacy, and employment referrals.⁸⁴ Contracted community-based services may also include in-home services led by licensed clinicians and counselors to enhance parents' protective capacities specifically geared toward families at risk of child removal due to the presence of domestic violence in the home.⁸⁵ These types of secondary-level intervention rehabilitation and remediation strategies may be programs that take place in clinics, at battered women's shelters, or in outpatient groups for victims of domestic violence designed to work with those who have been harmed by domestic violence so that they can best help their children.⁸⁶

Similarly, California is a proponent of a differential response approach composed of three pathways: (Path 1) community response; (Path 2) child welfare services with community response; and (Path 3) child welfare

78. *Id.* at 6.

79. *Id.* at 7.

80. *Id.* at 7, 18.

81. *See id.* at 18.

82. *Id.*

83. *See generally id.* at 135-292 (providing detailed information on different states' safety plan policies and procedures).

84. CHILD MALTREATMENT, *supra* note 18, at 77, 286.

85. *Id.* at 203-04.

86. WALKER, *supra* note 43, at 372.

services response.⁸⁷ Path 1's community pathway is engaged whenever family problems as indicated by the referral do not match the statutory definitions of neglect and abuse, so the referral is screened out with no investigation, but may include family referrals to helpful community providers.⁸⁸ Unlike Path 1 families, Path 2 families do meet the statutory definitions of abuse or neglect; however, the child is safe and not in substantial risk of harm because the family has the capacity and strength to meet the challenges through service engagement.⁸⁹ Depending on the results of the subsequent investigation following the referral, a case may or may not be initiated by social services under Path 2.⁹⁰ Finally, under Path 3, the child welfare agency must respond because the child is not safe and at "moderate to high risk for continuing abuse or neglect."⁹¹ Because of the severity of the allegations that trigger a Path 3 response, the referral is investigated, and a child welfare services case is launched.⁹²

Ultimately, engaging in and allowing for multiple strategies of intervention for families is crucial for improving safety decision-making and can lead to more positive outcomes for children and their families.

III. UNTANGLING CALIFORNIA DEPENDENCY CASELAW IN FAILURE TO PROTECT CASES POST *NICHOLSON V. SCOPPETTA*

In California, dependency proceedings for failure-to-protect are governed under Welfare and Institutions Code section 300, subdivision (b)(1). The primary question under this subdivision is whether circumstances at the time of the jurisdiction hearing subject the child to the defined risk of harm.⁹³ A child can come under the jurisdiction of the juvenile court under section 300, subdivision (b)(1) upon a showing that the "child has suffered or, there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of . . . [t]he failure or inability of the child's parent or guardian to adequately supervise or protect the child."⁹⁴ As in *Nicholson v. Scoppetta*,⁹⁵ in California, proof by a preponderance of the evidence is required at jurisdiction and requires showing that the child has experienced "concrete harm" or is at risk of

87. CHILD MALTREATMENT, *supra* note 18, at 145.

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *In re John M.*, 217 Cal.App.4th 410, 418-419 (2013); CAL. WELF. & INST. CODE § 300(b)(1)(A) (2017).

94. WELF. & INST. § 300(b)(1)(A).

95. *See supra* Section II.C.

experiencing it.⁹⁶ On appeal, the substantial evidence test is the appropriate standard of review for both the jurisdictional and dispositional findings.⁹⁷

Several factors emerge from the following cases involving domestic violence that appear to moderate the degree to which a child is affected by witnessing the domestic violence, including, but not limited to: the nature of the violent conduct, whether or not the child, too, was a victim of the physical abuse, the amount of time that has passed since the alleged domestic violence incidents occurred, steps the non-offending parent has taken to mitigate the risk of harm to her child, and, present circumstances such as the abusive parent's comprehension of and attitude toward his past conduct that endangered the child and the child's mother. The age of the child and the child's perceived family support are also other factors dependency courts should consider in their jurisdictional determination.

For instance, in *In re John M.*,⁹⁸ the Second Appellate District Court of Appeal found ample evidence supported the jurisdictional findings against the abusive father because of the history of domestic violence between the father and the child's mother.⁹⁹ The court found the conduct between the parents demonstrated an ongoing pattern of domestic violence, which included slapping and hitting, culminating with the mother bleeding profusely from the head, as well as frequent aggressive verbal altercations, all of which posed a tangible risk to the child's physical and emotional well-being.¹⁰⁰ Furthermore, although the minor was allegedly not present when the domestic violence transpired, the 2011 incident was relatively attenuated in time and space from the 2013 issue on appeal, and even though the mother's whereabouts at the time of appeal were unknown, the Court of Appeal still felt the severity of the 2011 isolated incident, coupled with the father's "angry and violent behavior" posed "a very real risk" to his son's overall well-being.¹⁰¹

Unlike the court in *John M.*, the court in *In re Daisy H.*¹⁰² found insufficient evidence to support a finding that past or present domestic violence between the parents presently placed the children at a substantial risk of physical harm.¹⁰³ Here, domestic violence between the parents happened at least two, and possibly even seven, years before the dependency petition was ever filed.¹⁰⁴ Furthermore, there was no evidence that any of the children were physically exposed to past domestic violence,

96. *In re Rocco M.*, 1 Cal.App.4th 814, 821 (1991).

97. *In re M.M.*, 240 Cal.App.4th 703, 719 (2015).

98. *John M.*, 217 Cal.App.4th at 410.

99. *Id.* at 419.

100. *John M.*, 217 Cal.App.4th at 415-419.

101. *Id.* at 419.

102. *In re Daisy H.*, 192 Cal.App.4th 713 (2011) (disproved on other grounds).

103. *Id.* at 717.

104. *Id.*

nor any evidence of any ongoing violence between the now separated parents.¹⁰⁵

In the child dependency case of *In re E.D.*,¹⁰⁶ the juvenile court considered whether a single act of domestic violence between the child's parents posed a substantial risk of harm to the child and whether the mother's actions in caring for her child before and after the domestic violence occurred posed a risk of endangerment.¹⁰⁷ Here, a 2015 referral to the Los Angeles County Department of Children and Family Services (DCFS) alleged that the father struck the mother while she was holding their two-month-old child.¹⁰⁸ Right after the altercation, the young mother obtained a restraining order against the father specifying no contact with either the mother or the child except for court-ordered visitation, and the mother subsequently terminated the relationship with her abuser.¹⁰⁹

Unfortunately, despite what appeared to be significant steps forward taken by the mother, two years later, mother and child were stopped by the police for a traffic violation in which police unearthed eleven grams of methamphetamine and two grams of marijuana on the mother's person, so she was subsequently arrested for possession of meth for sale, and the incident resulted in another child welfare referral to DCFS.¹¹⁰ During DCFS's prepetition investigation, the social worker discovered that the child's mother used meth whenever her child was on visits with the father as well as when the child was under her care.¹¹¹ Furthermore, the investigation revealed that the father repeatedly violated the restraining order by continuing physical contact with both mother and child.¹¹²

At the subsequent combined jurisdiction and disposition hearing, the court considered the specific incident of domestic violence that occurred two years earlier, a "single punch or slap to the forehead," as well as the mother's history of substance abuse and her possession of meth while operating a vehicle containing her young child, and, finally, the father's repeated violation of the restraining order.¹¹³ The juvenile court concluded that remaining in the home with both or either parent would pose a "substantial danger to the child's physical health, safety, and emotional

105. *Id.*

106. *In re E.D.*, 21 Cal.App.5th 664 *reh'g granted, vacated sub nom.*, L.A. Cty. Dep't of Child. & Family Servs. v. Paul D., No. B284657, 2018 Cal. App. LEXIS 367 (Apr. 11, 2018), *substitute op.*, L.A. Cty. Dep't of Child. & Family Servs. v. Paul D. (*In re E.D.*), No. B284657, 2018 Cal. App. LEXIS 3380 at *1 (May 17, 2018) (finding the same facts as *In re E.D.*).

107. *Id.* at 668-69.

108. *Id.* at 666.

109. *Id.* at 666-67.

110. *E.D.*, 21 Cal.App.5th at 667.

111. *Id.*

112. *Id.*

113. *Id.* at 668-69.

well-being” and declared the child a dependent of the court.¹¹⁴ The father appealed the juvenile court’s jurisdictional findings as to him.¹¹⁵

When reviewing the juvenile court’s jurisdictional findings, the Court of Appeal found that the jurisdictional order was unsupported by substantial evidence of a substantial risk of serious physical harm or illness to the child from the father.¹¹⁶ Unlike in *John M.*, where the parents had an ongoing history of domestic violence, here, the 2015 incident of domestic violence was a singular occurrence, and it was “relatively remote in time from the jurisdictional and dispositional hearing,”¹¹⁷ much like the domestic violence in *Daisy H.* Furthermore, here, the father acknowledged his wrongful conduct, enrolled in individual therapy, and completed his domestic violence batterer’s program to correct his abusive behavior.¹¹⁸

In a 2014 dependency matter, minor *M.M.* came under the jurisdiction of the juvenile court following domestic violence that took place between the child’s parents, which he witnessed.¹¹⁹ The minor saw his father choke his mother while he was holding the minor in his arms, viewed his father throwing mother onto a piano, a table, and onto the floor while the minor was “at their feet during most of the incident,” and breaking the mother’s phone.¹²⁰ Father’s naval command issued a military protective order (MPO), which required him to live outside the home; however, mother requested the restraining order be rescinded shortly thereafter, stating that the father had learned from his mistakes.¹²¹ Mother subsequently admitted to hitting the father while he was holding their child and during the domestic violence incident at issue, and she also disclosed to her therapist that domestic violence was continuously present throughout her relationship with the child’s father.¹²²

Based on the parents’ negligent and abusive actions regarding the care of their child, the Fourth Appellate District Court of Appeal found that both parents refused to acknowledge nor express empathy for how their actions caused trauma to their child and placed the minor under “enormous risk” of potential harm.¹²³ Likewise, both parents were lacking helpful domestic violence skills and safety plans, which not only posed great dangers for their son, but also increased the likelihood that they would break the

114. *Id.* at 669.

115. *Id.* at 670.

116. *Id.* at 671; see *Paul D.*, 2018 Cal. App. LEXIS 3380, at *16 (reversing the juvenile court’s jurisdictional findings after coming to the same conclusion as the court in *In re E.D.* that “the evidence was insufficient to support . . . dependency jurisdiction . . . based on father’s conduct”).

117. *Id.* at 673–74.

118. *Id.* at 674.

119. *In re M.M.*, 240 Cal.App.4th 703, 706 (2015).

120. *M.M.*, 240 Cal.App.4th at 720.

121. *Id.* at 706.

122. *Id.* at 720.

123. *Id.* at 708.

existing restraining order in the future.¹²⁴ As a result, the minor was declared a dependent of the court but permitted to live with his mother while the restraining order remained in effect.¹²⁵

As seen from this small group of California dependency matters involving children's exposure to domestic violence, the California courts have made an attempt to undertake a balancing test of many factors into consideration prior to making a section 300 jurisdiction determination. While echoes of the *Greenbook* Recommendations 59 and 60 still reverberate today, a more concrete approach is needed to help guide juvenile courts and child welfare workers.

IV. BATTERED PARENT AND CHILD SAFETY RISK ASSESSMENT TOOL (BPCSRAT)

The purpose of the instrument I am proposing, the Battered Parent and Child Safety Risk Assessment Tool (hereinafter BPCSRAT), is to provide a multi-dimensional approach for assessing each referred family's unique experience with domestic violence and how it affects the likelihood of future abuse of the victim partner as well as the likelihood her child will be subsequently maltreated in the future due to the domestic violence. The BPCSRAT evaluates present lethality factors exhibited by abusers, appraises the danger and frequency of the abuse and the children's exposure to it, takes note of the presence of red flags and comorbidities possessed by the abuser and the non-offending parent, and weighs these factors against the existence of green flags such as protective factors and help-seeking behaviors the battered non-offending parent may have, as well as any protective behaviors her children exhibit. At its foundation, the BPCSRAT supports the non-offending parent and survivor of domestic violence and her relationship with her child, aiming to preserve rather than sever the physical and emotional bond they share. Ideally, applying the factors, questions, and criteria set forth in the risk and safety assessment tool can serve to guide child welfare agencies in determining if the adult victim of domestic violence or her child is in immediate danger of moderate or serious harm or if the risk is much lower. The BPCSRAT is a family forward model that focuses on supporting the non-offending parent being able to maintain her relationship with her child while also holding the abusive parent accountable for their violence and responsible for correcting it.

124. *Id.* at 709.

125. *Id.*

A. LETHALITY AND DANGER ASSESSMENT OF THE PERPETRATOR OF DOMESTIC VIOLENCE

Step one of the BPCSRAT, the lethality assessment portion, is partially modeled after Jacquelyn Campbell's *Danger Assessment* instrument,¹²⁶ which is used by clinicians and researchers who work with domestic violence survivors and their perpetrators. Campbell created the *Danger Assessment* instrument to measure the level of danger a domestic violence survivor has of being killed or severely injured by her abuser.¹²⁷ It pinpoints several factors associated with an increased risk of homicides of women involved in violent relationships poses "yes" or "no" questions that zero in on the nature, type, and frequency of the abuse.¹²⁸ The lethality questions posed by the BPCSRAT, which largely mirrors the *Danger Assessment*, are used to evaluate the risk of *future* danger of abuse and subsequent child maltreatment, by learning the frequency of *past and present* domestic violence to obtain a more accurate context of the situation.

Some examples of questions to ask the non-offending, domestic violence survivor parent are:

1. Has your abuser threatened to harm you, your child, or himself. If so, how often?
2. Has your abuser ever used or threatened to use a deadly weapon, such as a gun or knife on you, your child or himself? If so, how often?
3. Has he ever sexually assaulted you or raped you? If so, how often?
4. Has your partner exhibited extreme jealousy or obsession with you? Is this a common occurrence?
5. Does he have a history of violence with previous partners?
6. How frequently does your abuser verbally abuse you?
7. How frequently are you physically abused?
8. Has your abuser ever physically abused you in front of your child? If so, how often did this happen?
9. Has your abuser ever harmed a family pet? If so, how many times?
10. Has your partner ever destroyed your personal property? If so, what did he destroy and how often has he done this?
11. Have you ever been choked or strangled by your abuser? How frequently did/does this happen?

126. Jacquelyn C. Campbell, Ph.D, R.N., *Danger Assessment*, DANGER ASSESSMENT, https://www.dangerassessment.org/uploads/DA_NewScoring_2019.pdf (2019) [<https://perma.cc/9TKW-YRUF>].

127. JOHN HOPKINS SCH. OF NURSING, DANGER ASSESSMENT, www.dangerassessment.org [<https://perma.cc/AGU2-3AG5>]; see also WALKER, *supra* note 43, at 308.

128. See Campbell, *supra* note 126.

12. Have there been any abusive incidents resulting in serious injury to you? How many times and how often does this take place?
13. What is your partner's propensity to restrict and control your movement, finances, and relationships?

The presence of one or more of these lethality factors, particularly on a moderate or frequent basis, indicates a high priority for the battered woman and her child to receive preventative and alternative community-based services as soon as possible because being around a partner who exhibits any one of the above-referenced lethality factors could result in lethal consequences to the domestic violence survivor, and, quite possibly, her child.

B. FAMILY FACTORS ASSOCIATED WITH EXPOSURE TO DOMESTIC VIOLENCE

Under the lens of domestic violence, risk factors are behavioral conditions possessed by the abuser, abused parent, or child that may influence child maltreatment or contribute to it occurring in the future.¹²⁹ Family risk factors that are associated with exposure to domestic violence include, poverty, parental unemployment, substance abuse, mental illness, crime, parenting stress, lower education, and poor health.¹³⁰ It is important to note that the presence of any of these factors does not in itself *cause* domestic violence nor its subsequent exposure to children; however, they are correlated and often exist comorbidly in households affected by domestic violence.¹³¹

For instance, substance abuse in particular affects one-quarter to one-half of domestic violence perpetrators.¹³² Alcohol itself plays a role in abusive incidents; accordingly, twenty-two percent of men and ten percent of their female victims were intoxicated during abusive incidents.¹³³ It is also important to note that substance abuse by the female adult victim of

129. CHILD.'S BUREAU, U.S. DEP'T OF HEALTH & HUMAN SERV., CHILD WELFARE OUTCOMES 2019: A REPORT TO CONGRESS 95 (2022), <https://www.acf.hhs.gov/sites/default/files/documents/cb/cwo-report-to-congress-2019.pdf> [https://perma.cc/5ZVH-JG8S] [hereinafter CHILD WELFARE OUTCOMES].

130. Todd I. Herrenkohl et al., *Intersection of Child Abuse and Children's Exposure to Domestic Violence*, 9 TRAUMA VIOLENCE ABUSE 84, 87 (2008).

131. *Risk and Protective Factors*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/riskprotectivefactors.html> [https://perma.cc/T8RG-DJSD] (Nov. 2, 2021).

132. PATRICIA FAZZONE ET AL., U.S. DEP'T HEALTH & HUMAN SERV., SUBSTANCE ABUSE TREATMENT AND DOMESTIC VIOLENCE TREATMENT IMPROVEMENT PROTOCOL (TIP) SERIES 25 at 3 (2012).

133. LARRY W. BENNETT, SUBSTANCE ABUSE AND WOMAN ABUSE BY MALE PARTNERS 2 (1998), https://vawnet.org/sites/default/files/materials/files/2016-09/AR_Substance.pdf [https://perma.cc/8TPF-E3DF].

domestic violence may affect her capacity to “shield her children from her abuser’s violence.”¹³⁴

Likewise, families experiencing domestic violence are frequently affected by mental health issues.¹³⁵ Domestic violence is associated with a heightened risk for either exacerbating preexisting mental health conditions or developing a range of new ones.¹³⁶ Women already living with serious mental illness may have increased vulnerabilities to abuse.¹³⁷ Fortunately, data also indicates that for many women experiencing mental illnesses such as depression, symptoms often resolve upon attaining safety and community-based services.¹³⁸

The second step when administering the BPCSRAT, is to pose the questions below to the non-offending parent in reference to herself, as well as her perceptions concerning her abusive partner:

1. What is the psychopathology of the perpetrator?
2. How would you assess your own psychopathology?
3. Is the perpetrator unemployed? If so, for how long? If they are employed, what is their income?
4. Are you unemployed? If so, for how long? If you are employed, what is your income?
5. Does the perpetrator have a history of substance abuse or alcohol abuse?
6. Do you have a history of substance abuse or alcohol abuse?

Battered mothers who are known or identified via the assessment tool to exhibit a psychiatric condition, substance abuse issue, or are presently unemployed, may be viewed as medium to high-risk priority. In most cases, they should be connected with community-based services as soon as possible to address the underlying issues. Such organizations may assist them in obtaining gainful employment, match them with narcotics or substance abuse groups and rehabilitation programs, and set them up with individual and/or family psychotherapy and psychiatric treatment if needed.

134. LEIGH GOODMARK, NAT’L COUNCIL OF JUV. & FAM. CT. JUDGES, REASONABLE EFFORTS CHECKLIST FOR DEPENDENCY CASES INVOLVING DOMESTIC VIOLENCE 14 (2008), https://www.ncjfcj.org/wp-content/uploads/2012/02/reasonable-efforts-checklist_web2010.pdf [<https://perma.cc/322K-FUN5>] [hereinafter REASONABLE EFFORTS].

135. *Id.*

136. CAROLE WARSHAW & HOLLY BARNES, DOMESTIC VIOLENCE & MENTAL HEALTH POL’Y INITIATIVES, DOMESTIC VIOLENCE, MENTAL HEALTH & TRAUMA: RESEARCH HIGHLIGHTS 3 (2003), <https://vawnet.org/sites/default/files/assets/files/2016-10/MentalHealthResearch.pdf> [<https://perma.cc/L439-E3VE>].

137. *Id.* at 4.

138. *Id.* at 6.

C. PROTECTIVE STRATEGIES, RISK FACTORS, AND HELP-SEEKING BEHAVIORS OF DV SURVIVORS

Protective factors are strengths an individual or communities possess that may serve as a barrier against existing risk factors that contribute to a child's vulnerability to maltreatment.¹³⁹ Some examples of protective strategies include obtaining a restraining order, contacting the police, or leaving the home and staying at a relative's home or at a domestic violence shelter.

The non-offending parent, a battered mother in this context, should be asked the questions listed below as part of the comprehensive BPCSRAT, so that agencies and courts can best assess the mother's specific active role in providing for her children's safety despite being a survivor of domestic violence. Current research shows that a mother's parenting characteristics may have a role in moderating the association between childhood exposure to domestic violence and some later adverse outcomes.¹⁴⁰ For instance, the relationship between exposure to domestic violence and the risk for dropping out of high school is reduced significantly in youth exposed to DV whose mothers were "highly accepting [of the specific interests and goals] and responsive [to the overall needs of]" their children.¹⁴¹ Conversely, the battered parent may also present with risk factors that may have a negative effect on the child, the family dynamic, and the child's perception of safety during a turbulent time, such as defending her abuser or minimizing the abuse, abusing drugs and alcohol herself, or suffering from a mental disorder.¹⁴² Finally, what can be perceived as inaction and passivity on the part of the battered mother may in fact be a masked, but intentional, protective strategy to preserve her and her child's safety.¹⁴³

With these ideas in mind, the BPCSRAT seeks to pinpoint the battered mother's protective compartments as well as to draw out any potentially adverse behaviors. In doing so, an accurate picture of each family's needs and capabilities may be quicker to form. The goal is to find the most effective mode of intervention and/or beneficial referral service for each affected family. Mothers who answer in the affirmative to many of the questions below should be viewed as active parents rather than passive ones in the context of domestic violence. In turn, they should be set up with community-based services that cater to their needs as well as the needs of their children. The wide assortment of questions itemized below may be

139. See CHILD WELFARE INFO. GATEWAY, U.S. DEP'T OF HEALTH & HUMAN SERV., *Protective Factors Approaches in Child Welfare* 1-14 (2020), https://www.childwelfare.gov/pubPDFs/protective_factors.pdf [<https://perma.cc/48RW-PHCX>].

140. Herrenkohl et al., *supra* note 130, at 92.

141. *Id.* at 92-93.

142. See *supra* Section IV.B.

143. WALKER, *supra* note 43, at 12, 18.

helpful in distinguishing active protective factors from apathetic or passive inactions and should be directed at the non-offending parent and/or abused mother:

1. What actions have you taken to keep you and your children safe from your violent partner?
2. Do you *feel* like you can protect your children from exposure to future domestic violence?
3. Have your children ever intervened while you were being abused? If so, were they physically harmed or did they exhibit outward signs of being distraught by the encounter such as tears, screaming, hiding, or acting out?
4. How do you think the violence is affecting your children?
5. Do you ever fear for your life or the lives of your children? If so, how omnipresent is/was this fear?
6. Have you ever left your home because of the abuse? If so, for how long?
7. Have you ever called the police or 911 due to domestic violence or fear for the safety of your child/ren? If so, how many times?
8. Have you ever filed a restraining order against your abusive partner? If so, when and for how long will it be in effect?
9. Have you ever fought back? If so, in what manner did you fight back?
10. Have you ever sent your children to the home of a family member, friend, or neighbor during the abuse to allow for their safety and to limit their direct exposure to the DV?
11. Has your family had any prior engagement with CPS or any other welfare agency? What were the relevant circumstances?
12. Did you choose to stay in the relationship to prevent the violence from escalating?
13. Have you ever conspired with, pacified, or lied on behalf of your abuser?
14. Have you and your children ever utilized shelter services?
15. Have you ever minimized or denied the abuse occurred and was perpetrated by your abuser?
16. Have you tried to obtain or secure help on your abuser's behalf by attempting to enroll him in any of the following: anger management, parenting skills, substance abuse groups, or narcotics abuse classes? If yes, what type of help or services did you seek out and were you successful in your attempt(s)?

D. GUIDING JUDGES IN MAKING REASONABLE EFFORTS
DETERMINATIONS IN CASES INVOLVING DV AND THE HARM OF
REMOVAL

Judges are tasked with assessing whether child welfare agencies have made reasonable efforts for families experiencing domestic violence.¹⁴⁴ Child welfare agencies have estimated to have discovered domestic violence between one-third to one-half of their cases, and this estimate is likely lower than the reality since many women experiencing domestic violence never disclose the battering to their family, friends, or attorneys.¹⁴⁵ Because of the vast scope of the problem, judges inevitably encounter families who are experiencing domestic violence each day and should be trained in the dynamics of domestic violence and in identifying risk factors that accompany domestic violence.¹⁴⁶ Judges cannot make a final determination regarding the child's placement without first determining if reasonable efforts were made by the child welfare agency to assist the victim of domestic violence.¹⁴⁷ The judge must determine if the battered parent was aided in keeping herself and her children safe and together in the form of services and support from child welfare agencies.¹⁴⁸ Such services may include aid in developing a meaningful safety plan, providing legal assistance to the abused victim, or helping the battered woman obtain a protective order.¹⁴⁹

Removal of a child from a non-offending abused parent is not always necessary, nor is it always in the best interest of children to be separated from their mother.¹⁵⁰ For instance, many children who are removed from their homes for 'safety' reasons are placed in foster care, and thousands who "age out" of the U.S. child welfare each year when they reach legal adulthood endure "increased rates of homelessness, incarceration, and mental illness"¹⁵¹ While outcomes such as these cannot account for all the reasons behind childhood removals nor explain their negative effects, it is worth noting to emphasize, children should not be removed from their non-offending mothers *solely* because of their exposure to domestic violence without showing actual or imminent harm to the child.

BPACSRAT also proposes that on an initial finding of a substantial likelihood of harm to the child, courts and agencies conduct a balancing test that takes into consideration whether there is in fact an imminent risk

144. REASONABLE EFFORTS, *supra* note 134, at 24-31.

145. *Id.* at 8.

146. *Id.* at 7-9.

147. *Id.* at 10.

148. MYERS, *supra* note 32, at 668-669.

149. REASONABLE EFFORTS, *supra* note 134, at 25.

150. *See* REASONABLE EFFORTS, *supra* note 134, at 10 (noting that "separation can provoke fear and anxiety in children, diminishing a child's sense of stability and self").

151. AM. PRO. SOC'Y ON THE ABUSE OF CHILD., THE APSAC HANDBOOK ON CHILD MALTREATMENT 67-70 (John E. B. Myers ed., 3rd ed. 2011).

to the child and if it can be mitigated by reasonable efforts against the harm of removal of the child. The goal should be to preserve the parent-child bond between the non-offending parent and her child unless there is a substantial risk of harm to the child. BPACSRAT echoes, as the *Greenbook* specified, removal should be utilized only as a last resort, upon a showing that all reasonable efforts have been made.¹⁵²

CONCLUSION

The mission of the *Greenbook* was both admirable and needed, yet due to implementation and sustainability struggles, communication barriers, and funding issues, the core principles underlying it, while not forgotten, have diminished in potency over the last decade. The architects of the *Greenbook* hoped to promote dialogue between domestic violence service providers, child welfare agencies, and family and juvenile courts in cases where child maltreatment and domestic violence coexisted. They sought to achieve these goals by creating better system-wide responses to families embroiled in domestic violence, enhancing victim safety, holding the batterer accountable, and promoting the well-being of children as well as their battered mothers. Greater cross-system dialogue is needed to discuss contentious issues like failure to protect in the context of domestic violence more respectfully and with less conflict.

The Battered Parent and Child Safety Risk Assessment Tool discussed within this paper hopes to build upon the vision and sustain the progress that the *Greenbook* made in reducing conflict and fostering collaborations between the disparate (but not actually so disparate) groups that are child welfare organizations and battered women's advocates. At the heart of the Battered Parent and Child Safety Risk Assessment Tool is the need to formulate a mutual response for adult victims of domestic violence and their children rather than a separate one. It is important to note that the Battered Parent and Child Safety Risk Assessment Tool I set forth is not a one-size-fit all model and considers how each family's experience with domestic violence is unique. Physical violence between a child's parents may support the exercise of jurisdiction, but only if there is evidence that the violence is either ongoing or likely to continue and that it directly harmed the child physically or placed the child at risk of physical harm. A careful assessment of each child's exposure to domestic violence is critical to determine if there is a substantial risk of harm to that child, and child protection agencies and dependency courts should be cautious in assuming that all children who witness domestic violence are better off being removed from their abused parent or their homes. Each response, whether it involves jurisdictional intervention or an alternative or differential

152. THE GREENBOOK, *supra* note 55, at 110.

response, should be catered specifically to the particularized needs of the child, his/her non-offending and abused parent, and to the family unit overall.

Revitalizing and codifying core principles of the *Greenbook* recommendations within my proposed risk assessment instrument or others like it is highly recommended. Tools such as these can be utilized by child welfare agencies and community-based domestic violence and children's organizations throughout the United States to implement a more family-centered and less interventionist approach to addressing referrals involving domestic violence and children's exposure to it. The benefits of providing coordinated and comprehensive services for battered mothers and their children are evident and reflect the hefty but doable goals of the *Greenbook*. Further cross-system dialogue and collaboration may allow for the strengthening of relationships between child welfare agencies and youth and family-serving agencies, and may even lead to the creation of future joint protocols or a shared response much like the *Greenbook*'s, to assess the risk of harm to a child and his/her battered mother to promote the safety of all family members in need of assistance. Ultimately, the way child welfare agencies and the courts treat mothers who are victims of domestic violence can have positive or negative effects on their availability as parents and essential caregivers and on their individual recovery from the abuse itself. Child protection agencies should aim to empower non-offending parents who have survived domestic violence rather than revictimize them by removing their children from their care. Granted there are certainly cases when children should be removed from their abused mothers due to egregious misconduct or inaction, but these circumstances are rare, so the removals of children should be equally rare and employed only as a last resort as stipulated by the *Greenbook*.