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Representing Children at the Intersection of Domestic Violence and Child Protection

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Representing Children at the Intersection of Domestic Violence and Child Protection

by Annette Appell and Josh Gupta-Kagan¹

I. When Domestic Violence and Child Protection Meet

Reflecting evolving norms surrounding the legitimacy of intimate violence, the law has made steady progress toward acknowledging that domestic violence is not a private family matter, but instead demands public assistance to help survivors of that violence protect themselves and their children. Most recently, child advocates, juvenile court judges, and domestic violence advocates have joined in a concerted effort to address the co-occurrence of domestic violence and child abuse and neglect, coordinate responses and remedies among the various court systems, and develop methods to avoid re-victimizing mothers and children through legal process.² This article traces civil remedies and barriers domestic violence survivors may encounter in their attempt to achieve safety in the St. Louis metropolitan area.

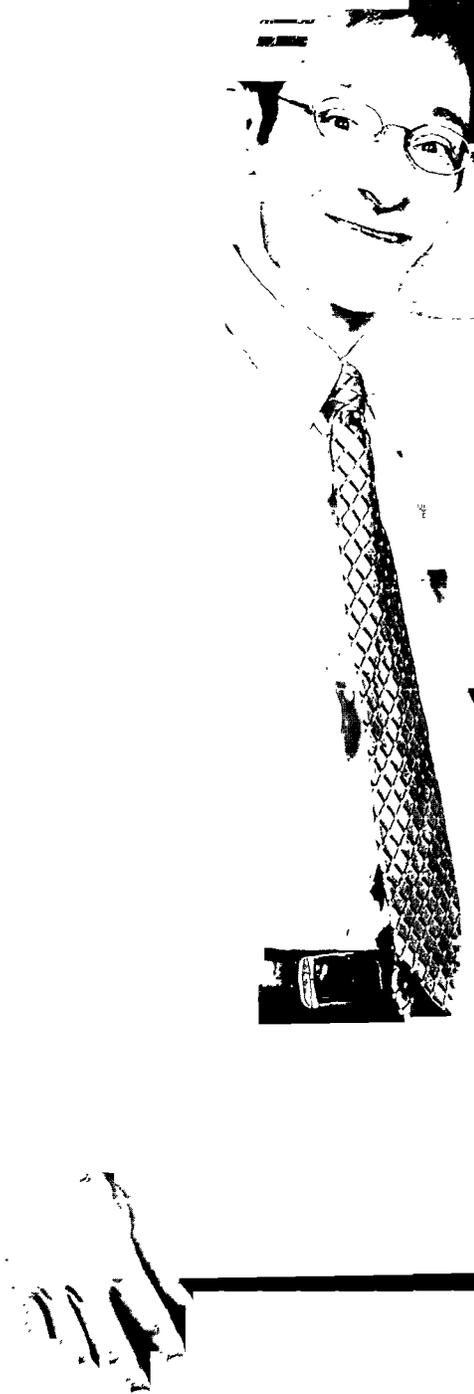
In Missouri, at least four family court proceedings have jurisdiction to adjudicate or otherwise consider domestic violence: juvenile,³ domestic violence,⁴ domestic relations,⁵ and termination of parental rights.⁶ The jurisdiction of the various family court dockets overlaps because the laws governing domestic violence⁷ and domestic relations offer protection for children subject to domestic violence, and child protection law empowers the state to intervene on behalf of children who are harmed by, or otherwise without proper care

and protection as a result of, such violence.⁸ These court systems typically have different norms and purposes. The domestic relations and the domestic violence courts aim to empower and protect domestic

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1. The authors thank Washington University law student and Civil Justice Clinic alumnus Michela Skelton Birk (Washington University Law, 2013) for her excellent research assistance; and also our colleague Kathryn Pierce for sharing her knowledge of St. Louis City courts.
 2. See Susan Schechter & Jeffrey L. Edleson, et. al., *Effective Intervention in Domestic Violence & Child Maltreatment Cases: Guidelines For Policy and Practice* (1999), available at, <http://www.thegreenbook.info/init.htm> (last visited July 18, 2012) (hereafter "GREENBOOK"); this publication, was the culmination of the Family Violence Department of the National Council of Juvenile and Family Court Judges assembly of "family court judges and experts on child maltreatment and domestic violence" to address this phenomenon. This initiative, in which St. Louis County served as one of the project's demonstration sites, produced the GREENBOOK. *Id.*

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violence survivors, while the juvenile court seeks to reform the parent through court-mandated services and regular ongoing court review. In this way, the domestic courts generally afford a more private, direct, and empowering approach to domestic violence.⁹

In larger circuits like St. Louis County and City, domestic violence involving children is subject to the jurisdiction of one or more of the family court's separate divisions: juvenile court, domestic violence court, and domestic relations court.¹⁰ Even though these courts are divisions of the family court, they each hold separate dockets in separate court buildings with separate judges, court personnel, and, generally, different *guardians ad litem* (GAL). In addition, the proceedings involve distinct party structures and afford different remedies.

A. The Juvenile Court

In juvenile court, the petitioner is the juvenile officer (JO). The primary parties generally include the State of Missouri (through the Children's Division), the JO (who prosecutes the abuse or neglect petition), the parents, and the child. The court attorney represents the JO; the court appoints an approved GAL to represent the child;¹¹ and the court will appoint an attorney for parents who request but cannot afford one.

The aim of the child protection system and the juvenile court is to reduce or eliminate the risk of harm to the child. In this system, the failure of parents to protect their children, even when the parent herself is subjected to domestic violence, renders them neglectful.¹² The juvenile court protects children from parental abuse and neglect by creating remedial plans and mandating services to help the family. Juvenile court proceedings are meant to be temporary and therapeutic – helping the family to correct conditions that brought the matter into court, find the child a new permanent home, or help prepare him for emancipation. While the cases are open, there are regular

court hearings, meetings, and orders. Once the matter is closed, any orders entered have no force.

Juvenile court proceedings involving domestic violence against children are usually the result of a substantiated report to the child abuse and neglect hotline, but domestic violence issues may also arise during the course of these proceedings

which the juvenile court is not empowered to reach. For example, a foster child may experience domestic violence or the juvenile court may not have jurisdiction to address fully the legal ramifications of the violence or the legal relationship between the batterer and the child or mother. In addition, the juvenile court only has jurisdiction over parents, children,

3. Mo. Rev. Stat. § 210.110 (1) & (12). The juvenile court also has jurisdiction over minors who are respondents in domestic violence orders through juvenile justice proceedings (Mo. Rev. Stat. § 211.031.1(2)(d)(6)), but this article only addresses the child protection portion of the juvenile court as it relates to children in need of care and protection.
4. Mo. Rev. Stat. § 455.010.
5. Mo. Rev. Stat. §§ 452.315, 452.375.2(6) & (13).
6. If conditions that led to removal of a child — which may include a domestic violence survivor's failure to leave her abuser — have not been remedied after one year, the court can terminate her parental rights. See, Mo. Rev. Stat. § 211.447.5(3) (2011).
7. Mo. Rev. Stat. § 455.010 (domestic violence); Mo. Rev. Stat. § 452.315 (domestic relations). The domestic violence statute empowers the domestic violence judge to "direct" Children's Division to investigate and provide services to the family when the order of protection petition alleges facts that "would give rise to jurisdiction under section 211.031." Mo. Rev. Stat. § 455.513.1.
8. Mo. Rev. Stat. §§ 210.110(1) & (6). The statute further makes clear that "those responsible for the child's care, custody, and control" include any household member and adults who are in a relationship with child's parent. *Id.*, at § 210.110 .16.
9. *But see Juvenile Officer v. Warner*, 155 S.W.3d 855 (Mo. Ct. App. W.D. 2005) (JO filed petition for renewal of order of child protection, after the mother declined to renew the order herself).
10. Mo. Rev. Stat. §§ 487.010.1 and § 487.080.
11. *In re Standards with Comments for Guardians ad Litem in Juvenile and Family Court Division Matters*, Mo. Supreme Court, August 29, 2011, effective September 1, 2011, available at <http://www.family-court.org/Documents/GAL/GAL%20Standards.pdf>, last visited July 20, 2012 (hereafter "GAL Standards"). For additional guidance regarding GAL and child attorney representation, see *ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings* (expressing preference for child-directed, rather than best interest-directed, legal representation of children), available at <http://www.clcmn.org/wp-content/uploads/2009/07/Model-Act-on-Representation-of-Children-8-8-11.pdf> (last visited July 28, 2012), *ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (February 1996), available at http://www.americanbar.org/groups/child_law/what_we_do/projects/empowerment/righttocounsel.html (last visited July 20, 2012).
12. See e.g. *In re V.J.B.*, 330 S.W.3d 560 (Mo. Ct. App. S.D. 2010); *In re N.J.S.*, 276 S.W.3d 397 at 401 (Mo. Ct. App. E.D., 2009); *In re F.C.*, 211 S.W.3d 680 (Mo. Ct. App. S.D., 2007); *In re K.A.W.*, 220 S.W.3d 310, 313 (Mo. Ct. App. S.D. 2007) (all cases in which the children came into care as a result of domestic violence perpetrated by the father or the mother's boyfriend).

or legal custodians, not boyfriends or others living in the home.¹³ So the juvenile court may not be authorized to enter orders against a foster child's abusive boyfriend or the boyfriend of the mother if he has abused the child. The juvenile court may retain jurisdiction over a child up to the age of 21.¹⁴

B. The Domestic Violence Court

In domestic violence proceedings, the adult survivor of domes-

tic violence, or if the survivor is a child, the child's parent or guardian, GAL, Court Appointed Special Advocate, or the JO files the petition.¹⁵ Petitioners and respondents may, of course, hire their own attorneys, but the court does not appoint lawyers for them, except that the Child Protection Orders Act requires the court to appoint a GAL once the *ex parte* order of protection is issued.¹⁶ The domestic violence court aims to craft orders to protect women and children from domestic violence.

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13. See Mo. Rev. Stat. § 211.101.1 (Missouri's antiquated juvenile code is no model of clarity, but § 211.101.1 suggests that parties to child protection proceedings are limited to parents, legal custodian, and children as respondents; still § 211.101.2 suggests others may be subject to the court's jurisdiction. See also, § 211.132 & .141 (parents and guardians are subject to jurisdiction and may be ordered to participate in certain programs). Even so, Missouri's Child Protection and Reformation statute contains a broader definition of family, including "other members of the child's household, or those exercising supervision over a child for any part of a twenty-four-hour day . . . [and includes] any adult who, based on relationship to the parents of the child, members of the child's household or the family, has access to the child." Mo. Rev. Stat. § 210.110.16. Thus, the administrative role of the child protection system casts a broader domestic violence net than the Juvenile Court Act.
 14. Mo. Rev. Stat. § 211.041.
 15. Mo. Rev. Stat. § 455.503.2.
 16. Mo. Rev. Stat. § 455.513.
 17. Mo. Rev. Stat. § 455.040.3.
 18. Mo. Rev. Stat. § 455.040.1 (providing for automatic renewal of full orders of protection, unless the respondent requests a hearing 30 days prior to the expiration of the order).
 19. See, e.g., *In re V.J.B., S.H.B., A.G.B., K.C.V. & C.A.V.*, 330 S.W.3d 560 (Mo. Ct. App. S.D. 2010); *In re K.A.W.*, 220 S.W.3d 310 (Mo. Ct. App. S.D. 2007); *In re F.C.*, 211 S.W.3d 680 (Mo. Ct. App. S.D. 2007) (cases in which the juvenile court removed children from their mother's custody in whole or in part because of a father's or boyfriend's domestic violence).
 20. See, e.g., Jill Chafetz, *Listening to Foster Children in Accordance with the Law: The Failure to Serve Children in State Care*, 25 REV. LAW & SOCIAL CHANGE 1 (1999); see also, note 53 *infra* (documenting poor outcomes for foster children).
 21. See, e.g., *In re V.J.B.* and *In re K.A.W.*, *supra* note 19 (both cases resulting in termination of parental rights after child protection intervention for domestic violence).
 22. GAL Standards 3.0, compare to see *ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings*, *supra* note 11.
 23. GAL Standard and Comment to 5.0.
 24. Comment to 9.0; Standard 13.0.
 25. GAL Standard 8.0 requires GALs to "advocate for timely hearings, provision of necessary services, and compliance with court orders" and timely resolution of the matter. See sources cited at note 6 for additional guidance for representation of children.
 26. GAL Standard 8.0.

Domestic violence orders extend to abusers, whether or not they are parents or legal custodians. In addition, the statute requires the clerk to forward domestic violence orders to the local law enforcement agency which will in turn enter it into the Missouri uniform law enforcement system, also known as MULES.¹⁷ The domestic violence court can ultimately enter plenary protective orders that require the court's ongoing jurisdiction, but do not require the involvement of Children's Division and the more frequent and probing review of the juvenile court.¹⁸

II. The Child's Interests and the Role of the GAL

A. The Risks for Child

Regardless of the forum, there is much at stake for children in these proceedings. Certainly, their safety and well-being, and that of their family members, are at risk. Their family status and relations also may be at risk of disruption through the child protection system.¹⁹ In this context, children risk coercive state removal from their family, home and school, along with the emotional distress and losses attendant to those separations, the significant and well-documented risks of foster care,²⁰ and, ultimately, possible dissolution of their family relationships through termination of parental rights.²¹

Children's vulnerability, combined with their lack of authority to direct their legal representatives, present further challenges to the protection of children's rights, wishes, and subjective interests, although Missouri's GAL standards do aim to protect the child's rights and ensure, when possible, that the child's views will be heard.²² Thus the standards require the GAL to create a relationship with, and explain the court's process to, the child,²³ and also to solicit the child's "opinion and feelings" and share them with the court.²⁴ In addition, the standards suggest that the GAL should ensure that the law is followed,²⁵ and advocate for expeditious resolution of the proceeding.²⁶

B. Best Practices for Representing Children in Domestic Violence Cases

In addition to local standards, other helpful guideposts for GALs include the findings and recommendations in the GREENBOOK.²⁷ This resource is the culmination of a national examination of the intersection of domestic violence and child abuse and neglect lead by the National Council of Juvenile and Family Court Judges (National Council), a project in which St. Louis served as a demonstration site. The GREENBOOK provides recommendations for judges and lawyers confronted with the co-occurrence of child neglect and domestic violence. The GREENBOOK acknowledged that “[c]reating safety for children experiencing domestic violence is inseparable from trying to create safety for their mothers and reducing the risk from the domestic violence perpetrator,” and that this goal requires a collaborative system between domestic violence service providers, child welfare agencies, and the courts.²⁸

In light of this goal, the National Council recommended that domestic violence courts address domestic violence, and that juvenile court intervention (and possible commitment to foster care) should occur only when there is a valid child protection risk beyond the domestic violence.²⁹ When the child protection system must be involved, “children should remain in the care of their non-offending parent (or parents), whenever possible.”³⁰ In other words, when domestic violence occurs, it is the abuser, not the survivor, whom the authorities should hold accountable and the abuser should be the one to leave the home, not the child.

Thus, best practices favor private remedies to domestic violence – those sought by parents through orders of protection and paternity/custody actions – because they emphasize the strong bond between parents and children and empower parents to protect their children.³¹

Even when a juvenile case is opened, it is usually in a child’s best interests for the court to support the efforts of a non-offending parent to protect the child, and eliminate any need for the invasive state intervention inherent in a juvenile court case.

In light of the child’s best interests, the threat of domestic violence to the child’s safety and the importance of preserving the child’s relationships and living arrangements, the GAL can play a significant role in protecting the child’s rights and interests. When best for the child, the GAL’s role should include supporting the efforts of the non-abusive parent in seeking protection; seeking an order of protection when the non-abusive parent is unable to do so; advocating for services to protect and empower the non-abusive caregiver; and addressing other barriers to safety and independence of the non-abusing parent and child.

III. Steps for a GAL in Navigating the Court Systems

Despite the preference for targeted intervention that focuses on the abuser, there are times when domestic violence and child protection intersect and when parents are unwilling or unable to seek a domestic violence order of protection. In these circumstances, the GAL faces a complicated set of challenges – how to prioritize the child’s relationship with his non-offending parent without permitting severe safety risks to occur, and how to ensure that a

child protection proceeding focuses on the real culprit — the batterer — rather than blaming a victim parent and thus improperly jeopardizing a child’s relationship with that parent.

A. Barriers to Private Remedies and the Need for a Truly Unified Family Court

Because private remedies are often the best way to serve children’s interests, GALs should often support and, consistent with ethical rules governing contact with other parties, encourage parents’ efforts to pursue such remedies. Such remedies require filing a petition for an order of protection against a batterer or, if the batterer is also a parent, a paternity and custody action, and thus provide textbook examples of the value of a unified family court. A parent with a pending juvenile case should be able to seek private remedies to protect her child in the same forum that is already familiar with her family, and thus avoid the complications and costs associated with multiple cases in multiple forums. As the Missouri Supreme Court explained:

The idea behind adoption of a unified family court is to create a single court with comprehensive jurisdiction over all cases involving children and their families. To the extent possible, one judge, specially trained, is to address the legal and accompanying emotional and social issues challenging each family. . . . This results in a more efficient

27. GREENBOOK, *supra* note 2.

28. *Effective Intervention in Domestic Violence & Child Maltreatment Cases: A Summary of Recommendations for Child Welfare Agencies*, thegreenbook.info, http://www.thegreenbook.info/documents/ei_cwa_summ.pdf (last visited May 4, 2012) at 2 (hereafter, *Greenbook Recommendations*).

29. The preferred outcome for families by both domestic violence service providers and child welfare agencies is “that children not be involved in CPS, if avoidable.” H. Lien Bragg, Office on Child Abuse and Neglect, *Child Protection in Families Experiencing Domestic Violence* 12 (2003).

30. *Greenbook Recommendations*, *supra* note 28, at 3.

31. *Greenbook*, *supra* note 2, Recommendation 4, at 21-22.

one-family/one-judge system that is more compassionate for families in crisis.³²

Unfortunately from the child's perspective, statutory and structural impediments to realizing the supreme court's vision exist. The relevant statutes do not permit parents to file for orders of protection and paternity actions in front of the juvenile court judge who is familiar with the situation: juvenile cases are filed in the "juvenile court," the arm of the family court which only has jurisdiction to hear child abuse or neglect cases brought by a JO against a parent, or delinquency and status offense cases brought by a JO against a child.³³ Other arms of the "family court" have jurisdiction to

hear a much wider range of cases, including paternity actions and orders of protection.³⁴ The judge that has become familiar with the family, therefore, does not have clear jurisdiction to consider petitions that relate to the factual core of why the juvenile court is involved in the first place and which seek more permanent protection for children than the juvenile court can provide through the juvenile case alone.³⁵

This means that a parent must file for an order of protection or custody in a new court, which in both the City and County of St. Louis means a different court building. If the parent cannot afford a lawyer, she may have to pay significant filing fees (for custody cases), complete long and

detailed legal forms,³⁶ address problems in serving the respondent (as seems common, even in order of protection cases³⁷), and face the opposition from an abuser who insists on a contested hearing. This system may discourage some parents from pursuing strong claims. GALs can help by encouraging parents to proceed, assisting parents (again, consistent with ethical rules governing contact with other parties), and requesting appointment as GAL in related cases.

GALs' assistance in order of protection and paternity cases is essential because Missouri does not provide counsel to domestic violence survivors who cannot afford one. The juvenile court system will provide indigent parents with a court-appointed lawyer at all stages of a juvenile case but not for a closely-related paternity, custody, or order of protection case. Without money to hire a lawyer, cases go unfiled, or parents are forced to choose between hiring a lawyer and providing for themselves or their children.³⁸ We are involved in one case that has remained open since 2010 following an incident of domestic violence by one parent against a young child. The other parent now has custody through the juvenile case; but the case remains open because that parent (who has a free court-appointed lawyer in the juvenile case) has not paid the lawyer to file and prosecute a paternity action. For want of a \$500 fee, this case has remained open more than two years longer than necessary.³⁹

The situation calls for reform. Any party entitled to representation in a juvenile case should be entitled to representation in related cases – especially order of protection and paternity actions. Just as the court pays the lawyer in the juvenile case, the court should pay the lawyer in the related case. And those related cases should be filed in the same court, eliminating the delays and burdens (especially on *pro se* parties) associated with filing in the main courthouse. Although paying for indigent parents' counsel would obviously

32. *In re S.M.H.*, 160 S.W.3d 355, 361 (Mo. *en banc* 2005).

33. Mo. Rev. Stat. § 211.031.

34. Mo. Rev. Stat. § 487.080. In St. Louis County, paternity and domestic violence actions are on separate dockets and separate courtrooms.

35. The family court, by administrative order, might be able to develop effective work arounds. For instance, an administrative order might empower a family to file any case listed under § 487.080 in the division of the family court, including the juvenile court, that is already hearing a case involving that family. The order could further provide that parties deemed indigent for one case are automatically authorized to proceed *in forma pauperis* and counsel appointed for such parties are appointed to provide holistic family court representation.

36. When a *pro se* litigant opens model forms for filing for child custody, she first sees a warning that begins "You are strongly encouraged to consult with a lawyer in the preparation of these documents and the presentation of your case to the court," and then sees 55 pages of legal forms. <http://www.selfrepresent.mo.gov/file.jsp?id=38348>.

37. Our clinic has been involved in three cases in the last five months in which a party has filed for an order of protection. In each of these three cases, the sheriffs have failed to serve the respondent — even in one case when the respondent was incarcerated, and even though the law requires service of order of protection petitions to "take priority over service in other actions." Mo. Rev. Stat. § 455.040.2. In one of these cases, a mother (not our client) declined to prosecute the order of protection after the sheriffs could not serve the respondent.

38. Anecdotally, the lack of free counsel is a recurring issue. Our clinic, which provides all services *pro bono*, has been asked in multiple cases to represent parents who seek to protect a child from another's parent's abuse via a paternity and custody action, but who cannot pay a lawyer for such an action.

39. We do not criticize lawyers seeking legal fees from parents. Lawyers should be paid for their work, and the lawyers who do this work are largely solo practitioners and small firm lawyers with relatively small profit margins. We encourage lawyers to handle cases *pro bono*, but we recognize that asking these lawyers to do all of these cases for free is not a viable solution.

come at a cost, so does the status quo. The absence of free counsel keeps juvenile court cases open far longer than necessary as parents struggle to navigate orders of protection and paternity cases. The case described above has remained open literally for years, imposing very real costs on both the court and the Children's Division (which is forced to remain involved unnecessarily), which outweigh the costs of paying the parent's modest legal fee. Until such reform occurs, GALs can bridge the gap between different forums, and help ensure that children can benefit from parents empowered to protect them through private family law remedies.

B. What Gals Can Do When Parents Do Not Seek Private Remedies

Domestic violence survivors may decline to file for an order of protection or for custody of their children for any number of reasons.⁴⁰ They may be deterred by the cost of retaining an attorney or the difficulty of proceeding without one. They may fear losing their job if they miss work to attend additional court hearings.⁴¹ They may feel powerless to leave an abusive relationship, especially if they are financially dependent on their abuser. Fleeing for a domestic violence shelter may provide short-term protection, but may isolate survivors from natural supports.⁴² Or they may be caught in the well-documented pathology of abusive relationships and maintain affection for their abuser and a hope that the abuse will stop.

None of these situations should, by itself, lead a GAL or court to conclude that the parent is neglecting the child, or that foster care is necessary to protect the child. We outline several legal questions that GALs should consider both to protect the child from abuse and to protect the child's relationship with her non-offending parent.

1. Should the GAL File a Petition for an Order of Protection?

If the child has been the victim of abuse — including battery, explicit or implicit threats of abuse, or harassment⁴³ — GALs should consider filing for an order of protection themselves on behalf of a child client. Missouri law explicitly empowers GALs to do so,⁴⁴ and the Missouri Supreme Court's GAL standards direct GALs to file petitions when appropriate.⁴⁵

A GAL's petition for an order of protection can seek the full range of relief available through Missouri's domestic violence statutes, including stay away orders, orders providing for legal and physical custody of the child, orders governing child support, and orders requiring abusers to enter batterers' intervention programs. Such relief may be essential to making the child's continued residence with her parent a safe and viable option — yet they are generally not considered in juvenile cases, especially when the abuser is not a parent and thus not a party to the juvenile case. Seeking an order requiring a batterers' intervention program can be particularly important because services directed at the batterer are unlikely to be provided through the juvenile case; the Children's Division Manual describes assessing the dan-

ger posed by a batterer and suggests "encouraging" a batterer to attend a treatment program, but says nothing about requiring such interventions.⁴⁶

Filing for an order of protection can help frame the juvenile court case to protect the child's safety and keep the child's family together, without putting those goals in unnecessary conflict. As discussed above, juvenile courts often analyze cases as mothers' "failure to protect" children from abusive partners.⁴⁷ Seeking an order of protection helps GALs build a counter-narrative consistent with the GREENBOOK: This is a case about an abusive partner, and how to protect the child from that partner while maintaining her relationship with her mother.

2. Are there grounds for the juvenile court to take jurisdiction over a GAL's child client?

GALs should consider whether juvenile court jurisdiction serves their client's best interests. Children have an interest in the court asserting jurisdiction when necessary to keep them safe. On the other hand, when alternatives to court jurisdiction can

40. The Missouri Children's Division's manual lists 16 "barriers to leaving" abusive partners. Missouri Department of Social Services, Children's Division Manual, Sec. 7 ch. 24, http://dss.mo.gov/cd/info/cwmanual/section7/ch1_33/sec7ch24.htm.

41. Missouri is not one of the small but growing number of jurisdictions with "sick and safe days" legislation, which protect employees if they have to miss work to pursue legal action to protect themselves or their children from domestic violence. E.g. D.C. Code § 32-131.02(b)(4).

42. Joan Pennell, *Safeguarding Everyone in the Family – Family Group Conferences and Family Violence*, September Soc. WORK NOW 4, 5 (2007) ("severely abused women relayed, living in hiding makes them 'so alone, so alienated,' 'depressed,' and 'sick' and their children need the 'safety net' of family connections.").

43. Mo. Rev. Stat. § 455.010(1) defines "abuse" broadly. Any behavior that falls within this statutory definition can provide grounds for an order of protection.

44. Mo. Rev. Stat. § 455.503.2(2).

45. Missouri Standards for Guardians Ad Litem, Standard 4.0 (rev. 2011).

46. Missouri Department of Social Services, Children's Division Manual, Sec. 7 ch. 24, http://dss.mo.gov/cd/info/cwmanual/section7/ch1_33/sec7ch24.htm.

47. *Supra* note 12 and accompanying text.

keep children safe, then court jurisdiction can cause anxiety for children, infringe on the child's right to family integrity, and risk separating the child from a non-offending parent.

If GALs determine that court jurisdiction is not necessary, there will often be strong arguments that past domestic violence incidents do not amount to abuse or neglect. Consider this fact pattern (based loosely on a case in which we have been involved):

One evening a woman and her abusive partner are drinking, while her children watch television in the other room. The partner assaults the woman, and she defends herself by hitting him with an empty wine bottle, and then calls the police. When the police arrive, he claims that she attacked him, and points to his

injuries from the bottle. Unsure who to believe, the police arrest both. There are no other adults in the house, so the children are taken into shelter care. A deputy juvenile officer then seeks protective custody of the children because they do not have child-care while their mother is in jail, and files a petition alleging that the children are without proper care, custody, or support. Authorities release the woman that weekend, she is not charged criminally, and she immediately requests custody of her children.

Juvenile court may not be necessary to protect these children, especially if their mother can protect them. It would be difficult to establish by clear and convincing evidence that the children were without proper parental custody *because of* parental neglect — a necessary conclusion to assert jurisdiction.⁴⁸ First,

the mother acted in reasonable self-defense; the party primarily at fault was her abusive boyfriend. Second, the party secondarily at fault was the police, who, except in very unusual cases, should not arrest both individuals in a domestic violence case and instead should determine who is at fault and arrest that person or nobody. Moreover, unless the incident is particularly severe, "one isolated incident does not suggest the failure by mother to supply the minimum quality of care which the community will tolerate."⁴⁹

3. If the Juvenile Court Takes Jurisdiction, Is There a Way to Protect a Child From Abuse and Keep the Child in the Non-offending Parent's Custody?

The GREENBOOK emphasizes that the court system should "keep[] children whenever possible in the custody of their non-offending parents."⁵⁰ The law presumes that parental custody serves children's best interests,⁵¹ and the Supreme Court has recognized that "children suffer from uncertainty and dislocation" during temporary separations from their parents.⁵² A growing body of social science research shows that placement in foster care, even briefly, harms children's long-term outcomes.⁵³ When advocating that custody with a non-offending parent is the presumptively best option for children, GALs will have strong legal authority on which to rely — both Missouri's non-offending parent statute⁵⁴ and the U.S. Constitution protect a parent and child's right to live together absent proof of a parent's unfitness.⁵⁵

Moreover, GALs should ensure that court proceedings include a thoughtful and individualized assessment of the relative harms of domestic violence and removing a child from home. The GREENBOOK explains that the "impact of domestic violence on children ranges from

48. *In re G.C.*, 50 S.W.3d 408, 410 (Mo. Ct. App. E.D. 2001) ("To assert jurisdiction under § 211.031.1(1), the juvenile court must find clear and convincing evidence that the child is in need of care *because* the parent has neglected to provide the care necessary for the child's well-being.") (*Emphasis added.*)

49. *In re S.B.*, 712 S.W.2d 18 (Mo. Ct. App. E.D. 1986). A pattern is not always necessary to prove neglect. *In re G.C.*, 50 S.W.3d at 411. Chief Judge Teitelman has convincingly articulated why a single incident usually ought not trigger juvenile court jurisdiction: "[W]hen there is no clear need of medical or other immediate care as a result of the past parental conduct, and when that conduct has not been severely neglectful, then there reasonably, at a minimum, ought to be some indication of a pattern or course of past conduct . . ." *Id.* at 417 (Teitelman, J., concurring).

50. Lauren J. Litton, *Helping St. Louis County Families: A Guide for Court Professionals on the Co-Occurrence of Domestic Violence and Child Abuse/Neglect*, at 3 (2007), available at http://www.thegreenbook.info/documents/SLC_Court_Guide.pdf.

51. *Troxel v. Granville*, 530 U.S. 57, 68 (2000).

52. *Stanley v. Illinois*, 405 U.S. 645, 647 (1972).

53. For instance, MIT professor James Doyle found that children placed in foster care had higher juvenile delinquency rates, higher teen birth rates, lower earnings, and higher rates of adult arrests, convictions, and prison sentences than similarly at-risk children left at home with their families. Joseph J. Doyle, *Child Protection and Adult Crime: Using Investigator Assignment to Estimate Causal Effects of Foster Care*, 116 J. OF POL. ECON. 746, 748 (2008); Joseph J. Doyle, *Child Protection and Child Outcomes: Measuring the Effects of Foster Care*, 97 AMER. ECON. REV. 1583, 1607 & n. 2 (Dec. 2007).

54. Mo. Rev. Stat. § 211.037.

55. *Stanley*, 405 U.S. at 649.

none to serious.”⁵⁶ Before a child is removed from a parent, therefore, a GAL should ensure that the court has evidence demonstrating a real harm to the child that is greater than the harm of removing the child from his parent, not only that a child has been exposed to domestic violence.

IV. Conclusion

Missouri has a strong foundation for meeting the legal needs of children subjected to domestic violence, including specialized courts and remedies which are accessible

in a variety of situations. To further its goals of protecting children from domestic violence, Missouri should strengthen existing remedies and remove barriers to more accessible and holistic approaches to the problem. Such reforms would enable Missouri achieve its aspiration of a fully unified family court system. This would enable children’s GALs to advocate

fully both for children’s safety and, consistent with the Greenbook Initiative, for children to remain in the custody of their non-offending parents whenever possible and to achieve a truly one-court, one family system.

□ □ □

56. St. Louis County Greenbook Initiative, *The Co-Occurrence of Child Maltreatment and Domestic Violence: Guidelines for Case Management in Child Welfare*, at I (2007), available at http://www.thegreenbook.info/documents/STL_casemgmt.pdf (last visited July 9, 2012).

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