

LAWS RELATED TO CHILD WITNESSES OF DOMESTIC VIOLENCE

Office of Legislative Oversight

Report Number 2006-1

October 18, 2005



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EXECUTIVE SUMMARY

This report by the Office Legislative Oversight (OLO):

- Identifies laws in other states related to child witnesses of domestic violence;
- Reviews published analyses of states' experiences implementing these laws; and
- Summarizes the arguments presented by proponents and opponents of these laws.

The Council requested this information to assist it in determining whether to pursue similar legislation in Maryland.¹

Most of the research on how witnessing domestic violence affects children has been conducted during the past 10-15 years. The research shows that children who witness domestic violence face greater risks of suffering serious emotional, behavioral, and cognitive difficulties that may stay with them into adulthood.

The following 22 states employ various laws establishing consequences for adults who allow children to witness domestic violence:

Alaska	Idaho	North Carolina
Arizona	Illinois	Ohio
Arkansas	Indiana	Oklahoma
California	Montana	Oregon
Delaware	Minnesota	Utah
Florida	Mississippi	Washington
Georgia	Nevada	
Hawaii	New York	

In sum, the laws provide that the state can impose one or more of the following consequences if a child witnesses an act of domestic violence:

- Require the abuser to pay for any state-ordered counseling needed by the child;
- Extend the sentences for crimes that involve domestic violence;
- Allow the state to charge the abuser with an additional crime of child maltreatment; and/or
- Require the state to investigate the abuser *or* the abused partner for child maltreatment.

Just as the established consequences differ among states, so does the definition of "witnessing." Some state laws clarify that "witnessing" means the child sees or hears the violence, while a few states provide no clarification at all.

¹The scope of OLO's assignment did not include reviewing current Montgomery County practices related to child witnesses of domestic violence.

Literature on children exposed to domestic violence reveals deep controversy over enacting new laws that define witnessing as maltreatment and over using existing maltreatment laws that are silent on witnessing to prosecute domestic violence victims for child neglect.

Arguments supporting these controversial approaches include:

- Child welfare agencies should intervene in order to prevent or treat the emotional and cognitive effects of exposure to domestic violence;
- Children are safer in out-of-home care rather than in a home in which domestic violence occurs; and
- Communities may otherwise miss an opportunity to break a multi-generational cycle of violence.

Arguments opposing these controversial approaches include:

- Researchers need to further study why all child witnesses of domestic violence do not suffer the same effects, and identify the relevant risk and protective factors that affect their experiences;
- Child welfare agencies should consider the effects suffered (and risks faced) by children who are removed from their homes; and
- Victims of domestic violence may be reluctant to seek voluntary assistance if they fear that their children will be taken away.

Perhaps the most controversial element of this approach is that abused partners may be at greater risk of facing maltreatment charges than the abusive partner. In many states, the structure and language of maltreatment laws require the state to prove *child abuse* against the domestic abuser. This typically requires that the state prove that a specific action caused an actual diagnosable mental injury. However, the state could pursue *child neglect* charges against the abused partner, in which it may only have to prove that a lack of action caused a risk of injury.

The field of research looking at issues related to child witnesses of domestic violence may be able to resolve some of these arguments as it matures. Currently lacking this, a review of states' laws indicate that legislators have more openly embraced laws that ensure that adults convicted of crimes involving domestic violence receive additional jail time if the crime was committed in the presence of children.

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I. AUTHORITY, SCOPE OF REVIEW, ORGANIZATION OF REPORT, METHODOLOGY, AND DEFINITIONS

A. Authority

Council Resolution 15-1092, *FY 2006 Work Program of the Office of Legislative Oversight*, adopted July 26, 2005.

B. Purpose and Scope of Review

This report by the Office Legislative Oversight (OLO) summarizes:

- Laws related to child witnesses of domestic violence;
- Published analyses of their impact; and
- Arguments supporting and opposing them.

The Council requested this information to assist it in determining whether to pursue similar legislation in Maryland.

The scope of OLO's assignment did not include reviewing current Montgomery County practices related to child witnesses of domestic violence.

C. Organization of Report

Chapter II, Impact of Witnessing Domestic Violence, provides background information on the effects of exposing children to domestic violence.

Chapter III, Laws Related to Child Witnesses of Domestic Violence, details the statutes used by other states to protect children exposed to domestic violence.

Chapter IV, Review of Implementation Experiences, presents OLO's review of research and analysis of the implementation of a variety of statutory measures identified in Chapter III, including viewpoints from proponents and opponents of these statutes.

Chapters V, Summary of OLO's Research.

¹³ The Child Abuse Prevention and Treatment Act (CAPTA), U.S.C.A. § 5106g(2)

D. Acknowledgements and Methodology

Office of Legislative Oversight staff member Suzanne Langevin conducted this study, with significant editorial assistance from OLO staff member Scott Brown. Council staff members Joan Planell, Michael Faden, Linda McMillan, and Amanda White also offered their assistance.

OLO gathered information through internet and print resources to identify statutes and legislative approaches throughout the country. OLO also reviewed published critiques of the various legislative approaches.

E. Definitions

The following terms appear throughout this report. Unless otherwise specified in the text, they are defined as follows:

Abuser and Abused. These terms refer to adults identified as perpetrators and victims of domestic violence as self-reported by the victim, or as suspected by a child welfare agency. Except when otherwise specified, they do not indicate that the perpetrator has been charged with or convicted of a crime involving domestic violence.

Child Abuse. This term refers to any 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 which presents an imminent risk of serious harm.³

Child Neglect. This term refers to a failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation which presents an imminent risk of serious harm.⁴

Child Maltreatment. This term encompasses both child abuse and neglect.

Parent or Caretaker. This term refers to any adult subject to a state's child maltreatment laws. Typically these laws apply to all or some of the following: parent, guardian, custodian, household member, or other adult responsible for the care of a child.

Partners. This term refers to adults in a current or former intimate relationship, regardless of whether cohabitating or married.

Domestic Violence. This term refers to a range of physical, sexual, or emotional maltreatment of an adult by his/her current or former partner.

Witnessing Domestic Violence. OLO uses this phrase interchangeably with "exposure to domestic violence" throughout this report. Both terms refer to children living in households where domestic violence occurs between adults.

⁴ Ibid

II. IMPACT OF WITNESSING DOMESTIC VIOLENCE

During the past decade, researchers studying victimization began to focus their attention on the “invisible victims” of domestic violence: child witnesses. Research estimates that slightly more than half of women who are victims of domestic violence have children under the age of 12 living with them.

A bulletin published in 2003 by the National Clearinghouse on Child Abuse and Neglect⁵ describes two categories of negative effects on children exposed to domestic violence.

Behavioral, social, and emotional problems. Children exposed to domestic violence experience higher levels of:

- Aggression, anger, oppositional behavior, and disobedience;
- Fear, anxiety, withdrawal, and depression; and
- Low self-esteem and other trauma-related symptoms.

Cognitive and attitudinal problems. Children exposed to domestic violence experience:

- Lower cognitive functioning;
- Poor school performance;
- Lack of conflict resolution skills;
- Limited problem solving skills;
- Belief in rigid gender stereotypes and male privilege; and
- Increased tolerance for and use of violence in adult relationships.

Studies of adults who witnessed domestic violence as children found that many of these effects last into adulthood. In particular, researchers have found a greater likelihood of trauma-related symptoms in adult men, while adult women continue to suffer from trauma-related symptoms, depression, and low self-esteem.⁶

Researchers have shown that domestic violence and child abuse frequently occur within the same household. In 1990, a national survey of over 6,000 families revealed that 50% of the men who frequently abused their wives also frequently abused their children.⁷ The same survey, and other studies, reveals that not only do violent husbands abuse their children, but abused mothers in turn abuse their children by at least double the rate of other mothers.⁸

⁵ National Clearinghouse on Child Abuse and Neglect. “Children and Domestic Violence: A Bulletin for Professionals.”

⁶ Edleson, Jeffrey, Ph.D. “Should Childhood Exposure to Domestic Violence be Defined as Child Maltreatment Under the Law?”

⁷ Straus, M.A. & Gelles, R.J. “Physical Violence in American Families.”

⁸ Ibid

However, some experts in the field point to the high incidence of child abuse among child witnesses of domestic violence and argue that much of the research on the impact of witnessing domestic violence fails to account for this co-occurrence.

The few small studies that differentiate between child witnesses and abused children reveal that abused children who also witnessed domestic violence experienced the most severe problem behaviors. These children also self-report that the child abuse caused the greatest negative effects.⁹

In addition to this concern, these experts note that:

- Researchers have not been able to reach consensus on the minimum threshold of exposure to domestic violence that may cause children to suffer these negative effects;
- Researchers have conducted their studies on the effects of witnessing domestic violence primarily on children residing in family shelters; and
- Researchers do not understand how the presence of protective and risk factors may influence the negative effects of witnessing domestic violence.¹⁰

Further study of these concerns may enable researchers to identify which child witnesses of domestic violence are at greatest risk of harm. This would enable lawmakers and practitioners to target their efforts to these children.

⁹ Edleson, Jeffrey, Ph.D. "Should Childhood Exposure to Domestic Violence be Defined as Child Maltreatment Under the Law?"

¹⁰ Ibid

III. LAWS RELATED TO CHILD WITNESSES OF DOMESTIC VIOLENCE

A. Overview

Responding to the potentially serious negative effects suffered by children who witness domestic violence, states across the country employ a variety of laws addressing child witnesses of domestic violence. Some states have re-interpreted existing child maltreatment statutes, while others have enacted new criminal and civil laws.

Table 1 (below) lists the 22 states that address the issue of child witnesses of domestic violence. The table lists the states by category of consequences for a parent or caretaker who exposes a child to domestic violence. In sum:

- In 15 states, the abuser faces an increased sentence if convicted of a crime that involves domestic violence if the violence is witnessed by a child;
- California, Illinois, and New York have prosecuted the abuser or the victim of domestic violence for exposing a child to the violence under their existing maltreatment statutes;
- Alaska and Minnesota statutes require local child welfare agencies to investigate reports of children witnessing domestic violence; and
- In California, Illinois, and Alaska, the abuser faces more than one consequence for exposing a child to domestic violence.

Table 1: Consequences of Exposing a Child to Domestic Violence

Consequence of Exposing a Child to Domestic Violence	States
Abuser faces increased sentence if convicted of crimes that involve domestic violence	Alaska, Arizona, Arkansas, California, Florida, Hawaii, Idaho, Illinois, Montana, Mississippi, North Carolina, Ohio, Oklahoma, Oregon, Washington
Abuser faces additional charges for child maltreatment if prosecuted for crime that involves domestic violence	Delaware, Georgia, Utah
Abuser or abused partner may face child maltreatment charges	California, Illinois, New York
Abuser or abused partner faces investigation by child welfare agency for emotional maltreatment	Alaska, Minnesota
Abuser liable for child's counseling costs if convicted of a crime that involves domestic violence	Illinois, Nevada
Abuser faces limitations on custody and visitation rights	Indiana
None Identified	Maryland, 27 other states

Source: OLO, National Clearinghouse on Child Abuse and Neglect, and state statutes (see Appendix)

The rest of this chapter provides greater detail of the various statutory approaches taken by the 22 states:

- **Part B** describes the various legal criteria the 22 states use to define “witnessing”;
- **Part C** describes the civil penalties allowed by statute in the states of Illinois, Indiana, and Nevada;
- **Part D** summarizes the criminal statutes in 18 states; and
- **Part E** describes the child welfare system responses required by statute in two states, and allowed by courts in two others.

B. “Witnessing” Defined

The 22 states that employ statutes to address child witnessing of domestic violence do not share a common definition of “witnessing.” The table below shows the range of definitions in place. Ten states specify that the domestic violence must occur in the physical presence of a child or that the child can see or hear the violence. Eight states simply require that a child was present – remaining silent on whether that includes circumstances under which a child may have heard, but not seen, the violence.

Ohio’s definition is the most specifically written, but covers the broadest range of conditions. It reads that a child has witnessed domestic violence if it occurred within “30 feet or within the same residential unit occupied by the child, regardless of whether the child is actually present or can actually see the commission of the offense.”¹¹

The remaining four states, Nevada, Delaware, Minnesota, and New York do not define witnessing.

Table 2: State Definitions of “Witnessing”

Witnessing Defined by Statute Language	States
Requires physical presence of a child or child able to see or hear domestic violence	Alaska, Georgia, Hawaii, Idaho, Illinois, Mississippi, Montana, Oklahoma, Washington, Utah
Requires presence of a child	Arizona, Arkansas, California, Florida, Indiana, North Carolina, Oregon
Other	Ohio
Not defined	Nevada, Delaware, Minnesota, New York

Source: OLO, National Clearinghouse on Child Abuse and Neglect, state statutes (see Appendix)

¹¹ Ohio State Code, §2929.01 (See Appendix).

C. Civil Consequences

Perpetrators of domestic violence in Illinois, Indiana, and Nevada face civil consequences if children witness the violence. The table below shows that Illinois and Nevada law make an abuser financially responsible for any counseling of the affected children deemed necessary by the state. Under Indiana law, in the event of separation or divorce, an abusive spouse is limited to only supervised visitation with his/her children if they have witnessed him/her committing an act of domestic violence.

Table 3: Civil Consequences of Exposing a Child to Domestic Violence

Consequence	State
Abuser financially liable for state-ordered child counseling	Illinois, Nevada
Abuser permitted only supervised visitation for up to two years in the event of separation or divorce	Indiana

Source: OLO and state statutes (see Appendix)

D. Criminal Justice Systems

In 18 states, perpetrators of domestic violence face criminal consequences if a child witnesses the violence. Courts can increase the abuser's sentence in 15 of these states. In the remaining three states, abusers face additional maltreatment charges if a child witnesses an alleged criminal act that involves domestic violence.

1. States that Allow Extended Sentences

Fifteen states consider exposing a child to domestic violence to be an aggravating circumstance in crimes involving domestic violence. Of these states, seven stipulate the increased penalty resulting from that aggravating circumstance, while eight allow for a judge's discretion. Table 4 summarizes the range of penalties for each of the 15 states.

Table 4: Increased Penalties for Committing a Crime Involving Domestic Violence Witnessed By a Child

State	Increased Penalty
Alaska	The sentence is increased from the presumptive mid-length to the maximum length
Arizona	The sentence is increased from six months to ten years
Arkansas	If convicted of felony domestic battering, the sentence is increased by ten years
California	Sentence may be increased from the presumptive mid-length to the maximum length
Florida	The subtotal of sentencing points is increased by 1.5 times (Florida assesses "sentencing points" for crimes that determines the sentence length)
Idaho	The sentence is doubled
Illinois	The sentence is increased by additional imprisonment for at least ten days and/or 300 hours of community service
North Carolina	The sentence requires supervised probation. A subsequent violation in the presence of a minor requires no less than 30 days imprisonment
Oklahoma	For the first offense, the sentence must be for 6 months to 1 year, and/or a fine not exceeding \$5,000. For subsequent offenses, the sentence is for 1 to 5 years and/or a fine not exceeding \$7,000
Oregon	Upon conviction, an assault is upgraded to Class C felony which has a maximum penalty of 5 years
Hawaii Mississippi Montana Ohio Washington	Discretion of the judge

Source: OLO and state statutes (see Appendix)

2. States that Allow Companion Charges of Child Maltreatment

Delaware, Georgia, and Utah statutes authorize companion charges of child maltreatment to criminal charges that involve domestic violence, if a child witnessed the alleged crime. Table 5 details the statute language and penalties used by these states.

Table 5: Definitions and Penalties Associated with Companion Charges of Maltreatment

State	Criminal Offense	Definition	Penalty
Delaware	Endangering the Welfare of a Child	Any violent felony, or reckless endangering second degree, assault third degree, terroristic threatening, or unlawful imprisonment second degree against a victim, knowing that the act witnessed by a child who is a member of the person's family or the victim's family	Up to 1 year in jail and/or up to \$2,300 fine (Class A Misdemeanor)
Georgia	Act of Cruelty to Children in 3 rd Degree	Intentionally allowing a child to witness the commission of a forcible felony, battery, or family violence battery; or committing those crimes knowing that a child is present and sees or hears the act	Misdemeanor for first or second offense; or Upgraded to a felony and 1 to 3 years in jail and/or \$1,000 to \$5,000 fine upon subsequent offenses
Utah	Child Abuse	Committing an act of domestic violence in the presence of a child; Intentionally causing serious bodily injury to a cohabitant in the presence of a child; or Criminal homicide or attempted criminal homicide against a cohabitant in the presence of a child	Up to 6 months in jail for acts of domestic violence (Class B Misdemeanor); or Up to 5 years in jail for criminal homicide, attempted homicide, or if the crime causes serious bodily injury (3 rd Degree Felony)

Source: OLO and state statutes (see Appendix)

E. Other Approaches

The research literature on child witnesses of domestic violence commonly cites five states that use their child welfare systems in unique ways to protect children from witnessing domestic violence. In California, Illinois, and New York, courts have decided several cases that expand the legal definition of child maltreatment to include witnessing domestic violence. This allows child welfare agencies to investigate cases of child witnesses of domestic violence. The other two states, Alaska and Minnesota, have revised their statutes to require the local child welfare agency to initiate investigations into maltreatment and subsequently offer any necessary services.

1. Prosecution Under Existing Maltreatment Statutes

Child maltreatment laws in all states must meet the federal minimum standards established by the Child Abuse Prevention and Treatment Act of 1974. This mandate requires states to address deliberate acts (abuse) and failures to act (neglect) that put their children at risk of physical or emotional harm.¹²

The table below details the language used by California, Illinois, and New York to address emotional harm. Experts cite these states as three that have successfully prosecuted the abuser *or* the victimized partner under existing child maltreatment statutes that do not specifically include language regarding witnessing domestic violence.

Table 6: States that Prosecute Under Existing Maltreatment Statutes

State	Statutes that Address Emotional Harm
California	Statute defines “severe neglect” as causing or permitting mental suffering of a child
Illinois	Statute defines “abused child” as a child whose parent or caretaker allows or creates a substantial risk of physical injury that would likely impair the child’s emotional health
New York	Statute defines “neglected child” as a child whose mental or emotional condition has been impaired (or is in imminent danger of becoming impaired) as a result of the failure of his parent or caretaker to exercise a minimum degree of care The statute defines mental or emotional impairment as a substantially diminished psychological or intellectual functioning clearly attributable to the unwillingness or inability of the parent or caretaker to exercise a minimum of degree of care

Source: OLO and state statutes (see Appendix)

¹² 42 USC 5106g

2. Child Welfare Agency Response

Alaska and Minnesota have revised their statutes to establish criteria under which the local child welfare agency should step in to protect child witnesses of domestic violence. Table 7 below provides excerpts from the states' codes that detail the criteria under which the agency should begin an investigation.

The Minnesota statute is accompanied by another that requires the child welfare agency to consider risk and protective factors in the child's life in determining whether ongoing supervision by the agency is needed.¹³

In either state (and across the nation), if the local agency determines that the child has suffered maltreatment, it may:

- Provide a range of intervention services;
- Remove the child from the home if he/she is not safe; and/or
- Refer the case for prosecution as criminal maltreatment. (Generally speaking, only a small subset of cases will be referred for criminal prosecution.)

**Table 7: Criteria for Initiating Child Welfare Agency Investigations
Due to Child Exposure to Domestic Violence**

State	Criteria for Investigation
Alaska	Exposure to murder, assault, or sexual assault by one household member against another, or attempts to commit these crimes; or Repeated exposure to conduct by one household member against another that is a nonviolent crime such as reckless endangerment or stalking
Minnesota	Exposure to violent behavior of a parent or caretaker that imminently or seriously endangers the child's physical or mental health or exposure to repeated domestic assault between parents or caretakers

Source: OLO and state statutes (see Appendix)

¹³ Minnesota Code, §1626.5552 (See Appendix).

IV. REVIEW OF IMPLEMENTATION EXPERIENCES

This chapter reviews the available research on the implementation of the statutory approaches discussed in chapter IV, including the primary arguments presented by the proponents and opponents of each approach.

- **Part A** discusses Alaska's and Minnesota's experience implementing their laws that protect child witnesses of domestic violence; and
- **Part B** discusses three states' (California, New York, and Illinois) experiences applying existing child maltreatment statutes to protect children who witness domestic violence.

A. Defining Witnessing as Child Maltreatment

In the late 1990's both Alaska and Minnesota enacted statutes that included exposure to domestic violence as maltreatment. Alaska's statute was part of a package of statutes that emanated from a state-wide conference on domestic violence. This package of statutes not only included exposure to domestic violence as maltreatment but also included guidance to the local child welfare agencies on appropriate responses to these cases. On the other hand, Minnesota enacted a single statute that included exposure to domestic violence as maltreatment, requiring the child welfare agency to respond to these cases as they would to any other report of neglect.

1. Alaska's Experience

Following a 1997 Domestic Violence Summit, Alaska implemented statutes to address a number of domestic violence issues. One of these statutes expanded the definition of "child in need of aid" to include children at:

...substantial risk of mental injury as a result of exposure to conduct by a household member, against another household member, that is [murder, assault or sexual assault],...an attempt to commit an offense [of murder, assault or sexual assault]; or repeated exposure to conduct by a household member,...against another household member that is [a nonviolent crime such as reckless endangerment and stalking].¹⁴

In addition, Alaska passed related legislation that guided the local child welfare agencies in "appropriate steps" to protect these children in need of aid. "Appropriate steps" include:

- a) Reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is not a domestic violence offender;
- b) Reasonable efforts to remove the alleged domestic violence offender from the child's residence if it is determined that the child or another family or household member is in danger of domestic violence; and

¹⁴ Alaska Statute 47.10.011

c) Services to help protect the child from being placed or having unsupervised visitation with the domestic violence offender.¹⁵

A third statute exempted domestic violence workers from mandatory reporting of these cases of maltreatment if the worker “has reasonable cause to believe that the child is in safe and appropriate care and not presently in danger of mental injury as a result of exposure to domestic violence.”¹⁶

In her review of the impact of these statutes, researcher Lois A. Weithorn (Assistant Professor of Law at the University of California’s Hastings College of the Law) reports that this has been interpreted as exempting domestic violence workers from reporting exposure in cases in which “the adult domestic violence victim is making effective use of voluntary services,” or if the child is not “presently in danger.”¹⁷ However, the state does not provide direct guidance on evaluating these factors.

As to the impact of these statutes, a review of the Alaska Department of Health and Social Services “Child Reports of Harm” reveals that, “mental injury” (the category that includes exposure to domestic violence), increased by 244% in the first year after implementation. However, this increase in reports of “mental injury” was offset by a corresponding decrease in other categories; resulting in an overall rate of maltreatment that remained substantially even.

Based on her interviews with state officials, Weithorn notes that:

Caseworkers and state attorneys report an easier time getting jurisdiction in cases of childhood exposure to domestic violence because they no longer need to convince the judge that there is a nexus between domestic violence and emotional harm in the absence of direct physical injury to the children. Furthermore, officials report that cases involving children’s exposure to domestic violence are often identified earlier, with child protective services delivering services more efficiently and appropriately to battered women and their children.¹⁸

2. Minnesota’s Experience

In 1999, Minnesota amended its definition of child neglect to encompass four conditions related to exposure to domestic violence. These conditions subject both the abuser, as well as the victim, to a finding of child neglect. See Table 8 for a comparison of the 1999 statute with the previous version.

The amended statute also relaxed the existing requirement that the child’s physical or mental health be “imminently and seriously endanger[ed].” As it related to exposure to

¹⁵ Alaska Statute 47.17.035

¹⁶ Alaska Statute 47.17.020

¹⁷ Weithorn, Lois A., J.D., Ph.D. “Protecting Children from Exposure to Domestic Violence: The Use and Abuse of Child Maltreatment Statutes”

¹⁸ Ibid

domestic violence, neglect required only that a parent or caretaker engage in behavior that could “reasonably result in serious physical, mental, or threatened injury, or emotional damage to the child.”

For the nonoffending parent or caretaker, the threshold for maltreatment was even lower; requiring only that the child be subjected to ongoing domestic violence that “is likely to have a detrimental effect on the well-being of the child.”¹⁹

Table 8: Minnesota’s Definition of Child Neglect – 1998 vs. 1999

1998	1999
<p>"Neglect" means...</p> <p>failure to protect a child from conditions or actions which <i>imminently and seriously endanger</i> the child's physical or mental health when reasonably able to do so....</p>	<p>"Neglect" means...</p> <p>failure to protect a child from conditions or actions which imminently and seriously endanger the child's physical or mental health when reasonably able to do so.... ; or</p> <p>the parent or other person responsible for the care of the child:</p> <ul style="list-style-type: none"> • engages in violent behavior that could reasonably result in serious physical, mental or threatened injury, or emotional damage to the child; • engages in repeated domestic assault...; • intentionally inflicts or attempts to inflict bodily harm against a family or household member... within sight or sound of the child; or • subjects the child to ongoing domestic violence by the abuser in the home environment that <i>is likely to have a detrimental effect</i> on the well-being of the child.

Source: OLO and Minnesota Statutes 1998, 626.556 and Minnesota Statutes 1999, 626.556

Inserted into the final draft of a previously debated mandatory maltreatment reporting bill, this new statutory language received little to no attention before its passage. Concerns began to grow once the Minnesota Department of Human Services (MDHS) transmitted implementation guidelines to the local child welfare agencies.²⁰

¹⁹ Minnesota Statutes 1999, Chapter 626

²⁰ Weithorn, Lois A., J.D., Ph.D. “Protecting Children from Exposure to Domestic Violence: The Use and Abuse of Child Maltreatment Statutes”

These guidelines acknowledged that both the perpetrator *and the victim* of domestic violence was subject to a neglect finding for not taking reasonable action to protect a child from witnessing ongoing domestic violence.²¹ Domestic violence workers were required to report cases in which the victim takes or sustains no reasonable steps to stop violence that is likely to have a detrimental effect on the child....²²

MDHS guidance further stated that local agencies should “conduct careful assessments of the risks, strengths, and needs of the family” in order to determine whether to pursue a neglect finding or to refer the family to voluntary services. The Minnesota Association of Social Service Directors surveyed its members to assess the fiscal impact of this guidance. Based on the data it collected shortly after enactment, the Association estimated that the annual number of cases screened would jump from 1,812 to over 9,000 costing over \$30 million.²³

In their next session, the Minnesota legislature repealed the language, restoring the neglect Section of Chapter 626 to its previous form. A new Section was added to the same Chapter, defining exposure to domestic violence. Excluded from the definition of neglect, child exposure to domestic violence is no longer subject to mandatory reporting. Furthermore, the legislation required the child welfare agency to provide services to these families only if funded by the legislature and Governor.²⁴

3. Views of Proponents and Opponents

Proponents of statutes that define exposure to domestic violence as maltreatment argue that without them:

- Children remain the “invisible victims” of domestic violence;
- Child welfare agencies cannot intervene to prevent or counteract the emotional and cognitive effects of exposure to domestic violence; and
- Communities miss an opportunity to break the multi-generational cycle of violence.

²¹ Minnesota Department of Human Services, “Bulletin #99-68-15”, 1999.

²² Ibid

²³ Weithorn, Lois A., J.D., Ph.D. “Protecting Children from Exposure to Domestic Violence: The Use and Abuse of Child Maltreatment Statutes”

²⁴ Minnesota Session Laws 2000 – Chapter 401

Opponents of these statutes argue that:

- Researchers need to further study why not all children suffer the same effects, and identify the relevant risk and protective factors that affect their experiences;
- Service models and specific services that are effective for abused partners seeking services voluntarily may not be effective for those who are required by a child welfare agency to seek assistance.
- The risk of separation from his/her child may discourage an abused partner from reporting domestic abuse, and the abuser may use this risk to control the victim.

Both sides cite concern about the availability of resources to assist these children. A 1997 GAO report that studied child protective services across the country noted that child welfare agencies across the country are overburdened and under-resourced. As a result, many only investigate the most serious reports.²⁵ Minnesota's experience with its 1999 statute indicates that a broadly-written statute can overwhelm an already stressed child protection agency.

B. Using Existing Child Maltreatment Laws

All states have statutes prohibiting emotional maltreatment of children. The National Clearing House on Child Abuse and Neglect's 2002 survey of all states concluded that the language used to define emotional maltreatment is often subjective or vague. It reports that the typical language used resembles "injury to the psychological capacity or emotional stability of the child as evidenced by an observable or substantial change in behavior, emotional response, or cognition," or as evidenced by "anxiety, depression, withdrawal, or aggressive behavior."²⁶ (Maryland's statutes addressing emotional maltreatment reflect this language, and can be found in the Appendix at ©13).

Research on the use of existing maltreatment statutes to address child witnesses of domestic violence indicates that the majority of state courts handle the vagueness of these emotional maltreatment statutes by placing "stringent requirements in the mental injury or psychological harm category."²⁷

However, the literature reviewed cites California, Illinois, and New York as states that employ existing maltreatment laws to prosecute parents or caretakers for exposing a child to domestic violence, even when the laws are silent on this issue. The challenge of researching case law on the state level makes it difficult to speculate on the likelihood that additional precedents in other states exist.²⁸

²⁵ Child Protective Services: Complex Challenges Require New Strategies." United States General Accounting Office. GAO/HEHS-97-115. July 1997.

²⁶ National Clearing House on Child Abuse and Neglect

²⁷ Weithorn, Lois A., J.D., Ph.D. "Protecting Children from Exposure to Domestic Violence: The Use and Abuse of Child Maltreatment Statutes"

²⁸ A review of Maryland Court of Appeals decisions did not reveal any relevant cases.

1. California

California child welfare agencies and courts have used their maltreatment statutes to protect children living with domestic violence. California courts have even ruled that living in a household with domestic violence may constitute neglect on the part of the abuser. In *Helen and Heather A.*,²⁹ the Court decided:

It is clear to this court that domestic violence in the same household where the children are living is neglect; it is a failure to protect Helen and Heather from the substantial risk of encountering the violence and suffering serious physical harm or illness from it. Such neglect causes the risk.³⁰

Researchers studying case law in California and across the nation have found that it is the abused partner that most often faces charges of neglect in these circumstances.³¹

2. Illinois

Research also cites Illinois court decisions that make findings of neglect based on exposure to domestic violence. In *re A.D.R.*³², the Court concluded that exposing children to repeated acts of domestic violence constitutes neglect based on the probability that it will cause emotional damage if allowed to continue. However, in a later case (*re S.S.*), the Court rejected an attempt to expand that decision to encompass situations in which a child is exposed to a single act of domestic violence.³³

3. New York

Court cases in New York involving domestic violence and child maltreatment have established that an adult can be charged with maltreatment without the requirement that the child suffered *actual* harm. For instance in *People v. Johnson*,³⁴ Johnson was convicted of maltreatment for attacking his ex-girlfriend in the presence of her children.

On appeal, the New York Court of Appeals concluded in 2000 that the state's broadly written statute "imposes a criminal sanction for the mere likelihood of harm." The Court further found that the statute required only that the defendant "be aware that the conduct may likely result in harm to a child," and not that the conduct be specifically directed at the child.³⁵

²⁹ 52 Cal. App. 4th 183 (1996)

³⁰ Weithorn, Lois A., J.D., Ph.D. "Protecting Children from Exposure to Domestic Violence: The Use and Abuse of Child Maltreatment Statutes"

³¹ *Ibid.*

³² 186 Ill. App. 3d 386 (1989)

³³ 313 Ill. App. 3d 121, 728 N.E. 2d 1165 (2000)

³⁴ 2000 NY Int. 116 (2000)

³⁵ 3 NY 3d 357 (2004)

The City of New York routinely employed this same statute against *victims* of domestic violence as well (see Appendix). The City had adopted a standard practice of deeming child witnesses of domestic violence as neglected and removing them from their homes.

In 1999, abused mothers whose children had been removed filed a federal class action lawsuit alleging constitutional violations. The federal court asked the state court to certify several questions, including whether the definition of neglect includes “instances in which the sole allegation of neglect is that the parent or other person legally responsible for the child's care allows the child to witness domestic [violence] against the caretaker?”³⁷

In 2004, the New York Court of Appeals sided with the abused mothers and ruled that “[p]lainly, more is required for a showing of neglect under New York law than the fact that a child was exposed to domestic [violence] against the caretaker.”³⁸

4. Views of Proponents and Opponents

Proponents of using existing maltreatment statutes to address children exposed to domestic violence argue that:

- Parents or caretakers who are unable to protect themselves from an abuser, will be similarly unable to protect their children³⁹; and
- States only criminally prosecute the most serious maltreatment cases. In these cases, prosecutors should have flexibility to pursue any charges necessary to prevent the child from witnessing further domestic violence.

Opponents of this approach argue that:

- Child welfare agencies should consider the effects suffered (and risks faced) by children who are removed from their home;
- An abused parent or caretaker may be discouraged from reporting domestic violence because he/she fears separation from his/her children. The abuser may use this risk to control the victim; and

States face a significantly less challenging threshold in prosecuting an abused parent or caretaker for neglect, as they typically must show only that a lack of action by the victim caused a *risk* of injury. Whereas, in order to prosecute the domestic abuser for child abuse, states must show that a specific action caused an actual diagnosable mental injury.

³⁷ 3 NY 3d 357 (2004)

³⁸ Ibid

³⁹ Edelson, Jeffrey and Schecter, Susan. “In the Best Interest of Women and Children: A Call for Collaboration Between Child Welfare and Domestic Violence Constituencies.”

V. SUMMARY OF OLO'S RESEARCH

This chapter presents a summary of the Office of Legislative Oversight's research, organized to parallel the sequence of chapters in this report.

IMPACT OF WITNESSING DOMESTIC VIOLENCE

1. Many children may experience serious negative effects from witnessing domestic violence.

Researchers have found that children exposed to domestic violence face a greater risk (as compared to their peers who have not witnessed domestic violence) of:

- Behavioral, social, and emotional problems; and
- Cognitive and attitudinal problems.

Research indicates that these negative effects can persist into adulthood. Adults who witnessed domestic violence as children face a greater likelihood of suffering from trauma-related symptoms, depression, and low self-esteem than adults who did not.

2. Further research is needed to identify the children at greatest risk of experiencing the negative effects of witnessing domestic violence.

Researchers have identified several aspects of the current body of research on child witnesses of domestic violence that need further investigation. These include whether:

- Research that was largely conducted on children living in domestic violence shelters applies to children who remain in their homes;
- A minimum threshold of exposure to domestic violence exists above which children suffer negative effects; and
- Specific protective or risk factors present in child witnesses can predict which children are most likely to suffer negative effects.

APPROACHES TAKEN BY OTHER STATES

3. Twenty-two states employ statutes to address child witnessing of domestic violence.

The following states employ various laws in their code to establish specific consequences for exposing a child to domestic violence:

Alaska	Idaho	North Carolina
Arizona	Illinois	Ohio
Arkansas	Indiana	Oklahoma
California	Montana	Oregon
Delaware	Minnesota	Utah
Florida	Mississippi	Washington
Georgia	Nevada	
Hawaii	New York	

4. The definition of “witnessing” domestic violence differs among these states.

Ten states specify that the domestic violence must have occurred in the physical presence of a child, or that the child was able to see or hear the violence. Eight states simply require that a child be present – remaining silent on whether that includes circumstances under which a child hears, but does not see, the violence.

The remaining four states (Delaware, New York, Nevada, and Minnesota) do not explicitly define witnessing.

Witnessing Defined by Statute Language	States
Requires physical presence of a child or child able to see or hear domestic violence	Alaska, Georgia, Hawaii, Idaho, Illinois, Mississippi, Montana, Oklahoma, Washington, Utah
Requires presence of a child	Arizona, Arkansas, California, Florida, Indiana, North Carolina, Oregon
Other	Ohio
Not defined	Nevada, Delaware, Minnesota, New York

Source: OLO, National Clearinghouse on Child Abuse and Neglect, and state statutes

5. The most common consequence across these 22 states is an increased penalty upon conviction of a crime involving domestic violence. States' codes impose civil or criminal consequences that fall into five other broad categories.

Twenty-two states have established civil or criminal consequences for parents or caretakers who expose children to domestic violence. The table below illustrates the consequences that each state employs.

Consequence	States
Abuser faces increased sentence if convicted for abuse	Alaska, Arizona, Arkansas, California, Florida, Hawaii, Idaho, Illinois, Montana, Mississippi, North Carolina, Ohio, Oklahoma, Oregon, Washington
Abuser faces additional charges for child maltreatment if prosecuted for abuse	Delaware, Georgia, Utah
Abuser or abused partner faces child maltreatment charges	California, Illinois, New York
Abuser or abused partner faces investigation by child welfare agency for emotional maltreatment	Alaska, Minnesota
Abuser liable for child's counseling costs	Illinois, Nevada
Abuser faces limitations on his/her custody and visitation rights.	Indiana
None Identified	Maryland and 27 other states

Source: OLO, National Clearinghouse on Child Abuse and Neglect, and state statutes.

- California, Illinois, and New York statutes are silent on child witnesses of domestic violence. However, these states have prosecuted the abuser or the abused partner for emotional maltreatment of a child who witnesses domestic violence.
- Alaska and Minnesota statutes require the local child welfare agency to investigate reports of children witnessing domestic violence. States may charge the abuser or the abused partner with child maltreatment for exposing a child to domestic violence.

SELECTED IMPLEMENTATION EXPERIENCES

6. Alaska employs statutes that require local child welfare agencies to investigate reports of child witnesses of domestic violence.

In 1997, Alaska revised its statutes to include children exposed to domestic violence in its definition of “children in need of aid,” making them eligible for publicly-funded child welfare services. Related statutes require local child welfare agencies to take reasonable efforts to:

- Protect the child and prevent his/her removal from the abused parent or caretaker;
- Remove the alleged abuser from the residence if the child is believed to be in danger; and
- Prevent the child from being placed or having unsupervised visitation with the domestic violence offender.

Alaska exempted domestic violence workers from mandatory reporting of children exposed to domestic violence if the abused partner uses voluntary services and the worker reasonably believes that the child is safe and not in danger of mental injury.

7. A Minnesota statute that defined child exposure to domestic violence as neglect resulted in a dramatic increase in neglect reports. The estimated annualized need for human and financial resources to investigate these reports overwhelmed the local child welfare agencies.

In 1999, Minnesota amended its definition of child neglect to encompass four conditions related to exposure to domestic violence. These conditions subject both the perpetrator of domestic violence, as well as the victim, to a finding of child neglect.

Based on the immediate impact of this amended law, local child welfare agencies estimated that neglect reports would increase from approximately 1,800 to 9,000. They further estimated that the cost of responding to these reports would be over \$30 million annually.

The legislature repealed the amendment in the next session. As an alternative measure, the legislature added a new section to the state code that made child witnesses to domestic violence eligible for voluntary public services if funding were available.

8. California, Illinois, and New York use their existing child maltreatment to address child witnessing of domestic violence.

Child welfare agencies in these states have sometimes used their emotional maltreatment statutes – which are silent on child witnesses of domestic violence - to protect children exposed to domestic violence. State courts have decided several cases which sanctioned agency decisions to treat exposure to domestic violence as child maltreatment, even without specific inclusion of this language in those statutes.

This practice has generated controversy because in some cases it has resulted in an abused partner losing custody of the children, or being criminally charged with child maltreatment for failing to protect the children from witnessing the violence of the abuser.

The challenge of researching case law on the state level makes it difficult to speculate on the likelihood that additional precedents in other states exist. (A review of Maryland Court of Appeals decisions did not reveal any relevant cases.)

9. Supporters of efforts to define exposure to domestic violence as maltreatment argue that these statutes illuminate the invisible victims of domestic violence.

Advocates supporting defining exposure to domestic violence as maltreatment point out that without this:

- Child welfare agencies cannot intervene to prevent or counteract the emotional and cognitive effects of exposure to domestic violence; and
- Communities are missing an opportunity to break the multi-generational cycle of violence.

10. Opponents of efforts to define exposure to domestic violence as maltreatment argue that children are best protected by offering services and assistance to keep the abused parent or caretaker and child together and safe.

Advocates wary of defining exposure to domestic violence as maltreatment point out that:

- Child welfare agencies should consider the effects suffered (and risks faced) by children who are removed from their home; and
- The risk of separation from his/her child may discourage an abused partner from reporting the violence, and the abusive partner may use this risk to control the victim.

11. States' efforts to prosecute parents or caretakers under existing maltreatment statutes that are silent on witnessing is controversial.

The controversy over these strategies largely results from the risk that the abused partner may lose custody or face charges of child maltreatment because the child witnessed a violent act that he/she could not prevent.

Proponents of using existing maltreatment statutes to address children exposed to domestic violence argue that:

- Parents or caretakers who are unable to protect themselves from an abuser, will be similarly unable to protect their children⁴⁰; and
- States only criminally prosecute the most serious maltreatment cases. In these cases, prosecutors should have flexibility to pursue any charges necessary to prevent the child from witnessing further domestic violence.

Opponents of this approach argue that existing child maltreatment statutes may inappropriately place abused partners at a greater risk of maltreatment charges than the abuser. In many states, the state would have to prove *child abuse* against the domestic abuser. This typically requires that the state prove that a specific action caused and actual diagnosable mental injury. However, in order to prove *child neglect* against the abused partner, the state must only prove that a lack of action caused a risk of injury.

⁴⁰ Edelson, Jeffrey and Schechter, Susan. "In the Best Interest of Women and Children: A Call for Collaboration Between Child Welfare and Domestic Violence Constituencies."

LAWS RELATED TO CHILD WITNESSES OF DOMESTIC VIOLENCE

APPENDIX

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Excerpts from State Codes Related to Child Witnesses of Domestic Violence

ALASKA

Subject to AS 47.10.019 , the court may find a child to be a child in need of aid if it finds by a preponderance of the evidence that the child has been subjected to any of the following:

- Conduct by or conditions created by the parent, guardian, or custodian have resulted in mental injury to the child; or placed the child at substantial risk of mental injury as a result of a pattern of rejecting, terrorizing, ignoring, isolating, or corrupting behavior that would, if continued, result in mental injury; or
- Exposure to conduct by a household member, as defined in AS 18.66.990, against another household member that is a crime under AS 11.41.100 - 11.41.220, 11.41.230(a)(1) or (2), or 11.41.410 - 11.41.432, an offense under a law or ordinance of another jurisdiction having elements similar to a crime under AS 11.41.100 - 11.41.220, 11.41.230(a)(1) or (2), or 11.41.410 - 11.41.432, an attempt to commit an offense that is a crime under AS 11.41.100 - 11.41.220 or 11.41.410 - 11.41.432, or an attempt to commit an offense under a law or ordinance of another jurisdiction having elements similar to a crime under AS 11.41.100 - 11.41.220 or 11.41.410 - 11.41.432; or
- Repeated exposure to conduct by a household member, as defined in AS 18.66.990 , against another household member that is a crime under AS 11.41.230 (a)(3) or 11.41.250 - 11.41.270 or an offense under a law or ordinance of another jurisdiction having elements similar to a crime under AS 11.41.230 (a)(3) or 11.41.250 - 11.41.270

If a defendant is convicted of an offense and is subject to sentencing under AS 12.55.125 (c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(3), or (i) and

- The presumptive term is four years or less, the court may decrease the presumptive term by an amount as great as the presumptive term for factors in mitigation or may increase the presumptive term up to the maximum term of imprisonment for factors in aggravation;

The presumptive term of imprisonment is more than four years, the court may decrease the presumptive term by an amount as great as 50 percent of the presumptive term for factors in mitigation or may increase the presumptive term up to the maximum term of imprisonment for factors in aggravation

Code Citation
§47.10.011

ALASKA (continued)

The following factors shall be considered by the sentencing court and may aggravate the presumptive terms set out in AS 12.55.125

The offense was a felony:

Specified in AS 11.41 and was committed against a spouse, a former spouse, or a member of the social unit comprised of those living together in the same dwelling as the defendant

Code Citation

**§12.55.155
(continued)**

- Specified in AS 11.41.410 - 11.41.458 and the defendant has engaged in the same or other conduct prohibited by a provision of AS 11.41.410 - 11.41.460 involving the same or another victim; or
- Specified in AS 11.41 that is a crime involving domestic violence and was committed in the physical presence or hearing of a child under 16 years of age who was, at the time of the offense, living within the residence of the victim, the residence of the perpetrator, or the residence where the crime involving domestic violence

ARIZONA

The upper or lower term imposed pursuant to section 13-604, 13-604.01, 13-604.02, 13-702.01 or 13-710 or subsection A of this section may be imposed only if one or more of the circumstances alleged to be in aggravation of the crime are found to be true by the trier of fact beyond a reasonable doubt, or in mitigation of the crime are found to be true by the trial judge, on any evidence or information introduced or submitted to the court or the trier of fact before sentencing or any evidence presented at trial, and factual findings and reasons in support of such findings are set forth on the record at the time of sentencing.

Code Citation

§13-702

For the purpose of determining the sentence pursuant to section 13-710 and subsection A of this section, the trier of fact shall determine and the court shall consider the following aggravating circumstances:

The offense was committed in the presence of a child and any of the circumstances exist that are set forth in section 13-3601

ARKANSAS

Code Citation §5-4-701	"In the presence of a child" means in the physical presence of a child or knowing or having reason to know that a child is present and may see or hear an act of assault, battery, domestic battering, or assault on a household member
Code Citation §5-4-702	<p>Any person who commits a felony offense involving assault, battery, domestic battering, or assault on a family member or household member, may be subject to an enhanced sentence of an additional term of imprisonment of not less than one year and not greater than 10 years if the offense is committed in the presence of a child</p> <p>The enhanced portion of the sentence shall be consecutive and any person convicted under this section shall not be eligible for early release on parole for the enhanced portion of the sentence</p>

CALIFORNIA

Code Citation §1170.76.	The fact that a defendant who commits or attempts to commit a violation of Section 243.4, 245, 273.5, or 273.55, is or has been a member of the household of a minor or of the victim of the offense, or the defendant is a marital or blood relative of the minor or the victim, or the defendant or the victim is the natural parent, adoptive parent, stepparent, or foster parent of the minor, and the offense contemporaneously occurred in the presence of, or was witnessed by, the minor shall be considered a circumstance in aggravation of the crime in imposing a term under subdivision (b) of Section 1170
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DELAWARE

Code Citation Tit. 11, §1102	<p>A person is guilty of endangering the welfare of a child when:</p> <p>Being a parent, guardian or any other person who has assumed responsibility for the care or supervision of a child less than 18 years old the person:</p> <ul style="list-style-type: none">• Knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of the child; or• Intentionally does or fails to do any act, with the result that the child becomes a neglected child; or <p>The person knowingly contributes to the delinquency of any child by doing or failing to do any act with the result that the child becomes delinquent; or</p> <p>The person commits any violent felony, or reckless endangering second degree, assault third degree, terroristic threatening, or unlawful imprisonment second degree against a victim, knowing that [it] was witnessed by a child less than 18 years of age who is a member of the person's family or the victim's family</p> <p>Endangering the welfare of a child is a class A misdemeanor</p>
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FLORIDA

Code Citation
§921.0024

Domestic violence in the presence of a child: If the offender is convicted of the primary offense and the primary offense is a crime of domestic violence, as defined in s. 741.28, which was committed in the presence of a child under 16 years of age who is a family or household member as defined in s. 741.28(3) with the victim or perpetrator, the subtotal sentence points are multiplied by 1.5

GEORGIA

Code Citation
§16-5-70

Any person commits the offense of cruelty to children in the third degree when:

- Such person, who is the primary aggressor, intentionally allows a child under the age of 18 to witness the commission of a forcible felony, battery, or family violence battery; or
- Such person, who is the primary aggressor, having knowledge that a child under the age of 18 is present and sees or hears the act, commits a forcible felony, battery, or family violence battery

A person convicted of the offense of cruelty to children in the first degree as provided in this Code section shall be punished by imprisonment for not less than five nor more than 20 years.

A person convicted of the offense of cruelty to children in the second degree shall be punished by imprisonment for not less than one nor more than ten years.

A person convicted of the offense of cruelty to children in the third degree shall be punished as for a misdemeanor upon the first or second conviction. Upon conviction of a third or subsequent offense of cruelty to children in the third degree, the defendant shall be guilty of a felony and shall be sentenced to a fine not less than \$1,000.00 nor more than \$5,000.00 or imprisonment for not less than one year nor more than three years or shall be sentenced to both fine and imprisonment

HAWAII

Code Citation §706-606.4	<p>The court shall consider the following aggravating factors in determining the particular sentence to be imposed:</p> <ul style="list-style-type: none">• The defendant has been convicted of committing or attempting to commit an offense involving abuse of a family or household member;• The defendant is or has been a family or household member of either a minor referred to in paragraph (c) or the victim of the offense; and• The offense contemporaneously occurred in the presence of a minor <p>As used in this section:</p> <ul style="list-style-type: none">• "In the presence of a minor" means in the actual physical presence of a child or knowing that a child is present and may hear or see the offense
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IDAHO

Code Citation §18-918	<p>The maximum penalties provided in this section shall be doubled where the act of domestic assault or battery for which the person is convicted or pleads guilty took place in the presence of a child</p> <p>For purposes of this section, "in the presence of a child" means in the physical presence of a child or knowing that a child is present and may see or hear an act of domestic assault or battery. For purposes of this section, "child" means a person under sixteen (16) years of age</p>
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ILLINOIS

Code Citation Ch. 720, §5/12-3.2	<p>In addition to any other sentencing alternatives, a defendant who commits, in the presence of a child, a felony domestic battery, aggravated domestic battery, aggravated battery, unlawful restraint, or aggravated unlawful restraint against a family or household member, shall be required to serve a mandatory minimum imprisonment of 10 days or perform 300 hours of community service, or both</p> <p>The defendant shall further be liable for the cost of any counseling required for the child at the discretion of the court</p> <p>For purposes of this Section, "child" means a person under 18 years of age who is the defendant's or victim's child or step-child or who is a minor child residing within or visiting the household of the defendant or victim</p> <p>For purposes of this Section, "in the presence of a child" means in the physical presence of a child or knowing or having reason to know that a child is present and may see or hear an act constituting one of the offenses listed in this subsection</p>
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INDIANA

Code Citation §31-14-14-5	<p>This section applies if a court finds that a noncustodial parent has been convicted of a crime involving domestic or family violence that was witnessed or heard by the noncustodial parent's child</p> <p>There is created a rebuttable presumption that the court shall order that the noncustodial parent's parenting time with the child must be supervised:</p> <ul style="list-style-type: none">• for at least one (1) year and not more than two (2) years immediately following the crime involving domestic or family violence; or• until the child becomes emancipated;
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MINNESOTA

Code Citation §1626.5552	<p>A child is considered to have been exposed to domestic violence when:</p> <ul style="list-style-type: none">• A parent or other person responsible for the care of the child engages in violent behavior that imminently or seriously endangers the child's physical or mental health;• A parent or other person responsible for the care of the child engages in repeated domestic assault• The child has witnessed repeated incidents of domestic <p>In determining the protective action to take and the services to be offered to the child and family when a child has been exposed to domestic violence, the local welfare agency shall consider the safety and well-being of the child and the safety of a parent who is a victim of domestic violence. In determining whether there is a need for child protective services, the local welfare agency shall take into account the presence of protective factors in the child's environment. These factors include, but are not limited to:</p> <ul style="list-style-type: none">• Whether the child is or has been the victim of physical abuse, sexual abuse, or neglect;• The age of the child;• The length of time since being exposed to domestic violence;• The child's relationship to the parent and the perpetrator of domestic violence; and <p>Whether steps are or have been taken to exclude the abuser from the home of the child or the adult victim sought protective services such as shelters, counseling, or advocacy services, legal recourse, or other remedies</p>
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MINNESOTA (continued)

The legislature hereby declares that the public policy of this state is to protect children whose health or welfare may be jeopardized through physical abuse, neglect, or sexual abuse. In furtherance of this public policy, it is the intent of the legislature under this section to strengthen the family and make the home, school, and community safe for children by promoting responsible child care in all settings; and to provide, when necessary, a safe temporary or permanent home environment for physically or sexually abused or neglected children

In addition, it is the policy of this state to require the reporting of neglect, physical or sexual abuse of children in the home, school, and community settings; to provide for the voluntary reporting of abuse or neglect of children; to require the assessment and investigation of the reports; and to provide protective and counseling services in appropriate cases

As used in this section, the following terms have the meanings given them unless the specific content indicates otherwise:

"Person responsible for the child's care" means (1) an individual functioning within the family unit and having responsibilities for the care of the child such as a parent, guardian, or other person having similar care responsibilities, or (2) an individual functioning outside the family unit and having responsibilities for the care of the child such as a teacher, school administrator, other school employees or agents, or other lawful custodian of a child having either full-time or short-term care responsibilities including, but not limited to, day care, babysitting whether paid or unpaid, counseling, teaching, and coaching.

"Neglect" means:

- Failure by a person responsible for a child's care to supply a child with necessary food, clothing, shelter, health, medical, or other care required for the child's physical or mental health when reasonably able to do so;
- Failure to protect a child from conditions or actions that seriously endanger the child's physical or mental health when reasonably able to do so;
- Emotional harm from a pattern of behavior which contributes to impaired emotional functioning of the child which may be demonstrated by a substantial and observable effect in the child's behavior, emotional response, or cognition that is not within the normal range for the child's age and stage of development, with due regard to the child's culture

Code Citation

§626.556

MINNESOTA (continued)

<p>Code Citation</p> <p>§626.556 (continued)</p>	<p>"Physical abuse" means any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child's care on a child other than by accidental means, or any physical or mental injury that cannot reasonably be explained by the child's history of injuries, or any aversive or deprivation procedures, or regulated interventions, that have not been authorized under section 121A.67 or 245.825</p> <p>"Assessment" includes authority to interview the child, the person or persons responsible for the child's care, the alleged perpetrator, and any other person with knowledge of the abuse or neglect for the purpose of gathering the facts, assessing the risk to the child, and formulating a plan</p> <p>"Mental injury" means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in the child's ability to function within a normal range of performance and behavior with due regard to the child's culture</p>
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MISSISSIPPI

<p>Code Citation</p> <p>§97-3-7</p>	<p>In sentencing, the court shall consider as an aggravating factor whether the crime was committed in the physical presence or hearing of a child under sixteen (16) years of age who was, at the time of the offense, living within either the residence of the victim, the residence of the perpetrator, or the residence where the offense occurred</p>
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MONTANA

<p>Code Citation</p> <p>§45-5-206</p>	<p>If the offense was committed within the vision or hearing of a minor, the judge shall consider the minor's presence as a factor at the time of sentencing</p> <p>In addition to any sentence imposed under subsections (3) and (4), after determining the financial resources and future ability of the offender to pay restitution as provided for in 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable actual medical, housing, wage loss, and counseling costs</p>
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NEVADA

Code Citation

§200.485

If it appears from information presented to the court that a child under the age of 18 years may need counseling as a result of the commission of a battery which constitutes domestic violence pursuant to NRS 33.018, the court may refer the child to an agency which provides child welfare services. If the court refers a child to an agency which provides child welfare services, the court shall require the person convicted of a battery which constitutes domestic violence pursuant to NRS 33.018 to reimburse the agency for the costs of any services provided, to the extent of his ability to pay

NORTH CAROLINA

Code Citation

§14-33

Any person who, in the course of an assault, assault and battery, or affray, inflicts serious injury upon another person, or uses a deadly weapon, in violation of subdivision (c)(1) of this section, on a person with whom the person has a personal relationship, and in the presence of a minor, is guilty of a Class A1 misdemeanor

A person convicted under this subsection, who is sentenced to a community punishment, shall be placed on supervised probation in addition to any other punishment imposed by the court

A person committing a second or subsequent violation of this subsection shall be sentenced to an active punishment of no less than 30 days in addition to any other punishment imposed by the court

The following definitions apply to this subsection:

- "In the presence of a minor" means that the minor was in a position to have observed the assault
- "Minor" is any person under the age of 18 years who is residing with or is under the care and supervision of, and who has a personal relationship with, the person assaulted or the person committing the assault

OHIO

<p>Code Citation §2929.01</p>	<p>An offense is "committed in the vicinity of a child" if the offender commits the offense within thirty feet of or within the same residential unit as a child who is under eighteen years of age, regardless of whether the offender knows the age of the child or whether the offender knows the offense is being committed within thirty feet of or within the same residential unit as the child and regardless of whether the child actually views the commission of the offense</p>
<p>Code Citation §2929.12</p>	<p>The sentencing court shall consider all of the following that apply regarding the offender, the offense, or the victim, and any other relevant factors, as indicating that the offender's conduct is more serious than conduct normally constituting the offense:</p> <p>If the offense is a violation of section 2919.25 or a violation of section 2903.11, 2903.12, or 2903.13 of the Revised Code involving a person who was a family or household member at the time of the violation, the offender committed the offense in the vicinity of one or more children who are not victims of the offense, and the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of those children</p>

OKLAHOMA

<p>Code Citation §21-644</p>	<p>Any person convicted of a second or subsequent domestic abuse as defined in subsection C of this section that was committed in the presence of a child shall be punished by imprisonment in the custody of the Department of Corrections for not less than one (1) year nor more than five (5) years, or by a fine not exceeding Seven Thousand Dollars (\$7,000.00), or by both such fine and imprisonment. The provisions of Section 51.1 of this title shall not apply to any second or subsequent offense</p> <p>As used in this section, "in the presence of a child" means in the physical presence of a child; or having knowledge that a child is present and may see or hear an act of domestic violence. For the purposes of subsections C and E of this section, "child" may be any child whether or not related to the victim or the defendant</p>
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ORGEON

Assault in the fourth degree is a Class A misdemeanor

Notwithstanding subsection (2) of this section, assault in the fourth degree is a Class C felony if the person commits the crime of assault in the fourth degree and:

The person has previously been convicted of assaulting the same victim;

Code Citation

§163.160

- The person has previously been convicted at least three times under this section or under equivalent laws of another jurisdiction and all of the assaults involved domestic violence, as defined in ORS 135.230; or
- The assault is committed in the immediate presence of, or is witnessed by, the person's or the victim's minor child or stepchild or a minor child residing within the household of the person or victim

For the purposes of subsection (3) of this section, an assault is witnessed if the assault is seen or directly perceived in any other manner by the child

UTAH

"In the presence of a child" means in the physical presence of a child; or having knowledge that a child is present and may see or hear an act of domestic violence

A person is guilty of child abuse if the person:

Code Citation

§76-5-109.1

- Commits or attempts to commit criminal homicide, as defined in Section 76-5-201, against a cohabitant in the presence of a child; or
- Intentionally causes serious bodily injury to a cohabitant or uses a dangerous weapon, as defined in Section 76-1-601, or other means or force likely to produce death or serious bodily injury against a cohabitant, in the presence of a child; or
- Under circumstances not amounting to a violation of Subsection (2)(a) or (b), commits an act of domestic violence in the presence of a child

A charge under this section is separate and distinct from, and is in addition to, a charge of domestic violence where the victim is the cohabitant. Either or both charges may be filed by the prosecutor

WASHINGTON

Aggravating Circumstances - Considered by a Jury -Imposed by the Court

Except for circumstances listed in subsection (2) of this section, the following circumstances are an exclusive list of factors that can support a sentence above the standard range.

Code Citation

§9.94A.535

The current offense involved domestic violence,, and one or more of the following was present:

- The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time;
- The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years

OLO and state codes

Excerpts from Maryland Code Related to Child Maltreatment

MARYLAND	
<p>Code Citation</p> <p>Fam. Law, § 5-701</p>	<p>"Abuse" means: the physical or mental injury of a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member, under circumstances that indicate that the child's health or welfare is harmed or at substantial risk of being harmed;</p> <p>Mental injury.- "Mental injury" means the observable, identifiable, and substantial impairment of a child's mental or psychological ability to function.</p> <p>Neglect.- "Neglect" means the leaving of a child unattended or other failure to give proper care and attention to a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate:</p> <ul style="list-style-type: none"> • that the child's health or welfare is harmed or placed at substantial risk of harm; or • mental injury to the child or a substantial risk of mental injury

OLO and the Code of Maryland

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