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## **From Collaboration to Consolidation: Developing a More Expansive Model for Responding to Family Violence**

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# FROM COLLABORATION TO CONSOLIDATION: DEVELOPING A MORE EXPANSIVE MODEL FOR RESPONDING TO FAMILY VIOLENCE

DESERIEE KENNEDY\*

*Academics and activists have frequently called for increased collaboration and communication between domestic violence and child welfare agencies as a means of more effectively responding to the impact of domestic violence on children and in recognition of the co-occurrence of domestic violence and child maltreatment. This Article reviews whether efforts based on the Greenbook and other initiatives calling for collaboration have led to any appreciable decrease in family violence. The Article finds evidence to suggest that there has not been significant improvement in the incidence or severity of family violence and more radical responses to family violence are needed. It proposes a decisive move from collaboration and communication to a consolidation of domestic violence and child welfare agencies that would fund domestic violence agencies to provide services to families experiencing domestic violence except in families where the harm or threat of harm to the children is severe. This approach would require child welfare agencies to refer all but the most serious cases of family violence to domestic violence agencies, which would be funded to respond to family violence issues holistically.*

*The American family and the American home are perhaps as or more violent than any other single American institution or setting (with the exception of the military, and only then in time of war). Americans run the greatest risk of assault, physical injury, and even murder in their own homes by members of their own families.<sup>1</sup>*

## INTRODUCTION

It has become uniformly accepted that domestic violence, child maltreatment, and substance abuse are closely correlated, and that families who are living with

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<sup>1</sup> MURRAY A. STRAUS ET AL., BEHIND CLOSED DOORS: VIOLENCE IN THE AMERICAN FAMILY 4 (1981) (recognizing of the need to respond to issues of violence within a family holistically).

domestic violence frequently experience child abuse and neglect.<sup>2</sup> Moreover, it has been widely noted that children are affected by exposure to adult violence even in families in which they are not being directly abused or neglected. Numerous studies demonstrate that families that experience violence in the home may suffer a variety of effects.<sup>3</sup> Despite significant evidence of the ways in which violence pervades a family and affects all of its members, most communities have continued to treat adult partner violence and child abuse as primarily separate problems to be addressed through different legal and social systems. These systems are hampered in their ability to treat families holistically, and the result has been a response mechanism that has not been entirely effective in reducing intra-family violence. One solution to the problem of family violence was proposed by the National Council of Juvenile and Family Court Judges in a set of principles and recommendations designed to improve responses to family violence, entitled, "Effective Intervention in Domestic Violence & Child Maltreatment Cases: Guidelines for Policy and Practice,"<sup>4</sup> and commonly referred to as the "Greenbook." The Greenbook encourages domestic violence and child abuse agencies to work more collaboratively and to increase lines of communication. Since its publication, mantras of value of collaborations between child welfare and domestic violence agencies have spread among domestic violence and child welfare workers, and the principle of collaborative responses has been viewed positively by many.<sup>5</sup> Yet, overall rates of domestic violence remain high. Although the rate of intimate partner violence declined between 1993 and 2000, it has stabilized since 2000 even though overall crime rates have continued to decline.<sup>6</sup> Despite the Greenbook and other initiatives and reforms, families experiencing abuse have not

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<sup>2</sup> Jeffrey L. Edelson, *The Overlap Between Child Maltreatment and Women Battering*, 5 VIOLENCE AGAINST WOMEN 134 (1999); Kenneth M. Coll, Roger A. Stewart, Renee Morse & Amber Moe, *The Value of Coordinated Services with Court Referred Clients and Their Families: An Outcome Study*, 89 CHILD WELFARE 61, 62 (2010); Robert Sawyer & Suzanne Lohrbach, *Integrating Domestic Violence Intervention into Child Welfare Practice*, 20 PROTECTING CHILDREN 62, 64 (2005).

<sup>3</sup> Shannan M. Catalano, *Intimate Partner Violence, 1993-2010*, OFF. OF JUST. PROGRAMS, BUREAU OF JUST. STATISTICS (NOV. 27, 2012), <http://bjs.gov/index.cfm?ty=pbdetail&iid=4536>; Kristen Kracke & Hilary Hahn, *The Nature and Extent of Childhood Exposure to Violence: What We Know, Why We Don't Know More, and Why It Matters*, in CHILDREN EXPOSED TO DOMESTIC VIOLENCE: CURRENT ISSUES IN RESEARCH, INTERVENTION, PREVENTION, AND POL'Y DEV. 27 (Robert A. Geffner, Peter G. Jaffe & Marlies Sudermann eds., 2000); STRAUS ET AL., *supra* note 1, at 4.

<sup>4</sup> THE GREENBOOK NATIONAL EVALUATION TEAM, THE GREENBOOK INITIATIVE FINAL EVALUATION REPORT (Feb. 2008), <http://aspe.hhs.gov/hsp/08/Sr/greenbook/report.pdf> [hereinafter THE GREENBOOK INITIATIVE].

<sup>5</sup> *Id.*; Duren Banks, John Landsverk & Kathleen Wang, *Changing Policy and Practice in the Child Welfare System Through Collaborative Efforts to Identify and Respond Effectively to Family Violence*, 23 J. INTERPERSONAL VIOLENCE 903 (2008).

<sup>6</sup> Catalano, *supra* note 3, at 1 ("From 1994 to 2010, the overall rate of intimate partner violence in the United States declined by 64%, from 9.8 victimizations per 1,000 persons age 12 or older to 3.6 per 1,000"); Michele C. Black, et al., *The National Intimate Partner and Sexual Violence Survey (NISVS) 2010 Summary Report*, NAT'L CTR. FOR INJURY PREVENTION AND CONTROL, CTRS. FOR DISEASE CONTROL AND PREVENTION (2010), [http://www.cdc.gov/violenceprevention/pdf/nisvs\\_report2010-a.pdf](http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf).

seen significant improvement in treating these issues.<sup>7</sup> While it is true that several communities have implemented projects that seek to create greater integration between domestic violence and child abuse agencies, the dilemma of how to create a more holistic response to domestic violence remains.<sup>8</sup>

The fifteenth anniversary of the Greenbook Initiative and its support for increased integration of child maltreatment and domestic violence responses is an important juncture to reflect and reassess the effectiveness of the policy initiatives. This article asks whether the historical division of labor and responsibility between domestic violence and child welfare agencies continues to be useful and whether collaboration alone is a satisfactory response to responding to family violence. It proposes the need to consider moving more decisively from collaboration to consolidation of efforts. It summarizes research supporting the view that domestic violence and child abuse coincide so frequently that greater efforts toward an integrative approach are required to effectively respond to both. Furthermore, it examines recent efforts involving experimental programs and greater funding for collaboration between domestic violence and child welfare workers to assess whether the provisions are effective and whether they go far enough. The Article weighs criticisms of current approaches to domestic violence, and concludes that while collaboration is a move in the right direction, the change has been too limited and greater reform is necessary. As a result, it suggests that domestic violence agencies restructure themselves to form family violence agencies that are prepared to deal directly with issues of adult-to-adult violence as well as respond to allegations of child abuse and neglect. Under this scheme, state child protective services would refer all but the most serious cases involving allegations of child abuse and neglect to family violence agencies. The family violence agencies then would be primarily responsible for direct client contact, monitoring, and follow-up, treating the violence as an issue that necessarily affects all members of the family. While child protective agencies would not be absolved of responsibility for these

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<sup>7</sup> Leigh Goodmark, *Law Is the Answer? Do We Know That for Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 ST. LOUIS U. PUB. L. REV. 7, 27 (2007) (noting "There is a tremendous amount of energy and thought going into bringing child protective services and domestic violence advocates together to work on behalf of battered women and their children. . . . But still too often, battered women are finding that when they become involved with the child protection system, they are viewed as mothers who have failed their children by being abused and are suffering the consequences."); Marianne Hester, *The Contradictory Legal Worlds Faced by Domestic Violence Victims*, VIOLENCE AGAINST WOMEN IN FAMS. & RELATIONSHIPS 127-145 (Evan Stark & Eve S. Buzawa eds., 2009).

<sup>8</sup> See Margo Lindauer, *Damned If You Do, Damned If You Don't: Why Multi-Court-Involved Battered Mothers Just Can't Win*, 20 AM. U. J. GENDER SOC. POL'Y & L. 797, 814 (2012) (proposing reforms to address the continuing conflicts for battered women in trying to protect themselves from domestic violence while mothering their children. She notes that "collaboration was identified as one of the successes of the Greenbook initiative."); see generally Joan S. Meier, *Notes from the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice*, 21 HOFSTRA L. REV. 1295 (1993) (describing the benefits of integrating social science research into legal practice); Judy L. Postmus, *Domestic Violence and Children's Well-Being*, in VIOLENCE AGAINST WOMEN IN FAMILIES & RELATIONSHIPS 18, 18-19 (Evan Stark & Eve S. Buzawa eds., 2009).

cases, the day-to-day efforts of monitoring and providing family services would be delegated to smaller nonprofit and government-funded agencies.

Part I of this Article will discuss the incidence of domestic violence and child abuse, explaining the correlation between the two. Part II describes the Greenbook initiative and summarizes its recommendations. It reviews the recommendation that domestic violence and child abuse agencies collaborate and communicate. It describes some of the agencies that have done so and reviews their effectiveness in decreasing family violence and improving outcomes. In addition, Part II describes recent amendments to the Child Abuse Prevention Act ("CAPTA") geared toward greater collaboration between domestic violence and child welfare workers, assessing the likely effectiveness of these latest reforms.

Part III suggests that while the efforts towards collaboration have been met with some success, the improvements are not far-reaching enough, and argues for the need to move even further in the direction of a consolidated family violence model. Moreover, a collaborative approach does little to address the tensions and concerns raised about child welfare agencies' over-involvement in poor families. The consolidated family violence model proposes increasing domestic violence agencies' scope of responsibility to include allegations of child abuse and neglect as well as adult violence. The Article suggests increasing funding for these agencies to allow for their reach to expand and argues that these agencies would be more effective than state-run child protective services in creating individualized responses to families and improving outcomes for families experiencing violence.<sup>9</sup>

Part IV responds to the likely criticisms of a consolidated approach and concludes that despite difficulties in making the transition, the consolidated approach would better serve families and increase safety. Part IV asserts that families in which the risk of violence has been determined by the state child protective agency to be low or moderate should be serviced by family violence agencies largely to the exclusion of child welfare agencies. Only those families deemed to present a risk of serious harm to a child would be subject to child protective services procedures. It concludes that the divisions between domestic violence and child welfare agencies in homes experiencing family violence have been largely counterproductive. Moreover, the divisions, to some degree, are artificial and outdated. It suggests that we have been slowly moving in the direction of consolidated efforts to family violence in recognition of the efficiencies and harms that result from agency separation, and that it is time for a more fully consolidated agency model, at least for some families. The primary goals of the consolidated model would be to increase family safety and to stem the cycle of violence.

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<sup>9</sup> Although the Article focuses on collaborations between child welfare and domestic violence agencies it recognizes the importance of coordinated approaches that include other important family violence professionals including law enforcement and court personnel.

## I. THE PREVALENCE AND CO-OCCURRENCE OF DOMESTIC VIOLENCE AND CHILD ABUSE AND NEGLECT

The exact incidence of domestic violence between adults varies depending upon the source of the data.<sup>10</sup> One generally accepted view is that 1 out of 3 women have been affected by domestic violence.<sup>11</sup> It is widely believed, however, that domestic violence continues to be vastly underreported and that the actual incidence of violence within families is far greater.<sup>12</sup> Child abuse is similarly widespread. Child maltreatment is said to affect approximately 5.9 million children a year.<sup>13</sup> Child abuse is likely also underreported, although the requirement of mandatory reporting of child abuse by some members of society may mean that the statistics of the incidence of child abuse may be more accurate than those involving adults.<sup>14</sup> Unlike incidents of adult partner violence, federal statutes provide incentives for states to investigate and act on reports of suspected child abuse.<sup>15</sup> As

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<sup>10</sup> Domestic violence is viewed as a pattern of behavior that is used to exercise power and control over a victim. Abusers rely on a variety of interlocking methods to maintain power and control and behaviors can include physical and sexual violence, economic coercion, use of threats, psychological and emotional abuse, pet abuse, damage to property, stalking, electronic monitoring and spying of victims, among others.

<sup>11</sup> Catalano, *supra* note 3; Black, *supra* note 6, at 2. The survey reveals that, "More than one-third of women in the United States (35.6% or approximately 42.4 million) have experienced rape, physical violence, and/or stalking by an intimate partner at some point in their lifetime . . . One in 3 women (32.9%) has experienced physical violence by an intimate partner."

<sup>12</sup> Black, *supra* note 6, at 85 ("Even though the National Intimate Partner and Sexual Violence Survey captures a full range of victimization experiences, the estimates reported here are likely to underestimate the prevalence of sexual violence, stalking, and intimate partner violence.").

<sup>13</sup> More than 3 million reports of child abuse and neglect involving more than 5 million children are made each year. See U.S. DEP'T OF HEALTH AND HUMAN SERVICES, ADMIN. FOR CHILDREN AND FAMILIES., YOUTH AND FAMILIES CHILDREN'S BUREAU, CHILD MALTREATMENT 2011: SUMMARY OF KEY FINDINGS, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, CHILDREN'S BUREAU (2010), <http://archive.acf.hhs.gov/programs/cb/pubs/cm10/cm10.pdf>. According to the U.S. Department of Health and Human Services, there were an estimated 3.3 million reports of suspected child abuse and neglect involving 5.9 million children across the United States in 2010. See also NAT'L INCIDENCE STUDY OF CHILD ABUSE AND NEGLECT (NIS-4) (2004-09).

<sup>14</sup> See Child Abuse and Treatment Act, Pub. L. No. 93-247 (1974), 42 U.S.C. §§ 5101-5107 (1996). In addition, note that in response to a number of recent high profile child abuse cases including Penn State, Boy Scouts, and clergy associated with the Catholic Church, there are multiple efforts at the federal and state level to amend child abuse reporting requirements. "Federal legislation was initiated in November 2011 to amend the Child Abuse Prevention and Treatment Act (CAPTA) to require that all states amend their laws within two years to mandate all adults report suspected child abuse and provide training on child abuse reporting, tied to state eligibility to continue to receive federal CAPTA funding. Introduced by Sen. Robert Casey of Pennsylvania and Sen. Barbara Boxer of California, the Speak Up to Protect Every Abused Kid Act is designed to increase trained, responsible reporting of child abuse across the country." Debra Schilling Wolfe, *Revisiting Child Abuse Reporting Laws*, 12 SOCIAL WORK TODAY Mar./Apr. 2012, at 14. "The Senate Committee on Health, Education, Labor, and Pensions Subcommittee on Children and Families held a public hearing in December 2011. Experts recommended studying the outcomes of increasing the class of mandated reporters to all adults in the 18 states that currently do so prior to moving forward and legislating this act nationally." *Id.*

<sup>15</sup> The Child Abuse Prevention and Treatment Act of 1974 required states to establish reporting systems for child abuse and neglect. See Robert J. Lukens, *The Impact of Mandatory Reporting Requirements on the Child Welfare System*, 5 RUTGERS J.L. & PUB. POL'Y 177, 193 (2007) ("as a condition of the federal funding, states were required to have mandatory reporting requirements and to develop a specialized agency like the CPS to investigate reports and assure treatment availability for the

a result, states have mandatory child abuse reporting laws that require a specific category of professions or all capable adults to report suspected child maltreatment to the designated state agency.<sup>16</sup> These provisions may result in a greater reporting of child rather than adult partner abuse, but it is widely believed that underreporting is still an issue for child abuse and neglect.<sup>17</sup>

Children in homes in which acts of violence are being committed against an adult are at risk of becoming victims of violence themselves, as there is a correlation between intimate partner abuse and child maltreatment. Researchers have found that child abuse frequently occurs in families that experience adult violence.<sup>18</sup> In some thirty to sixty percent of families in which domestic violence is taking place, children are either directly abused or injured during the course of a violent episode.<sup>19</sup> The co-occurrence of domestic violence and child abuse means that significant numbers of children are witnesses to adult violence in the home. The National Survey of Children's Exposure to Violence is a telephone survey directed to a nationally representative target sample of more than 4,000 children (ages 0-17 years).<sup>20</sup> The survey found that "6.2% of children had witnessed assault between parents in the last year, and 16.3%" witnessed assault between parents during their lifetime.<sup>21</sup> The survey further revealed, "among children who reported other forms of child maltreatment, these percentages climbed to 20.8%" who witnessed adult violence in the preceding year and 49.6% in their lifetime.<sup>22</sup>

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child and her family.").

<sup>16</sup> Most states designate professionals who are mandated by law to report child abuse or neglect. New Jersey and Wyoming do not specify professionals who are required to report. See NAT'L CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org> (last visited Nov. 12, 2013). In addition, domestic violence workers are mandated reporters in Alaska, Arizona, Arkansas, Connecticut, Illinois, Maine, and South Dakota. See Child Welfare Information Gateway, U.S. Dep't of Health and Human Services, Children's Bureau, *Mandatory Reporters of Child Abuse and Neglect*, CHILDWELFARE.GOV (2012), [https://www.childwelfare.gov/systemwide/laws\\_policies/statutes/manda.pdf](https://www.childwelfare.gov/systemwide/laws_policies/statutes/manda.pdf) [hereinafter Child Welfare].

<sup>17</sup> See Black, *supra* note 6, at 95; Lukens, *supra* note 15, at 181; DENISE HINES & KATHLEEN MALLEY-MORRISON, *FAMILY VIOLENCE IN THE UNITED STATES, DEFINING, UNDERSTANDING, AND COMBATING ABUSE* 32, 166-167 (2008).

<sup>18</sup> SUSAN SCHECHTER & JEFFREY L. EDELSON, *EFFECTIVE INTERVENTION IN DOMESTIC VIOLENCE & CHILD MALTREATMENT CASES: GUIDELINES FOR POLICY AND PRACTICE, RECOMMENDATIONS FROM THE NATIONAL COUNCIL OF JUVENILE & FAMILY COURT JUDGES, FAMILY VIOLENCE DEPARTMENT 9* (1998); Edelson, *supra* note 2; Sawyer & Lohrbach, *supra* note 2, at 64; The Failure to Protect Working Group, *Charging Battered Mothers with "Failure to Protect": Still Blaming the Victim*, 27 *FORDHAM URB. L.J.* 849, 850 (2000) [hereinafter *Charging Battered Mothers*]; David Finkelhor et al., *National Survey of Children's Exposure to Violence*, *JUV. JUST. BULL.* (2009) (finding high levels of DV among adults in child maltreatment investigations).

<sup>19</sup> Studies have found a correlation between domestic violence and child maltreatment although families experiencing domestic violence do not seem to experience more incidents of fatal child abuse. See Linda Spears, *Building Bridges Between Domestic Violence Organizations and Child Protective Services* 7 (Nat'l Resource Ctr. on Domestic Violence, February 2000); Sawyer & Lohrbach, *supra* note 2, at 64.

<sup>20</sup> See Theodore Cross et al., *Child Welfare Policy and Practice on Children's Exposure to Domestic Violence*, 36(3) *CHILD ABUSE & NEGLECT* 210, 211 (2012).

<sup>21</sup> *Id.* at 211; Postmus, *supra* note 8, at 2-3.

<sup>22</sup> Cross et al., *supra* note 20.

However, the statistics of child exposure to family violence reflect only a fraction of the problem. These numbers do not reflect the breadth of the possible harms that result to children from adult violence, nor do they necessarily capture the multitude of effects that exposure to domestic violence may have on children.<sup>23</sup> For instance, children may suffer ill effects from witnessing adult violence or exposure to the aftermath of violence.<sup>24</sup> Moreover, the effects can vary depending on a number of factors including the nature of the “witnessing.”<sup>25</sup> Researchers and lawyers struggle to define “witnessing,” as well as to identify with any reliable clarity the effects of witnessing, since children react differently to domestic violence exposure.<sup>26</sup> Broadly defined, witnessing violence involves not only seeing and hearing violence that occurs between adults in the home, but may include experiencing the aftermath of the abuse.<sup>27</sup> Thus, children who see broken furniture, holes in walls, black eyes, bruises, or who sense tension and anger between the adults in the home, may also experience negative effects of having done so.<sup>28</sup> The research about what those effects may be is somewhat diffuse.<sup>29</sup> In addition, the effects may vary according to the age and gender of the children as well as other contextual issues such as home environment, the stability of the child’s home environment, and the nature of the acts to which they are exposed.<sup>30</sup> There is some evidence that the exposure “can have negative implications for the emotional and neurological development of infants and young children.”<sup>31</sup> This research suggests that infants may show signs of Posttraumatic Stress Disorder, that they may refuse to eat, have difficulty sleeping, and be irritable.<sup>32</sup> It has also been suggested that high levels of stress can adversely affect unborn children during a pregnancy.<sup>33</sup> Older children who are exposed to domestic violence may have a heightened sense of fear, difficulty sleeping, exhibit signs of anxiety, depression, and aggression, may have difficulty relating to others, and have trouble in school.<sup>34</sup> Researchers have also found that children exposed to adult violence have lower self-esteem, may demonstrate less empathy, and may be more likely to tolerate

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<sup>23</sup> See Lois A. Weithorn, *Protecting Children from Exposure to Domestic Violence: The Use and Abuse of Child Maltreatment*, 53 HASTINGS L.J. 1, 81 (2001).

<sup>24</sup> Sawyer & Lohrbach, *supra* note 2, at 64.

<sup>25</sup> Weithorn, *supra* note 23, at 81- 92.

<sup>26</sup> *Id.* at 81.

<sup>27</sup> *Id.*

<sup>28</sup> Sawyer & Lohrbach, *supra* note 2, at 64.

<sup>29</sup> *Id.* at 64-65.

<sup>30</sup> Weithorn, *supra* note 23, at 88; Postmus, *supra* note 8, at 3-4.

<sup>31</sup> Georgia L. Carpenter & Ann M. Stacks, *Developmental Effects of Exposure to Intimate Partner Violence in Early Childhood: A Review of the Literature*, 31 CHILD. AND YOUTH SERVICES REV. 831, 833 (2009).

<sup>32</sup> *Id.* at 835.

<sup>33</sup> *Id.* at 836.

<sup>34</sup> See Jeffrey Edelson, *Children’s Witnessing of Adult Domestic Violence*, 14(8) J. OF INTERPERSONAL VIOLENCE 839 (1999); Sawyer & Lohrbach, *supra* note 2, at 64.



violence in their adult relationships.<sup>35</sup> It is important to note that this witnessing may not, in all instances, trigger the intervention of state child protective services, in part because states vary in their requirements about whether witnessing domestic violence triggers a duty to report.

Despite the overlap between domestic violence and child maltreatment, the systems that respond to each largely remain separate and distinct.<sup>36</sup> Child welfare agencies include state agencies and non-governmental groups.<sup>37</sup> Domestic violence agencies grew from women's rights' organizations and direct service domestic violence agencies, which are typically non-governmental agencies, funded through a mix of public and private funds.<sup>38</sup> These systems not only have different histories, but also frequently maintain different philosophies and approaches to responding to family violence.<sup>39</sup> In fact, one research refers to the two as inhabiting "different planets."<sup>40</sup> As some have noted, the result has been that "tensions and problems now emerge as service providers, the courts, and communities try to more effectively help those families in which violence against women and children is overlapping and intertwined."<sup>41</sup>

Child welfare services are largely provided by government agencies and contracted agencies.<sup>42</sup> These state-based agencies are the main systems for receiving and investigating reports of child abuse, as well as providing services to families in need.<sup>43</sup> The agencies are guided by a web of federal requirements that focus on child safety and, to some extent, permanency for children.<sup>44</sup> Under a traditional approach, to child reports of child maltreatment, state child welfare services are responsible for investigating reports of child abuse and neglect.<sup>45</sup>

<sup>35</sup> Sawyer & Lohrbach, *supra* note 2, at 64.

<sup>36</sup> See Spears, *supra* note 19. In calling for greater collaboration between agencies, Spears notes, however, that, "[n]o single organization can do this work by itself." HINES & MALLEY-MORRISON, *supra* note 17, at 291.

<sup>37</sup> See Spears, *supra* note 19.

<sup>38</sup> *Id.*; SUSAN SCHECHTER, WOMEN AND MALE VIOLENCE: THE VISIONS AND STRATEGIES OF THE BATTERED WOMEN'S MOVEMENT 29-43 (1982). Some states provide funding to domestic violence agencies from fees generated from state services such as marriage licenses or court fees. See FLA. STAT. §741.01 (201); ALA. CODE §30-6-11 (1999); ARIZ. REV. STAT. §36-3002 (2011). Funding is also provided through federal legislation, such as the Family Violence Prevention and Services Act, Pub. L. No. 98-457, 98 Stat. 1749 (codified at 42 U.S.C. 10401-10421) (2012) and the Violence Against Women Act and through private donations.

<sup>39</sup> See Spears, *supra* note 19.

<sup>40</sup> Hester, *supra* note 7, at 127. Hester notes that domestic violence and child welfare agencies have separate histories, cultures, laws, and populations which create tensions and contradictions. *Id.* at 127-28.

<sup>41</sup> Spears, *supra* note 19, at 1; see also CURRENT CONTROVERSIES ON FAMILY VIOLENCE (Donileen R. Loseke et al. eds., 2d ed. 2005); Postmus, *supra* note 8, at 5.

<sup>42</sup> See Vivek S. Sankaran, *Innovation Held Hostage: Has Federal Intervention Stifled Efforts to Reform the Child Welfare System?*, 41 U. MICH. J.L. REFORM 281, 288 (2007).

<sup>43</sup> Child Abuse Prevention and Treatment Act, Pub. L. No. 111-320, § 3, 124 Stat. 3459, 3482 (2010) (codified in scattered sections of 42 U.S.C.). The Child Abuse Prevention and Treatment Act (CAPTA) mandates states set up a mandatory reporting system for child abuse; Spears, *supra* note 19.

<sup>44</sup> See Sawyer & Lohrbach, *supra* note 2, at 65.

<sup>45</sup> See Donald N. Duquette, *Looking Ahead: A Personal Vision of the Future of Child Welfare Law*,

Typically, after an investigation, child protective services make a determination as to whether claims of child maltreatment are substantiated.<sup>46</sup> Families for whom reports of child maltreatment are substantiated would receive services, and in families whose risk level is believed to be low to moderate risk the services may be provided in the families home. However, where the risk to children is greater families might be subject to greater monitoring or the removal of the children from the family.<sup>47</sup> Child protective agencies work closely with law enforcement, and any extensive intervention into a family, such as the removal of children, requires court oversight and approval.<sup>48</sup> In many communities, state child protective services are seen as intrusive, and are often viewed as being in an adversarial relationship with the families with whom they are working.<sup>49</sup>

Unlike child welfare agencies, domestic violence groups originally grew from a feminist movement, and although often state and federally funded, tend to operate independently of direct state oversight and governance.<sup>50</sup> Quite often the agencies are grounded in the community that they serve, and they view the safety of the battered partner as their primary goal.<sup>51</sup> Domestic violence agencies typically provide a range of services for the abused partner as well as her children.<sup>52</sup> These services often include counseling, provision of short term housing, assistance with obtaining government services like food stamps (WIC), and job training.<sup>53</sup>

Although, historically, laws and agencies governing child safety have been state-based, there are a number of federal provisions that play a critical role in these cases. For example, the Adoption and Safe Families Act of 1997 (ASFA) set up timetables which require states to achieve permanency for children by limiting the length of their stay in state care, the result of which can, in some circumstances, be

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41 U. MICH. J.L. REFORM 317, 329 (2007) (noting that CPS “services have been eroded in the development of our existing child protection system with its emphasis on reporting and investigation of suspected child abuse and neglect.”). Note, some states have implemented or are piloting a “differential” approach to responding to cases of child abuse or neglect which allow the state agency greater flexibility to place family in different “tracks” depending on a number of factors including the level of potential danger to the child. See *Differential Response in Child Protective Services*, NATIONAL CONFERENCE OF STATE LEGISLATURES (Mar. 27, 2013), <http://www.ncsl.org/research/human-services/state-legislation-differential-response.aspx> (providing a summary of state legislation adopting or piloting a differential approach to child protective services).

<sup>46</sup> See Spears, *supra* note 19.

<sup>47</sup> *Id.* at 16 (noting that “about 15% of children in substantiated abuse and neglect cases are removed from their homes.”).

<sup>48</sup> Spears, *supra* note 19.

<sup>49</sup> See Soledad A. McGrath, *Differential Response in Child Protection Services: Perpetuating the Illusion of Voluntariness*, 42 U. MEM. L. REV. 629, 633 (2012).

<sup>50</sup> See Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1657, 1666 (2004).

<sup>51</sup> See Linda G. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550, 596 (1999).

<sup>52</sup> See Deborah M. Weissman, *The Personal Is Political and Economic: Rethinking Domestic Violence*, 2007 BYU L. REV. 387, 436 (2007).

<sup>53</sup> *Id.* at 436-437.

the termination of parental rights.<sup>54</sup> Unless one of the narrow statutory exceptions applies, the ASFA demands state agencies begin removal procedures for children who have been in state care for fifteen out of the last twenty-two months.<sup>55</sup> The ASFA deadlines create pressure for families in crises to resolve issues quickly, and may create impossible standards for compliance for some families. The requirements of the statute, although ostensibly designed to protect children and their best interests, may be in conflict with the needs of families experiencing intimate partner violence.<sup>56</sup> In recognition of the need to further acknowledge the link between domestic violence and child abuse CAPTA was recently amended. The Act now places greater focus on the need to respond more holistically to the ways in which violence can pervade a family impacting the adults as well as the children involved.<sup>57</sup>

## II. THE USE OF COLLABORATION AND INCREASED COMMUNICATION BETWEEN DOMESTIC VIOLENCE AND CHILD WELFARE WORKERS TO IMPROVE OUTCOMES FOR CHILDREN

The overlapping and stubborn nature of domestic violence, child maltreatment, and substance abuse has long been clear and met with a range of remedial solutions. One set of solutions is focused on increasing the degree of intervention into families experiencing intra-family violence in order to better identify families experiencing violence, and to provide them with services. Since public awareness of domestic violence as a criminal act has grown, various and wide-ranging reforms have been implemented to address adult violence. As a result, most, if not all, jurisdictions have adopted a number of reforms including educational programs to raise awareness of the co-occurrence of child abuse and domestic violence, the availability of civil protection orders through a simplified proceedings that can include children affected by the violence, the adoption of mandatory and preferred arrest policies that encourage police intervention in domestic calls, and no-drop policies that allow prosecutors to move forward with prosecuting a case even if a victim does not wish to cooperate.<sup>58</sup> States have also

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<sup>54</sup> Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1997) (codified in scattered sections of Title 42 of the United States Code). The ASFA creates a timetable and incentives for moving children out of state care and making them available for adoption. Under the Act, permanency hearings must be held within twelve months of the initial removal of the child from the home and into foster care. Children who are out of the home and in foster care fifteen of the preceding twenty-two months must be moved toward permanency, and the Act requires that states, with some exceptions, file petitions to terminate parental rights under these circumstances. *Id.*

<sup>55</sup> 42 U.S.C.A. § 675(5)(C) (West 2011); Lukens, *supra* note 15, at 197.

<sup>56</sup> Lukens, *supra* note 15, at 197.

<sup>57</sup> 42 U.S.C.A. § 10412 (West 2010). The specialized services for abused parents and their children makes a number of improvements to the CAPTA including providing greater funding to domestic violence agencies to respond to the needs of children exposed to domestic violence. *Id.*

<sup>58</sup> See Donna D. Bloom, "Utter Excitement" *About Nothing: Why Domestic Violence Evidence-Based Prosecution Will Survive Crawford v. Washington*, 36 ST. MARY'S L.J. 717, 728 (2005); Ruth Jones, *Guardianship for Coercively Controlled Battered Women: Breaking the Control of the Abuser*, 88

broadened the category of family members and behaviors addressed by “family offense” or domestic violence procedures to include children, same-sex partners, dating relationships, teens, pets and property.<sup>59</sup> Fewer jurisdictions use electronic monitoring of abusers, and have expanded criminal penalties and tort liability for abusers.<sup>60</sup> Activists and scholars have called for other reforms such as domestic violence registries.<sup>61</sup> These reforms and proposals have been met with criticisms and varying levels of success, while domestic violence continues to be a significant problem. Researchers and activists are still struggling to develop even more effective means of responding to the particular problem raised by the co-occurrence of child maltreatment and domestic violence.

There have been proposals specifically designed to respond to the overlap between child welfare and domestic violence, to improve systems to identify families in need, and to respond more holistically to families experience intra-family violence. In order to respond to families experiencing violence, it is necessary to first find effective ways to identify them as early as possible. One proposal to address the rate of family violence has been to expand the scope of laws that mandate the reporting of suspected child abuse. Who is required to report incidents of child abuse under mandatory reporting laws varies from state to state. While some states define mandatory reporter broadly,<sup>62</sup> most define the categories of reporters more narrowly and typically limit reporting to those in society who most directly work with children and who are charged with the responsibility for keeping them safe, such as doctors, teachers, social workers, and law enforcement

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GEO. L.J. 605, 611 (2000); Mills, *supra* note 51, at 611; Angela Corsilles, *No-Drop Policies in the Prosecution of Domestic Violence Cases: Guarantee to Action or Dangerous Solution?*, 63 FORDHAM L. REV. 853, 857-58 (1994); Jeanine Percival, Note, *The Price of Silence: The Prosecution of Domestic Violence Cases in Light of Crawford v. Washington*, 79 S. CAL. L. REV. 213, 243 (2005).

<sup>59</sup> Jennifer Cranstoun et al., *What's an Intimate Relationship, Anyway? Expanding Access to the New York State Family Courts for Civil Orders of Protection*, 29 PACE L. REV. 455 (2009); ABA Domestic Violence Civil Protection Orders (CPOs) By State (June 2009), available at [http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/dv\\_cpo\\_chart.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/dv_cpo_chart.authcheckdam.pdf); N.Y. FAM. CT. ACT LAW § 812 (McKinney 2010); MINN. STAT. § 609.2247(1)(c) (2010); WIS. STAT. § 940.235 (2007); 725 ILL. COMP. STAT. 5/112A-14 (2012).

<sup>60</sup> Holly Maguigan, *Wading Into Professor Schneider's "Murky Middle Ground" Between Acceptance and Rejection of Criminal Justice Responses to Domestic Violence*, 11 AM. U. J. GENDER SOC. POL'Y & L. 427 (2003); Sarah M. Buel, *Access to Meaningful Remedy: Overcoming Doctrinal Obstacles in Tort Litigation Against Domestic Violence Offenders*, 83 OR. L. REV. 945, 946 (2004).

<sup>61</sup> Molly J. Walker Wilson, *The Expansion of Criminal Registries and the Illusion of Control*, 73 LA. L. REV. 509, 537-38 (2013); Shannon M. Heim, *Revisions to Minnesota Domestic Violence Law Affords Greater Protection to Vulnerable Victims*, 37 WM. MITCHELL L. REV. 950, 964 (2011); Edna Erez et al., *Electronic Monitoring of Domestic Violence Cases—A Study of Two Bilateral Programs*, 68 FED. PROBATION 15, 15 (2004).

<sup>62</sup> N.J. STAT. ANN. § 9:6-8.10 (West 2012) (requiring any person having reasonable cause to believe that a child has been subjected to child abuse, neglect, or acts of child abuse to report); WYO. STAT. ANN. § 14-3-205 (West 2013) (requiring reporting by any person who knows or has reasonable cause to believe or suspect that a child has been abused or neglected or who observes any child being subjected to conditions or circumstances that would reasonably result in abuse or neglect); Child Welfare, *supra* note 16, at 1.

personnel.<sup>63</sup> Although state law defines child abuse and neglect, CAPTA defines the boundaries of these laws by legislating minimum standards.<sup>64</sup> Thus, there is some uniformity in defining the behaviors that trigger the reporting responsibility that tends, in most states, to exclude having to report the existence of domestic violence between adults in the home.<sup>65</sup> As a result, one reform proposed to increase child safety in homes in which domestic violence is occurring has been to expand mandatory reporting laws to include child exposure to domestic violence.<sup>66</sup> The hope is that creating a duty to report that a child has witnessed domestic violence might increase child safety and make authorities aware of homes in which children are in danger of being harmed.<sup>67</sup> Most states require some proof of danger to the child as a result of intimate partner violence and intimate partner violence alone. In those states, an incident need not be reported as child abuse unless there is reason to believe a child is in danger of being harmed.<sup>68</sup> Therefore, only a few states require reporting of incidents in which a child witnesses adult domestic violence.<sup>69</sup> It may be that expanding mandatory reporting requirements to include child witnessing or exposure to domestic violence might help reduce family violence rates and do more to protect children from child abuse.<sup>70</sup> However, there is little empirical data to support this conclusion. Moreover, critics of this approach have raised concerns that increasing the scope of mandatory reporting laws will encourage victim blaming, placing battered women at greater risk of having their children removed, or being criminally charged under state child protective laws.<sup>71</sup>

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<sup>63</sup> See e.g., N.Y. SOC. SERV. § 413 (2013) (specifying a range of professionals including teachers, physicians, therapists, police officers, among others to report).

<sup>64</sup> Joëlle Anne Moreno, *Einstein on the Bench?: Exposing What Judges Do Not Know About Science and Using Child Abuse Cases to Improve How Courts Evaluate Scientific Evidence*, 64 OHIO ST. L.J. 531, 552 (2003) (stating, “the Federal Child Abuse Prevention and Treatment Act sets the following minimum standards for state definitions of child abuse 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.’”).

<sup>65</sup> Justine A. Dunlap, *Sometimes I Feel Like A Motherless Child: The Error of Pursuing Battered Mothers for Failure to Protect*, 50 LOY. L. REV. 565, 602 (2004) (Dunlap reports, “Alaska, Florida, and Montana changed their neglect laws to specifically provide that exposure to domestic violence constitutes child abuse or neglect. Similarly, Minnesota changed its laws, but repealed the changes a year later.”).

<sup>66</sup> *Id.* For example, in 1998, Minnesota expanded child maltreatment reporting requirement to include child exposure to domestic violence. This provision was later repealed. See Sawyer & Lohrbach, *supra* note 2.

<sup>67</sup> Cross et al., *supra* note 20, at 213.

<sup>68</sup> See Weithorn, *supra* note 23, at 26 (“There is substantial disagreement in the field as to whether such exposure should be treated as a form of child maltreatment for the purposes of triggering child protective services and the dependency court involvement.”).

<sup>69</sup> See e.g., MONT. CODE ANN. § 41-3-102 (West 2013); W. VA. CODE ANN. § 49-1-3(a)(4), (c) (West 2013); Child Trends, *Child Witnesses to Domestic Violence Addressed in Statute*, STATE CHILD WELFARE POLICY DATABASE, <http://www.childwelfarepolicy.org/> (last visited Nov. 11, 2013). See also Cross et al., *supra* note 20, at 212 (The authors of the study also note that reporting is required in 8 of 13 jurisdictions in Canada; and 3 of 8 jurisdictions in Australia); Weithorn, *supra* note 23, at 26.

<sup>70</sup> See Cross et al., *supra* note 20, at 212.

<sup>71</sup> *Id.* at 212-13 (referencing an anecdotal report by Edelson, Gassman-Pines, & Hill from 2006 about a brief experiment with mandatory reporting of EDV in Minnesota.)

An additional problem with a solution to family violence that centers on expanding mandatory reporting requirements to include the reporting of child exposure to domestic violence is whether mandatory reporters are prepared to recognize the signs of domestic violence.<sup>72</sup> Patterns of intimate partner violence are often difficult to identify for those not trained in recognizing its signs.<sup>73</sup> In fact, studies show that even when trained to recognize the signs of domestic violence, social workers often miss those signs, with one researcher reporting, “workers accurately identified DV in less than 10% of cases in which female caregivers identified it in their research interviews.”<sup>74</sup> Researchers also found that even when social workers recognize and identify the existence of domestic violence between the adults in the home, they failed to make appropriate referrals to domestic violence agencies in nearly forty percent of their cases.<sup>75</sup> The disparate histories, philosophies, and focuses of child welfare and domestic violence agencies leave a gap in coverage that allows families struggling with intra-familial violence in various forms without sufficient support or the assistance they need to maintain the safety of family members and encourage healthy family interactions. Thus, mandatory reporting laws designed to address child abuse do not currently provide much protection for children and families in which the primary violence is taking place between adults, nor is it clear that expanding the definition of acts which require mandatory reporting to include child witnessing is a clear solution to reducing the incidence of family violence.

States have also moved towards increasing criminal penalties for abusers who commit domestic violence in the presence of children. Criminal law and procedure reforms have included measures that make “the batterer more accountable” by increasing the frequency with which batterers are charged with endangering the welfare of a child, child abuse, and child neglect, as a result of the adult intimate partner violence.<sup>76</sup> The approaches vary in their definition of “child witnessing” as well as the means by which penalties are enhanced. Some states penalize the exposure of a child to domestic violence as a crime;<sup>77</sup> others impose greater penalties if a child is within a zone of danger when an act of domestic violence is committed.<sup>78</sup> Still other states consider the commission of an act of domestic violence in front of a child to constitute child endangerment or cruelty.<sup>79</sup> Some jurisdictions even charge battered mothers with failure to protect their child when a

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<sup>72</sup> *Id.* (citing Kohl et al., *Child Welfare as a Gateway to Domestic Violence Services*, CHILD. & YOUTH SERVICES REV. 27, 1203-1221 (2005)).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> Jan Jeske, Note, *Custody Mediation Within the Context of Domestic Violence*, 31 HAMLINE J. PUB. L. & POL’Y 657, 677 (2010).

<sup>77</sup> See, e.g., OR. REV. STAT. ANN. § 163.160(3)(c) (West 2013).

<sup>78</sup> See, e.g., CAL. PENAL CODE § 1170.76 (West 2006).

<sup>79</sup> See, e.g., DEL. CODE ANN. tit. 11, § 1102 (West 2012); GA. CODE ANN. § 16-5-70(d).

child is harmed due to intimate partner violence.<sup>80</sup> Some of these measures are not without controversy, thus debates about how to hold the batterer accountable and concerns about re-victimizing domestic violence survivors by charging them with child maltreatment continue. The need to develop systems that can respond to family violence in a way that protects a child's well-being without further harming or unduly blaming the victim remains.<sup>81</sup> Moreover, the increased criminalization of exposing children to domestic violence has not, in fact, led to any significant decrease in its incidence.<sup>82</sup>

"Private" family law has also been affected by the growing understanding of the impact of adult intimate partner violence on children. For example, judges in all states consider, to some degree, the effect of domestic violence on private child custody matters.<sup>83</sup> Although states differ in the extent to which domestic violence plays a role in private custody determinations, there is overall agreement that it should be considered.<sup>84</sup> In addition, an increasing number of states make custody modifications on grounds of the presence of domestic violence.<sup>85</sup>

However, one of the more significant proposals to address the conundrum of family violence has been the recommendation to increase the collaboration and communication between agencies charged with responding to adult abuse and those responsible for child abuse and neglect.<sup>86</sup> In this vein, in 1999, the National Council of Juvenile and Family Court Judges published the Greenbook which offered a set of principles and recommendations to improve outcomes for battered women and their children while at the same time increasing the capacity of systems, such as the adoption of mandatory arrest policies, designed to hold

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<sup>80</sup> Jennifer L. Woolard & Sarah L. Cook, *Common Goals, Competing Interests: Preventing Violence Against Spouses and Children*, 69 UMKC L. REV. 197, 209 (2000).

<sup>81</sup> Weithorn, *supra* note 23, at 9.

<sup>82</sup> See Hester, *supra* note 7, at 130-31 (criticizing the "over-criminalization" of domestic violence).

<sup>83</sup> Weithorn, *supra* note 23, at 13-14; Jennifer Jack, *Child Custody and Domestic Violence Allegations: New York's Approach to Custody Proceedings Involving Intimate Partner Abuse*, 5 ALB. GOV'T L. REV. 885, 888 (2012).

<sup>84</sup> Weithorn, *supra* note 23, at 13-14.

<sup>85</sup> Leslie Joan Harris, *Failure to Protect from Exposure to Domestic Violence in Private Custody Contests*, 44 FAM. L.Q. 169, 180 (2010) ("Courts in at least six other states have recently upheld modification orders or grants of initial custody to a parent, which resemble modifications, because the child has lived with the other parent for years in an informal arrangement, based on evidence of domestic violence in the original custodial parent's home.").

<sup>86</sup> SCHECHTER & EDELSON, *supra* note 18; Howard Davidson, *The CAPTA Reauthorization Act of 2010: What Advocates Should Know*, 29 CHILD. L. PRAC. 177, 184 (2011). The goal of promoting cross discipline training to better prepare child protection workers and domestic violence advocates to work together successfully is promoted in the 2010 CAPTA reauthorization. See Keeping Children and Families Safe Act, Pub. L. No. 108-36, § 113(a)(3)(I), 117 Stat. 800 (2003); Maureen K. Collins, *Nicholson v. Williams: Who Is Failing to Protect Whom? Collaborating the Agendas of Child Welfare Agencies and Domestic Violence Services to Better Protect and Support Battered Mothers and Their Children*, 38 NEW ENG. L. REV. 725, 758 (2004) ("The Act allows grants 'for cross training for child protective service workers in research-based strategies for recognizing situations of . . . domestic violence'").

batterers accountable for their violence.<sup>87</sup> The project has four guiding principles: maintaining the safety, well-being, and stability of children and families; keeping children in the care of the non-offending parent; providing a community service system with many points of entry; and creating a differential response to families living with violence.<sup>88</sup> In making recommendations to fulfill these principles, the Greenbook focuses on reforms for the child welfare, domestic violence, and the judicial systems.<sup>89</sup>

The hallmark of the Greenbook recommendations is improving collaboration among child protection agencies, domestic violence advocacy programs, the judicial system, and other organizations to help maintain safety and provide support.<sup>90</sup> Part of these collaborations would ensure that workers are sufficiently trained and adequately equipped to deal with issues of domestic violence and child abuse.<sup>91</sup> Therefore, the Greenbook proposes “[t]raining child welfare workers & DV advocates to understand each other’s perspective and the specific needs and context each responds to.”<sup>92</sup> Under this approach, “DV specialists worked in child welfare agencies, providing additional training and consultation, and serving on multidisciplinary case review teams. Protocols or guidelines for child welfare workers include preparing them to screen for [domestic violence], develop safety plans . . . and refer them to DV services.”<sup>93</sup> Increasing the understanding of domestic violence workers of child neglect and abuse in addition to improving the training of child protective workers in domestic violence would facilitate the Greenbook’s third recommendation that more points of entry to needed services be provided for families experiencing family violence.<sup>94</sup>

Flexibility in how families in crises can seek assistance by creating multiple points of entry and differentiated responses to family violence are also critical to the Greenbook recommendations.<sup>95</sup> Recommendation four of the Greenbook proposes, “differentiated responses” to domestic violence and child maltreatment.<sup>96</sup>

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<sup>87</sup> THE GREENBOOK INITIATIVE, *supra* note 4.

<sup>88</sup> SCHECHTER & EDELSON, *supra* note 18, at 14-15.

<sup>89</sup> *Id.* at 12.

<sup>90</sup> Janine Allo & Amber Ptak, *If I Knew Then What I Know Now: Project Leadership in Multi-System Change Efforts to Address the Co-Occurrence of Domestic Violence and Child Maltreatment, Lessons Learned from the Greenbook Project Directors*, NAT’L COUNCIL OF JUV. AND FAM. CT. JUDGES 5 (2009).

<sup>91</sup> Cross et al., *supra* note 20, at 213.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> THE GREENBOOK INITIATIVE, *supra* note 4, at 20. Recommendation 3 provides that “Leaders of public child protection services, community-based child welfare agencies, and domestic violence programs need to create a community service system with many points of entry in order to provide safety and stability for families experiencing domestic violence and child maltreatment.” *Id.* It includes training service providers and collaboration among key members of the community as necessary characteristics to achieving this recommendation. *Id.*

<sup>95</sup> *Id.* at 20-22.

<sup>96</sup> *Id.* at 21.



A flexible and tailored response to each family, according to this recommendation, would allow service workers to address the needs of each family in a way that would improve outcomes.<sup>97</sup> Rather than embracing the trend among many states of heightening responses to family violence through expanded use of criminal and child protective provisions, the Greenbook acknowledges the need for flexibility.<sup>98</sup> The Greenbook recommends a multi-faceted approach in which responses would take into account an assessment of dangerousness and provide differentiated responses depending on family needs.<sup>99</sup> This approach suggests that child protective responses be reserved for families that present a greater danger to children's safety, allowing less dangerous situations to be handled through "a system of community care."<sup>100</sup>

The inherent logic of the value of collaborative responses to domestic violence and child abuse and neglect has resonated with the domestic violence and child welfare communities. Recognition of the co-occurrence of child abuse and domestic violence as well as the possibility that exposure to domestic violence may adversely affect a child has gained fairly widespread acceptance among researchers, activists, judges, and legislators.<sup>101</sup> In fact, "coordinated services" are seen as "an emerging trend."<sup>102</sup> States have adopted provisions that, in varying degrees, recognize the connection between domestic violence and child wellbeing. These responses range in scope and focus. For example, "From 2000-2007, the U.S. Departments of Health and Human Services and Justice funded six demonstrations sites to implement the [Greenbook Initiative] policy recommendations."<sup>103</sup> The demonstration sites selected by the Departments of Justice and Health and Human Services differed in geography and the demographics of the populations served but shared significant similarities in goals. Each of the sites desired to increase multidisciplinary collaboration of the child protective system, domestic violence service providers, and the courts. The hallmark of these projects included education and training to raise awareness of the

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<sup>97</sup> *Id.*

<sup>98</sup> THE GREENBOOK INITIATIVE, *supra* note 4, at 21.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> Ellen Pence & Terri Taylor, *Building Safety for Battered Women and their Children into the Child Protection System: A Summary of Three Consultations*, PRAXIS INT'L 5 (2003) (assessing how child protection agencies affect family safety by evaluating programs in three states. The Report states, "To date, reform efforts have understandably emphasized the need to place experts on domestic violence within the child protection system, form collaborations in the practice of intervention, and intensify training of child protection workers to enhance their knowledge and attentiveness to aspects of domestic violence in a case."). See *In re Nicholson* 181 F. Supp. 2d 182 (E.D.N.Y. 2002).

<sup>102</sup> Coll, *supra* note 2, at 63.

<sup>103</sup> THE GREENBOOK INITIATIVE, *supra* note 4, at ii. The U.S. Departments of Justice and Health and Human Services funded six demonstration sites to implement The Greenbook Initiative Recommendations in Santa Clara County, California; San Francisco, California; Lane County, Oregon; El Paso County, Colorado; St. Louis County, Missouri; and Grafton County, New Hampshire. See Allo & Ptak, *supra* note 90.

Greenbook, including the overlap between domestic violence and child maltreatment. This frequently included improving intake procedures to allow for improved identification of families in need of services as well as to increase responses by improving understanding of the dynamics of family violence. In addition, the initiatives sought ways to improve integration of the systems such as through the implementation of court case coordinators and case monitors to better integrate information across courts and assure compliance with court sentencing.<sup>104</sup> These Greenbook projects designed methods to improve resource sharing and communication between systems. The overall goal of the project was to improve safety and the wellbeing of the families involved in each of the demonstration sites.

Increasing collaborative efforts across disciplines in an effort to reduce the effect of domestic violence on children also developed independently of the Greenbook demonstration sites around the country. For example, the United States Departments of Justice and Health and Human Services provided funding for "Safe Start" demonstration projects that produced materials and information about interdisciplinary collaborations.<sup>105</sup> The Nurse Family Partnership (NFP) program is another example of a program found across the country that demonstrates the advantages of cross-discipline collaboration.<sup>106</sup> In a NFP program, nurses provide regular home visits to at-risk prospective mothers during pregnancy and during the first two years of a child's life. Although, the program was not designed specifically to identify and respond to domestic violence, studies reviewing the efficacy of the program revealed that incidents of child exposure to domestic violence were reduced in families who participated in the program.<sup>107</sup> More localized efforts at collaboration have also developed in numerous jurisdictions. Massachusetts has been at the forefront of building successful collaborations between domestic violence and child welfare workers.<sup>108</sup> The Massachusetts Department of Social Services set up a domestic violence unit in 1993 that allows social services, law enforcement, domestic violence service providers, and court

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<sup>104</sup> *Id.*

<sup>105</sup> Postmus, *supra* note 8, at 17.

<sup>106</sup> Neil B. Guterman, *Advancing Prevention Research on Child Abuse, Youth Violence, and Domestic Violence: Emerging Strategies and Issues*, 19 J. INTERPERSONAL VIOLENCE 299, 314 (2004); David L. Olds, *Prenatal and Infancy Home Visiting by Nurses: From Randomized Trials to Community Replication*, 3(3) PREVENTION SCI., 153 (2002); David L. Olds, *Long-term Effects of Nurse Home Visitation on Children's Criminal and Antisocial Behavior: 15-year Follow-up of a Randomized Controlled Trial*, 280 J. AM. MED. ASS'N 1238, 1239 (1998).

<sup>107</sup> Cross et al., *supra* note 20, at 214; David L. Olds et al., *Preventing Child Abuse and Neglect: A Randomized Trial of Nurse Home Visitation*, 78 PEDIATRICS 65 (1986); David L. Olds et al., *Long-term Effects of Home Visitation on Maternal Life Course and Child Abuse and Neglect: Fifteen-year Follow-up of a Randomized Trial*, 278(8) J. AM. MED. ASS'N 637 (1997).

<sup>108</sup> See Spears, *supra* note 19 (noting that "in Jacksonville, Florida, and Cedar Rapids, Iowa, child protection and domestic violence programs are working together in community partnership models. In San Diego and Minneapolis, hospital-based programs are in place, and partnerships among police, hospitals, and child protection are developing."). See Nat'l Council of Juv. and Fam. Ct Judges, *Family Violence: Emerging Programs for Battered Mothers and their Children* (1998); Postmus, *supra* note 8, at 14.

personnel to work together.<sup>109</sup> The Advocacy for Women and Kids in Emergencies ("AWAKE") Program is located at Children's Hospital in Boston, Massachusetts, and provides services to abused women and children.<sup>110</sup> In the AWAKE program, "the mother's advocate and the child's advocate work side by side to protect families."<sup>111</sup> In a report on domestic violence and child welfare collaboration, Dr. Spears reports that "[i]n a 16-month follow-up with a group of 46 mothers served by advocates, 85% of the women reported they were free from violence, and in only one family had children been placed in foster care."<sup>112</sup> Researchers assert that, "AWAKE is one model that shows how protecting women also provides protection to children."<sup>113</sup> Similar efforts at cross-discipline collaboration can be found in other communities including Jacksonville, Florida and Orange County, New York. Each of these projects is guided by the principle that the historical scheme in which responsibility for child welfare and domestic violence are divided into different "silos" may not be workable.

Multiple analyses of the Greenbook Initiative sites and others modeled after the Greenbook principles have been conducted.<sup>114</sup> These studies indicate that efforts to collaborate are promising but may not go far enough, and that they continue to face resistance. One review of attempts at integration at the demonstration sites in Minnesota, St. Louis, and El Paso found that child welfare agencies continued to work in ways that fail to address domestic violence and to take seriously issues of safety.<sup>115</sup> The evaluation found that structural issues affected the ability of child protective workers to build effective alliances with battered mothers to maintain their safety and the safety of their children.<sup>116</sup> It further found that aspects of child protective services' routinized responses to these families not only failed in individualizing their treatment of families, but also frequently had the effect of blaming the battered parent for violence in the home.<sup>117</sup> Evaluators found that barriers to collaboration are rooted in a lack of trust and a limited willingness to work together to overcome ideological differences.<sup>118</sup>

Another study of the increased collaboration between domestic violence and child welfare agencies focused on the responsiveness of both systems to

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<sup>109</sup> *Charging Battered Mothers*, *supra* note 18, at 862-65.

<sup>110</sup> Cross et al., *supra* note 20, at 214; Postmus, *supra* note 8, at 17-18.

<sup>111</sup> Susan Schechter & Jeffrey L. Edelson, *In the Best Interest of Women and Children: A Call for Collaboration Between Child Welfare and Domestic Violence Constituencies* (June 8-10, 1994) (paper presented at the Conference on Domestic Violence and Child Welfare: Integrating Policy and Practice for Families), available at <http://www.mincava.umn.edu/documents/wingsp/wingsp.html>.

<sup>112</sup> Spears, *supra* note 19 (citing P. Whitney & L. Davis, *Child Abuse and Domestic Violence in Massachusetts: Can Practice be Integrated in a Public Child Welfare Setting?* 4(2) CHILD MALTREATMENT 158 (1999)).

<sup>113</sup> Schechter & Edelson, *supra* note 111.

<sup>114</sup> Cross, *supra* note 20; Banks et al., *supra* note 5.

<sup>115</sup> Pence & Taylor, *supra* note 101.

<sup>116</sup> *See id.*

<sup>117</sup> *See id.*

<sup>118</sup> *See* Postmus, *supra* note 8, at 16.

communities of color.<sup>119</sup> This 2002 survey focused on the impact of the collaborations on communities of color querying whether the needs of these communities would be better served by collaboration.<sup>120</sup> Although the study revealed support for the concept of collaboration, participants noted that more needed to be done to integrate services.<sup>121</sup> The report states, “[s]ervices should be more holistic and integrate community services, domestic violence and child welfare services. Services should come from the community and be integrated into the community.”<sup>122</sup> In addition, the report found that collaboration alone didn’t resolve issues of racism in the child welfare and domestic violence communities, with one participant noting, “They are getting dollars for people who look like us but the services were not designed for us.”<sup>123</sup> The study is not alone in leveling criticism in the domestic violence community for under-serving the black community.<sup>124</sup> For example, Professor Morrison takes the domestic violence community to task and challenges it to adopt anti-racist and culturally aware services to better serve the needs of the black community.<sup>125</sup>

Efforts toward integration have recently received greater federal support under the 2010 amendments to CAPTA. The amended CAPTA places an increased emphasis on expanding collaboration between agencies that serve abused mothers and their children and child welfare agencies. The CAPTA amendments provide grants “to expand the capacity of family violence, domestic violence, and dating violence service programs and community-based programs to prevent future domestic violence by addressing, in an appropriate manner, the needs of children exposed to family violence, domestic violence, or dating violence.”<sup>126</sup> The grants are designed for local agencies, nonprofit organizations, and tribal organizations “with a demonstrated record of serving victims of family violence, domestic violence, or dating violence and their children.”<sup>127</sup> The money is to be used for, inter alia, direct counseling or advocacy for victims of family violence, domestic violence, or dating violence and those victims’ children. Funding is also used to assist in coordinating domestic violence services with services provided by the child welfare system, to support non-abusing parents in their roles as caregivers and

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<sup>119</sup> See NITA CARTER, NATIONAL RESOURCE CENTER ON DOMESTIC VIOLENCE, FORGING NEW COLLABORATIONS BETWEEN DOMESTIC VIOLENCE PROGRAMS, CHILD WELFARE SERVICES AND COMMUNITIES OF COLOR: A REPORT FROM THE FOCUS GROUPS CONDUCTED BY THE WOMEN OF COLOR NETWORK (WOCN) (2003); see also KATHLEEN MALLEY-MORRISON & DENISE A. HINES, FAMILY VIOLENCE IN A CULTURAL PERSPECTIVE, DEFINING, UNDERSTANDING, AND COMBATING ABUSE (2004).

<sup>120</sup> CARTER, *supra* note 119.

<sup>121</sup> See *id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 8.

<sup>124</sup> See MALLEY-MORRISON & HINES, *supra* note 119, at 230; see also Adele M. Morrison, *Changing the Domestic Violence Discourse: Moving from White Victim to Multi-Cultural Survivor*, 39 U.C. DAVIS L. REV. 1061, 1065-66 (2006).

<sup>125</sup> Morrison, *supra* note 125, at 1065-66.

<sup>126</sup> 42 U.S.C. § 10412(a)(1) (2010).

<sup>127</sup> *Id.* § 10412(b).

to coordinate activities with and provide technical assistance to community-based organizations serving victims of family violence, domestic violence, or dating violence or children exposed to family violence, domestic violence, or dating violence.<sup>128</sup> The revised measure also provides for collecting information on the incidence and characteristics of child maltreatment cases where there is also domestic violence.<sup>129</sup>

The CAPTA amendments are a form of recognition of the need for integrated approaches, but they do not go far enough to make the structural changes necessary for a more effective integrated approach. There is a benefit in providing funding to domestic agencies to engage with victims in order to support them in their role as parents and to assist the children of victims.. The amendments could do more to ensure the differentiated responses to domestic violence recommended by the Greenbook Initiative. Moreover, the amendments do little to alter the current child welfare approaches to families living with violence. For example, the amendments do not resolve the tension between ASFA deadlines and the practical difficulties of resolving, within the statutory mandated time deadlines, the myriad of issues families are facing. Similarly, the amendments provide little guidance to avoid the issues presented by the sometimes very different goals, philosophies, and policies of domestic violence agencies as compared with child protective workers. More efforts to pull families away from child protective and child welfare services and keeping them in less structured, less bureaucratic domestic violence agencies are needed.

Despite the value of a collaborative and flexible approach to family violence and some movement to embrace a differentiated approach, there is still a tendency for states to rely on hyper-criminalized responses. It does not go unnoticed that, in many instances, local and state officials have responded to the persistence of family violence by increasing criminal responses to domestic violence.<sup>130</sup> The expansion of the scope of family offense provisions, increased criminal justice responses to family offenses, adoption of no-drop prosecution policies, and

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<sup>128</sup> *Id.* § 10412(d)(1)(A).

<sup>129</sup> *Id.* (requiring HHS to maintain and disseminate information on: 1) the medical diagnosis and treatment of child maltreatment; 2) best practices in differential response; 3) training resources for substance abuse treatment services and domestic violence personnel; and 4) effective programs and best practices for collaboration between CPS and domestic violence services. CAPTA further requires HHS to gather information on the incidence and characteristics of child maltreatment cases present with domestic violence, and in cases related to substance abuse. It also provides for support for research on, inter alia, 1) approaches to improving the attachment of maltreated infants and toddlers with parents or caregivers where reunification is appropriate; 2) effective practices in medical diagnosis of child abuse and neglect; 3) effective collaborations between CPS and domestic violence services that provide safety for children exposed to domestic violence and their non-abusing parents to improve investigations and delivery of services for children and families; 4) effective collaborations between CPS and medical, mental health, developmental disabilities, early childhood, and special education services; 5) the impact of child abuse and neglect on the progression of disabilities; effective practices in differential response.).

<sup>130</sup> See Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849, 1859 (1996); see also Sack, *supra* note 50, at 1678.

increased penalties for family offenses are all designed to improve safety, but these measures expand the reach of the criminal courts and decrease flexibility.<sup>131</sup> In an effort to be “responsive” to domestic violence rates, state level approaches to domestic violence instead have become increasingly inflexible.<sup>132</sup> The Greenbook notes critically the increased inflexibility in approaches to domestic violence and child maltreatment in a number of states.<sup>133</sup> A collaborative model with differentiated responses has not become sufficiently widespread, and so families experiencing violence typically are enmeshed in multiple systems with different personnel and procedures, which can often have conflicting philosophies and which make conflicting demands on the family members. Families experiencing violence are all too often simultaneously involved with child welfare agencies, domestic violence agencies, family courts, criminal courts, probation departments, substance abuse centers, and shelters. The complicated web of state and private interventions and services can be daunting for families to navigate, and may even be counterproductive in terms of achieving the overall goals of a significant reduction in family violence and increasing safety.

### III. THE CONSOLIDATED MODEL

Although efforts towards collaboration have met with some success, the improvements are not far-reaching enough. Domestic violence and child abuse rates have not declined significantly since the Greenbook Initiative and calls for collaboration were given voice. As a result, there is a need to move even further in the direction of an integrated and perhaps even a consolidated family violence model.<sup>134</sup> The consolidated family violence model proposes increasing domestic violence agencies’ scope of responsibility to include allegations of child abuse and neglect as well as adult violence. These agencies should receive increased government funding to allow for the agencies’ expanded reach. As smaller units, the agencies would be more effective in improving outcomes for families experiencing violence.

A consolidated model of dealing with intra-family violence would permit a more natural, holistic, and organic response to the range of issues and behaviors faced by families in conflict. It would be consistent with the recognition that violence in a family cannot be easily segregated into adult-adult or adult-child

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<sup>131</sup> See ANDREW R. KLEIN, *THE CRIMINAL JUSTICE RESPONSE TO DOMESTIC VIOLENCE* 131 (2004); see also Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE J.L. & FEMINISM 3, 15 (1999).

<sup>132</sup> E.g., Leigh Goodmark, *Autonomy Feminism: An Anti-Essentialist Critique of Mandatory Interventions in Domestic Violence Cases*, 37 FLA. ST. U. L. REV. 1, 12 (2009) (arguing for greater agency for battered women and for fewer mandatory policies to empower women).

<sup>133</sup> See THE GREENBOOK INITIATIVE, *supra* note 4.

<sup>134</sup> See Woolard & Cook, *supra* note 80, at 204 (“The critical question facing policymakers is whether the best help for families will come from simply combining existing child maltreatment and spouse assault policies or from developing new approaches.”).

paradigms. A consolidated model would be more reflective of the ways violence in the home pervades and infects all the relationships in the family.<sup>135</sup> This model imagines a system that attempts greater responsiveness to the needs of families affected by violence and in crisis. It asks whether current structures and divisions of responsibilities between and among agencies continue to be supported by the evidence and whether they are in the best interests of families and children. Furthermore, it suggests that as long as child welfare systems continue to focus primarily on children and domestic violence agencies on adult victims, the tensions will continue and families will be ill-served.

Delegating the primary responsibility for providing services to families experiencing abuse to domestic violence agencies except in the more severe cases is consistent with the Greenbook Initiative's goal of developing "a differential response to the diverse range of families experiencing domestic violence and child maltreatment."<sup>136</sup> The Initiative prefers a varied response to families experiencing domestic violence and child abuse depending upon the seriousness of the matter without specifying agency responsibility. The Greenbook explicitly advocates a "flexible system" in which the level of danger for each family is assessed individually so that only in those families in which real danger is present would child protective services be required.<sup>137</sup>

Education and training of child welfare workers to understand domestic violence and of domestic violence workers to understand child welfare are important components of the Greenbook and similar collaborative models. The focus on education and training is designed to improve the identification of domestic violence and child abuse and neglect, as well as to improve services. However, criticisms have arisen about whether the education and training is sufficient, effective, or culturally competent. Moreover, concerns have been raised about whether families continue to be underserved and whether the tensions between the communities have been addressed. A criticism of the collaborative model has been that it is difficult to retrain child welfare and domestic violence workers to fully appreciate the issues and concerns of the others' disciplines. Given the growing depth and complexity of family violence research, it might be more effective to focus not on "cross-training" but "holistic" training and agency development. It may be time to move from collaboration to consolidation and to adopt the perspective of those researchers and activists who have, for some time, asserted the need to address violence in the family as a whole.<sup>138</sup> This approach would entail having social workers trained not as child welfare or domestic

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<sup>135</sup> See STRAUS ET AL. *supra* note 1, at 4.

<sup>136</sup> See SCHECHTER & EDELSON, *supra* note 18, at 21-22 ("Families with less serious cases of child maltreatment and domestic violence should be able to gain help without the initiation of child protection investigation or the substantiation of a finding of maltreatment.").

<sup>137</sup> *Id.* at 21.

<sup>138</sup> See STRAUS ET AL., *supra* note 1.

violence workers but more holistically as family violence workers who can provide a range of services in agencies designed to address intimate partner abuse and child welfare abuse, neglect, and endangerment.<sup>139</sup> This approach would be consistent with those who suggest that we need a more “forward thinking preventive approach,” that training is important but cannot be the primary policy objective, and that more systemic change is needed.<sup>140</sup>

The primary goal of a consolidated family violence approach would be to achieve safety and stability for the children and for the parent who is not actively engaged in domestic violence. This approach is consistent with the view that child safety is related to maintaining the safety of the non-abusing parent.<sup>141</sup> The focus would be on providing counseling and a range of services that help the child and parent maintain independence. This would include, if necessary, assistance with education, employment, employment training, long-term housing, food, and healthcare. This approach also would be consistent with the Greenbook guiding principles of keeping children with the non-abusing parent whenever possible, as well as with goals of family preservation.<sup>142</sup>

The consolidated model is also consistent with the Greenbook goal of providing differentiated response to domestic violence, but diverting families with low levels of risk to children to consolidated family violence agencies and leaving only cases of serious risk of harm with child protective services. The diverted cases would allow for the provision of a wide range of community-based services developed with cultural and racial needs in mind. In addition, a consolidated model is consistent with 2010 reauthorization of CAPTA, which promotes collaboration between child welfare and domestic violence workers as well as supporting a “differential response” approach.<sup>143</sup>

The consolidated approach, however, also conceives of the possibility that some families may, despite exertions to the contrary, want or need to stay together. It differs from other models that stress separation in all cases and instead proposes an individualized approach that recognizes that many families will stay connected in spite of a history of intra-family violence.<sup>144</sup> A hallmark of a consolidated

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<sup>139</sup> THE GREENBOOK INITIATIVE, *supra* note 4 (This approach is consistent with the Greenbook Recommendations.). See e.g., Ann Rosewater, *Building Capacity in Child Welfare Systems: Domestic Violence Specialized Positions*, NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES (2008), [www.thegreenbook.info/documents/BuildingCaps.pdf](http://www.thegreenbook.info/documents/BuildingCaps.pdf) (discussing training child welfare workers to hold “domestic violence specialized positions”).

<sup>140</sup> Woolard & Cook, *supra* note 80, at 214.

<sup>141</sup> See Sawyer & Lohrbach, *supra* note 2, at 65.

<sup>142</sup> See SCHECHTER & EDELSON, *supra* note 18, at 14 (The Greenbook’s second recommendation is to try “to keep children affected by maltreatment and domestic violence in the care of the non-offending parent (or parents).”).

<sup>143</sup> 42 U.S.C. § 10412 (2010); Davidson, *supra* note 86, at 183 (2011) (noting that in promoting these values, CAPTA echoes recommendations made by the Greenbook which have already been implemented in some states. He cites to collaboration in six sites and 15 CPS agencies with differential response programs as of 2009.).

<sup>144</sup> See Sawyer & Lohrbach, *supra* note 2, at 65-66.



approach would be differentiation of services and flexibility. There would be room within the consolidated model for the more controversial view that, "to meaningfully support the children of batterers and their mothers we need to acknowledge their desire for both safety and connection."<sup>145</sup> It would be consistent with the view that, "reaching out to battered mothers and their children is most successful when we can accept the importance of the batterer to them and appreciate their visceral desire that he change and become a better person."<sup>146</sup>

We have been moving toward a consolidated model for responding to family violence for quite some time.<sup>147</sup> Consolidating domestic violence responses has led to the creation of Integrated Domestic Violence Courts and Family Justice Centers.<sup>148</sup> Integrated Domestic Violence Courts differ in the scope of their responsibilities but are part of the growth of problem-solving courts and typically share the philosophy of "one family one court."<sup>149</sup> The integrated court model refers cases in which families have matters pending in more than one court to the integrated domestic violence court to streamline a family's experience with the judicial system.<sup>150</sup> Under this approach, a family with cases pending in family court, criminal court, and perhaps the court of general civil jurisdiction, in lieu of facing two or more separate court systems, can have their cases heard by one judge.<sup>151</sup> The goal is to not only simplify the proceedings for the family and to reduce time spent in and travelling to court, but to reduce conflicting orders and in other ways create a more tailored response for each family.<sup>152</sup> Consolidated courts

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<sup>145</sup> See David Mandel, *Batterers and the Lives of Their Children*, in VIOLENCE AGAINST WOMEN IN FAMILIES AND RELATIONSHIPS 67, 85 (2009).

<sup>146</sup> See *id.*

<sup>147</sup> See STRAUS ET AL. *supra* note 1, at 4. ("The American family and the American home are perhaps as or more violent than any other single American institution or setting (with the exception of the military, and only then in time of war). Americans run the greatest risk of assault, physical injury, and even murder in their own homes by members of their own families."); Sawyer & Lohrbach, *supra* note 2, at 62 (reviewing a differentiated response to child welfare cases in Minnesota that diverts less serious cases involving children to family assessments leaving only more serious cases for investigation and services by child welfare).

<sup>148</sup> See CASEY GWINN & GAIL STRACK, HOPE FOR HURTING FAMILIES, CREATING FAMILY JUSTICE CENTERS ACROSS AMERICA 37-42 (2006); see also MELISSA LABRIOLA ET AL., CTR. FOR CT. INNOVATION, NAT'L INST. OF JUST., A NATIONAL PORTRAIT OF DOMESTIC VIOLENCE COURTS 52 (2009).

<sup>149</sup> See SUSAN KEILITZ, NAT'L INST. OF JUST., SPECIALIZATION OF DOMESTIC VIOLENCE CASE MANAGEMENT IN THE COURTS: A NATIONAL SURVEY 4 (2004), available at <https://www.ncjrs.gov/pdffiles1/nij/199724.pdf> (Responses to the effectiveness of integrated domestic violence courts have been mixed.); Thomas L. Hafemeister, *If All You Have is a Hammer: Society Ineffective Response to Intimate Partner Violence*, 60 CATH. L. REV. 919, 932-933 (2011); Judge Amy Karan, et al., *Domestic Violence Courts: What are They and How Should We Manage Them*, 50 JUV. & FAM. CT. J. 75, 76 (1999); Betsy Tsai, *The Trend Toward Specialized Domestic Violence Courts: Improvements on an Effective Innovation*, 68 FORDHAM L. REV. 1285, 1287 (2000).

<sup>150</sup> See Tsai, *supra* note 149, at 1316.

<sup>151</sup> See Epstein, *supra* note 131, at 29; Robyn Mazur, *What Makes a Domestic Violence Court Work - Lessons from New York*, 42 JUDGES J. 5, 7 (2003).

<sup>152</sup> See Elizabeth MacDowell, *When Courts Collide: Integrated Domestic Violence Courts and Court Pluralism*, 20 TEX. J. WOMEN AND L. 95, 111 (2011). see also Mazur, *supra* note 151, at 7.

recognize the complicated nature of family violence and the multifaceted nature of the issues that are present in these families.<sup>153</sup> However, studies of the effectiveness of integrated courts have revealed that not all such projects include strong collaboration.<sup>154</sup> In addition, while the courts may have streamlined their responses, in each case presented the court may be faced with ten or more family members, social workers, guardians, and lawyers in each case.<sup>155</sup> Agencies and lawyers representing the battered parent, the child, and the batterer may all be present and may unduly complicate the process.<sup>156</sup>

Family Justice Centers also reflect the growth of the collaborative model.<sup>157</sup> Family Justice Centers are umbrella organizations that house a range of agencies that perform services addressing the needs of an abused parent and his or her children.<sup>158</sup> Although Family Justice Centers may include domestic violence agencies, child protection workers, law enforcement, child abuse agencies, and social welfare and services agencies, each agency or group works independently, and their interactions are collaborative and not consolidated.<sup>159</sup> While the Family Justice Center may facilitate collaboration and communication between agencies, they do not, on their own, create a true model of a consolidated response to family violence.<sup>160</sup>

#### IV. MOVING BEYOND COLLABORATION

Detractors from the consolidated model are likely to argue that moving primary responsibility from child protective agencies to domestic violence agencies is an endeavor that carries too much risk for our nation's children.<sup>161</sup> Under this view, efforts to change current child protective services approaches may potentially place children at risk of harm.<sup>162</sup> While the goal of child safety is paramount,<sup>163</sup> these concerns should not prevent the adoption of a consolidated family violence model. Child protective services would be responsible for making an initial review of reports of child abuse and neglect. Their investigation would separate the most

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<sup>153</sup> See Tsai, *supra* note 149.

<sup>154</sup> Labriola, *supra* note 148, at 78.

<sup>155</sup> MacDowell, *supra* note 152, at 113-14 (remarking that, "proliferation of specialized domestic violence courts may also have the unintended and paradoxical effect of marginalizing both those domestic violence cases within, and outside of, the specialized court system.").

<sup>156</sup> MacDowell, *supra* note 152, at 113-14.

<sup>157</sup> See Casey Gwinn, *Family Justice Center Collaborative Model*, 27 ST. LOUIS U. PUB. L. REV. 79, 119 (2007).

<sup>158</sup> See *id.*; Jeffrey Baker, *Necessary Third Parties: Multidisciplinary Collaboration and Inadequate Professional Privileges in Domestic Violence Practice*, 21 COLUM. J. GENDER & L. 283, 310 (2012).

<sup>159</sup> See Gwinn, *supra* note 157, at 103-04.

<sup>160</sup> *Id.*

<sup>161</sup> See Lindauer, *supra* note 8, at 817; Linda Quigley, *The Intersection Between Domestic Violence and the Child Welfare System: The Role Courts Can Play in the Protection of Battered Mothers and Their Children*, 13 WM. & MARY J. WOMEN & L. 867, 867-68 (2007).

<sup>162</sup> See Lindauer, *supra* note 8, at 817; Quigley, *supra* note 161, at 867.

<sup>163</sup> *Id.*

serious cases, those that involve significant harm or threats of significant harm to the child, from other cases. These cases would be retained by child protective services and would not be assigned to a nonprofit domestic violence agency. The referred cases then would present little risk and the services provided could potentially help lower the risk further by helping to address family issues and stresses. In fact, this approach is similar to that adopted in some states that have moved to a "differential" model of responding to reports of child maltreatment.<sup>164</sup> In states adopting a differential model, the child protective agency diverts some cases that present lower risk to an alternate pathway that provides services to families in need without a formal determination or disposition.<sup>165</sup> In these states, families may be offered a range of services that can include parenting classes, substance abuse rehabilitation, and child care assistance.

Currently, under a traditional approach to reports of child maltreatment that is used by most states, child welfare agencies respond with monitoring and providing in-home services to most families who come within their supervision as a result of a finding that the risk of harm or neglect to a child is substantiated by an investigation. These child welfare cases involve families in which the risk of harm to the child has been found by the agency to be low to moderate. The policy of most child welfare agencies, in these circumstances, is to try to keep the family together rather than remove the child. Only in a very small percentage of cases do child welfare workers initiate proceedings for removal.<sup>166</sup> Under the consolidated model, the families whose risk to children is seen as severe would not be referred to the consolidated family violence agency. These families would continue to stay under the direct supervision of the child protective agency of the state. It is only those families whose risk has been measured to be low or moderate that would be referred to the consolidated agency, and for whom a menu of services and support would be provided while the children continued to live at home. This approach would benefit the families by moving them into smaller, more responsive agencies that could more easily tailor their support to the families' individual needs. Concerns are frequently raised about the large caseload of child protective services workers, and diverting more cases to smaller agencies could ease some of this

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<sup>164</sup> See Differential Response in Child Protective Services, *supra* note 45; see also Nat'l Quality Improvement Center on Differential Response in Child Protective Services, *A Differential Response in Child Protective Services: A Guide for Judges and Judicial Officers* 3 (2009), <http://www.ucdenver.edu/academics/colleges/medicalschooll/departments/pediatrics/subs/can/DR/qicdr/General%20Resources/resources/judgesguide.pdf>; Child Trends, *Status of DR Implementation*, STATE CHILD WELFARE POLICY DATABASE, <http://www.childwelfarepolicy.org/maps/single?id=186> (last visited Nov. 11, 2013) (approximately 14 states have adopted a differential response to child maltreatment cases and a number of other states are piloting programs).

<sup>165</sup> See Nat'l Quality Improvement Center on Differential Response in Child Protective Services, *supra* note 164.

<sup>166</sup> See Postmus, *supra* note 8, at 12-13. Postmus states, "fewer than half of the cases reported to CPS were accepted for investigation." *Id.* at 12.

burden. In addition, this would mitigate families' concerns about the state encroaching upon the intimate province of the home.

Child welfare services have been subject to significant criticism about their practice of unfairly targeting poor communities and families of color, a practice that has led to an over-representation of children of color in the child welfare system.<sup>167</sup> In fact, some communities have already begun developing culturally sensitive organizations in response to this concern.<sup>168</sup> The consolidated family violence agencies similarly would be community-based and, since they would not be a governmental agency with the power to participate in removal proceedings, they would be less threatening to the families they were seeking to help. The child protective agency's efforts would be focused on the more serious and risky cases, allowing them to lessen their workers' caseloads, spend more time assessing and responding to the needs of each family, and avoid splitting their efforts unnecessarily between families at low risk and families at higher risk, whose needs are likely to be quite different.

Some child welfare agencies are already been moving toward a differentiated approach to child welfare cases that separates the more serious cases from those that require less intrusive state investigation.<sup>169</sup> A review of one such approach found it reduced blaming and revictimization of domestic violence victims.<sup>170</sup> On the other hand, questions have been raised about whether this more flexible and innovative approach is sufficient to fill the gap in philosophy and approach of child welfare and domestic violence workers. In fact, a differentiated approach by child welfare workers has been criticized by some for failing to adequately protect the constitutional rights of parents.<sup>171</sup> From this perspective, not only does a differentiated approach lack the due process protections available in a more formal child protective services process, but seeking participation in an informal differentiated process may not be truly voluntary since some families report feeling "coerced" into services and child welfare agencies in some states will open an investigation in cases involving families who have declined services.<sup>172</sup> Thus,

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<sup>167</sup> See MALLEY-MORRISON & HINES, *supra* note 119, at 223-24.

<sup>168</sup> Some of the culturally specific organizations designed to meet the needs of families experiencing family crises including violence include the African American Family Services Organization in Memphis, the Institute on Domestic Violence in the African American Community at the University of Minnesota School of Social Work, and MADRE that provides parenting education to Latina women at high risk of abusing or neglecting their children. See *id.*

<sup>169</sup> See Sawyer & Lohrbach, *supra* note 2, at 65-66.

<sup>170</sup> *Id.* at 65.

<sup>171</sup> See McGrath, *supra* note 49, at 633 (arguing that, "By relying on a family's voluntary consent to services, states are permitted to circumvent the need to provide due process protections.").

<sup>172</sup> Nat'l Quality Improvement Center on Differential Response in Child Protective Services, *supra* note 164, at 6 (noting that refusing services can result in a traditional investigation); see also Nat'l Quality Improvement Center on Differential Response in Child Protective Services, *Differential Response in Child Protective Services: A Legal Analysis* 9 (Sept. 2009) <http://www.ucdenver.edu/academics/colleges/medicalschooll/departments/pediatrics/subs/can/DR/qicdr/General%20Resources/General%20Resources/docs/differential-response-in.pdf>.

even voluntary participation in a state child welfare agency can have significant consequences for families.<sup>173</sup> Relying more heavily on private domestic violence agencies may resolve many of these concerns.

Domestic violence agencies are already working holistically with families in most cases. These agencies typically have social workers and counselors on staff who are trained to work with children. As a result, these agencies are not only equipped to take on primary responsibility for the needs of children, but are to a large degree already doing so. The consolidated model would work to eliminate much of the duplication of effort that currently exists when a family is working with a domestic violence agency at the same time that the state's child protection system is monitoring them. By reducing that duplication of effort, the consolidated model would be more effective as well as more efficient in the use of state and federal funding.

Domestic violence agencies are often underfunded, and so expanding their scope of responsibilities might raise fears that their budgets would be unduly strained. Although domestic violence agencies typically receive some level of financial support from both the state and federal government for their work, they often rely heavily on private grants and fundraising. Moving to a consolidated model would save money and expand opportunities for fundraising.

There may be some concern that increasing the scope of the responsibility of domestic violence agencies will make them too large to be effective. Concerns about size and the fear of increasing the bureaucracy of organizations that are more typically relatively small in size and are often somewhat intimate in management and approach are legitimate. However, consolidating missions does not necessarily mean inflating an organization to an unwieldy size. Family violence organizations can be set up to serve population areas or communities in ways that maintain potential client lists at a manageable size. Greater numbers of small organizations that are responsible for entire families may be more effective than current approaches in wrapping together all the services the family needs. Much like Integrated Domestic Violence Courts try to address the needs of entire families rather than splitting their legal issues across multiple courts, family violence agencies could focus more holistically on family needs.<sup>174</sup>

Whether integration of responsibilities within one organization as opposed to collaboration across independent organizations will result in a sacrifice of goals by broadening the reach of such organizations and perhaps even their effectiveness are issues that can be adequately addressed through effective management and training

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<sup>173</sup> See McGrath, *supra* note 49, at 633; Amy Sinden, "Why Won't Mom Cooperate?": A Critique of Informality in Child Welfare Proceedings, 11 YALE J.L. & FEMINISM 339, 396 (1999) (raising concerns about the use of informal procedures in child welfare matters).

<sup>174</sup> See Mazur, *supra* note 151, at 7; Gwinn, *supra* note 157, at 103-04; Epstein, *supra* note 131, at 28-29.

within organizations.<sup>175</sup> In fact, the fairly well-accepted support for collaboration and communication between agencies has been effectuated largely through providing training and educating workers to understand the perspective of the other.<sup>176</sup> The collaboration approach is based on being able to successfully educate domestic violence workers to recognize and refer suspected abuse, and for child welfare workers to be aware of the signs of domestic violence and to make the appropriate referrals.<sup>177</sup>

A related concern is that the consolidation would lead not only to a sacrifice of goals and effectiveness but would raise serious conflicts of interest.<sup>178</sup> Thus, there may be fears that mandatory reporting laws would require organizations to report child abuse concerns and act in ways contrary to the interests of an abused parent to whom they are providing services.<sup>179</sup> Again, although these instances may arise, these problems are not restricted to consolidated agencies.<sup>180</sup> Typically the social workers, therapists, or counselors working with an abused parent in a traditional domestic violence agency or in any capacity who learns of child maltreatment would have a duty to report that suspicion.<sup>181</sup> The duty does not rise spontaneously or become more difficult in a consolidated agency.<sup>182</sup> In fact, a consolidated agency would be in a better position to respond swiftly and effectively to signs of potential harm to children. Moreover, as allies to the abused parent in their efforts to eliminate the violence and chaos in their lives, these workers may be in a more privileged position of trust.<sup>183</sup> Abused parents may be more likely to open up to and confide their fears about violence in the home. As nongovernmental agencies, the family violence centers may not carry the stigma that child welfare workers and agencies often have with the public.<sup>184</sup> In many communities, child welfare agencies have a contentious and somewhat adversarial relationship with their clients.<sup>185</sup> Child welfare agencies are often seen as an arm

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<sup>175</sup> See Schechter & Edleson, *supra* note 111; Collins, *supra* note 86, at 757.

<sup>176</sup> See Schechter & Edleson, *supra* note 111; Joan S. Meier, *Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions*, 11 AM. U. J. GENDER SOC. POL'Y & L. 657, 716 (2003).

<sup>177</sup> See Schechter & Edleson, *supra* note 111.

<sup>178</sup> See *id.*

<sup>179</sup> See Weithorn, *supra* note 23, at 134-35.

<sup>180</sup> See *id.*

<sup>181</sup> See Anne Elizabeth Rosenbaum, *Embracing the Strengths and Overcoming the Weaknesses of Child Protection Mediation*, 15 U.C. DAVIS J. JUV. L. & POL'Y 299, 301-302 (2011); Collins, *supra* note 86, at 740-41.

<sup>182</sup> See Collins, *supra* note 86, at 742-43.

<sup>183</sup> See Dunlap, *supra* note 65, at 577; see generally Sack, *supra* note 50.

<sup>184</sup> Child welfare workers may sometimes be viewed with suspicion by families because of the threat of removal. See McGrath, *supra* note 49, at 656; Jill M. Zuccardy, *Nicholson v. Williams: The Case*, 82 DENV. U. L. REV. 655, 663 (2005).

<sup>185</sup> See Pence & Taylor, *supra* note 101, at 14-15 (noting that the child protective services of the sites reviewed had a tendency to focus on the abused mother and her ability or inability to control violence in the home); Clare Huntington, *Rights Myopia in Child Welfare*, 53 UCLA L. REV. 637, 673-74 (2006) (suggesting family group conferencing as a less adversarial approach to handling child

of the state, with the reach of law enforcement and the power to punish like the judiciary.<sup>186</sup> Often, they are viewed as unsupportive of families, and their intrusion into family life is frequently unwelcome and actively resisted.<sup>187</sup> Under the traditional model of responding to family violence, battered mothers may be less willing to disclose domestic violence to child welfare workers because of a fear of child protective services involvement in their families and of losing their children to the state.<sup>188</sup>

The most significant concern about conflicts of interest is likely to be raised in cases in which a battered victim has maltreated their child. In these instances, the conflict of protecting the child and serving the victim may be most acute.<sup>189</sup> Although this can occur, more often it is the presence of the abuser that creates a danger to the children.<sup>190</sup> The underlying principle would be that addressing the needs of the adult victim and the child at the same time will protect both. However difficult, the potential conflict this scenario raises is not unique to a consolidated model. In fact, the Greenbook advises the need for domestic violence agencies to “view battered women who maltreat their children as deserving of a wide range of services, including advocacy with child protection services.”<sup>191</sup> It advocates for domestic violence groups to make their policies more supportive of these families and argues for an approach that would take a less punitive approach to their problems than may be currently followed. A consolidated model could help relieve the tension, avoid having child protective services and domestic violence workers seeing each other as adversaries, and allow the focus to remain on the safety of the family members.

Whether a consolidated model would violate confidentiality, privacy goals, and create intractable conflicts is another legitimate area of concern.<sup>192</sup> Domestic violence workers are bound to maintain the confidences of their clients, and the safety of those clients and their children depends upon maintaining a level of privacy.<sup>193</sup> Seeking help and separation raises the level of risk for the abused and their children.<sup>194</sup> However, the consolidated model does not create new

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welfare matters); Goodmark, *supra* note 7, at 25-26.

<sup>186</sup> See Sarah H. Ramsey, *Children in Poverty: Reconciling Children's Interests with Child Protective and Welfare Policies a Response to Ward Dorman and Roberts*, 61 MD. L. REV. 437, 453 (2002).

<sup>187</sup> See McGrath, *supra* note 49, at 656; Postmus, *supra* note 8, at 6.

<sup>188</sup> See Postmus, *supra* note 8, at 1.

<sup>189</sup> See *id.* at 8.

<sup>190</sup> See *id.* at 9-10.

<sup>191</sup> See Susan Schecter & Jeffrey Edelson, *Effective Intervention in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice: Recommendations from the National Council of Juvenile and Family Court Judges*, NAT'L COUNCIL OF JUVENILE AND FAM. COURT JUDGES 82 (1999), <http://www.childwelfare.gov/pubs/otherpubs/ncjfcj.pdf>.

<sup>192</sup> See Baker, *supra* note 158, at 285.

<sup>193</sup> See Joan Zorza, *Recognizing and Protecting the Privacy and Confidentiality Needs of Battered Women*, 29 FAM. L.Q. 273, 298-99 (1995).

<sup>194</sup> See Megan Shipley, *Reviled Mothers: Custody Modification Cases Involving Domestic Violence*,

confidentiality issues and may present opportunities for creative solutions to this long-standing problem.

Systemic reform and restructuring has been a critical component of the development of the legal and social responses to domestic violence in recent years. While the consolidated model may present some practical challenges and dilemmas it is wholly consistent with the principles of the Greenbook Initiative. Moreover, the approach is in harmony with the development in child welfare and domestic violence responses which recognize a need for greater flexibility and differentiation in response models and serves to continue the conversation about how to more effectively serve the interests of children and families living with intimate partner violence.

### CONCLUSION

The consolidated model may be controversial for a number of reasons, but the least of which should be that it differs significantly from the traditional way in which child welfare and domestic violence agencies have operated in the past. It responds directly to those voices who have, for years, been suggesting that “a more unified approach” that reaches across the separate spheres or planets of child welfare and domestic violence workers is a logical development from a collaborative approach.<sup>195</sup> It does, however, require a willingness not only to think outside of the box, but also to draw a circle broad enough to include the myriad of issues that rise in families facing violence.

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86 IND. L.J. 1587, 1598 (2011); V. Pualani Enos, *Prosecuting Battered Mothers: State Laws' Failure to Protect Battered Women and Abused Children*, 19 HARV. WOMEN'S L.J. 229, 245 (1996).

<sup>195</sup> Hester, *supra* note 7, at 145.



