

Addressing Custody, Placement, and Safety Issues



Created by
Governor's Council on Domestic Abuse

Revised
February 2025

This project was supported by STOP Grant Award No. 2021-VA-01C-19446 awarded to the Wisconsin Director of State Courts Office by the Office on Violence Against Women, U. S. Department of Justice. The opinions, findings, conclusions, or recommendations expressed in this publication are those of the authors and do not necessarily reflect the views of the Department of Justice or the Office on Violence Against Women.

The original 2017 guidebook was a joint project of the Wisconsin Governor's Council on Domestic Abuse and End Domestic Abuse Wisconsin. It was based on documents created by the Washington State Administrative Office of the Courts and the Battered Women's Justice Project, adapted with permission.

The 2025 revision to the guidebook is a project of the Wisconsin Governor's Council on Domestic Abuse. The 2025 revision to the guidebook used resources from the Battered Women's Justice Project, adapted with permission.

The Wisconsin Governor's Council on Domestic Abuse and End Domestic Abuse Wisconsin wish to thank all of the following:

- The Governor's Council on Domestic Abuse: Legislative, Policy and Systems Collaboration Committee, GAL Guidebook Revision Workgroup
- The Battered Women's Justice Project
- Washington State Administrative Office of the Courts
- The domestic abuse programs, guardians ad litem, and court officials who helped us compile sample recommendations and provided feedback for the guidebook and the 2025 revision.

The 2025 guidebook revision workgroup, consisting of the following members:

- Krystal Chase, The Women's Center
- Virginia Gittens Escudero, UNIDOS
- Kari Niesen-LaScala, End Domestic Abuse Wisconsin
- Kelsey Mullins, Wisconsin Director of State Courts Office, Office of Court Operations
- Amber Peterson, Wisconsin Director of State Courts Office
- Gricel Santiago-Rivera, Santiago Family Law & Mediation
- Bronson Stein, Bolton Refuge House
- Tegan Swanson, End Domestic Abuse Wisconsin

The 2017 guidebook workgroup, consisting of the following members:

- Shirley Armstrong, Governor's Council on Domestic Abuse
- Cyrus Behroozi,
 Milwaukee Center on Children and Youth
- Maureen Funk, Gunderson Health System
- Tony Gibart, End Domestic Abuse Wisconsin
- Kevin Hamberger, Ph.D., Medical College of Wisconsin
- Darald Hanusa, Ph.D., Midwest Domestic Violence Resource Center & University of Wisconsin-Madison, School of Social Work
- Marlys Howe, Dane County District Attorney's Office — Domestic Violence Unit
- Rochelle Jones, Legal Action of Wisconsin
- Sharon Lewandowski, Department of Children and Families
- Bonnie MacRitchie, Department of Children and Families
- Tess Meuer, End Domestic Abuse Wisconsin
- Amber Peterson, Wisconsin Director of State Courts Office, Office of Court Operations
- Gricel Santiago-Rivera, RISE Law Center
- Representative Katrina Shankland, Governor's Council on Domestic Abuse
- Renee Schulz-Stangl, Personal Development Center
- Senator Lena Taylor, Governor's Council on Domestic Abuse
- Morgan Young, End Domestic Abuse Wisconsin

Table of Contents

Introduction: Domestic Abuse Cases Require Specialized Knowledge	1
I. Definitions and Foundations	4
A. Language Used in the Guidebook	
B. Legal Definition of Domestic Abuse	
1. Family Law Definitions	5
a. Domestic Abuse, as Defined in the Family Law Code	5
b. Interspousal Battery	
c. Abuse of a Child	6
d. Primary Physical Aggressor, as Defined in the Family Law Code	7
2. Criminal Law Terminology	7
a. Domestic Abuse, as Defined in the Criminal Law Code	7
b. Predominant Aggressor, as Defined in the Criminal Law Code	8
C. Behavioral Definition and Common Characteristics of Domestic Abuse	9
D. Lethality Risk Factors: Identifying High-Risk Domestic Abuse	11
E. Resources for GALs	12
II. Four-Step SAFeR Framework for Identifying, Understanding,	
and Accounting for Abuse in Recommendations	14
A. SAFeR Step 1: Screen for Domestic Abuse	
1. Legal Custody and Physical Placement Orders	
a. GAL's Domestic Abuse Inquiry	
b. GAL's Child Abuse Inquiry	
2. Methods to Conduct an Investigation	
a. Importance of a Thorough Investigation	
b. Investigation Protocols that Increase Safety	
3. Steps in an Investigation	
a. Interview the Adult Parties — Sample Interview Comments and Questions	
b. Gather Information from the Child — Sample Interview Comments and Questions	
c. Reflection Questions for GALs to Consider	
d. Determine Whether There Are Domestic Abuse, Harassment, or Child Abuse Restraining Orders	
i. Domestic Abuse Restraining Order, Wis. Stat. § 813.12	
ii. Harassment Restraining Order, Wis. Stat. § 813.125	
iii. Child Abuse Restraining Order, Wis. Stat. § 813.122	
g	

iv. Individual at Risk Restraining Order, Wis. Stat. § 813.123	23
e. Determine Whether There Is a Criminal Case Involving Domestic Abuse	24
f. Access Documents Related to Domestic Abuse	25
g. A Note about Privileged Records	26
h. Interview Additional Parties	28
B. SAFeR Step 2: Assess the Nature and Context of Domestic Abuse	30
1. Isolated Incidents	30
2. Resistive Violence	31
3. Coercive Control of the Victim	31
4. Identifying Coercive Control during Family Court Proceedings	32
a. Using the GAL to Control the Victim	32
b. Attempting to Control the Court Process	33
5. Children's Experience of the Abuse	34
a. Assess the Domestic Abuse Risk Posed to Children	34
b. Physical or Psychological Abuse of the Children	35
i. Injury or Threat to Child, Pets, or Objects	35
ii. Injury to Child while Attacking the Victim	36
iii. Using the Children to Control the Victim	36
iv. Assaulting the Victim in front of the Child	36
c. Effects of Domestic Abuse on Children by Age and Developmental Stage	36
6. Parenting in the Context of Domestic Abuse	39
a. Impacts of Domestic Abuse on Parenting by a Victim	40
b. Risks for a Child Raised by an Abuser	40
i. Risk of Rigid, Authoritarian Parenting	41
ii. Risk of Neglectful or Irresponsible Parenting	41
iii. Risk of Psychological Abuse and Manipulation	41
iv. Risk of Abduction	41
C. SAFeR Step 3: Focus on the Effects of Domestic Abuse	43
1. Statutory Presumptions and Paramount Considerations	43
a. Presumption against Joint and Sole Custody to the Abuser	43
b. Paramount Concern: Safety and Well-being of the Child and Victim	44
c. Sole Custody When Parties Will Not Be Able to Cooperate	
d. Presumption against Joint and Sole Custody to the Abuser	
When There Is Evidence of Child Abuse	
2. Best Interest of the Child Factors	46

51
51
51
51
52
52
53
55
56
57
58
60
4

INTRODUCTION:

DOMESTIC ABUSE CASES REQUIRE SPECIALIZED KNOWLEDGE

As a guardian ad litem ("GAL"), you have an especially important and difficult job, over and above what is expected of advocacy counsel for a party. The fundamental role of an attorney is to carry out the objectives of their client. In many situations, lawyers face challenges related to discerning and managing the expectations of their clients and, then, planning and executing a strategy to create the greatest chance for success. As a GAL, you have an even more complex task. You must represent the best interest of the child¹, make a specific recommendation concerning legal custody and placement, and advocate for that recommendation in court if necessary.

As an attorney, you have been trained to read and interpret the law and to formulate arguments. However, this training usually does not provide any special insight on figuring out what is in the best interests of a child. In other states, GALs are not required to be licensed attorneys but rather are individuals with specialized training in child development. What is expected of a GAL goes well beyond legal skill. Nonetheless, the statutes provide a host of factors that you must consider and apply. However, statutory language is unclear when it comes to describing how to discern what is in the best interests of a child. To make the appropriate recommendation, you will need to employ skills beyond strict legal reasoning. Being a competent GAL requires just as much empathy, self-reflection, and dedication as it does legal training.

This guidebook addresses cases in which domestic abuse is occurring or allegedly occurring in the family. While domestic abuse is not present in every case you will handle as a GAL, it is still important that you consider the *possibility* of domestic abuse in every case you handle. You are required in every case to report to the court on evidence of domestic abuse. To accomplish this, you must know how to effectively and safely screen for domestic abuse. This guidebook will give you the tools to follow this requirement.

When you do identify that domestic abuse is an issue, you have an extraordinarily critical and demanding role to play. This guidebook will help you fulfill your obligations. However, before delving into a discussion of domestic abuse dynamics, the substantive law, and techniques for handling domestic abuse cases, it is useful to take a step back and think critically about what it means to determine the best interest of a child in a family that has experienced domestic abuse and what influences that determination.

On some level, your ideas about what children need and what good parenting is will influence your determination. This means you should think about the values and assumptions you bring to the work to ensure that the best interest of the child is protected. For example, you may believe that children do best if they spend relatively equal time with both parents and that parents should set their "differences" aside to parent post-divorce. You may also believe that parents should sacrifice for their children by putting their children's needs ahead of their own. While there is nothing inherently wrong with that view, if that is the only lens through which you view a domestic abuse victim who seeks sole custody and full physical placement, you might tend to see that victim as selfish, putting their needs ahead of the child's relationship with the other parent. As a GAL, you must think deeply about the needs of the child and the domestic abuse victim. Is it reasonable to expect the victim to want to share custody and placement with the abuser? Even more importantly, would such an arrangement be beneficial or

¹ This guidebook typically uses the word "child" even though there may be multiple children in the family. As GAL, you will represent the best interests of each child, and these could differ even within one family.

even safe for the children and the victim? To what further danger or trauma could such an arrangement expose the child? These are not always easy questions to answer. This guidebook will give you tools and information to help with this task.

You also must cultivate your ability to empathize. What would it be like to be afraid of your child's other parent? How might one react to that fear? What would you do if, after you left an abusive partner, you realized that they are now using your child as a means to interfere with and to control your life? What would it be like to be a kid growing up with a domestic abuser as a parent — a parent whom you love but who may be harming you? Can you imagine the conflict and anxiety you might have in these situations? Your belief in how you would act may not always match what you observe in the families with whom you are working, but unlike lawyers who are directed by the objectives of their clients, you have to stretch your capacity to empathize to fulfill your role as a GAL.

Another consideration for GALs is that the judicial system's ability to function effectively, in part, depends, upon parties frequently settling their cases. However, a GAL who understands their obligation to protect the best interests of the child must be aware of the pressure to achieve efficient resolution and not allow that pressure to distort their judgment. The family law system may have a tendency to penalize a parent who refuses mediation or asks for atypical custody and placement arrangements; yet, in all cases — and especially when that parent is a victim of domestic abuse — the child and parent deserve that you consider the best interests of the child without a bias towards what is preferable to the system. What is in the best interests of a child does not necessarily correspond to what is in the best interests of the legal system.

Therefore, your task is complicated. It requires balancing internal and external pressures, all while keeping your focus on the best interests of a child with whom you will have a limited ability to get to know. In the subset of cases involving domestic abuse, both the pressures you face and the magnitude of your recommendation are elevated. This guidebook can be an important resource as you undertake this incredibly critical task and help you advance the best interests of children in vulnerable and precarious situations.

Finally, thank you for the work you do, and thank you for taking the time to read this guidebook. When you make it to the end of the guidebook, you will be thanked again, by a domestic abuse survivor whose story demonstrates how important and valuable the work you do can be.

Definitions and Foundations



I. Definitions and Foundations

This section details definitions related to domestic abuse. It starts with legal definitions, because these are the specific definitions GALs apply in their cases. However, statutory language often fails to capture the nuances and contextual significance of human dynamics. Therefore, this section outlines behavioral definitions of domestic abuse, explains lethality risk factors, and provides further resources. Because a GAL should seek to understand not just the law but also the practical, lived reality of the child, behavioral definitions of domestic abuse are just as critical to the practice of a GAL as legal definitions.

A. Language Used in the Guidebook

For ease of use, this guidebook attempts to use language consistently while recognizing that different terms are used within different systems and contexts and by individuals themselves who have experience with domestic abuse. The terms used in this guidebook to describe parties where there is domestic abuse are:

- **Victim**: Individual who is the target of domestic abuse.
- **Abuser**: Individual who uses abusive behavior to target the victim.

In other contexts, the following terms may be used instead of "victim" and "abuser":

- **Survivor**: In advocacy settings, this term emphasizes the resilience and autonomy of victims of domestic abuse.
- **Protective parent**: In child welfare settings, this term is used to designate the parent who does not maltreat the child. Most, but not all, victim parents who have experienced domestic abuse are protective parents.
- **Maltreater**: In child welfare settings, this term is used to designate the parent who maltreats the child.
- Harm doer / person who caused harm: This term recognizes that just like victims are not defined solely by victimization, abusers are not defined solely by their abusive behaviors. Additionally, some abusers have also experienced abuse themselves.

B. Legal Definition of Domestic Abuse

GALs should be familiar with the legal definitions of both domestic abuse and child abuse to properly apply the law to the facts of the case. The following key terms are crucial to understand:

- **Domestic Abuse**, as defined in the family law code;
- Interspousal Battery;
- Abuse of a Child;
- Primary Physical Aggressor;
- Predominant Aggressor;
- **Domestic Abuse**, as defined in the criminal law code.

Below are definitions of the most relevant terms directly referenced in the family law code. Often the definitions include or cross-reference criminal conduct. Therefore, GALs may need to consult Wis. Stat. § 939.22, which contains definitions for terms used in the criminal code.

One complication is that the term "domestic abuse" in the criminal context is slightly different from the definition of domestic abuse referenced throughout the family law code. Because an abuser might be involved in the criminal justice system for domestic abuse, a GAL should also be familiar with the definition of domestic abuse contained in the criminal code. However, it is important to understand that the absence of a criminal charge does not end the analysis of whether the parent engaged in abuse nor is the classification of a criminal charge a substitute for applying the facts of the case to the definitions and provisions found in the family law code. Differences in various legal definitions and the inconsistent application of definitions in the criminal justice system could lead a GAL to faulty legal analysis unless they undertake an independent analysis using the correct definitions and the facts that they understand to be supported by the evidence.

1. Family Law Definitions

a. Domestic Abuse, as Defined in the Family Law Code

The definition of "domestic abuse" used in the family law code² directs the reader to the definition found in Wis. Stat. § 813.12(1)(am), which provides the following two components: (1) the relationship between the perpetrator and the victim must be a qualifying relationship, and (2) the abusive conduct must be described in the definition of domestic abuse.

Wis. Stat. § 813.12(1)(am) specifies qualifying relationships between the victim and perpetrator to meet the definition of domestic abuse. One such relationship is an adult perpetrating domestic abuse against an adult with whom there is a child in common. Thus, parents in a family law case will qualify under this definition.

Wis. Stat. § 813.12(1)(am) lists the following types of conduct as domestic abuse when committed in the context of a qualifying relationship:

- Intentional infliction of physical pain, physical injury, or illness;
- Intentional impairment of physical condition;
- A violation of first, second, or third degree sexual assault [Wis. Stat. § 940.225 (1), (2), or (3)], which
 encompasses any nonconsensual sexual intercourse, certain types of nonconsensual sexual contact, and
 sexual contact under certain conditions;
- A violation of stalking [Wis. Stat. § 940.32];
 - * Stalking is when a perpetrator engages in two or more acts over time that show a continuity of purpose.
 - * Acts generally must be directed at a specific person and cause that person to suffer serious emotional distress or induce fear in the person of bodily injury to or the death of him- or herself or a member of his or her family or household.
 - * The perpetrator must have known or should have known that at least one of the acts would have a harmful effect on the person, and the act must be such that it would cause a reasonable person under similar circumstances to suffer that effect.
 - * Some of these elements are not required when the perpetrator has previously been convicted of certain offenses.
- A violation of criminal damage of property [Wis. Stat. § 943.01], involving property that belongs to the individual;
- 2 For example, Wis. Stat. § 767.407(4)

- * Criminal damage to property is the intentional damage of the physical property of another without that person's consent.
- * "Property of another" includes "property in which a person other than the actor has a legal interest that the actor has no right to defeat or impair, even though the actor may also have a legal interest in the property."³
- * Damage to marital property by one spouse can constitute criminal damage to property if it is done without the consent of the other spouse.⁴
- A threat to engage in any of the conduct list above.

GALs should review the relevant statutes to familiarize themselves with the criminal conduct referenced in this definition.

b. Interspousal Battery

When the family law code uses the term "interspousal battery," it references Wis. Stats. §§ 940.19 and 940.20(1m), the battery statute and the battery statute for individuals protected by injunctions, respectively. Battery occurs when one person "causes bodily harm to another by an act done with intent to cause bodily harm to that person or another without the consent of the person so harmed." 5

c. Abuse of a Child

In several instances, the family law code⁶ makes reference to abuse of a child as defined in Wis. Stat. § 813.122(1) (a). Wis. Stat. § 813.122(1)(a) defines child abuse as the following:

- Physical injury inflicted on a child by other than accidental means;
- Sexual intercourse or sexual contact that violates the sexual assault statute or the sexual assault of a child statutes, specifically Wis. Stats. §§ 940.225, 948.025, or 948.085;
- Sexual exploitation of a child in violation of Wis. Stat. § 948.05;
- Permitting, allowing, or encouraging a child to violate Wis. Stat. § 944.30(1m) [prostitution];
- Causing a child to view or listen to sexual activity in violation of Wis. Stat. § 948.055;
- Exposing genitals, pubic area, or intimate parts in violation of Wis. Stat. § 948.10;
- Manufacturing methamphetamine in violation of Wis. Stat. § 961.41(1)(e) under any of the following circumstances: with a child physically present during the manufacture; in a child's home, on the premises of a child's home, or in a motor vehicle located on the premises of a child's home; or under any other circumstances in which a reasonable person should have known that the manufacture would be seen, smelled, or heard by a child;
- Emotional damage for which the child's parent, guardian or legal custodian has neglected, refused, or been unable for reasons other than poverty to obtain the necessary treatment or to take steps to ameliorate the symptoms.
- 3 Wis. Stat. § 939.22(28)
- 4 State v. Sevelin, 204 Wis. 2d 127, 554 N.W.2d 521 (Ct. App. 1996).
- 5 Wis. Stat. § 940.19(1)
- 6 For example, Wis. Stat. § 767.41(2)(b)2.c.

d. Primary Physical Aggressor, as Defined in the Family Law Code

If the court finds that both parties have engaged in a pattern or serious incident of interspousal battery, as described in Wis. Stats. § 940.19 or 940.20 (1m), or domestic abuse, under Wis. Stat. § 813.12(1)(am), against the other party, the court must determine who, if either party, is the "primary physical aggressor." The presumption against joint or sole legal custody will be applied to the primary physical aggressor. The court must consider all of the following to determine which party is the primary physical aggressor:⁷

- Prior acts of domestic abuse between the parties;
- The relative severity of the injuries, if any, inflicted upon a party by the other party in any of the prior acts of domestic abuse;
- The likelihood of future injury to either of the parties resulting from acts of domestic abuse;
- Whether either of the parties acted in self-defense in any of the prior acts of domestic abuse;
- Whether there is or has been a pattern of coercive and abusive behavior between the parties;
- Any other factor that the court considers relevant to the determination.

If one, but not both, of the parties has been convicted of a crime of that was an act of domestic abuse as defined under Wis. Stat. § 813.12(1)(am) against the other party, the court shall find the party who was convicted of the crime to be the primary physical aggressor. § If the court determines that both parties engaged in a pattern or serious incident of interspousal battery or domestic abuse but neither party was the primary physical aggressor, the presumption against sole or joint legal custody will not apply. §

2. Criminal Law Terminology

It is important to know that the terminology used in criminal domestic abuse cases does not precisely correspond to the terminology used in the family law system. The following are two terms commonly used in the criminal justice system that do not fully align with the parallel terms in family law code.

a. Domestic Abuse, as Defined in the Criminal Law Code

The definition of domestic abuse in the criminal law code is slightly different than the definition of domestic abuse referenced in the family law code. Wis. Stat. § 968.075(1)(a) defines "domestic abuse" as any of the following conduct engaged in by an adult person against his or her spouse or former spouse, against an adult with whom the person resides or formerly resided, or against an adult with whom the person has a child in common:

- Intentional infliction of physical pain, physical injury, or illness;
- Intentional impairment of physical condition;
- A violation of first, second, or third degree sexual assault [Wis. Stats. § 940.225(1), (2), or (3)];
- A physical act that may cause the other person reasonably to fear imminent engagement in the conduct described above.

The key functional difference between these two definitions is that the criminal law code definition does not

⁷ Wis. Stat. § 767.41(2)(d)2.a.-f.

⁸ Wis. Stat. § 767.41(2)(d)3.

⁹ Wis. Stat. § 767.41(2)(d)4.

include abuse between individuals who are related as dating partners, whereas the definition used in the family law code is inclusive of dating parents. Because both definitions include conduct between individuals with children in common, this difference is not likely to be relevant in family law cases.

More importantly, while the criminal law code contains a definition of domestic abuse, there is not a particular criminal charge or set of charges that are named "domestic abuse." Instead, if the underlying facts of a charge meet the definition of domestic abuse, a domestic abuse modifier may be attached to the charge. For example, the following charge, unlawful phone use, was allegedly committed under circumstances that met the criminal law code definition of domestic abuse.

Dane County Case Number 2014CM000191

Charge(s)/Sentence(s)

Charge Detail

The Defendant was charged with the following offense:

Count No.Statute CiteDescriptionSeverity1947.012(1)(a)Unlawful Phone Use-Threatens HarmMisd. B

Charge Modifier(s)

Statute Cite Description

968.075(1)(a) Domestic Abuse

A charge that meets the criminal law code definition of domestic abuse may or may not have the modifier attached to it. The presence or absence of a domestic abuse modifier on a criminal charge must not replace a GAL's investigation and analysis of whether a particular act or set of acts constitutes domestic abuse under the family law code.

b. Predominant Aggressor, as

Defined in the Criminal Law Code

As previously mentioned, the family law code uses the term "primary physical aggressor." The criminal code uses a similar but not identical term, "predominant aggressor." Wis. Stat. § 968.075, commonly referred to as Wisconsin's mandatory arrest law, defines "predominant aggressor" to mean "the most significant, but not necessarily the first, aggressor in a domestic abuse incident." Police officers must consider all of the following to identify the predominant aggressor and whether an arrest must be made as a result of an alleged domestic abuse incident:

- The history of domestic abuse between the parties, if it can be reasonably ascertained by the officer, and any information provided by witnesses regarding that history;
- Statements made by witnesses;
- The relative degree of injury inflicted on the parties;

The presence or absence of a domestic abuse modifier on a criminal charge must not replace a GAL's investigation and analysis of whether a particular act or set of acts constitutes domestic abuse under the family law code.

- The extent to which each person present appears to fear any party;
- Whether any party is threatening or has threatened future harm against another party or another family or household member;
- Whether either party acted in self-defense or in defense of any other person under the circumstances described in Wis. Stat. § 939.48.

C. Behavioral Definition and Common Characteristics of Domestic Abuse

As previously mentioned, legal definitions often fail to capture the nuances and significance of behaviors in the context of ongoing human relationships. GALs need to understand both the law and the lived reality of the family and the child. Therefore, a firm grasp of the legal definitions of abusive behavior must be augmented with an understanding of the behaviors that constitute domestic abuse. Additionally, some legal definitions incorporate concepts included in the behavioral definition of domestic abuse. For example, the definition of primary physical aggressor includes consideration of the potential "pattern of coercive and abusive behavior." ¹⁰

Domestic abuse is a *pattern* of assaultive and coercive behaviors, which may be learned through personal experiences and broader societal structures, operating at a variety of levels — physical, psychological, emotional, financial, and/or sexual — and that abusers use against their intimate partners. The pattern of behaviors is incremental and results in control over the victim. Some of the behaviors may include criminal conduct, such as physical and sexual assaults, as well as other behaviors that function to control, dominate, humiliate, or terrorize, such as emotional abuse or financial control. However, in any given incident, the abuser might only use one or two of these behaviors. Thus, no single behavior defines domestic abuse.

Examples of domestic abuse behavioral tactics include, but are not limited to, the following:

Physical abuse: Spitting, poking, shaking, grabbing, shoving, pushing, throwing, hitting with open or closed hand, restraining, blocking, strangling, hitting with objects, kicking, burning, using weapons, etc.

Sexual abuse: Pressured, coerced, or physically-forced sex. Sexually abusive behavior may also intersect with other forms of abuse, e.g., "revenge porn," or sharing/threatening to share intimate photos in public forums, on social media, or with third parties, without the victim's explicit consent.

Psychological abuse: Acts of violence against others, property, or pets; intimidation through threats of violence against the victim, children, others, or self (e.g., threats of suicide); stalking, including through social media or devices like GPS and hidden cameras; physically or psychologically isolating victims from family, friends, community, culture, or accurate information; attacks against the victim's self-esteem and competence; forcing victims to do degrading things; controlling the victim's activities; alternating use of indulgences such as promises, gifts, or affection versus abuse; threatening to report an undocumented immigrant to gain their compliance.

Verbal abuse: Pattern of speaking that demeans, humiliates, blames, or threatens the victim. Verbal abuse becomes an effective weapon in controlling the victim because victims know through experience that abusers will at times back up the threats or taunts with physical and sexual assaults as well as other abusive behaviors. For example, an abuser may gain compliance from the victim by simply saying,

10 Wis. Stat. § 767.41(2)(d)2.e.

"Remember what happened the last time you tried to get a job?" These reminders of past violence are meant as threats against the victim.

Economic coercion: Control of funds; withholding funds; control of victim's access to resources, such as money, health insurance, transportation, child care, employment, housing, or threatening to report an undocumented immigrant who is working without authorization so that the victim quits their job and remains dependent on the abuser.

Use of children to control victim: Interrogating children about the victim's activities; forcing children to participate in the physical or psychological abuse of the victim; using children as hostages; using visitation with children to monitor the victim; using the child's devices to monitor the victim; undermining parenting of the victim; custody or visitation fights; demonstrably false reports to Child Protective Services; holding an immigrant's status against them (e.g., telling an undocumented immigrant victim that if they leave the relationship, the abuser will have them deported and thus, the victim will not see their children ever again).

Technological abuse:¹¹ May include a diversity of tactics via digital or electronic coercive control, harassment, stalking, or threats. Examples include: incessant texts or calls from ever-changing numbers; doxxing, or non-consensual sharing of their personal identity data; monitoring a victim's movement via GPS trackers or camera apps; financial abuse via account access/monitoring or credit ruination; hacking or surveilling their communication via social media, email, or cell phone; abusive online communication that weaponizes sexism, racism, transphobia, and other oppressions; use of online platforms to traffic or exploit them or their minor child.

Post-separation abuse:¹² Research shows that when violence is coercive and controlling, it is likely to continue post separation.¹³ The dynamics of power and control that existed during the relationship are likely to manifest during a custody battle through tactics such as: an abuser's consistent focus on the victim's decision-making; using approved methods of contact to inundate the victim with accusatory statements or conversely, refusing to use approved methods of contact to withhold information about the child. The abuser will undermine the victim's parenting, attempt to exhaust third-parties and support systems, as well as legal professionals, by creating or enhancing conflict. For immigrant victims, abusers often continue to leverage their privilege, such as by refusing to sign permission for the child to obtain a passport to travel to the victim's country of origin or demanding to hold all travel documents.

All incidents or tactics of the pattern of abuse interact with each other and have a profound effect on the victim. For example, the victim learns that when the abuser says certain phrases or performs certain actions, the abuser will likely physically harm them. The abuser need only say these phrases or perform these actions in the future to control the victim's behavior. The use of physical force combined with psychological coercion establishes a dynamic of power and control in the relationship.

Abusers might also alternate their abusive tactics with occasional indulgences, such as flowers, gifts, sweet words, promises to get help, attention to children, etc. Some victims may think that the abuse has stopped, whereas

- 11 See the Safety Net Project. *Technology Safety & Privacy: A Toolkit for Survivors*. https://www.techsafety.org/resources-survivors.
- 12 The Duluth Model. *Post-Separation Power and Control*. https://www.theduluthmodel.org/wp-content/uploads/2017/03/Using-Children-Wheel.pdf.
- 13 Hardesty, J.L., Crossman, K.A., Khaw, L., & Raffaelli, M. (2016). Marital Violence and Coparenting Quality After Separation. *Journal of family Psychology*, 30(3), 320-330.

abusers have simply changed control tactics. Early domestic abuse literature sometimes referred to this conduct as part of a "honeymoon phase." In fact, these periods are merely different tactics of control.

D. Lethality Risk Factors: Identifying High-Risk Domestic Abuse

Over the last several years, researchers and practitioners have focused their attention on indicators of high lethality in domestic abuse cases. Identification of specific risk factors has grown out of a body of research that has been primarily led by Dr. Jacquelyn Campbell at Johns Hopkins University. Screening for these risk factors can help you attend to the safety of domestic abuse victims and their children, as required under Wis. Stat. § 767.41(5)(bm).

Understanding the factors that tend to increase the risk of deadly violence can also provide a lens through which to determine whether a single incident of domestic abuse is "serious" under Wis. Stat. § 767.41(2)(d)1.

The Lethality Assessment, based on Campbell's research, considers a victim at high risk to be killed if any of the following statements are true:¹⁵

- Has he/she threatened to kill you or your child?
- Has he/she used a weapon against you or threatened you with a weapon?
- Do you think he/she might try to kill you?

In addition, affirmative responses to three or more of the following questions also mark the case as presenting a high risk of lethality:

- Does he/she have a gun or can he/she easily get one?
- Has he/she ever tried to strangle/choke you?
- Is he/she violently or constantly jealous or does he/she control most of your daily activities?
- Have you left him/her or separated after living together or being married?
- Has he/she ever tried to kill himself/herself?
- Does he/she spy on you or leave you threatening messages?
- Is he/she unemployed?
- Do you have a child that he/she knows is not his/hers?

Other factors that research confirms are markers of higher risk for lethality include the following: 16

• Abuser has forced sex on the victim;

- 14 Campbell, J.C., Webster, D., Koziol-McLain, J., Block, C.R., Campbell, D.W., Curry, M.A., Gary, F., McFarlane, J, Sachs, P.S., Ulrich, Y., Wilt, S.A. (2003). Assessing Risk Factors for Intimate Partner Homicide. *National Institute of Justice Journal*, (250), 14-19.
- 15 Maryland Network Against Domestic Violence. (2005). Lethality Assessment Program Maryland Model For First . . . Retrieved April 25, 2016, from https://law.seattleu.edu/media/school-of-law/documents/continuing-legal-education-cle/cle-pdfs/dv-symposium/dv-2016/5C1---Throwing-Victims-a-Lifeline-Lethality-Assessment---LAP-for-Maryland-1st-Responders---Boardman-Kelly.pdf.
- 16 Campbell, J.C., Webster, D.W., & Glass, N. (2009). The Danger Assessment Validation of a Lethality Risk Assessment Instrument for Intimate Partner Femicide. *Journal of Interpersonal Violence*, 24(4), 653-674. Also see: https://pubmed.ncbi.nlm.nih.gov/18667689/.

- Abuser has successfully avoided arrest for domestic abuse;
- Abuser uses illegal drugs;
- Abuser is an alcoholic or problem drinker;
- Abuser beat the victim while the victim was pregnant;
- Abuser has threatened to harm the child;
- Abuser follows, spies on, or leaves threatening messages for the victim.

With a number of these indicators, the degree to which the risk of homicide multiplies is stark.¹⁷ Campbell found that women who were threatened or assaulted with a gun were 20 times more likely than other women to be murdered. Women whose partners threatened them with murder were 15 times more likely than other women to be killed. Attempted strangulation presents a ten-fold increased risk of murder. Male abusers who are violently and constantly jealous are nine times more likely to kill their female partners, and male abusers who force their victims into sexual activity are over seven times more likely to commit homicide.

In Wisconsin, the coalition against domestic violence, End Domestic Abuse Wisconsin, produces and publishes an annual homicide report, detailing lives lost to domestic violence. Data is available for each year beginning with 2000.¹⁸ Recent reports have shown that domestic violence homicides are increasingly prevalent.

E. Resources for GALs

GALs represent the best interests of the child in family court disputes. As such, they are charged with presenting their case in a manner that supports the best interests of the child. In cases in which domestic abuse is present, GALs may need to access support and resources in order to investigate and present evidence at trial. Below are some resources available to GALs and family law practitioners that could be useful in cases in which domestic abuse is alleged or identified.

End Domestic Abuse Wisconsin (End Abuse) — Wisconsin's Coalition Against Domestic Violence, End Abuse offers the following services:

- Legal Technical Assistance (TA) Attorneys who focus on issues related to domestic abuse are available to answer questions from legal professionals. Questions may range from legal strategy, to understanding dynamics of domestic abuse, to statutory and case law. https://www.endabusewi.org/our-work/legal-services/.
- Connection to Domestic Abuse / Sexual Assault Expert Witnesses The Legal Services Department at End Abuse in collaboration with the Wisconsin Department of Justice, the Wisconsin Coalition Against Sexual Assault (WCASA) and other agencies conducts expert witness training for those wishing to give expert testimony about domestic abuse. If an expert witness is needed in your case, End Abuse or WCASA can work to connect you with an appropriate expert witness.

¹⁷ Campbell, J.C., Webster, D., Koziol-McLain, J., Block, C.R., Campbell, D.W., Curry, M.A., Gary, F., McFarlane, J, Sachs, P.S., Ulrich, Y., Wilt, S.A. (2003). Assessing Risk Factors for Intimate Partner Homicide. *National Institute of Justice Journal*, (250), 14-19.

¹⁸ End Domestic Abuse Wisconsin. Homicide Reports & Response. https://www.endabusewi.org/our-work/homicide-reports/.

• **Get Help Map / Section** — It is very important that GALs know the local resources for domestic abuse victims and survivors. End Abuse maintains a list of programs providing services to domestic abuse victims on their website: https://www.endabusewi.org/get-help/.

Office of Court Operations, VAWA STOP Grant Program Manager — Within the Wisconsin Director of State Courts Office, the VAWA STOP Grant Program Manager is a Legal Advisor in the Office of Court Operations who creates and provides written resources, training, and technical assistance to justice system stakeholders on legal issues related to domestic abuse, sexual assault, stalking, and human trafficking.

Wisconsin Department of Justice (WI DOJ) — WI DOJ is home to the Safe at Home program, Wisconsin's Address Confidentiality Program for victims of abuse. DOJ provides other resources for victims, which are useful for GALs to understand, as they could be tools for ensuring the safety and wellbeing of child and the victim. https://www.doj.state.wi.us/.

Child Advocacy Centers (CACs) — A Child Advocacy Center is a safe place to bring a child who may have experienced abuse where there are resources such as forensic interviewing. Visit the CACs of Wisconsin website to find a list of local CACs. https://cacsofwi.org/local-centers/.

CASA (Court Appointed Special Advocate) Programs — A CASA is a volunteer who works with children who have experienced abuse or neglect and writes reports to help a judge make case decisions in child welfare cases. Visit CASA Wisconsin to see which counties currently have CASA programs. https://www.wisconsin-casa.org/local-programs.

National Organizations:

- The Battered Women's Justice Project This national organization (from whom we adapted the SAFeR framework) is recognized as a leading expert in legal issues at the cross section of domestic abuse and children. https://bwjp.org/our-work/children/.
- The National Coalition Against Domestic Violence Provides legal and other resources to state domestic violence coalitions and various professionals in cases involving domestic violence. https://ncadv.org/.
- The National Network to End Domestic Violence Provides legal and other resources to legal professionals in cases involving domestic abuse. https://nnedv.org/.

II. Four-Step SAFeR Framework for Identifying, Understanding, and Accounting for Abuse in Recommendations

This guidebook uses the four-step SAFeR framework created by the Battered Women's Justice Project. This framework is designed to help GALs gather, synthesize, and analyze information about the context and implications of domestic abuse to improve informed decision making in all cases. The full framework can be found at: https://bwjp.org/our-work/children/. A summary of each part of the framework is described below.

SAFeR Step 1: Screen for Domestic Abuse

The first step is for GALs to screen to determine whether domestic abuse is present. To promote safe and informed disclosure of domestic abuse, it is also important to explain to the parties why the GAL is asking about abuse, how the information will be used, who will have access to the information, and where the information might appear later in the family court process.

SAFeR Step 2: Assess the Nature and Context of Domestic Abuse

The second step is for GALs to assess the nature and context of the abuse. GALs need to know who is doing what to whom, why, and to what effect. In the context of a family law case, GALs need to know what is going on with respect to the parenting, health, safety, and wellbeing of the child, as well as the victim of abuse.

SAFeR Step 3: <u>F</u>ocus on the <u>E</u>ffects of Domestic Abuse

The third step is for GALs to focus on the effects of the abuse. In this step, GALs address the question, "Now that I know what's going on, what does it mean for the task or decision at hand?" For instance, if the GAL is trying to make recommendations to the court, they need to ask what the effect of the abuse is on the child. What risks and problems does the abuse create for the parents and for the child? What kinds of things are standing in the way of constructive parenting and healthy childhood development?

SAFeR Step 4: <u>Respond with Recommendations Accounting for Domestic Abuse</u>

The last step is for the GAL to make informed recommendations to the court that fully account for the nature, context, and implications of abuse. GAL recommendations should account for post-separation abuse, ongoing coercive control, parenting practices that jeopardize the child's safety and well-being, and the safety and well-being of the victim. The framework encourages the GAL to directly address the underlying conditions that would otherwise allow the abuse to persist long after the family court case is closed.

SAFeR Step 1: Screen for Domestic Abuse



A. SAFeR Step 1: Screen for Domestic Abuse

In any family case, GALs must determine whether domestic abuse is present. Domestic abuse is a crucial area of inquiry in addressing custody and physical placement disputes. Domestic abuse can create grave risks for a victim and their child. There is no guaranteed method to determine with absolute certainty, especially at the outset, exactly which cases contain or create those risks. Many times, separation increases, rather than reduces, the risks of harm to a victim or to the child.¹⁹ Recommending ongoing contact between the child and abuser may create increased opportunities for domestic abuse through exchanges of the child and periods of physical placement.²⁰ In extreme cases, domestic abuse may be lethal. The lethality of domestic abuse often increases when the abuser believes that the victim is leaving or has left the relationship.²¹ In these extreme cases, children themselves may become victims or be involved as witnesses to homicide.²²

A GAL first needs to ask initial screening questions to determine if there are any "red flags" that might indicate domestic abuse in a family. Initial screening questions are listed in <u>Appendix: Step 1</u> <u>GAL Initial Screening Questions for Domestic Abuse</u>. If red flags

Recommending ongoing contact between the child and abuser may create increased opportunities for domestic abuse through exchanges of the child and periods of physical placement.

are detected, the GAL must ask the more comprehensive questions, which are discussed below and listed in <u>Appendix: Step 1 GAL Interview Questions — Adult Parties</u>. Critically, the absence of red flags does not definitively rule out the presence of domestic abuse.

1. Legal Custody and Physical Placement Orders

a. GAL's Domestic Abuse Inquiry

Courts are required to consider whether there is a history of domestic abuse when determining the best interests of the child. In cases in which the court finds that a parent has engaged in a pattern or serious incident of interspousal battery or domestic abuse, the safety and wellbeing of the child and the safety of the victim are the paramount concerns in determining legal custody and periods of physical placement.²³ Further, if the court finds by a preponderance of the evidence that a party has engaged in a pattern or serious incident of interspousal

¹⁹ DeKeseredy, W.S., Rogness, M., & Schwartz, M.D. (2004). Separation / Divorce Sexual Assault: The Current State of Social Scientific Knowledge. *Aggression and Violent Behavior*, 9(6), 675-691.

²⁰ Sheeran, M., & Hampton, S. (1999). Supervised Visitation in Cases of Domestic Violence. *Juvenile and Family Court Journal*, 50(2), 13-25.

²¹ Websdale, N. (2003). Reviewing Domestic Violence Deaths. *National Institute of Justice Journal*, 250, 26-31; Campbell, J.C., Webster, D., Koziol-McLain, J., Block, C.R., Campbell, D.W., Curry, M.A., . . . & Ulrich, Y. (2003). Assessing Risk Factors for Intimate Partner Homicide. *National Institute of Justice Journal*, (250), 14-19; Campbell, J.C., Webster, D., Koziol-McLain, J., Block, C., Campbell, D., Curry, M.A., . . . & Sharps, P. (2003). Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study. *American Journal of Public Health*, 93(7), 1089-1097.

²² Starr, K., Fawcett, J., & Violence, E.C.A.D. (2006). If I Had One More Day: Findings and Recommendations from the Washington State Domestic Violence Fatality Review. WSCADV.

²³ Wis. Stat. § 767.41(5)(bm)

battery or domestic abuse, there is a rebuttable presumption that it is detrimental to the child and contrary to the best interest of the child to award joint or sole legal custody to that party.²⁴

Wisconsin law requires GALs to provide information to the court to assist in determining whether domestic abuse occurred. Specifically, statute provides that GALs:

shall investigate whether there is evidence that either parent has engaged in interspousal battery, as described in s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), and shall report to the court on the results of the investigation. The GAL shall review and comment to the court on any mediation agreement and stipulation made under s. 767.405 (12) and on any parenting plan filed under s. 767.41 (1m).²⁵

b. GAL's Child Abuse Inquiry

The presence of domestic abuse is also an indicator for the coexistence of child maltreatment. Researchers estimate that the overlap between domestic abuse and child physical or sexual abuse ranges from 30 to 60 percent.²⁶ In cases in which mothers are assaulted by the father, daughters are five to six times more at risk of sexual abuse than daughters in homes without domestic abuse.²⁷ Some domestic abuse shelters report that the primary reason many victims give for fleeing the home is that the abuser was also abusing the child. Victims report multiple concerns about the impact of domestic abuse directly on the child.²⁸ Furthermore, the more severe and fatal cases of child abuse tend to overlap with domestic abuse.²⁹

Evidence of child abuse triggers an important custody presumption — that the parties will not be able to cooperate in future decision making.³⁰ When this presumption is combined with a request for sole custody and a finding that sole custody is in the child's best interests, it forms the basis for awarding a party sole custody under Wis. Stat. § 767.41(2)(b). Also, evidence of child abuse is a factor that must be considered when determining what periods of physical placement, if any, should be awarded to a parent.³¹

2. Methods to Conduct an Investigation

a. Importance of a Thorough Investigation

If, after asking the initial screening questions, the GAL suspects domestic abuse may be present, then the GAL must conduct a more thorough investigation to determine if there is, indeed, a history of abuse. [See <u>Appendix</u>:

- 24 Wis. Stat. § 767.41(2)(d)1.
- 25 Wis. Stat. § 767.407(4)
- 26 Edleson, J.L. (1999). The Overlap between Child Maltreatment and Woman Battering. Violence against Women, 5(2), 134-154; Williams, L.M. (2003). Understanding Child Abuse and Violence Against Women A Life Course Perspective. Journal of Interpersonal Violence, 18(4), 441-451.
- 27 Bowker, L.H., Arbitell, M., & McFerron, J.R. (1988). On the Relationship between Wife Beating and Child Abuse, in Bograd, M. (Ed.). Feminist Perspectives on Wife Abuse: An Introduction. Sage Publications.
- 28 Hilton, N.Z. (1992). Battered Women's Concerns about Their Children Witnessing Wife Assault. *Journal of Interpersonal Violence*, 7(1), 77-86.
- 29 Schechter, S., & Edleson, J.L. (1994). In The Best Interest of Women and Children: A Call for Collaboration between Child Welfare and Domestic Violence Constituencies. In Briefing Paper Presented at the Conference on Domestic Violence and Child Welfare: Integrating Policy and Practice for Families, Wingspread, Racine, Wisconsin.
- 30 Wis. Stat. § 767.41(2)(b)2.c.
- 31 See Wis. Stat. § 767.41(5)(am)11.

Step 1 GAL Initial Screening Questions for Domestic Abuse.] Domestic abuse may not be easily detected in relationships where the abuse is unseen, or where most of the abuse is not physical in nature. [See section <u>I.</u> <u>B. Behavioral Definition and Common Characteristics of Domestic Abuse</u> for examples of different types of abuse.] It is particularly important in these cases for GALs to evaluate what the parties report in interviews compared to other available evidence, including information provided by other sources and patterns of assaultive and coercive behaviors in past relationships, in relationships with other family members, or in relationships outside the family.³²

In some cases, there will be public records of violence or abuse (e.g., police reports, criminal court records, or civil restraining order case information). In other cases, there will be explicit allegations of domestic abuse or child abuse, or there will be indications of disturbances in the family that may or may not, upon further investigation, be related to violence or abuse. In many cases, domestic abuse may not be easily detected because it is not formally raised or because other issues, such as allegations of mental illness or substance abuse, may obscure the presence of domestic abuse. However, the lack of witnesses or corroboration does not conclusively prove that domestic abuse did not take place. Furthermore, the absence of a restraining order or an absence of convictions for domestic abuse does not mean that a parent is not abusive.³³

It can be even more difficult to identify domestic abuse because victims may not acknowledge that the abuse exists for many different reasons: they are ashamed; they ... the lack of witnesses or corroboration does not conclusively prove that domestic abuse did not take place. Furthermore, the absence of a restraining order or an absence of convictions for domestic abuse does not mean that a parent is not abusive.

feel they are to blame; they think that abuse is normal; cultural norms keep them from discussing the abuse with strangers; they are trying to protect themselves from increased violence and/or loss of their children; they are trying to keep their family together. To ensure that the report to the court regarding the existence of domestic abuse is accurate, GALs need to understand that domestic abuse can affect people of different backgrounds and cultures in different ways. Domestic abuse should never be excused as an accepted component of any culture.

b. Investigation Protocols that Increase Safety

GALs should strive to shield the parties from any contact or unsafe communication with one another during the process of an investigation and while developing recommendations. In many cases, the GAL should be able to seek corroboration of adverse information disclosed by one party about the other without disclosing the source of that information. It is important, however, to ensure that the parties understand the lack of confidentiality

³² American Psychological Association. Presidential Task Force on Violence, & the Family. (1996). Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family. American Psychological Association (stating that custody and visitation provide domestic violence abusers with an opportunity to continue their abuse, and that such abusers are twice as likely to seek sole physical custody of their children and more likely to dispute custody if there are sons involved).

³³ Aldarondo, E., & Mederos, F. (2002). Common practitioners' concerns about abusive men. *Programs For Men Who Batter: Intervention And Prevention Strategies in a Diverse Society*, 2-1 (stating that many physically abusive men are never arrested or brought to trial even though they have a long history of violence toward a partner).

in the process. To best protect the safety of the parties and child, GALs should:

- Make initial contact with each party separately;
- Attempt to interview the victim first;
- Consider the safety needs of each family member when creating any guidelines for contact with both the adult parties and the child;
- Respect the terms of existing restraining orders;
- Help unrepresented litigants understand the evaluation process, the risks of disclosing information that may be shared with the other party, and the risks of not disclosing information;

The GAL should adhere to any confidentiality protections, such as address confidentiality, that a victim of domestic abuse may be entitled to within the court system.

- Inform the parties of an evaluator's duty to report suspected child abuse;
- Whenever possible, avoid identifying one party as the source of negative information about the other;
- Seek to corroborate information obtained from the parties or the child;
- If it is necessary to disclose information that may put one of the parties at risk, alert the at-risk party in advance so they may take the necessary safety precautions;
- Avoid attributing direct quotes to the child;
- Use specialized techniques to obtain and interpret information from child. [See section <u>II.A.3.b. Gather Information from the Child</u> below for more information.]

The GAL should adhere to any confidentiality protections, such as address confidentiality, that a victim of domestic abuse may be entitled to within the court system. This is not limited to only the names or addresses of the parties and the child but can also apply to information about other persons interviewed.

3. Steps in an Investigation

GALs should take the following steps when investigating whether domestic abuse is present. Please note that these steps are not intended to be an exhaustive list, nor are they required to be conducted in this order.

a. Interview the Adult Parties — Sample Interview Comments and Questions

The following suggested screening questions are designed to allow a GAL to make the threshold determination of whether domestic abuse is present. Although the GAL needs to make inquiries about physical and sexual abuse, the GAL also must inquire about the series of controlling and coercive behaviors and tactics that are a part of domestic abuse.

For a complete list of interview questions, see <u>Appendix: Step 1 GAL Interview Questions — Adult Parties</u>.

Once the GAL has completed the initial screening, the GAL can use the following suggestions, including these sample questions, to get a more complete picture of dynamics within the family.

Focus on safety concerns. Both victims and their children may be reluctant to speak honestly about the abuse with GALs because of fears of being punished by their abusers. By focusing on the safety concerns, GALs may be able to build rapport with the victim.

• I understand you may be hesitant to answer these questions because of how [the other parent] might respond.

Please let me know if you have safety concerns about a particular question.

• Have you ever talked with someone about developing plans for when [the other parent's] behavior is making you feel unsafe? If not, may I connect you with an advocate who might help?

When asking yes/no questions, ask open-ended follow-up to ensure clarity and context.

• Did [the other parent] ever say or do things that made you fearful for your safety or the safety of your child? If so, what did they say or do?

Listen with a trauma-informed lens. Some victims minimize and/or deny the violence as a way to survive the abuse. Remember to think about coercive control and other dynamics of power in the relationship.

• Does [the other parent] engage in any behavior that causes you to feel on edge, frightened, or concerned about your safety? If so, when does this happen?

Communicate the process clearly. In interviews with the victim and older children, explain that it is likely that the abuser will also be interviewed.

- Ask the victim if they will feel endangered by interviews of the abusers and whether they have a safety plan³⁴ in place.
- Support the victim in using a safety plan by explaining **how and when** the GAL will conduct an interview with the abuser.
- Ask the victim what, if any, concerns they may have about possible consequences to them and the child as a result of such interviews with the abuser.
- **Most importantly**, if it appears that an interview about domestic abuse with the alleged abuser will endanger victims or the child, **delay it until their safety is secured**.

Avoid blaming / **shaming language with both parties**. Victims often experience victim-blaming from both the abuser and from legal systems and social services. Abusers often deny harmful behavior or avoid accountability because of shame or fear of punishment themselves. Interview the alleged abuser in a way that encourages disclosure of their abusive conduct.

• I understand this might be difficult to talk about. Have you ever said or done something that might have scared your partner? If so, what happened?

Do not force disclosure. If an identified abuser denies the abuse, do not try to force disclosure. Angry confrontations with abusers often result in retaliation against the child or victim.

Do not confront the abuser with information provided by a victim. While GALs can sometimes use police reports or other agency reports about the Do not confront the abuser with information provided by a victim.

domestic abuse in the interviews with abusers, try not to imply any information solely from a victim's statements. For example, don't say things like:

• [The other parent] told me that you . . .

^{34 &}quot;A safety plan is a personalized, practical plan to improve your safety while experiencing abuse, preparing to leave an abusive situation, or after you leave." See Domestic Abuse Intervention Services. *Safety Planning*. https://abuseintervention.org/safety-planning/.

• I have a police report from when [the other parent] pressed charges . . .

Remember the GAL **does not need the abuser's disclosure to confirm** that domestic abuse occurred — confirmation can come from the victim's statement, child's statements, and other collateral sources. [For more information on interviewing collateral sources, see section <u>II.A.3.h. Interview Additional Parties.</u>]

b. Gather Information from the Child — Sample Interview Comments and Questions

In addition to interviewing the adult parties, it is also important to gather information about the domestic abuse and its impact on children, including interviewing the child, if possible. Consider partnering with your local Child Advocacy Center, if available in the county, when approaching interviews of children. It is possible that the Child Advocacy Center has already conducted an interview of the child or can provide resources for your interview. If the GAL conducts an interview of a child, the GAL should take care not to reveal information about domestic abuse that the child does not already know. For instance, if the GAL is aware of a police response to the home but is unsure if the child was present, the GAL should find out first before revealing the incident to the child in an interview. GALs should review section II.B.5.c. Effects of Domestic Abuse on Children by Age and Developmental Stage before interviewing children to better understand and incorporate these important dynamics in their interviews with children who have experienced violence in their homes.

It is important to recognize that children **may never feel safe disclosing** negative information or feelings about a parent. If the GAL senses reluctance on the part of the child when answering questions, GALs should explore the reluctance by asking the child how it feels to think about or talk about these things. If the child indicates they do not want to talk about it, explore the reasons why rather than continuing to pressure them to talk.

- What's it like to talk about these things? Tell me all the reasons you do not want to talk about it. Help me understand.
- Thank you for sharing your feelings about talking/sharing with me. What are some things I can do to make it easier to talk about this? I need to understand more about what is happening so we know what to do next.

Diversify language and concepts for children. Interview strategies should be non-suggestive and appropriate to the age and developmental stage of the child.

- Tell me about arguing or fighting that happens in your family.
- Tell me about mom/dad getting mad? What happens when mom is mad at dad? What happens when dad gets mad at mom? How do you feel when that happens? Tell me everything you see/hear...
- Who takes care of you at mom's / dad's? What do they do to take care of you? Tell me all the things you like to do with mom / dad.

The child's perspective may be impacted by what they saw and what they heard. Their perspective may also be impacted by what they hear other people say about events and how each parent frames the event. Detail errors are normal within accurate reports. Finally, children's descriptions of events will reflect their stage of language development. Focusing the child on sensory information (what the child saw with their eyes and heard with their ears) will help elicit

Focusing the child on sensory information . . . will help elicit information that the child personally experienced.

information that the child personally experienced.

Remember the impacts of coercive control. At a minimum, children should be interviewed separately in cases with allegations of abuse, even if they are also interviewed or observed with one or both parents.

Do not quote children directly. From a safety standpoint, it is critical that the GAL not attribute direct quotes to children; this reduces the risk that a parent will use the child's words against them or against the other parent.

[For more about gathering information from children, see <u>Appendix: Step 1 Evaluating Domestic Violence:</u> Considerations for the Questioning of Potential Child Witnesses by GALs.]

c. Reflection Questions for GALs to Consider

Even after the GAL has interviewed the parents and child, there may not be an explicit disclosure of domestic abuse. This does not rule out the presence of domestic abuse. It is important to reflect on whether there were / are any indicators of domestic abuse, power differentials between the parents, or fear within the family. Questions to ask for reflection include:

- Does either parent appear scared or reluctant to share information about the other parent?
- Has either parent shared they feel trapped or that they constantly second guess themselves?
- Have you observed either parent not know how to access finances, or share that they weren't allowed to have a job?

d. Determine Whether There Are Domestic Abuse, Harassment, or Child Abuse Restraining Orders

Records from civil court proceedings related to domestic and child abuse may provide useful information regarding the presence and effect of abuse on adults and children. [For information on how to access these court records, see section II.A.3.f. Access Documents Related to Domestic Abuse.]

In a family law action, if the court believes that a temporary restraining order or injunction under Wis. Stat. § 813.12 is appropriate, the court shall inform the parties of their right to file a domestic abuse restraining order and the procedure to follow.³⁵

Under certain circumstances, evidence of domestic or child abuse overcomes the general presumption in favor of joint legal custody: a finding that one party has engaged in a pattern or serious incident of domestic abuse creates a rebuttable presumption that the court should deny joint or sole legal custody to the offending party.³⁶

[See section II.C.1. Presumptions and Paramount Considerations.] The existence of a restraining order or injunction related to domestic or child abuse against a party likely constitutes "evidence" of domestic or child abuse within the meaning of Wis. Stat. § 767.41(2)(b)2.c.

If a restraining order or injunction currently limits contact between the parties or a party and the child, the GAL should take care not to make recommendations that would call for the respondent to violate the order. Violations of restraining orders and injunctions

If a restraining order or injunction currently limits contact between the parties or a party and the child, the GAL should take care not to make recommendations that would call for the respondent to violate the order.

35 Wis. Stat. § 767.225(3m)

36 Wis. Stat. § 767.41(d)(1)

can result in significant criminal penalties. There is no legal authority that a family law order may modify or supersede an existing restraining order or injunction. It is common for a victim to seek an injunction prior to filing for a divorce or during a divorce because leaving an abusive relationship is, statistically, the most dangerous time in an abusive relationship.

Under Wisconsin law, petitioners file first for a temporary restraining order ("TRO"), which is granted ex parte. An injunction hearing will be scheduled around two weeks later, where the court will determine whether to grant a longer-term injunction. There are four types of restraining order under Wisconsin statutes.

i. Domestic Abuse Restraining Order, Wis. Stat. § 813.12

An adult can file for a domestic abuse TRO or injunction against an adult respondent with whom a statutorily specified relationship is shared. A petitioner can file against a family member, spouse or former spouse, household member, person with a child in common, person in a dating relationship, and/or person acting as a caregiver.³⁷ If a domestic abuse injunction is granted, the court is mandated to order the respondent to surrender any firearms in their possession and to no longer possess firearms for the duration of the order.³⁸

ii. Harassment Restraining Order, Wis. Stat. § 813.125

A harassment restraining order does not have the same relationship requirements as a domestic abuse restraining order. Any adult or child can petition for a harassment TRO or injunction against an adult or child.³⁹ Harassment restraining orders allow minor victims of domestic abuse (e.g., teens experiencing dating violence) to file a petition for a TRO against their abuser without first needing permission from an adult.

Some petitioners who are eligible for a domestic abuse restraining order choose to seek a harassment restraining order for a variety of reasons. For instance, a harassment injunction does not include a mandatory prohibition on the respondent possessing firearms (though a court may order this condition),⁴⁰ and some petitioners fear increased retaliation when a firearm surrender is ordered.

iii. Child Abuse Restraining Order, Wis. Stat. § 813.122

A child victim or a parent, stepparent, or legal guardian on behalf of the child victim can petition for a child abuse TRO or injunction to protect the child victim from child abuse.⁴¹ The court will grant the order upon a finding that the respondent engaged in or, based on prior conduct, may engage in child abuse.⁴² If a child abuse injunction is granted, the court is mandated to order the respondent to surrender any firearms in his or her possession and to no longer possess firearms for the duration of the order.⁴³

iv. Individual at Risk Restraining Order, Wis. Stat. § 813.123

An individual at risk (either an adult at risk or elder adult at risk) or anyone on their behalf can petition for an individual at risk TRO or injunction to protect the victim from abuse.⁴⁴ Uniquely, the individual at risk TRO

```
37 Wis. Stat. § 813.12(1)(am)
```

³⁸ Wis. Stat. § 813.12(4m)

³⁹ Wis. Stat. § 813.125(2)(b)

⁴⁰ Wis. Stat. § 813.125(4m)(a)

⁴¹ Wis. Stat. § 813.122

⁴² Wis. Stat. § 813.122(5)(a)3.

⁴³ Wis. Stat. § 813.122(5m)

⁴⁴ Wis. Stat. § 813.123(2)(a)

and injunction statutes contain explicit measures to protect against financial abuse. 45

e. Determine Whether There Is a Criminal Case Involving Domestic Abuse

In the course of investigations, GALs may encounter parties with closed or pending domestic abuse criminal cases. [For information on how to access these court records, see section II.A.3.f. Access Documents Related to Domestic Abuse.] Some abusive behaviors are crimes under Wisconsin law. However, it is important to understand that the Wisconsin criminal code does not create a separate crime of domestic abuse.

Understand that a parent who has been charged with a domestic abuse crime may feel limited in their ability to provide information to a GAL if doing so will interfere with their constitutional right against self-incrimination. In cases involving pending criminal charges, GALs may seek consent from the party or party's attorney to speak to the parent with pending criminal charges in order to investigate if there is any evidence of domestic abuse. If the parent asserts their Fifth Amendment right against self-incrimination, it probably will not be possible to interview that party within the timeframe set by the court. In this situation, GALs may seek information regarding domestic abuse and its effect on the child through other sources, to the extent possible. Note the inability to interview the party in the report to the court.

Wisconsin's mandatory arrest law, which uses the criminal law code definition of "domestic abuse" [see section I.B.2.a. Domestic Abuse, as Defined in the Criminal Law Code], states that law enforcement shall arrest and take a person into custody if the officer has reasonable grounds to believe that the person has committed or is committing domestic abuse, that the person's actions constitute the commission of a crime, and that any of the following apply:

- The officer has a reasonable basis for believing that continued domestic abuse against the alleged victim is likely.
- There is evidence of physical injury to the alleged victim.
- The person is the predominant aggressor. 46

Thus, an officer might arrest a person for any number of domestic abuse-related crimes. However, the lack of charges or convictions should never be taken to indicate there is not domestic abuse. Oftentimes survivors are reluctant to report abuse to law enforcement. Still, most common domestic abuse-related crimes in Wisconsin include the following:

Offense	Statutory Citation
Homicide Offenses	940.01 – 940.06
Battery, Battery by Persons Subject to Certain Injunctions, Battery or Threat to Witnesses	940.19, 940.20(1m), 940.201
Sexual Assault	940.225
Reckless Injury	940.23
Strangulation and Suffocation	940.235
Abuse of Individuals at Risk	940.285
False Imprisonment	940.30
Human Trafficking	940.302

⁴⁵ Wis. Stat. § 813.123(1)(dm)

⁴⁶ Wis. Stat. § 968.075(1) and (2)

Offense	Statutory Citation
Taking Hostages	940.305
Kidnapping	940.31
Global Positioning Devices	940.315
Stalking	940.32
Intimidation of Witnesses / Victims	940.42 - 940.45
Violation of Court Orders	940.48
Endangering Safety by Use of Dangerous Weapon	941.20
Recklessly Endangering Safety	941.30
Damage to Property	943.01
Damage or Threat to Property of Witness	943.011
Criminal Trespass to Dwellings	943.14
Entry onto a Construction Site or into a Locked Building, Dwelling, or Room	943.15
Bail Jumping	946.49
Disorderly Conduct	947.01
Unlawful Use of a Telephone	947.012
Unlawful Use of Computerized Communication Systems	947.0125
Trafficking of a Child	948.051
Municipal Ordinances Conforming to:	940.201; 941.20; 941.30; 943.01; 943.011; 943.14; 943.15; 946.49; 947.01; 947.012; 947.0125

f. Access Documents Related to Domestic Abuse

In the course of a thorough investigation, and depending on the facts of each case, GALs will look at files and materials related to domestic abuse from a variety of sources. However, victims may be reluctant to support the investigation of these related documents. Oftentimes victims feel distrustful of systems that have not worked in their favor, such as the justice system, schools, and child protective services. Moreover, undocumented immigrant victims may show increased reluctance related to investigation of their records due to fear of immigration enforcement. Discussing the investigation, and its scope, with the victim may help them understand why certain documents are necessary and reduce their fears and concerns. Keeping this dynamic in mind, the following are some sources of documents that may contain information related to domestic abuse:

Court Records: Check court records as a routine part of every investigation. Wisconsin Court System Circuit Court Access ("CCAP") can provide some useful information, but not all relevant information is accessible through CCAP. Criminal records from other states, confidential case types, files that have been sealed, and convictions that have been expunged are not available on CCAP. Records of restraining order petitions are generally not accessible by searching under the petitioner's name; they usually can

only be found by searching the respondent's name. Moreover, beginning April 18, 2014, records of child abuse restraining order petitions and child abuse injunctions are confidential and do not appear on CCAP. Additionally, all child protective cases are confidential and are not available on CCAP.

To obtain more complete information about criminal records, request a criminal history background check done through the Wisconsin Department of Justice Crime Information Bureau (CIB). For more information, visit www.doj.state.wi.us/dles/cib/background-check-criminal-history-information.

Probation Records: A GAL may also need to obtain information from the Department of Corrections, Division of Community Corrections. Most probation officers should be able to speak freely with a courtappointed GAL upon verification of appointment.

School Records: Schools will often share information after initial contact is made by telephone and the school receives a copy of the order of appointment.

Employment Records: On some matters, it may be significant to look at either parent's employment records; for instance, if a parent reports that they were unable to work due to abuse or the abuser was interfering with the victim's job.

Miscellaneous Children's Records: Day care, preschool, safe visitation and exchange center, camp, and extracurricular activity records may also be important to the investigation. GALs should be able to access these by providing a copy of the order of appointment.

Child Protective Service (CPS) Records: CPS records may show prior reports of abuse, neglect, or violence in the home. Under Wis. Stat. § 48.981(7)(b), a GAL may review these CPS records if one or both parents of the child have signed a release authorizing the disclosure of this information. Inquire with the county CPS agency as to the required form and procedure to avoid an unnecessary delay in obtaining the information. If the parents are unwilling to sign such an authorization, a GAL also has the option of filing a motion for an order allowing access to specific information. Many judicial officers, while careful to protect confidentiality, will be generous in allowing a GAL access to relevant information upon a careful showing of need and meeting the overriding standard of best interests of the child.

Review CPS records carefully and acknowledge their limitations. At times, agencies will "screen out" or "unsubstantiate" reports of alleged maltreatment and not take any further action. This does not necessarily indicate that the alleged actions did not occur. The Wisconsin Access and Initial Assessment Standards require the agency to determine whether there are present or impending threats that place the child at risk of harm when determining response times or if a report is to be "screened out." In addition, the standards allow agencies to "screen out" reports that do not meet the statutory definition of the alleged abuse. For example, if a report indicates that a parent is using inappropriate physical discipline, but the child has not received injuries as a result of this discipline, the report could be screened out as the discipline does not meet the definition of abuse found in the Wis. Stat. § 48.02. However, GALs can access helpful information related to the family functioning, parenting practices, safety determination, and other related information in cases where the agency completed an investigation and initial assessment, regardless of the substantiation determination. In cases where the agency screened out and did not investigate a report, the record will only include minimal information regarding an allegation of maltreatment.

g. A Note About Privileged Records

While it is natural to want as much information as possible, be thoughtful about the decision to request, and the handling of, privileged records, especially medical records. GALs who seek and obtain privileged records without considering the privacy and safety of victims and children may increase victims' and children's risk

for physical and emotional harm. Additionally, just like defendants have constitutional rights, crime victims have constitutional rights, such as the right to privacy, under Marsy's Law.⁴⁷

Mental health and medical records may be an issue in contested custody and placement cases. For instance, courts may consider "[w]hether the mental or physical health of a party, minor child, or other person living in a proposed custodial household negatively affects the child's intellectual, physical, or emotional well-being" when determining the best interests of the child.⁴⁸ However, medical and mental health records are afforded special protections under state and federal law and medical practitioners' professional ethical obligations. These protections are in place to allow individuals to seek help without fear of exposing themselves to the release of sensitive or embarrassing information or information that could be used against them.

Domestic abuse victims and their children have especially important reasons to limit the distribution of their medical and mental health records. First and foremost, abusers' knowledge of GALs who seek and obtain privileged records without considering the privacy and safety of victims and children may increase victims' and children's risk for physical and emotional harm.

what victims and their children told health care providers about the abuse may cause abusers to retaliate. In addition, children and victims who reveal painful details about abuse, in what was thought to be a safe space, are traumatized and re-victimized when abusers are able to gain access to that information through the court process. Imagine the pain of a child who trusts a therapist enough to talk about what happened to them only to later learn the abuser was able to find out what was said. That violation of trust could make it more difficult for the child to trust again and compromise the child's future relationships with either or both parents.

Abusers also often try to portray victims as "crazy" or "unstable." Abusers who do this are, many times, exploiting the effects of trauma that they themselves caused. Abusers' access to mental health information fuels their attempts to marginalize and discredit their victims. These tactics occur inside and outside of the courtroom. Some abusers use the victims' mental health information revealed in the court process to slander the victims to family, friends, and community members.

Moreover, allowing disclosure of protected information to a third party may result in a loss of the statutory privilege those mental health and other medical records are afforded under the law. Thus, a strong preference exists for no disclosure of medical records. A GAL should provide a legal reason for needing these records before requesting such a release rather than risk the loss of privilege on behalf of a victim. Finally, a crime victim has standing to oppose the release of medical records in a criminal case, and there are arguments that a victim's rights may apply in simultaneous family or civil cases where the crime victim and the defendant are parties.⁴⁹

For all these reasons, GALs should proceed very carefully when seeking a party's mental health records. It should never be a routine practice for a GAL to request an authorization for release of information from a victim. If the mental health of the victim has been raised as a legitimate issue and there are no less obtrusive means to obtain the information, seek a court order for the release of mental health or other medical records that includes

⁴⁷ Wis. Const. Art. I, § 9m

⁴⁸ Wis. Stat. § 767.41(5)(am)10.

⁴⁹ Wis. Const. Art. I, § 9m(2)(m); State v. Johnson, 2023 WI 39, 407 Wis. 2d 195.

a protective order. The protective order should stipulate to seal the records and prohibit release to anyone other than the GAL to be used as consideration for their recommendations.

If the information under the protective order must be used at trial, seek an in camera inspection. The judge or court commissioner will decide whether the records may be used at trial. Even when records are used at trial (e.g., if the medical records are part of the evidence and, therefore, become part of the court record), request that those records be sealed in the court's file and NOT made available to anyone to view them. Also, ask the court to conduct a closed hearing if these privileged records are going to be used as evidence or discussed in court.

h. Interview Additional Parties

In addition to interviewing the adult parties and children, consider whether the parties have relationships in the broader community, such as with family, friends, neighbors, doctors, teachers, clergy, etc. Because isolation is a common tactic used by abusers, evaluate whether both parties have equal access to social support and the broader community and then determine whether additional interviews would support the investigation. For instance, abusers often prevent victims from maintaining contact with family and friends and prevent them from forming connections in new communities. By contrast, abusers are oftentimes very respected within the community and may hold positions of power, with many community members willing to vouch for them. With these power differentials in mind, it still may be helpful to interview additional parties in an effort to determine if domestic abuse is present.

SAFeR Step 2: Assess the Nature and Context of Domestic Abuse



B. SAFeR Step 2: Assess the Nature and Context of Domestic Abuse

Again, accurately identifying domestic abuse requires attention, skill, and sensitivity. Once the GAL has gathered the basic facts related to incidents of domestic abuse, GALs must consider the nature and context in which that abuse occurred. Understanding the nature and context allows the GAL to understand the meaning of the abuse for the victim and the children in the family. This analysis is necessary to understand the extent of the abuse and the effect it has with respect to parenting and the health, safety, and well-being of the child and the victim. As will be discussed in section II.C. SAFeR Step 3: Focus on the Effects of Domestic Abuse, understanding the nature and context of abuse is also necessary to properly apply numerous statutory presumptions and factors.

Explore the following issues to understand the nature and context of the abuse:

- Whether the abuse is part of an ongoing pattern of behaviors to control the victim;
- Whether there is interference with the victim's access to resources, decision-making authority, and freedom (e.g., surveillance, stalking, and tech abuse);
- Whether there has been sexual assault;
- Whether the child has experienced direct harm from the abuse, directly observed the abuse, and/or seen aftermath of abuse;
- Whether the abuser has the abilities to appropriately parent, including the ability to provide emotional support to the child, protect the child from emotional or physical harm, respond to the child's needs, support the child's relationship with the victim, and support the parental authority of the victim.

1. Isolated Incidents

In some cases, an incident of domestic abuse may not be part of, or perceived as part of, a pattern. The violent incident is not necessarily one that the victim believes will be repeated, and the victim may not be afraid of the other parent. Victims of an isolated incident often see themselves as capable of making decisions and asserting themselves without fear of reprisal or coercion from the person who committed the violent act.

Proceed with extreme caution before concluding that a violent incident was isolated and/or minor. Perpetrators and victims of severe abuse often minimize what has occurred and the effects of the abuse, for different reasons. For instance, abusers minimize their behavior to escape accountability. [See section II.A.2.a. Importance of a Thorough Investigation for more information about victim interviews and why victims may not disclose a full picture of abuse.]

If an incident of violence is truly isolated, it may fall within the definition of "situational couple violence," which is not embedded in a larger pattern of controlling behaviors.⁵⁰ Situational couple violence occurs in specific situations, such as during an argument. However, even an isolated incident of violence could meet the statutory definition of domestic abuse, thereby warranting a finding of domestic abuse triggering a presumption that the abuser should not receive sole or joint legal custody.

Additionally, GALs cannot solely rely on the existence or absence of criminal charges or convictions to make a conclusion about the severity or significance of a domestic abuse incident or incidents. The criminal justice system tends to account for individual incidents separately and often does not accurately reflect the pattern or meaning of abuse. Understanding the nature and context of abuse in a way that will allow a GAL to make conclusions about the best interests of the child requires a more comprehensive and fact-specific determination.

⁵⁰ Hardesty, J.L., Crossman, K.A., Khaw, L., & Raffaelli, M. (2016). Marital Violence and Coparenting Quality After Separation. *Journal of family Psychology*, 30(3), 320-330.

Moreover, charging decisions in the criminal justice system tend to be influenced by factors such as prosecutor workload, plea bargaining strategies, the prosecutor's knowledge and understanding of domestic abuse, and whether or not the prosecutor believes the victim will be a strong witness at trial. While these factors can have a large bearing on the outcome of criminal justice processes, they have very little or no relevance to the best interests of a child who has been exposed to domestic abuse, and, therefore, GALs must dig deeper to understand the nature and context of abuse.

2. Resistive Violence

In some cases, a GAL may learn about an incident of violence that was committed by an individual who is actually the victim of a pattern of abuse. Some victims of domestic abuse will use violence to protect themselves or to stand up to the abuser. Although resistive violence or self-defense could meet the statutory definition of domestic abuse, violence that is committed in response to ongoing abuse has a different nature and context, and has different implications for a GAL in terms of the best interest of the child and the recommendations offered to the court. Be aware that some abusers are very skilled at bringing victims' acts of resistance to the attention of authorities, while using fear and psychological abuse to conceal or minimize the underlying pattern of violence and abuse.

In cases involving domestic abuse committed by and against both parties, a GAL will generally need to consider whether both parties' acts of abuse constitute a "pattern" or are deemed "serious" within the meaning of the

statute and, if so, which party was the primary physical aggressor. [See sections I.B.1.d. Primary Physical Aggressor, as Defined in the Family Code and II.C.1.a. Presumption against Joint and Sole Custody to the Abuser for more information about the requisite legal analysis in these situations.]

3. Coercive Control of the Victim

Most critically, GALs must understand the effects of coercive control to understand the dynamic that is often present in domestic abuse cases. Coercive control refers to any pattern of behavior an abuser uses to dominate their partner and limit their freedom.⁵²

Generally, the types of abusive behaviors that facilitate and support coercive control include implicit and explicit forms of intimidation, actual physical and sexual violence, property destruction, and threats. In the research done by the Battered

destruction, and threats. In the research done by the Battered Women's Justice Project, other examples of coercive control include abusers interfering with the victim's:

- Access to resources, e.g., medical services, transportation, childcare, etc.;
- Freedom to manage their daily affairs and meet daily needs;
- Access to financial resources, e.g., bank accounts, credit cards, paychecks, public benefits, etc.;

51 Note that Wis. Stat. § 767.41(2)(d)2.d. directs the court to consider the possibility of self-defense, among other factors, when both parties have engaged in a serious incident or pattern of violence.

52 Flannery, S. (2021). A Guide to Coercive Control: How to Recognize this Subtle Yet Dangerous form of Abuse. www.domesticshelters.org/articles/identifying-abuse/a-guide-to-coercive-control.

Most critically, GALs must understand the effects of coercive control to understand the dynamic that is often present in domestic abuse cases.

- Parenting autonomy;
- Social and cultural connectedness, e.g., ability to continue relationships with family and friends, ability to participate in faith communities, freedom to speak in preferred language.

Within any given relationship, however, the specific behaviors used to abuse the victim are unique to that relationship.⁵³ Specific behaviors used are based on the abuser's knowledge and assessment of the victim's vulnerabilities. The abuser learns about these vulnerabilities from everyday observations of the victim during the relationship.

Coercive control reduces the victim's power to make decisions, places limitations on independence, and diminishes the victim's self-image and strength. ⁵⁴ Coercive control impacts virtually all dimensions of the victim's life, including everyday actions, use of economic resources, relationships with family and friends, educational and occupational opportunities, sexuality, and general life activities. ⁵⁵

Coercive control is a subtype of psychological abuse. Not all psychological abuse is controlling per se, even if it is damaging in some way. Similarly, physical violence is not the same as coercive control, even though physical and other forms of violence (e.g., sexual, property damage, and pet abuse) are intimately related to coercive control because these forms of abuse support and maintain the abuser's coercive control over the victim. Coercive control is also differentiated from influence or persuasion⁵⁶ in that, with coercive control, victims are constrained as to the choices they have and perceive the control as negative. The victim of coercive control can reliably predict negative outcomes for failure to comply with the demands of the abuser. Influence or persuasion does not constrain the other person's ability to make choices.

4. Identifying Coercive Control during Family Court Proceedings

a. Using the GAL to Control the Victim

GALs have to be careful when appointed to cases where domestic abuse is an issue or a concern. Abusers often use any available means of power and control to continue victimizing their former partners. Oftentimes abusers' manipulative behaviors can be hard to detect because abusers are well-practiced at presenting as organized, responsible, good parents, and even good partners. GALs should be aware of these behaviors when they have concerns that a parent has been abusive and, therefore, likely has the motivation to use the GAL against the victim.

- 53 Stark, E. (2007). Coercive Control: How Men Entrap Women in Personal Life. Oxford University Press.
- 54 Ehrensaft, M.K., & Vivian, D. (1999). Is Partner Aggression Related to Appraisals Of Coercive Control By A Partner?. *Journal of Family Violence*, 14(3), 251-266.
- 55 Bair-Merritt, M. H., Crowne, S.S., Thompson, D.A., Sibinga, E., Trent, M., & Campbell, J. (2010). Why Do Women Use Intimate Partner Violence? A Systematic Review of Women's Motivations. *Trauma, Violence, & Abuse, 11*(4), 178-189; Beck, C.J., Menke, M., Brewster, K.O., & Figueredo, J. (2009). Validation of a Measure of Intimate Partner Abuse with Couples Participating in Divorce Mediation. *Journal of Divorce & Remarriage, 50*(5), 295-308; Davis, K.E., Swan, S.C., & Gambone, L.J. (2012). Why Doesn't He Just Leave Me Alone? Persistent Pursuit: A Critical Review of Theories and Evidence. Sex Roles, 66(5-6), 328-339; Robertson, K., & Murachver, T. (2011). Women and Men's Use of Coercive Control in Intimate Partner Violence. *Violence and Victims, 26*(2), 208-217.
- 56 Bair-Merritt, M.H., Crowne, S.S., Thompson, D.A., Sibinga, E., Trent, M., & Campbell, J. (2010). Why Do Women Use Intimate Partner Violence? A Systematic Review of Women's Motivations. *Trauma, Violence, & Abuse, 11*(4), 178-189; Day, A., & Bowen, E. (2015). Offending Competency and Coercive Control in Intimate Partner Violence. Aggression and Violent Behavior, 20, 62-71; Ehrensaft, M.K., Langhinrichsen-Rohling, J., Heyman, R.E., O'Leary, K.D., & Lawrence, E. (1999). Feeling Controlled in Marriage: A Phenomenon Specific to Physically Aggressive Couples?. *Journal of Family Psychology, 13*(1), 20.

Abusers may try to manipulate a GAL with a variety of tactics, including the following:

- Constantly calling and contacting the GAL to increase the billing;
- Not contacting the GAL until the last minute and then bringing a lot of documentation and information to try to delay the trial;
- Giving the GAL inaccurate or misleading information about the abuse, which could prompt the GAL to obtain more information from the victim, thus re-victimizing them;
- Providing false information;
- Demanding to know exactly what the victim has told the GAL;
- Insisting that the GAL share unrelated or confidential documents about the victim;
- Trying to charm the GAL.

While abusers may use these behaviors to perpetuate their power and control within a family law case, it is critical to understand that victims may demonstrate seemingly similar behaviors, but for very different reasons not related to power and control. For example, victims may frequently call the GAL to request — or even demand — further investigations or to report new incidents of abuse; miss meetings or ignore phone calls from the GAL due to lack of trust in the court system; insist that a GAL consider the facts in an unsubstantiated report to child protective services; or insist the GAL share what the abuser has said. Victims can feel disenfranchised from the justice systems and family courts, and may be accustomed to being their own fiercest advocate, which may present as overbearing in the context of an investigation. On the other hand, victims can display hypervigilance related to their interactions with systems due to the belief that contacting the GAL or other decision makers will reflect negatively on them.

b. Attempting to Control the Court Process

Be aware of attempts by abusers to control the court process as a means of reinforcing to the victim that the abuser, not the judge, is in control. Abusers are very adept at using the legal system as one more tactic of control against victims. A thorough knowledge about domestic abuse is necessary to identify and counter such attempts. To evaluate whether the abuser is trying to control the court process, consider whether they have:

Victims can feel disenfranchised from the justice systems and family courts, and may be accustomed to being their own fiercest advocate, which may present as overbearing in the context of an investigation. On the other hand, victims can display hypervigilance related to their interactions with systems due to the belief that contacting the GAL or other decision makers will reflect negatively on them.

- Physically assaulted or threatened violence against the victim or others inside or outside the courtroom?
- Threatened suicide or to take the children in order to coerce the victim to change the petition or to recant previously given testimony?

- Waited for the victim at court or followed the victim in or out?
- Weaponized information gained through GAL interviews and court records to stalk or threaten the victim?
- Claimed that the victim's behaviors "made" the abuser do it or that the victim's reactions to trauma make them an unfit parent?
- Made statements of profound devotion or remorse to the victim and to the court?
- Initiated the family court action after contact was stopped due to a restraining order or criminal case? Delayed and prolonged court proceedings? Filed numerous motions or sought additional court dates? Called the police or others about trivial issues?
- Tested the limits of physical placement and custody/support agreements (e.g., arriving late or not showing up at appointed times and then, if the victim refuses to allow a subsequent visit, threatening court action)?

5. Children's Experience of the Abuse

a. Assess the Domestic Abuse Risk Posed to Children

In making custody and placement recommendations, consider the safety of the children. Given the range of physical and psychological danger to children that exists when domestic abuse is present and the many elements necessary for recovery, assessing the risk of danger to children is complex.⁵⁷ Factors to be considered in assessing risk to children include the following:⁵⁸

- Level of physical danger to the victim: The higher the severity or frequency of an abuser's violence, the greater the risk of child abuse.
- History of physical abuse towards the children.
- History of sexual abuse or boundary violations towards the children.
- **Presence of polyvictimization**: More than one in three children exposed to domestic abuse are also experiencing child maltreatment⁵⁹ and 64.5% of youth who report direct victimization also reported more than one type of abuse.⁶⁰
- Level of psychological cruelty to the victim or the children: Research indicates that the degree of emotional abuse in the home is an important determinant of the severity of difficulties developed by children exposed to domestic abuse.⁶¹
- 57 Bancroft, L., & Silverman, J.G. (2004). Assessing Abusers' Risks to Children. *Protecting Children from Domestic Violence: Strategies for Community Intervention*, 101-119.
- 58 Bancroft, L., Silverman, J.G., & Ritchie, D. (2011). The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics. Sage Publications.
- 59 Hamby, S., Finkelhor, D., Turner, H., & Ormond, R. (2010). The Overlap of witnessing partner violence with child maltreatment and other victimizations in a nationally representative survey of youth. *Child Abuse & Neglect*, 34(10), 734-741.
- 60 Finkelhor, D., Turner, H., Ormrod, R., & Hamby, S.L. (2009). Violence, abuse, and crime exposure in a national sample of children and youth. *Pediatrics*, 124(5), 1411–1423.
- 61 Hughes, H.M., Graham-Bermann, S.A., & Gruber, G. (2001). Resilience in Children Exposed to Domestic Violence, in S. Graham-Bermann & J. Edleson (Eds.) *Domestic Violence in the Lives of Children: The Future of Research, Intervention, & Social Policy.* American Psychological Association

- Level of coercive or manipulative control exercised during the relationship: Research indicates that the more severely controlling individuals are towards their partners, the more likely they are to draw the children in as weapons of the abuse.⁶²
- Level of entitlement and self-centeredness: Consider the abuser's perception of themselves as deserving of special rights and privileges within the family. Highly entitled and self-centered abusers have been observed to chronically exercise poor parenting judgment and to inappropriately expect children to take care of their emotional and physical needs.⁶³
- **History of using the children as a weapon**: For example, manipulating the victim by threatening to abuse or take away the children, hurting the partner by hurting the children, not allowing the partner to comfort the children or have physical contact with them, teaching children to use insulting language towards the non-abusive partner, and undermining the other parent.
- History of placing children at physical or emotional risk while abusing the other parent.
- History of neglectful or severely under-involved parenting.
- **Refusal to accept the end of the relationship**: Refusing to accept decisions by the other parent, such as ending the relationship or beginning a new relationship, is often accompanied by severe jealousy and possessiveness, and has been linked to increased dangerousness in domestic abusers. ⁶⁴
- History of substance abuse.

b. Physical or Psychological Abuse of the Children

While the child may not be the specific target of the abuser, the abuser may traumatize the child in the process of abusing the victim. Children who live in abusive homes not only witness the abuse, but also are at risk of being victims of physical or sexual abuse by domestic abusers, or of being victimized by the abuser's use of them to control the parent victim. ⁶⁵ Current research indicates that domestic abuse impacts children in a variety of ways including the following. ⁶⁶

i. Injury or Threat to Child, Pets, or Objects

Abusers may intentionally injure or threaten violence against the child, pets, or the child's cherished objects as a way of threatening and controlling the victim. For example, the child may be used as a physical weapon against the victim, be thrown at the victim, or be abused as a way to coerce the victim to do certain things. The child's pets or cherished objects may be damaged, or threatened with damage. Attacks against pets are particularly traumatic for children who are often extremely empathetic toward their pets and animals. An attack against the pet is often experienced by the child as an attack against the child.

⁶² Bancroft, L., & Silverman, J. (2002). The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics. Thousand Oaks, CA: Sage.

⁶³ *Id*.

⁶⁴ Weisz, A.N., Tolman, R.M., & Saunders, D.G. (2000). Assessing the Risk of Severe Domestic Violence the Importance of Survivors' Predictions. *Journal of Interpersonal Violence*, 15(1), 75-90.

⁶⁵ Jaffe, P.G., Crooks, C.V., & Poisson, S.E. (2003). Common Misconceptions in Addressing Domestic Violence In Child Custody Disputes. *Juvenile and Family Court Journal*, 54, 57.

⁶⁶ Edleson, J.L. (1999). The Overlap between Child Maltreatment and Woman Battering. Violence against Women, 5(2), 134-154

ii. Injury to Child while Attacking the Victim

Abusers may unintentionally physically injure the child while attacking the victim. For example, when the child gets caught in the fray (e.g., an infant injured when the mother is thrown while holding the infant) or when the child attempts to intervene (e.g., a small child is injured when trying to stop the abuser's attack against the victim).

iii. Using the Children to Control the Victim

Abusers may use the child to coercively control the victim by isolating the child along with the victim (e.g., not allowing the child to enter peer activities or friendships), engaging the child in the abuse of the victim (e.g., making the child participate in the physical or emotional assaults against the adult), forcing the child to watch the abuse against the victim, interrogating the child about the victim's activities, taking the child away after each violent episode to ensure that the victim will not flee the abuser, and asserting that the child's "bad" behavior is the reason for the assault on the victim.

iv. Assaulting the Victim in front of the Child

Despite what parents say, children have often either directly witnessed acts of physical and psychological assaults, ⁶⁷ or have indirectly witnessed them by overhearing the episodes or by seeing the aftermath of the injuries and property damage. There is a common misconception that as long as children are not abused

There is a common misconception that as long as children are not abused directly, they are not harmed by exposure to domestic abuse. However, the reality is that even when they are not physically or sexually abused, if there is violence at home, children are aware of and affected by it.

directly, they are not harmed by exposure to domestic abuse. However, the reality is that even when they are not physically or sexually abused, if there is violence at home, children are aware of and affected by it. As a significant and growing body of research attests, exposure to physical violence at home hurts children, although the extent of that injury differs from child to child,⁶⁸ even within the same home.

c. Effects of Domestic Abuse on Children by Age and Developmental Stage

Domestic abuse affects every child differently, and, therefore, each case needs to be assessed individually. Considering the child's stage of development can help the GAL ascertain the impact of domestic abuse on a particular child.⁶⁹

⁶⁷ Brookhoff, D., O'Brien, K., Cook, C., Thompson, T., & Williams, C. (1997). Characteristics of Participants in Domestic Violence. *Journal of The American Medical Association*, 277(17), 1369-1373.

⁶⁸ Edleson, J.L. (2001). Studying The Co-Occurence of Child Maltreatment and Domestic Violence In Families, in S. Graham-Bermann & J. Edleson (Eds.) Domestic Violence in the Lives of Children: The Future of Research, Intervention, & Social Policy. American Psychological Association.

⁶⁹ Wisconsin Department of Children and Families. Division of Safety and Permanence. (2023). *Domestic Violence Handbook for Wisconsin Child Welfare Professionals*. https://dcf.wisconsin.gov/files/cwportal/prevention/dvhandbook.pdf.

Age	Critical Developmental Tasks	Impacts of Domestic abuse
Infants and toddlers	 Creating emotional attachments to others is critical to provide a foundation for health development Attachment and appropriate stimulation increases infant brain development 	 Child may have interrupted parent attachment⁷⁰ Child may have difficulty forming future relationships and delayed development of cognitive, emotional, and relational skills due to interruption to relationship with victim-parent Child may appear fussy, suffer from eating and sleeping disruptions, and experience cognitive delays⁷¹
Preschool age children	 Learning to take initiative Developing autonomous skills (e.g. potty training, picking out their own clothes) 	 Child may feel guilt for the abuse, and anxiety from the lack of structure in the home⁷² Child may display aggression, fear, anxiety, behavioral problems, and post-traumatic stress disorder (PTSD)⁷³ Child may struggle in interactions with both adults and other children and present as clingy, overactive, and highly demanding
School age children	Developing problem-solving abilities and cognitive skills.	 Child may have compromised learning skills because of anxieties about what is happening at home⁷⁴ Child may present as anxious, aggressive, disobedient, and depressed⁷⁵ Child may suffer from low self-esteem and PTSD

- 70 Stiles, M.M. University of Wisconsin-Madison Medical School, Madison, Wisconsin, Am Fam Physician. (2002) Dec. 1; 66(11):2052-2067 adapting Jaffe, P.G., Hurley, D.J., Wolfe, D. Children's observations of violence: I. Critical issues in child development and intervention planning. *Canadian Journal of Psychiatry*. 1990; 35:466–70 and Rhea, M.H., Chafey, K.H., Dohner, V.A., Terragno, R. The silent victims of domestic violence who will speak? *Journal of Child Adolescent Psychiatry Nursing 1996*;9(3):7–15.
- 71 Carlson. B.E. (2000). Children Exposed to Intimate Partner Violence: Research Findings and Implications for Intervention. Trauma, Violence & Abuse, 1(4): 321-342.
- 72 Cunningham, A.J., Baker, L.L. & Centre for Children and Families in the Justice System. (2007). *Little eyes, little ears: How violence against a mother shapes children as they grow.* London, Ont: Centre for Children and Families in the Justice System.
- 73 Carlson (2000). op. cit.
- 74 Cunningham & Baker (2007) op. cit.
- 75 Stiles (2002). op. cit.

Age	Critical Developmental Tasks	Impacts of Domestic abuse
Teenagers	Becoming autonomous and developing relationships	 Child may lack relationship skills necessary for establishing healthy adult relationships due to lack of positive family role models⁷⁶ Child may exhibit school truancy, delinquency, substance abuse, and early sexual activity⁷⁷ Child may suffer from depression, PTSD, and increased risk of suicide attempts⁷⁸ Child may intervene when there is a violent incident in the home, which could result in physical injury and further developmental impacts

The negative effects of the domestic abuser in interrupting childhood development may be seen immediately in cognitive, psychological, behavioral, and physical symptoms, such as the following:

- Eating or sleeping disorders;
- Mood-related disorders, such as depression or emotional neediness;
- Over-compliance, clinging, withdrawal;
- Overachieving in academic or extracurricular settings;
- Taking on responsibilities greater than are age appropriate (e.g., assuming parenting responsibilities for younger siblings and even caretakers);⁷⁹
- Aggressive acting out, destructive behavior;
- Mirroring either parent's behavior, for example:
 - * Mimicking the abuser's behavior, such as using verbal and physical abuse at home or with peers.
 - * Mimicking the victim's behavior, such as appearement.
 - * Generally using language borrowed from either parent, which may have the effect of the child sounding "coached."
- Detachment, avoidance, a fantasy family life;
- 76 Cunningham & Baker (2007) op. cit.
- 77 Stiles (2002). op. cit.
- 78 Carlson (2000). op. cit.
- 79 Dariotis, J.K., Chen, F.R., Park, Y.R., Nowak, M.K., French, K.M., & Codamon, A.M. (2023). Parentification Vulnerability, Reactivity, Resilience, and Thriving: A Mixed Methods Systematic Literature Review. *International Journal of Environmental Research and Public Health*, 20(13), 6197.

- Changes in relationship with either parent, for example:
 - * Aligning with the abuser due to fear or to ensure the relationship is preserved.
 - * Aligning with and seeking to protect the victim, even intervening during instances of abuse.
- Somatic complaints, finger biting, restlessness, shaking, stuttering;
- School problems;
- Suicidal ideation.80

The child's experience of domestic abuse may also result in changes in perceptions and problem-solving skills, such as the following:

- Young children incorrectly seeing themselves as the cause of the abuser's violence against the victim;
- Children using either passive behaviors (withdrawal, compliance, etc.) or aggressive behaviors (verbal and/or physical striking out, etc.) rather than assertive problem-solving skills.

There also may be long-term effects as these children become adults, such as the following:

Carrying deficits into adulthood: When important developmental tasks are interrupted, children may never recover from getting behind in certain academic tasks or in interpersonal skills. These deficits impact their abilities to maintain jobs and relationships.

Adverse Childhood Experiences (ACEs): Disruptions to the promotion of safe, stable, and nurturing family relationships and are characterized by stressful or traumatic events that occur during an individual's first 18 years of life. ⁸¹ Research indicates there are long-term health effects from experiences of domestic abuse during childhood. ⁸² Childhood exposure to domestic abuse is considered an ACE and has been linked to numerous negative physical and mental health outcomes in adulthood. ⁸³

Continuing the cycle of violence: Male children, in particular, exposed to domestic abuse have a higher likelihood of abusing intimate partners in their adult relationships.⁸⁴

6. Parenting in the Context of Domestic Abuse

The GAL must also consider the abuse in the context of the familial and parental relationships between the victim, the abuser, and the child. Due to the effects of experiencing domestic abuse and subsequent trauma, the victim's parental capacity may be reduced while in the abusive relationship. Oftentimes, the victim's parental

⁸⁰ Barnett, O.W., Miller-Perrin, C.L., & Perrin, R.D. (1997). Children Exposed to Marital Violence. In Barnett, O.W., Miller-Perrin, C.L., & Perrin, R.D. (2010). Family Violence Across the Lifespan: An Introduction. Sage Publications.

⁸¹ CDC. Violence Prevention. About the CDC-Kaiser ACE Study. https://www.cdc.gov/violenceprevention/aces/about.html.

⁸² Coker, A.L., Smith, P.H., Bethea, L., King, M.R., & McKeown, R.E. (2000). Physical Health Consequences of Physical and Psychological Intimate Partner Violence. Archives of Family Medicine, 9(5), 451.

⁸³ O'Connor, C., Finkbiner, C., & Watson, L. (2012). Adverse Childhood Experiences in Wisconsin: Findings from the 2010 Behavioral Risk Factor Survey. Wisconsin Children's Trust Fund and Child Abuse Prevention Fund of Children's Hospital & Health System.

⁸⁴ Roberts, A.L., Gilman, S.E., Fitzmaurice, G., Decker, M.R., & Koenen, K.C. (2010). Witness of Intimate Partner Violence in Childhood and Perpetration of Intimate Partner Violence in Adulthood. Epidemiology, 21(6), 809.

capacity improves following separation from the abuser when safeguards are put in place to prevent continued abuse and address trauma.⁸⁵

a. Impacts of Domestic Abuse on Parenting by a Victim

Victims may display reduced parental capacities due to the impacts of trauma. GALs should acknowledge that 65% of victims develop complex-PTSD as a result of experiencing an abusive relationship and that continued conflict during legal battles will likely increase a victim's sensation of danger. This sensation results in the manifestation of the symptoms of PTSD, often referred to as trauma responses, such as:

Hyperarousal: The victim demonstrates an agitated state due to a heightened perception of imminent threats and may appear angry or paranoid.

Avoidance: The victim demonstrates an apathetic or disinterested demeanor during court proceedings or other stressful environments.

Intrusion: The victim demonstrates a state of exhaustion and/or an inability to focus or recall seemingly important details of the case.

This is why the emotional well-being of the victim is a factor the GAL should prioritize. A victim's continued conflict with the abuser, even over co-parenting apps or written communication, makes the victim feel less safe, which results in ongoing, compounding trauma and trauma responses manifesting frequently throughout the case.

The significance of these symptoms is that they often present in different ways that impact a GAL's ability to encourage stability and predictability for the children. Some common examples are victims reacting intensely to what a GAL may perceive as mundane information they shared with the victim, the victim failing to respond in a timely manner to requests for information from the GAL, or even the development of conflicts that disrupt a child exchange or an entire holiday placement schedule.

It is easy to misread this dynamic as a power struggle and admonish both parents for the effects of such conflict without understanding that not taking the emotional well-being of victims into consideration can actually be a precipitating factor for continued interfamilial conflict and dysfunction.

b. Risks for a Child Raised by an Abuser

Parents' capacities to meet children's emotional needs are impacted by the presence of domestic abuse. In many abusive relationships, in addition to the risks of domestic abuse exposure to children, children are also exposed to the risk of irresponsible parenting. Published studies demonstrate that there are various recurring themes that consistently emerge when evaluating parenting behaviors on the part of abusers. Additionally, impacts of domestic abuse on the child persist in particular if the abuser uses domestic abuse against future romantic partners. Continued exposure to domestic abuse means that impacts on the child will continue, and the child may interpret abuse as appropriate conflict resolution. In domestic abuse cases, children often face the following risks.

86 Id.

⁸⁵ Copps Hartley, C. & Renner, L.M. (2016). The Longer-Term Influence of Civil Legal Services on Battered Women. www.ojp.gov/pdffiles1/nij/grants/249879.pdf.

i. Risk of Rigid, Authoritarian Parenting

An abuser may be severely controlling toward children⁸⁷ and is likely to use a harsh, rigid disciplinary style⁸⁸ that may intimidate children who have been exposed to domestic abuse and can trigger the reawakening of traumatic memories, setting back post-separation healing.

ii. Risk of Neglectful or Irresponsible Parenting

Abusers may have difficulty focusing on their children's needs due to their self-centered tendencies. ⁸⁹ For example, the domestic abuser may assert his or her needs over the needs of a crying infant or a child who is frightened or hurt, especially when the abuser is the source of the fear or injury. ⁹⁰ In post-separation visitation situations, these parenting weaknesses may come to light as abusers may be caring for children for much longer periods of time than to which they have been accustomed. In some situations, abusers may engage in intentionally lenient parenting as a way to win their children's loyalty (e.g., not imposing appropriate safety or eating guidelines, or permitting the children to watch adult media and movies that may include inappropriate violence or sexuality). Neglectful parenting by domestic abusers may often take the form of intermittently showing interest in their children and then ignoring them for extended periods. Post-separation, domestic abusers with this parenting style tend to drop in and out of visitation, which can be emotionally disruptive to their children. ⁹¹

iii. Risk of Psychological Abuse and Manipulation

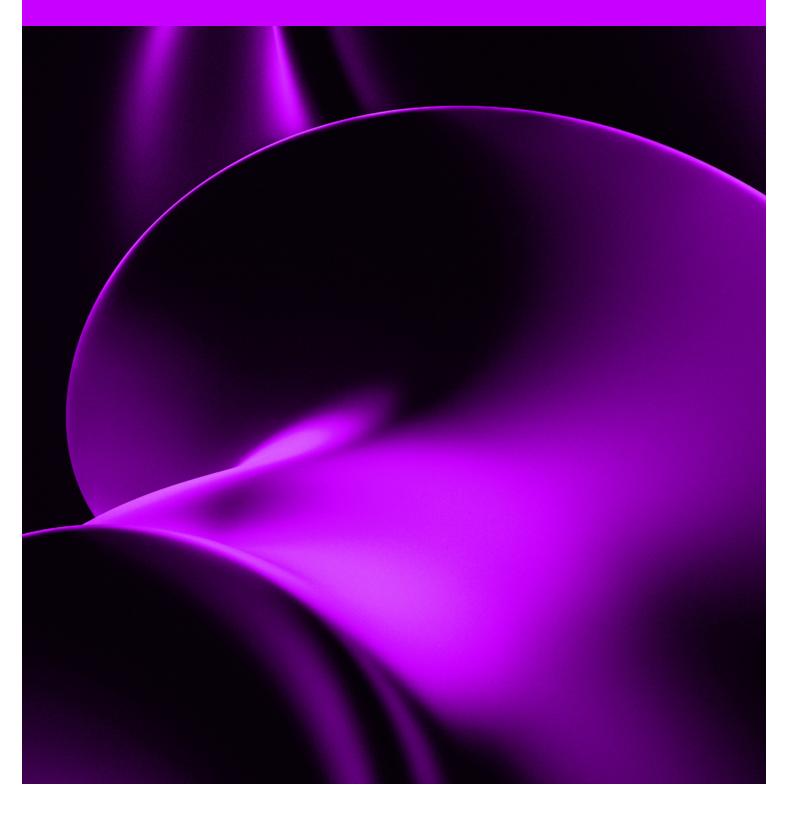
Abusers have also been observed to tend towards verbally abusive parenting styles and towards using the children as weapons against the other parent.⁹² Frequently, in abusive relationships, the abuser repeatedly usurps the victim's autonomy and right to independent decision making.⁹³ As a consequence, children may feel unsafe or that the world is unpredictable. Post-separation, this tendency often increases, with visitation becoming an opportunity for an abuser to manipulate the children in a continuing effort to control the other parent.⁹⁴

iv. Risk of Abduction

The majority of parental abductions take place in the context of domestically violent relationships and are mostly carried out by abusers or others acting on their behalf.⁹⁵

- 87 McGee, C. (2000). Childhood Experiences of Domestic Violence. Philadelphia, PA: Jessica Kingsley Publishers Ltd.
- 88 Margolin, G., John, R.S., Ghosh, C.M., & Gordis, E.B. (1996). Family Interaction Process: An Essential Tool for Exploring Abusive Relations, in D. Cahn & S. Lloyd (Eds.), *Family Violence from a Communication Perspective*, at 37-58. Sage Publications.
- 89 Jacobson, N.S. & Gottman, J.M. (1998). When Men Batter Women: New Insights into Ending Abusive Relationships. Simon and Schuster.
- 90 Bancroft, L., Silverman, J.G., & Ritchie, D. (2011). The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics. Sage Publications.
- 91 Id.
- 92 McGee, C. (2000). Childhood Experiences of Domestic Violence. Philadelphia, PA: Jessica Kingsley Publishers Ltd.
- 93 Stark, E. (1999). Failure to Protect: Unravelling the Battered Mother's Dilemma, Western State University Law Review, 29.
- 94 Ericksen, J.R. & Henderson, A.D. (1998). Diverging Realities: Abused Women and Their Children. *Sage Series on Violence Against Women*, 10, 138-155.
- 95 Greif, G.L. & Hegar, R.L. (2010). When Parents Kidnap. Simon and Schuster.

SAFeR Step 3: Focus on the Effects of Domestic Abuse



C. SAFeR Step 3: Focus on the Effects of Domestic Abuse

Wisconsin law recognizes and reflects that domestic abuse can have significant implications on what custody and placement arrangements are in the best interests of the child. Therefore, once a GAL has identified the existence of domestic abuse and understands the nature and context of that abuse, the GAL should look to Wis. Stat. § 767.41 to evaluate the effects of the abuse.

1. Statutory Presumptions and Paramount Considerations

Because domestic abuse can have far-reaching implications on the health, safety, and welfare of children and victims, Wisconsin's custody and placement statutes contain overriding principles that guide GALs' decision-making in these cases. In both practical and legal terms, GALs and other decision makers come to a given custody and placement case with the presumption that both parties will share legal custody and that significant amounts of placement time with each parent will be in the child's best interest. However, it is imperative to understand that Wisconsin law contains several provisions that reflect that these presumptions should NOT apply when there is evidence of domestic abuse or child abuse. In fact, as discussed below, there are presumptions against awarding joint or sole legal custody to an abuser when there is domestic abuse or child abuse. Further, these presumptions must come first in custody and placement determinations, ahead of any of the "best interests of the child" factors described below.

a. Presumption against Joint and Sole Custody to the Abuser

When a court finds by a preponderance of the evidence that one party has engaged in "a pattern or serious incident of interspousal battery... or domestic abuse... there is a rebuttable presumption that it is detrimental to the child and contrary to the best interest of the child to award joint or sole legal custody to that party." 96

As discussed in sections II.B.5. Children's Experience of the Abuse and III.B.6. Parenting in the Context of Domestic Abuse, coercive and controlling abuse has far-reaching implications on a child's development and can impede the victim's ability to parent in ways that support their child's healthy development. When abusers who exhibit coercive and controlling behavior are given legal custody, these harmful dynamics are allowed to continue to the detriment of children and victims. This is because the authority that legal custody provides can be a powerful mechanism for the abuser to use to control the other parent and the child.

Often, abusers with sole or joint decision-making power think first about how they can use this power to continue the pattern of control over the victim. The child's needs are an afterthought, if they are considered at all. Joint decision-making authority leaves the victim's power to act in the child's interest compromised. Therefore, in cases of domestic abuse that meet the threshold of serious incident or pattern of abuse, request that the court make a finding of domestic abuse under Wis. Stat. § 767.41(2)(d)1. and proceed with the custody and placement analysis with a presumption that legal custody awarded to the abuser is not appropriate.

Wis. Stat. § 767.41(2)(d) directly corresponds to the discussion about coercive control contained in section <u>II.B.3.</u> <u>Coercive Control of the Victim.</u>

In some cases, the statute directs the court to apply the presumption against sole or joint legal custody against the party who has used a "pattern of coercive and abusive behavior." Specifically, when the court finds that both parties engaged in a pattern or serious incident of interspousal battery or domestic abuse, the GAL may be required to consider who is the primary physical aggressor in order to determine how the presumption against

96 Wis. Stat. § 767.41(2)(d)1.

97 Wis. Stat. § 767.41(2)(d)2.e.

joint and sole custody should be applied. The factors that must be considered in determining who is the primary physical aggressor directly correspond to the dynamics of coercive control. The statutory considerations⁹⁸ to determine who is the primary physical aggressor are as follows:

- Is there a history of prior acts?
- What is the relative severity of injury?
- What is the likelihood of future injury?
- Was either party acting in self-defense?
- Is there or has there been a pattern of coercive control or abusive behavior between the parties?

Fear is the common denominator for all the above statutory considerations, which is a hallmark of coercive control. In addition to fear, the elements of stalking strongly correspond to coercive controlling behavior. Generally, stalking occurs when the stalker engages in a course of conduct that causes the victim to reasonably experience serious emotional distress or to fear bodily injury or death and when the stalker knew or should have known that at least one of the stalking acts would cause the victim to experience distress or fear. (See Wis. Stat. § 940.32 for the precise definition.) These essential elements are the same as the core elements of coercive control. (See section II.B.3. Coercive Control of the Victim.)

Recall that stalking, as defined in Wis. Stat. § 940.32, is incorporated in the definition of domestic abuse as that term is used in Wis. Stat. § 767.41(2)(d)1. Therefore, when one party has stalked another party, the presumption against sole or joint legal custody is applied against the perpetrating party, regardless of the level of physical abuse.

Finally, the court can consider any other relevant factor to the determination under this subdivision. Therefore, investigation of coercive and controlling abuse can be essential to determining if and how the presumption against sole or joint legal custody in Wis. Stat. § 767.41(2)(d)1. should be applied.

b. Paramount Concern: Safety and Well-being of the Child and Victim

Under Wis. Stat. § 767.41(5)(bm), once a court has found that a party has engaged in a pattern or serious incident of interspousal battery or domestic abuse, "the safety and well-being of the child and the safety of the parent who was the victim . . . shall be the paramount concerns in determining legal custody and periods of physical

placement." It is important to remember that this statute specifically calls for protecting the safety of the child and the victim. This provision recognizes that domestic abuse often has significant and potentially long-lasting impacts on the psychological health and physical safety of children AND victims and reflects the commonsense principle that mitigating the risk of future abuse is more important than the other considerations that generally factor into custody and placement decisions when abuse is not a concern. Simply put, when domestic abuse has occurred, the statute requires GALs to first make custody and placement recommendations to protect the wellbeing and safety of both the child and the victim.

Simply put, when domestic abuse has occurred, the statute requires GALs to first make custody and placement recommendations to protect the well-being and safety of both the child and the victim. All other objectives are secondary.

98 Wis. Stat. §767.41(2)(d)(2).

All other objectives are secondary. Considering these factors can support addressing the risk of domestic abuse homicide.

c. Sole Custody When Parties Will Not Be Able to Cooperate

Wis. Stat. § 767.41(2)(b)2.c. gives courts latitude to not order joint custody arrangements even when there has not been a finding that one party has engaged in a pattern or serious incident of interspousal battery or domestic abuse when the parties will not be able to cooperate in the required future decision making. The statute explicitly states that in making this finding the court shall consider, along with any other pertinent items, any reasons offered by a party objecting to joint legal custody. Here, GALs should consider making a recommendation under this statute when they have identified coercive and controlling behavior but there is not enough evidence of domestic abuse to support a finding of a pattern or serious incident.

A parent who engages in coercive control against the other parent is generally not a person who is willing or able to engage in future decision making, as demonstrated by the abuser's inability and unwillingness to allow the victim control over their life. Coercive and controlling abuse is incompatible with the type of cooperation required with joint legal custody as contemplated in Wis. Stat. § 767.41(2).

Additionally, Wis. Stat. § 767.41(2)(b)2.c. explicitly creates a presumption that the parties will not be able to cooperate when a parent has committed domestic abuse. This statute has a lower threshold than Wis. Stat. § 767.41(2)(d)1 and applies when there is evidence of interspousal battery or domestic abuse. When evidence exists and when one party requests sole legal custody, the court may grant sole custody to a party.

Again, this provision can be invoked by a GAL who has concerns about ongoing coercive and controlling behavior, such as psychological abuse and manipulation, but who may also have concerns as to whether there is enough evidence to support a finding of a pattern or serious incident of domestic abuse. Using this provision may be the best way to advance the best interests of the child because the child deserves the benefit of parental decisions that are free of coercive and controlling tactics.

d. Presumption against Joint and Sole Custody to the Abuser When There Is Evidence of Child Abuse

Finally, this same presumption against joint or sole custody to the abuser also explicitly applies in cases that include evidence that a party engaged in child abuse. As discussed in section II.B.5. Children's Experience of the Abuse, there is a substantial overlap between an abuser's use of abuse or violence against a parent and direct abuse to the child. Children of domestic abusers are at risk of being victims of physical or sexual abuse by the abuser. Of Given the range of physical and psychological danger to children that exists when domestic abuse is present, assessing the risk of danger to children is complex. Utility Studies show that the higher the severity or frequency of a domestic abuser's level of violence, the greater the risk of child abuse. Therefore, if GALs have identified concerns related to domestic abuse, they should consider whether sole custody to the victim under Wis. Stat. § 767.41(2)(b)2. is appropriate.

⁹⁹ Wis. Stat. § 767.41(2)(b)2.c.

Jaffe, P.G., Crooks, C.V., & Poisson, S.E. (2003). Common Misconceptions in Addressing Domestic Violence In Child Custody Disputes. *Juvenile and Family Court Journal*, 54, 57.

Bancroft, L., & Silverman, J.G. (2004). Assessing Abusers' Risks to Children. *Protecting Children from Domestic Violence: Strategies for Community Intervention*, 101-119.

2. Best Interest of the Child Factors

Once the correct statutory framework for custody and placement decision making has been identified, consider all facts relevant to the best interest of the child. The statute lists numerous factors that are to be considered. However, remember that the paramount concern in cases involving domestic abuse is the safety and well-being of the child and victim. The other considerations and values that are embedded in the best interest of the child factors are secondary. The statute lists the following factors as being in the best interests of the child:

Wis. Stat. 767.41(5)(am)114.	Considerations due to domestic abuse
1. The wishes of the child's parent or parents, as shown by any stipulation between the parties, any proposed parenting plan or any legal custody or physical placement proposal submitted to the court at trial.	It is important to respect a victim's autonomy, just as for any party. Some victims may stipulate to minimize the length of a family court case. Keep in mind dynamics of power and control and coercion that may have been present and influenced a stipulation.
2. The wishes of the child, which may be communicated by the child or through the child's guardian ad litem or other appropriate professional.	"Unless the child otherwise requests, the guardian ad litem shall communicate to the court the wishes of the child as to the child's legal custody or physical placement under s. 767.41(5)(am)2." Wis. Stat. § 767.407(4). A GAL who has identified domestic abuse should consider how the child's wishes may be impacted by domestic abuse. For instance, a child may align with the abuser to protect their own safety. On the other hand, a child may have no relationship with or even be fearful of the abuser
3. The cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party.	Coercive and controlling behavior is incompatible with supporting a healthy relationship between the victim and the child (see sections II.B.6. Parenting in the Context of Domestic Abuse and II.C.1.d. Presumption Against Joint and Sole Custody to the Abuser When There is Evidence of Child Abuse). Frequently, abusers who use coercive and controlling behavior will claim that the victim is not amenable to a strong relationship between the abuser and the child and that the victim is unreasonably interfering with the child's continuing relationship with the abuser. Continued on next page

102 Wis. Stat. § 767.41(5)

103 Wis. Stat. § 767.41(5)(bm)

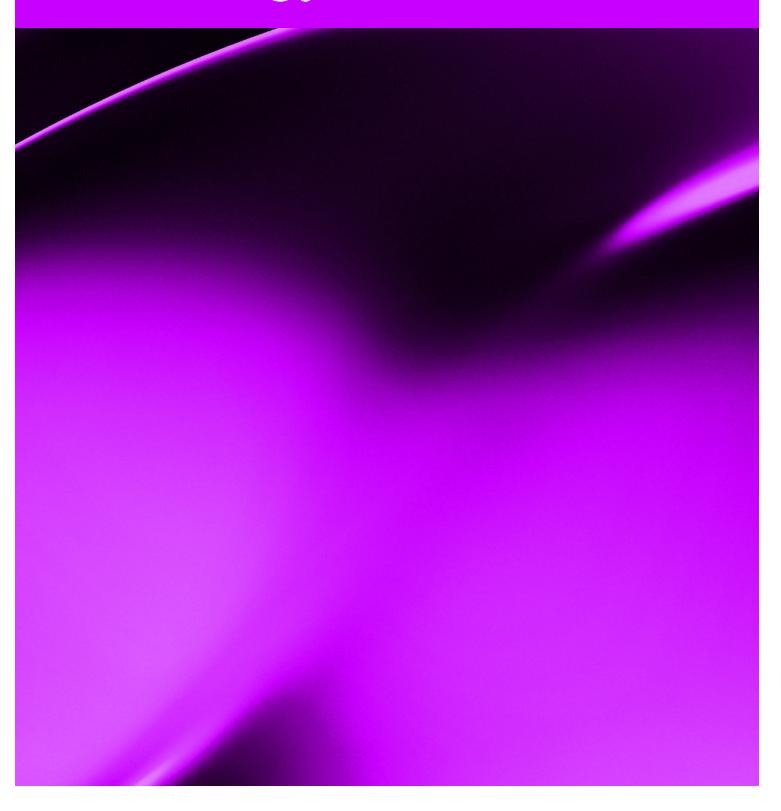
Wis. Stat. 767.41(5)(am)114.	Considerations due to domestic abuse
3. Continued	A GAL who has identified domestic abuse and considered the nature and context of the abuse is able to accurately counter the claims of the abuser and put these factors into the correct legal and factual context. The GAL can describe to the court the implications of the coercive and controlling abuse: that the abuser's behavior makes mutually respectful and cooperative parenting impossible. The victim's desire for safety is not only reasonable in the context of the abuser's conduct, but also justified by Wis. Stat. § 767.41(5)(bm), which makes safety and well-being the paramount objective of custody and placement decisions. This factor should not be used as a basis to argue that the victim should cooperate with the abuser or that the goal of the custody and placement arrangement should be to force this type of cooperation. The abuser is ultimately responsible for the inability of the parents to cooperate, communicate, and have a mutually supporting relationship. In addition, Wis. Stat. § 767.41(5)(bm) holds that concern for cooperative and mutual support between the parties cannot override the need to protect the safety and well-being of the child and victim.
4. Whether each party can support the other party's relationship with the child, including encouraging and facilitating frequent and continuing contact with the child, or whether one party is likely to unreasonably interfere with the child's continuing relationship with the other party.	As discussed in section II.B.6. Parenting in the Context of Domestic Abuse and in section II.C.1.a. Presumption against Joint and Sole Custody to the Abuser, coercive and controlling behavior is incompatible with supporting a healthy relationship between the victim and the child.
5. The interaction and interrelationship of the child with his or her siblings, and any other person who may significantly affect the child's best interest.	Consider whether the abusive parent will support the child's interrelationship with siblings and, in particular, with the victim's side of the family.
6. The interaction and interrelationship of the child with his or her parent or parents and the amount and quality of time that each parent has spent with the child in the past, any necessary changes to the parents' custodial roles, and any reasonable lifestyle changes that a parent proposes to make to maximize placement with the child.	Parenting styles and level of involvement often reflect the abusive tendencies that are directed at the victim. Analyze how the abuser's need to control the victim has influenced past parenting in order to anticipate what parenting issues can be expected post-judgment. After the case is concluded, the child will be one of the few, and likely one of the strongest, connections the abuser has to the victim, making it less likely that the abuser will be able to make changes in their child's interest. With the child as one of the few remaining conduits to attempt to continue the abuse, the abuser's unhealthy parenting tendencies may amplify post-judgment.

Wis. Stat. 767.41(5)(am)114.	Considerations due to domestic abuse
 7. Whether any of the following has or had a significant problem with alcohol or drug abuse: a. A party. b. A person with whom a parent of the child has a dating relationship, as defined in s. 813.12(1)(ag). c. A person who resides, has resided, or will reside regularly or intermittently in a proposed custodial household. 	Note that a male abuser's heavy consumption of alcohol and use of illegal drugs is associated with a higher risk of homicide of the victim. [See section I.D. Lethality Risk Factors: Identifying High-Risk Domestic Abuse for more information about lethality factors.] [104]
8. The child's adjustment to the home, school, religion, and community.	Consider who supports the child's engagement with their broader communities and consider whether the victim has means to support the child's engagement with the community or whether that parent is isolated from those spaces.
9. The age of the child and the child's developmental and educational needs at different ages.	Section II.B.5.c. Effects of Domestic Abuse on Children by Age and Developmental Stage provides an explanation of the developmentally specific implications of domestic abuse on children. These implications should be analyzed in relation to the GAL's consideration of the child's age and development.
10. Whether the mental or physical health of a party, minor child, or other person living in a proposed custodial household negatively affects the child's intellectual, physical, or emotional well-being.	Again, section II.B.5.c. Effects of Domestic Abuse on Children by Age and Developmental Stage discusses the many ways that living with an abusive parent can negatively affect the child's intellectual, physical, or emotional well-being. Consider this information and the implications it may have on the best interests of the child.
 11. Whether any of the following has a criminal record or whether there is evidence that any of the following has engaged in abuse, as defined in s. 813.122(1)(a), of the child or any other child or neglected the child or any other child: a. A party. b. A person with whom a parent of the child has a dating relationship, as defined in s. 813.12(1)(ag). c. A person who resides, has resided, or will reside regularly or intermittently in a proposed custodial household. 	In addition to being a basis for sole custody to the non- offending parent, child abuse is a separate factor for determining the best interest of the child. [See section II.C.1.d. Presumption against Joint and Sole Custody to the Abuser When There is Evidence of Child Abuse.] As discussed earlier, child abuse and domestic abuse often co-occur, which is another reason why it is so important to conduct a thorough investigation and analysis into any allegations of abuse and apply this factor.

Campbell, J.C., Webster, D.W., & Glass, N. (2009). The Danger Assessment Validation of A Lethality Risk Assessment Instrument for Intimate Partner Femicide. *Journal of Interpersonal Violence*, 24(4), 653-674. Also see: https://vawnet.org/material/danger-assessment.

Wis. Stat. 767.41(5)(am)114.	Considerations due to domestic abuse		
12. Whether there is evidence of interspousal battery, as described under s. 940.19 or 940.20(1m), or domestic abuse, as defined in s. 813.12(1)(am).	Like child abuse, evidence of domestic abuse is a separate factor for determining the best interest of the child, in addition to being a basis for presumptions related to legal custody. This factor provides a GAL who has learned about domestic abuse and who has investigated the nature and context of that abuse another opportunity to remind the court of the implications of abuse. Bear in mind that the safety and well-being of the child and the safety of the victim are the paramount concerns in determining legal custody and placement. What this means in practice is that the GAL's understanding of the physical and psychological abuse should guide decision making about both legal custody and physical placement. In that respect, domestic abuse is not merely one of many of the best interest factors to be considered. The implications of abuse override other considerations.		
13. The reports of appropriate professionals if admitted into evidence.	GALs should evaluate whether psychological reports are being misinterpreted in domestic abuse cases in ways that can harm victims and children. Moreover, consider confidentiality and privilege of the records at stake.		
14. Any other factor that the court determines to be relevant.	GALs should consider using this factor as an opportunity to highlight to the court any of the lethality factors discussed in section I.D. Lethality Risk Factors: Identifying High-Risk Domestic Abuse. In domestic abuse cases, where the safety of the child and victim is the paramount concern, the presence of one or more lethality factors is acutely relevant.		

SAFeR Step 4: Respond with Recommendations Accounting for Domestic Abuse



D. SAFeR Step 4: Respond with Recommendations Accounting for Domestic Abuse

Once all of the information about domestic abuse has been collected and analyzed, the final step for GALs is to make informed recommendations to the court. These recommendations should account for the nature, context, and implications of the abuse. Making informed recommendations that account for the abuse will better ensure that the best interest of the child is met and that the long-term safety of the child and victim are appropriately prioritized.

1. Statutory Requirement to Investigate Domestic Abuse

Under Wisconsin statute, GALs must screen for domestic abuse in all cases. Wisconsin Statute § 767.407(4) requires GALs to investigate whether there is evidence that either parent has engaged in interspousal battery or domestic abuse and to report the results of the investigation to the court. As discussed, a thorough investigation

requires the GAL to take a number of steps, including interviewing the parties as well as reviewing all relevant records. Evaluations that are based solely on interviewing and observing the parties and their children are significantly less reliable.

2. Statutory Requirement to Report Investigative Findings to the Court

Once a GAL has investigated whether there is evidence that either parent has engaged in interspousal battery or domestic abuse, Wis. Stat. § 767.407(4) requires the GAL to report the results of the investigation to the court. This reporting is significant for two reasons.

First, Wis. Stat. § 767.41(5)(bm) directs that if the court finds by a preponderance of the evidence that one party has engaged in a pattern or serious incidence of interspousal battery or domestic abuse, "the safety and

Wisconsin Statute § 767.407(4) requires GALs to investigate whether there is evidence that either parent has engaged in interspousal battery or domestic abuse and to report the results of the investigation to the court.

well-being of the child and the safety of the parent who was the victim of the battery shall be the paramount concerns in determining legal custody and periods of physical placement." Second, Wis. Stat. § 767.41(2)(d)1. directs that if the court finds by a preponderance of the evidence that a party has engaged in a pattern or serious incident of interspousal battery or domestic abuse, there is a rebuttable presumption that it is detrimental to the child and contrary to the best interest of the child to award joint or sole legal custody to that party.

3. Making Recommendations for Custody and Placement

Through the course of the investigation, if a GAL discovers that the family is experiencing domestic abuse, the GAL must consider, within the parameters of the provisions discussed in section <u>II.C.1. Statutory Presumptions</u> and <u>Paramount Considerations</u>, how the custody and placement recommendations will be tailored to protect the safety of the child and victim and reflect the best interest of the child.

After conducting an investigation, if the GAL determines that domestic abuse exists, the GAL may request that the court make a finding of domestic abuse under Wis. Stat. § 767.41(2)(d)1. and (5)(bm). This finding better allows the court to consider domestic abuse in determining the best interest of the child in custody and placement decisions. It also makes it more likely that the court will make orders that account for the safety of the

child and victim. [See <u>Appendix: Step 3 Judicial Guide to Domestic Abuse Issues</u> for more information on this topic.] Even without a finding of domestic abuse, GALs should prioritize child and victim safety.

a. Categories to Account for Domestic Abuse

To maximize safety and stability for the victim and the child, GALs must consider how their recommendations account for the dynamics of domestic abuse in each of these categories:

Custody: Will conflicts over major decisions negatively impact the child's well-being in the future?

Placement: How much placement time is appropriate with each parent? Will placement be supervised or monitored by a trustworthy person or do the abuser and supervisor have a shared interest in maintaining a relationship with the child?

Note that if you recommend less than 25% placement to one parent, you should provide your reasoning
to the court. If the court orders less than 25% placement time to one parent, the court must enter
specific findings of fact explaining why a greater allocation of physical placement with that parent is
not in the best interests of the child.¹⁰⁶

Child Exchanges: Will a third party such as a grandparent be able to facilitate exchanges for years to come? Is there a way to exchange young children without direct contact between the abuser and victim, such as one parent dropping the child off at a school or daycare with the other parent picking the child up at the end of the day?

Communication between the Parents: Can communication be limited to written means only? Would online or app-based resources support effective communication? Can the parents communicate without using abusive language? Is direct communication at this time helpful or harmful for this family?

Child's Well-being: What does discipline of the child look like? Does the abuser believe physical discipline is their "right" as a parent?

Extended Family and Exposure to Other Adults

- Does the abuser live with their parents? Is there a multigenerational history of violence to which the child is exposed?
- Is the child exposed to the abuser's use of violence against other intimate partners? Does the abuser's intimate partner defend the abuser and claim the victim is lying about the abuse?

Technology: Does the abuser use social media to malign or intimidate the victim? Has the abuser purchased devices for the child that may allow for location sharing during the victim's placement?

Financial Provisions

- How will child support be ordered to provide for the child?
- How does each parent financially support the child's education and medical treatment (e.g., uninsured
 medical expenses)? Is there an income disparity that could allow for the abuser to financially abuse the
 victim by requesting reimbursement for expensive items or services for the child?

b. Consider Conditions the Court Can Order under Wisconsin Law

If the court finds that a party has engaged in a pattern or serious incident of domestic abuse, and the court awards periods of physical placement to both parties, Wis. Stat. § 767.41(6)(g)1.-8. specifically directs the court

106

to impose one or more conditions in its custody and placement order to ensure the parent and child's safety. Consider the ability of the court to impose the following safety measures when drafting recommendations:

- Requiring the exchange of the child to occur in a protected setting or in the presence of an
 appropriate third party who agrees by affidavit or other supporting evidence to assume the
 responsibility assigned by the court and to be accountable to the court for their actions with respect to
 the responsibility.
- Requiring the child's periods of physical placement with the party who committed the battery or abuse
 to be supervised by an appropriate third party who agrees by affidavit or other supporting evidence
 to assume the responsibility assigned by the court and to be accountable to the court for their actions
 with respect to the responsibility.
- Requiring the party who committed the battery or abuse to **pay the costs of supervised physical placement**.
- Requiring the party who committed the battery or abuse to attend and complete, to the satisfaction of the court, **treatment for batterers provided through a certified treatment program or by a certified treatment provider** as a condition of exercising their periods of physical placement.
 - * See *Valadez v. Valdez* (2022 WI APP 2), in which the Court of Appeals held that one may only overcome the presumption against sole or joint custody set forth in Wis. Stat. § 767.41(2)(d)1. by successfully completing treatment designed for batterers and provided by a certified program or provider.
 - * Courts can also order batterers intervention even without a finding of domestic abuse.
- If the party who committed the battery or abuse has a significant problem with alcohol or drug abuse, **prohibiting that party from being under the influence of alcohol or any controlled substance** when the parties exchange the child for periods of physical placement and from possessing or consuming alcohol or any controlled substance during their periods of physical placement.
- Prohibiting the party who committed the battery or abuse from having overnight physical placement with the child.
- Requiring the party who committed the battery or abuse to post a bond for the return and safety of the child.
- Imposing any condition not specified above that the court determines is necessary for the safety and well-being of the child or the safety of the party who was the victim of the battery or abuse.

c. All Recommendations Must Be Specific

In drafting custody and placement recommendations in cases where domestic abuse is present, it is important to be as specific as possible. Recommendations should In drafting custody and placement recommendations in cases where domestic abuse is present, it is important to be as specific as possible. Recommendations should provide for structure, limits, and predictability...

provide for structure, limits, and predictability and should include specific times and processes for each category (e.g., how long, how often, timelines for responses, consequences for failure to comply such as calling law enforcement or asking the court to schedule an emergency hearing, etc.). While custody and placement

recommendations that incorporate a degree of flexibility may be beneficial in some family cases, in cases where domestic abuse is present, this flexibility can be used by the abuser to continue to exert coercive control over the victim even after the family case is over.

Moreover, there is a higher possibility parties will have to return to court to address flexible or vague court orders, which can be traumatic for the victim and cause financial hardship. Additionally, the more specific the recommendations and, in turn, the final court order, the easier it may be for parties to follow and enforce the order.

Below are some examples of different language options to avoid and use when drafting recommendations in cases involving domestic abuse.

General Language to Avoid	Suggested Language
"No contact with an exception that communication between the parties be allowed via co-parenting apps solely regarding the children."	" communication between the parties will be allowed only via [Our Family Wizard] and limited to topics of child exchanges, placement timing, and medical emergencies. All other topics are prohibited. In emergent scenarios, communication may occur via text message."
"Exchanges shall happen at a date and time as agreed upon by the parties."	"Exchanges shall occur at [the police station] located at [500 W. Main St.] at [5:00 p.m. every Sunday]. The parties shall not engage in any contact with one another during the exchange. If a party is more than 15 minutes late and hasn't notified the other party via [text message, Our Family Wizard, etc.], the party with placement of the child(ren) may return home with the child(ren) and alternative arrangements for exchange will have to be made. Placement time missed due to missing the exchange shall be forfeited and cannot be made up at a later date."
"Parties shall have periods of physical placement at reasonable times and upon providing reasonable notice."	"Parties shall have periods of physical placement during the exact dates and times specified in the table below. Any requests to deviate from these times for special occasions (e.g., family events) must be submitted to the other parent in writing at least two weeks before the date of placement. The other party has 48 hours to respond to the requested modification. If the party does not respond to the request, the requesting party may modify the placement time."
"Party shall have supervised placement with children with a mutually agreed-upon third party person."	"[Parent 1] shall have periods of supervised placement on [Tuesdays and Thursdays] from [3:00 - 5:00 p.m.] and must be supervised by [person 1 or person 2], who were mutually approved by the parties. No other person is approved to supervise placement times."

General Language to Avoid	Suggested Language
"Each party will share variable expenses equally." or "Parties shall share the costs of extra-curricular activities."	The parties shall share variable expenses proportionately to their placement time based on a shared placement formula, with the Petitioner covering 60% of the variable expenses and the Respondent covering 40% of the variable expenses. Payment of variable expenses shall be governed by the following: • Neither party can incur a variable expense over \$100 without the agreement of the other party. In the event a party incurs such an expense, they cannot seek reimbursement from the other party. • Neither party can incur a variable expense for the minor child that will encumber the placement time of the other party (for example, sports, dancing, etc.) without the express written consent of the other party. • The following will be considered variable expenses: Winter gear (coats, boots, gloves, and hats); school supplies and backpacks; field trips; school lunches; haircuts • The following will not be considered variable expenses: Child care • The party incurring the variable expense shall upload the receipt to [Our Family Wizard] within 15 days of incurring the expense. The parties will reconcile expenses quarterly as follows: January to March, by April 15th; April to June, by July 15th; July to September, by October 15th; and October to December, by January 15th. If after reconciling expenses either party owes the other party any funds to cover variable expenses, that party shall have 30 days to pay the other party. Medical expenses shall be reconciled according to the variable expenses
"Parents shall be permitted one phone call with the children per day during the other parent's placement time."	"During each parent's placement time, the child(ren) and other parent will have one voice-only phone call per day at [time]. The call will be made by the parent with placement time to the other parent using [the child's school-issued iPad, parent's cell phone, etc.]. The call will be made in a quiet environment to support the communication."

For a full list of specific recommendations that can be drafted under each section, see <u>Appendix: Step 4 Sample Recommendations for Cases that Involve Domestic Abuse</u>.

d. Recommendations Should Account for Presence of Lethality Factors

If, during the course of the investigation, the GAL identified any of the lethality risk factors discussed in section I.D. Lethality Risk Factors: Identifying High-Risk Domestic Abuse, the GAL should account for those risk factors in their recommendations. The presence of certain factors in a relationship can indicate an increased risk that deadly violence may be used. Accordingly, it is important for GALs to try to mitigate the risk of violence through recommendations that will limit direct contact between the parties and eliminate other risk factors, such as the presence of firearms.

e. Presenting the Recommendations to the Court

As stated above, GALs for minor children represent the best interest of the child. Among their statutory duties, they must investigate and *report to the court* whether there is evidence of domestic abuse. They must also review and *comment to the court* on any mediation agreement or stipulation, and on parenting plans. Further, the GAL has a duty to *communicate to the court* the wishes of the child as to legal custody and physical placement.

Despite these statutory requirements to report, comment, and communicate to the court, the statute does not indicate the procedure for doing so. The statute does indicate that GALs shall function independently and in the same manner as an attorney for a party to the action.

One thing is clear: GALs must be prepared to present to the court information, testimony, and other evidence to promote and support what they believe is in the best interests of the child after their investigation is completed.

From a practical perspective, GALs should familiarize themselves with local practices in their county and any requirements specific judicial officials may have. For example, some counties require GALs to write preliminary written recommendations and share only with the parties and not the court; some counties require briefs from GALs; some counties only want oral information and recommendations from the GAL.

Possible options for reporting statutorily required information to the court include the following:

- Written reports or briefs to the court;
- Oral recommendations or summations after a hearing;
- Testimony of the family court counselor or other witnesses (lay and expert), including, where necessary, testimony from the minor child.¹⁰⁸

Regardless of county-specific practice, and absent a stipulation by the parties, GALs are expected to present their case via witnesses and admissible evidence, and be ready to orally tell the court what they recommend at the end of the hearing. No matter what method a GAL uses to present their recommendations to the court, the recommendations must be based on a thorough and complete investigation.

Best practices indicate not to call children as witnesses due to the potential for further trauma and damage to their relationship with parents. If a child must testify, ensure the court is aware beforehand so that protective measures can be put in place for the child.

CONCLUSION:

THANK YOU FROM A DOMESTIC ABUSE SURVIVOR

The job of a GAL can be as challenging as it is critical for the safety and well-being of children and abuse victims. At times, you may encounter pressures that make it harder to implement the practices discussed in this guidebook. You may feel that going the extra mile is a thankless task. For anyone who has worked on difficult issues in an imperfect system, these feelings are understandable. Despite the potential obstacles, following the guidebook will make a positive and immeasurable difference in the lives of children and victims.

In some cases, you might not hear a thank you or you will not know about the pain, abuse, heartache, and even deaths that you will have prevented by taking domestic abuse seriously. But, you do deserve thanks. What follows is a thank you from a Wisconsin domestic abuse survivor.

Thank you for using this guidebook and working to appropriately identify and respond to domestic abuse as a GAL. About ten years ago, I was nearly killed by my ex-husband. He abducted me and left me for dead, bound me and trapped me in a storage locker, freezing for over 24 hours. The abduction occurred during a custody exchange between me and my ex-husband because we shared custody and placement of our two young daughters. As I was locked in the storage locker, I could hear the voices of my daughters outside with their father. I struggled to survive so that I would be there for them. I knew that they needed me. Thankfully, I was rescued, and my daughters are now healthy and happy.

When I went through my divorce, I tried to get the GAL and judge to understand my ex-husband's controlling and jealous behavior, his history of violence, and the continuing harm he was causing my family. I remember the GAL only interviewing my ex-husband once and the GAL coming away from that meeting convinced the man who would later try to kill me was a great person and deserved more time with his children. There was plenty of information available that would have allowed the GAL to identify the seriousness of the domestic abuse that was committed against me. There were many warning signs that could have been used to predict what could happen to me and my children. But, that information was not investigated and taken seriously. As a result, my ex-husband was given the opportunity to continue the abuse and ultimately attempt to kill me. If I hadn't been ordered to have ongoing contact with him during exchange of our kids, I could have stayed away.

The work that you are doing as a GAL can help ensure that other victims of domestic abuse and their children are not put in the same position as my family. When you gather complete information, when you recognize controlling behavior and risks of lethality, when you make custody and placement recommendations that prioritize the safety of children and victims, you will be preventing continued abuse, and you will be giving children the best chance to be resilient and move past the abuse they experienced in their families. Thank you for taking on this life-changing and potentially life-saving work. Know that you can make all the difference for the children and families you encounter as a GAL.

Additional Written Resources

The following is a list of resources that GALs may find useful as they work with cases involving domestic abuse.

Battered Women's Justice Project: "Practice Guides for Family Court Decision-Making in Domestic Abuse-Related Child Custody Matters"

This document provides guidance on how to identify, understand, and account for the nature, context, and implications of domestic abuse at every stage of the family court proceeding.

https://bwjp.org/assets/compiled-practice-guides-may-2018.pdf

State Bar of Wisconsin: GAL Handbook

The Handbook provides guidance on the basics of being a GAL, as well as detailed help with complex issues. http://www.wisbar.org/

Domestic Abuse Intervention Programs: The Power and Control Wheel:

The Power and Control Wheel is a helpful tool in understanding the overall pattern of abusive and violent behaviors that are used by a batterer to establish and maintain control over a partner.

http://www.theduluthmodel.org/training/wheels.html

National Council of Juvenile and Family Court Judges (NCJFCJ): A Judicial Guide to Child Safety in Custody Cases

The Judicial Guide contains 14 bench cards that provide an easy-to-use checklist system for judges at critical decision-making points throughout the case, as well as a supplemental guide that provides additional information about in- and out-of-court behaviors, best interest of the child, and order issuance and enforcement.

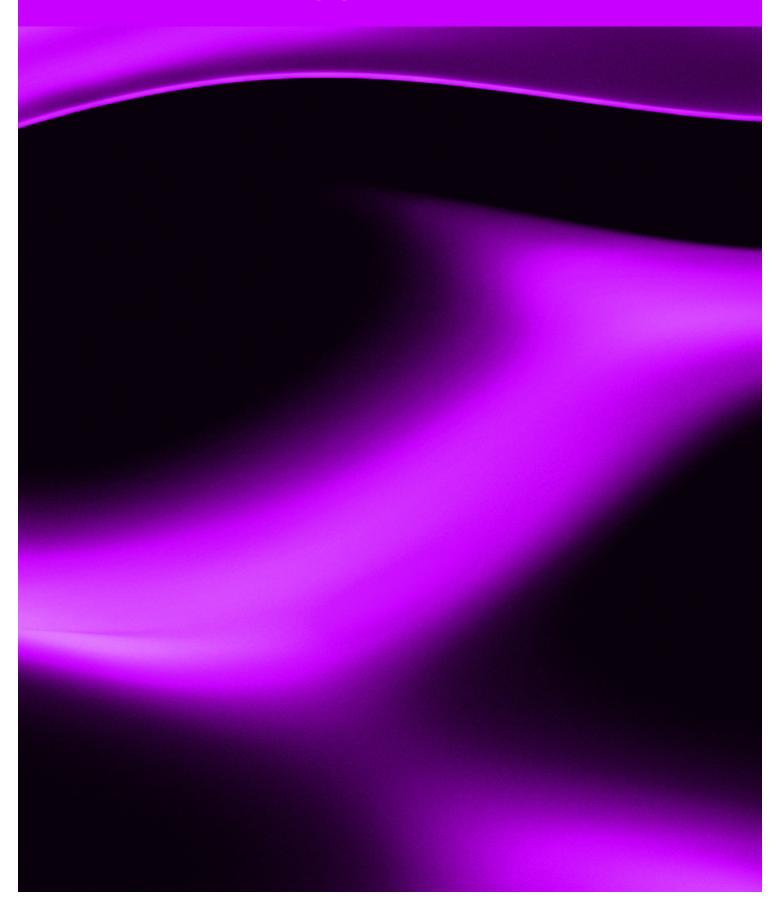
http://www.ncjfcj.org/resource-library/publications/judicial-guide-child-safety-custody-cases

NCJFCJ: Specialized Family Violence Information Packets from National Council on Juvenile and Family Court Judges

The NCJFCJ has developed five specialized family violence information packets on child protection and child custody issues in the context of domestic and family violence.

https://www.ncjfcj.org/publications/specialized-family-violence-information-packets

Appendix



Appendix Table of Contents

I. SAFeR Step 1: Screen for Domestic Abuse	i
GAL Screening Questions for Domestic Abuse	i
GAL Interview Questions — Adult Parties	ii
Evaluating Domestic Violence: Considerations for the Questioning of Potential Child Witnesses by Guardians Ad Litem	vi
Suggested Screening Questions When There Is No Other Information Available from the Child	vii
II. SAFeR Step 2: Assess the Nature and Context of Domestic Abuse	
III. SAFeR Step 3: Focus on the Effects of Domestic Abuse	
IV. SAFeR Step 4: Respond with Recommendations Accounting for Domestic Abuse	xii
Potential Recommendations for Custody and Placement in Family Cases that Involve Domestic Abuse	

SAFeR Step 1: Screen for Domestic Abuse

GAL Initial Screening Questions for Domestic Abuse

Adapt these screening questions to identify domestic abuse. Ensure that the parties understand your role, why you're asking about domestic abuse, and how and with whom the information will be shared. You should ask these questions of both parents in the case. Review behavioral definitions of domestic abuse in Part I. C. of the guidebook.

Presence of Power and Control	Psychological (Including Verbal) Abuse	Physical and Sexual Abuse	Economic Abuse	Use of Children	Post-Separation Abuse
Who made decisions in your relationship?	Were you able to see your friends and family during your relationship with	Did ever act physically violent toward you? [If yes: Did you ever respond with physical violence?]	Did either or both of you work outside the home? Where did income go?	Did ever criticize you or your parenting in front of the child?	How is your relationship with today?
Did you feel comfortable expressing disagreement with's decisions?	Did ever call you names or use derogatory language about you?	Did ever push, hit, slap, kick, bite, choke/strangle, throw objects at you, or break things?	Could you freely use the money? Could you decide how much to spend?	Did ever say or do something that made you fearful for the child or any pets? Did ever threaten to take the child away from you?	How is time with the child divided between you and? Does this work? Does this feel safe for you and the child?
What would happen if you and disagreed about a decision?	Did ever make threats or statements that scared you?	Did you ever engage in sexual activities or have sex when you did not want to?	What would happen if you and disagreed about money?	How is the child disciplined? How was that decided? What would happen if you disagreed about discipline?	Do you have any fears or concerns related to your or your child's interactions with?

GAL Interview Questions — Adult Parties

Presence of Power and Control

Social Isolation Questions:

- Who do you spend time with and how often? Does [the other parent] support your efforts to have a social life and time away, or limit your time with friends and family?
- Does [the other parent] control what you do, who you see, or who you talk to?
- Does [the other parent] control or monitor your phone calls, emails, or communication with others?
- Does [the other parent] display jealousy such that you limit your activities or interactions with others?
- Does [the other parent] ever lock you into or out of the home, or prevent you from going to a place of recreation, workplace, or any other place?
- Does [the other parent] prevent you from having a driver's license or using a vehicle?
- Who decides where you live? Has [the other parent] ever moved you away from family and friends?

Decision-Making Questions:

- Who makes household and social decisions and why?
- Are there written or unwritten rules created by [the other parent] that you must follow around the home and elsewhere?
- What are those rules and what would happen if you attempt to change them?
- Does [the other parent] act as if they have the right to make all the big decisions? If so, what will happen if you try to make a big family decision?
- Does [the other parent] define which of you takes care of what chores or needs in your household?

Psychological Abuse

Emotional Abuse Questions:

- Does [the other parent] repeatedly undercut or hurt your self-esteem?
- Does [the other parent] call you names or put you down?
- Does [the other parent] make you feel badly about yourself, your thoughts, and/or your behavior?
- Does [the other parent] ever make you feel crazy or play mind games with or against you?
- Does [the other parent] ever humiliate you in private or public?
- Does [the other parent] make you feel guilty if you do not engage in the behavior they expect of you?

Intimidation Questions:

- Have you ever felt threatened or intimidated by [the other parent]?
- Does [the other parent] ever threaten to destroy or has [the other parent] ever destroyed your possessions or property? If so, when and why?
- Does [the other parent] ever harm a family pet or animal?

- Does [the other parent] ever force you to watch or actively or inactively participate in harm to your pets or other animals?
- Does [the other parent] engage in any behavior that causes you to feel on edge, frightened, or concerned about your safety? If so, when does this happen?
- Did [the other parent] ever use or threaten to use a weapon or an object to intimidate, threaten, or harm you?
- Does [the other parent] ever engage in cruel or harmful punishment against you or your child?
- Does [the other parent] engage in looks, actions, or gestures that threaten or intimidate you?

Coercion and Threat Questions:

- Does [the other parent] ever threaten to take the children if you ever leave the relationship?
- Has [the other parent] ever told you that if you seek a divorce, they will gain full custody of the children?
- Has [the other parent] ever told you or implied that you will pay a price if you do not follow their rules?
- Has [the other parent] ever threatened or attempted to commit suicide?
- Does [the other parent] threaten you or force you to not call for help or tell others when you are afraid of their behavior?

Minimize, Deny Blame Questions:

- If you and [the other parent] fight, does [the other parent] minimize or deny their role in that conflict?
- If you and [the other parent] fight, does [the other parent] blame you for the conflict?
- If something goes wrong in the family or household, does [the other parent] blame you for what happened?
- Is [the other parent] likely to blame you or someone in the household when bad things happen?
- Does [the other parent] ever engage in behavior that you find demeaning or controlling but they say is done "in fun"?
- If [the other parent] engages in behavior that you find harmful or hurtful to you or your child, do they make light of it and/or not take it seriously when you express concern about that behavior?

Physical and Sexual Abuse

- How do you and [the other parent] communicate when upset? What happens when you or [the other parent] disagree and [the other parent] wants to get their way?
- Have you ever been hurt or injured in an argument?
- Has [the other parent] ever used physical force against you?
- Did [the other parent] ever say or do things that made you fearful for your safety or the safety of your child? If so, what was said or what did [the other parent] do?
- Did [the other parent] ever force or coerce you to engage in sexual activities that made you feel uncomfortable?

iii

- Did [the other parent] ever cause you physical pain against your will? If so, what caused this pain?
- If the party reveals that some type of physical or sexual abuse occurred, ask questions about specific types of abuse. Many people do not identify the following actions as abusive and will not reveal they occurred unless directly asked.

Specific Physical and Sexual Abuse Questions:

- Has [the other parent] ever hit, slapped, punched, or struck you or some part of your body?
- Has [the other parent] ever choked/strangled you or restricted your breathing in some way? (See Lethality questions section below)
- Did [the other parent] ever pin you against the wall or some other object?
- Does [the other parent] ever shove or push you into objects, onto the floor or another surface, or down steps?
- Has [the other parent] ever thrown objects at or toward you?
- Does [the other parent] spit, bite, or use excessive force with you?

Economic Abuse

- Who controls the finances in your family?
- Do you share a checking and/or savings account?
- Do you each have equal access to the account(s)? Do you each make decisions about how to spend the assets in the account(s)?
- Who set up this financial arrangement? Have you ever tried or requested to change this arrangement? If so, what happened? If not, why not?
- What do you think would happen if you proposed a change in the financial arrangements?
- Does [the other parent] prevent you from getting or keeping a job?
- Does [the other parent] allot how much money you can have or spend?

Use of Children

- Does [the other parent] ever undermine your parenting? If so, how?
- Does [the other parent] ever undermine or override your efforts to discipline or set boundaries with your child?
- Does [the other parent] belittle, demean or make fun of you in the presence of your child?
- Does [the other parent] ask your child to report to them about your actions or activities?
- Does [the other parent] force the children to watch as they harm or hurt you?
- Does [the other parent] force you to watch as they harm or hurt your child?
- Does [the other parent] discipline or react to your child in a manner that frightens or concerns you?
- Has your child ever been hurt or injured as a result of [the other parent]'s behavior?
- Is the child afraid of [the other parent]?

In all cases, the GAL must ask about specific types of abuse that might increase a likelihood of lethality. [See section I.D. Lethality Risk Factors: Identifying High-Risk Domestic Abuse for more information.]

Lethality Risk

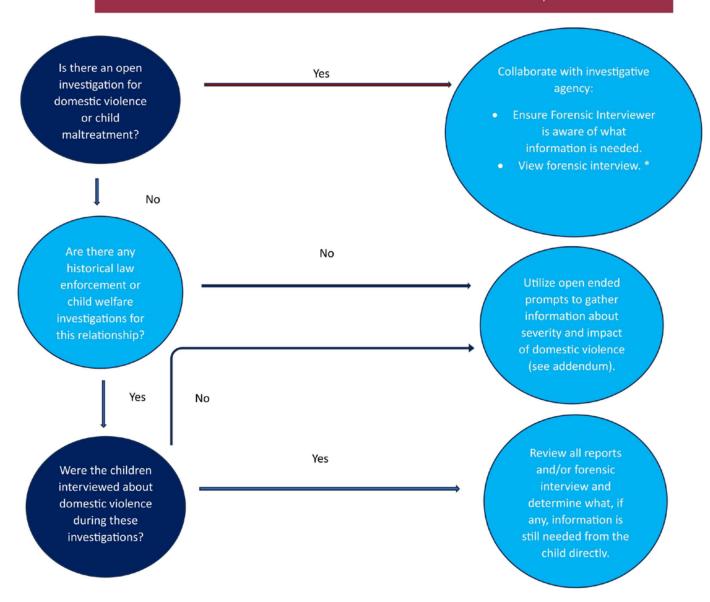
- Did [the other parent] ever use or threaten to use a firearm or other weapon to intimidate, threaten, or harm you?
- Has [the other parent] ever placed their hands around your neck or mouth, causing you to have difficulty breathing?
- Did [the other parent] ever strangle, choke, or smother you with an object or with their hands?
- As a result of any strangulation or smothering behavior by [the other parent], did you ever experience momentary or more prolonged loss of consciousness?
- Is [the other parent] constantly and violently jealous?
- Does [the other parent] ever follow, track, or monitor your actions and activities? How and why?
- Does [the other parent] force you to engage in sexual activities against your will?
- Has [the other parent] ever threatened to kill you or your children?
- Do you think [the other parent] is capable of killing you or your children?



Children's Justice Act Program Office of Crime Victim Services

Evaluating Domestic Violence: Considerations for the Questioning of Potential Child Witnesses by Guardians Ad Litem

*FORENSIC INTERVIEWS ARE VIDEO AND AUDIO RECORDED. THEY ARE CONDUCTED BY PROPERLY TRAINED PROFESSIONALS AT THE REQUEST OF INVESTIGATIVE AGENCIES SUCH AS LAW ENFORCEMENT AND CHILD PROTECTIVE SERVICES (SEE NATIONAL CHILDREN'S ALIANCE ACCREDIDATION STANDARDS).





Children's Justice Act Program

Office of Crime Victim Services

EVALUATING DOMESTIC VIOLENCE: CONSIDERATIONS FOR THE QUESTIONING OF POTENTIAL CHILD WITNESSES BY GUARDIANS AD LITEM

Suggested screening questions when there is no other information available from or about the child:

Introduction	"What do you know about me coming to speak to you today?"	"What do you know about lawyers?" "Well today, I am here to listen to you and learn from you"	"What should I know about you and your life?" "It is my first time meeting you. Tell me all about you."
Topic of Concern	When investigation information or reports are available: "I understand the police have come to your house. Tell me about that." "I understand mom got a black eye one time. Tell me about that."	fighting or arguing that you know about."	"Sometimes kids talk to me about things that make them upset or scared. Tell me about something you saw that made you upset or scared."
Exploring the Violence (See flow chart to determine if necessary)	"Tell me everything you saw with your eyes." "Tell me everything you heard with your ears."	"What was mom doing when?" "What was dad doing when?"	"Think about a time you were the most scared and tell me everything you remember step by step."

Wisconsin Department of Justice Office of the Crime Victim Services | Children's Justice Act September 2024



Children's Justice Act Program

Office of Crime Victim Services

Allor			
Exploring the Impact of Violence	"Does someone else ever get hurt besides	"How does it make you feel when" "What do you think about when" "What do you think would help mom/dad/you?"	"What does mom/dad say about the fighting?" "What did mom/dad say to you about talking with me?"

Wisconsin Department of Justice Office of the Crime Victim Services| Children's Justice Act September 2024

SAFeR Step 2: Assess the Nature and Context of Domestic Abuse

What is Parental Alienation?

Parental alienation refers to the theory that allegations of domestic abuse or sexual assault are false, designed to gain a custody advantage, and have resulted in the child being wrongly alienated from the "accused" parent.

Parental alienation is frequently alleged in cases in which an abusive parent and victim separate.

Often, the victim is accused of parental alienation because the allegations of abuse come forward during the pendency of the family case.

Consider alternative hypotheses in cases alleging parental alienation or other alienation:

- Is the parent attempting to alienate the child or protect the child from further abuse?
- Are there other reasons why the child would prefer one parent over another?
- Is there documentation of any form of abuse occurring within the family?

Parental alienation has been discredited by the psychiatric profession, and has been routinely deemed by courts and mental health professionals as inadmissible in the courtroom in this context. See, e.g., *State v. Fortin*, 706 N.Y.S.2d 611, 614 (N.Y. Co. Ct. 2000) (finding that parental alienation has not been generally accepted by the professional community and, therefore, lacks the foundation for its admission at trial); *People v. Loomis*, 658 N.Y.S.2d 787, 789 (N.Y. Co. Ct. 1997) (specifically rejecting parental alienation syndrome evidence in criminal cases).

See Joan S. Meier. (January 2009) Parental Alienation Syndrome and Parental Alienation: Research Reviews. Available online at https://vawnet.org/sites/default/files/materials/files/2016-09/AR_PASUpdate.pdf.

SAFeR Step 3: Focus on the Effects of Domestic Abuse

Judicial Guide to Domestic Abuse Issues

Legal Custody and Physical Placement When Domestic Abuse Is Alleged

Findings of Fact which trigger Domestic Abuse Provisions Under Wis. Stat. § 767.41(5)(bm); See also Wis. Stat. § 767.41(2)(d)2.

Court finds, by preponderance of the evidence, one party has engaged in a pattern or serious incident of interspousal battery or domestic abuse such as:

- Intentional infliction of physical pain, physical injury or illness
- Causing bodily harm with intent to harm while subject to a restraining order
- Intentional impairment of physical condition
- 1st, 2nd or 3rd degree sexual assault per § 940.225
- Intentional damage to property of the individual
- Threat to engage in any of the above

OR court finds, by preponderance of the evidence, both parties have engaged in a pattern or serious incident of the above AND one of them was the primary physical aggressor. Consider the following to determine primary aggressor:

- Prior acts of domestic abuse between the parties
- Relative severity of the injuries
- Likelihood of future injury to either party from domestic abuse
- Whether either party acted in self-defense
- Whether there has been a pattern of coercive and abusive behavior
- Any other factor that is relevant

If only one of the parties has been convicted of a crime of domestic abuse against the other party, the court shall find the convicted party was the primary physical aggressor. Wis. Stat. § 767.41(2)(d)3

Upon making a Finding of Fact that one party engaged in domestic abuse or one was the primary aggressor, presumption of joint legal custody does NOT apply, and the safety and well-being of the child and the safety of the parent who was the victim of abuse shall be the paramount concern in determining physical placement. Specifically, the following apply:

Presumption against Joint or Sole Legal Custody to the Abuser

The safety and well-being of the child and the safety of the parent who was victim of abuse shall be the paramount concern in determining legal custody. Wis. Stat. § 767.41(5)(bm)

It is generally detrimental to the child and contrary to the best interest of the child to award joint or sole custody to the abuser. Wis. Stat. § 767.41(2)(d)

The presumption against joint or sole legal custody to the abuser may only be overcome if the abuser shows ALL of the following: See Wis. Stat. § 767.41(2)(d)1.

Abuser has successfully completed treatment provided through a certified treatment program or by a certified treatment provider; Providers can be located at https://thewbtpa.com/s/2024-2025-WBTPA-provider-list-121124.pdf;

Abuser is not abusing alcohol or any other drug; and

It is in the best interest of the child for the abuser to be awarded joint or sole legal custody after consideration of the factors under § 767.41(5)(am)

When determining legal custody, the safety of the child and victim are still paramount. See Wis. Stats. § 767.41(2)(d) and (5)(bm)

Final Order

Any final order granting joint or sole legal custody to the abuser in cases in which domestic abuse is found must state in writing whether the presumption against awarding joint or sole legal custody to that party is rebutted and, if so, what evidence rebutted the presumption and why it is in the best interest of the child.

Wis. Stat. § 767.41 (6)(f)

Paramount Concerns for Physical Placement

The safety and well-being of the child and safety of the parent who was victim of abuse shall be the paramount concern in determining periods of physical placement. Wis. Stat. § 767.41(5)(bm)

If the court awards periods of physical placement to the abuser, court shall provide for safety and well-being of the child and victim-parent by imposing one or more of the following:

- Requiring supervised exchange of the child
- Requiring supervised visits
- Requiring the abuser to pay the costs of supervision
- Requiring the abuser to attend and complete, to the satisfaction of the court, a certified batterer's treatment program as a condition of placement
- Prohibiting the party from being under the influence of alcohol or controlled substances
- Prohibiting overnight placement with the abuser
- Requiring the abuser to post a bond to ensure the child's return or safety
- Any other condition the court determines is necessary

SAFeR Step 4: Respond with Recommendations Accounting for Domestic Abuse

Sample Recommendations for Cases that Involve Domestic Abuse

In drafting custody and placement recommendations, *especially in cases where domestic abuse is present*, it is important to be as specific as possible. Recommendations should provide for structure, limits, and predictability. Making the recommendations specific and clear can help reduce the degree of coercive control the abuser can exercise over the victim once the family case is over.

Below you will find categories for which you may make recommendations along with sample recommendations. The sample recommendations, and any reasoning you provide, should be adjusted based on the facts of the case at hand.

- **I. Custody Recommendations**: Custody may be ordered as sole with one party, joint between both parties, or joint with one party receiving impasse-breaking authority. Specific provisions may also need to be delineated, such as related to how a decision is made about religion, school, or healthcare.
 - a. **Sample for joint custody**: I recommend the parties exercise joint legal custody of the minor children, as defined in Wis. Stat. § 767.001(1s). The parties should communicate with each other in writing regarding custodial decisions. The party seeking to make or change a custodial decision shall explain the pros and cons of the decision. The parties shall attempt to discuss custodial decisions within one week of the initial request. In the event the parties are not able to reach an agreement, the parents agree to request mediation or seek a court review of the decision.
 - b. **Sample for sole custody**: I recommend that Parent A be awarded sole legal custody of the minor child. My recommendation is based on the fact that during the course of my investigation I uncovered evidence of domestic abuse, pursuant to Wis. Stat. § 767.41(2)(d)1. As such, I believe it would be detrimental to the best interest of the children for the parties to exercise joint legal custody. Parent A shall communicate all custodial decisions to Parent B via Our Family Wizard or a similar parenting application/platform.
 - c. **Sample for impasse-breaking authority**: I recommend the parties exercise joint legal custody with Parent A having final decision-making authority if the parties are unable to reach an agreement. The parents shall discuss custodial decisions and make a good faith effort to make joint decisions. As such, custodial decisions should be communicated to the other parent at least a week in advance in writing.
 - d. **Sample for religion**: Despite my recommendation regarding legal custody, I recommend the children continue to attend Catholic Church. As both parents each practice a different religious faith, the placement schedule will allow for the children to be able to attend Catholic services with Parent A. While there may be times the children will not be able to attend services, the parents shall strive to ensure the children continue to be active members of the Church as much as possible.
 - e. **Sample for school**: I recommend the children attend school in the school district where Parent A resides, as Parent A is the parent with the majority of placement time during the school year.
 - f. **Sample for healthcare, in particular therapy**: I recommend the children be enrolled in therapy as soon as possible. Therapy shall continue until the therapist recommends otherwise. Both parents shall fully cooperate with the therapeutic process by: taking the children to therapy, attending therapy at the request of the therapist, and following all therapeutic treatment recommendations for the

- children. The children's therapists may not be called as witnesses in any further proceedings unless the therapeutic relationship has ended.
- **II. Placement Recommendations**: Placement recommendations may include amount of routine placement with each parent, restrictions or conditions on placement (e.g., supervised placement), and a holiday or special occasion calendar. If the court grants physical placement to one parent for less than 25% of the time, Wis. Stat. § 767.41(6)(a) requires that the court shall enter specific findings of fact explaining why a greater allocation of physical placement with that parent is not in the best interests of the child.
 - a. **Sample for shared placement**: I recommend the following placement schedule for the children. This schedule will maximize the amount of time the children spend with each parent: Proposed Shared Placement/Overnights

Please note: you should add additional details regarding specific times in a table outlining the parents' placement schedule table.

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Week 1	Parent B	Parent B	Parent A	Parent A	Parent B	Parent B	Parent B
Week 2	Parent A	Parent A	Parent A	Parent B	Parent B	Parent A	Parent A

- b. **Sample for placement of less than 25% time with one parent**: I recommend Parent A have primary placement of the minor children. Parent B's periods of placement shall be every other weekend, from Friday after school or 3 p.m. if no school, until Monday dropping off at school or until 3 p.m. if there is no school. My recommendation is based on the evidence of domestic abuse, and my opinion that Parent B engaged in a pattern or serious incident of domestic abuse.
- c. **Sample for supervised placement**: I recommend that Parent B's placement with the minor children be supervised. The following people are all approved to supervise placement: Parent B's mother, Parent A's sister Jill, Parent B's cousin Mary, and Parent B's brother Doug. Parent B's placement shall be every Tuesday and Thursday, from after school until 6 p.m. The supervisor shall accompany Parent B to pick up and drop off the children, and shall be present during the entirety of the period of placement. I am recommending supervised placement due to evidence that points to potential harm to the child while in Parent B's care, including evidence of domestic abuse against Parent A and child abuse against the children.

Appendix

d. **Sample for holiday schedule**: I recommend the parties exercise the following holiday placement schedule. Holiday placement shall supersede regular placement. Neither party may schedule vacation during the other party's holiday unless both parties agree in writing. All provisions for safe exchanges should be followed.

Please note: you should add appropriate details and any other relevant holiday or special days to your table outlining the parents' holiday placement schedule table.

Holiday	Every Year	Odd Years	Even Years	
Mother's Day	Parent A			
Memorial Day		Parent B (12–2 p.m.); Parent A	Parent A	
Father's Day (12–2 p.m.)	Parent B			
Fourth of July		Parent A	Parent B (12–2 p.m.); Parent A	
Labor Day		Parent B (12–2 p.m.); Parent A	Parent A	
Thanksgiving Day		Parent A	Parent B (12–2 p.m.); Parent A	
Christmas Eve		Parent A	Parent A	
Christmas Day	Parent A			
New Year's Eve		Parent A	Parent B (12–2 p.m.); Parent A	
New Year's Day		Parent B (12–2 p.m.); Parent A	Parent B	

- e. **Sample for vacation schedule**: I recommend that each party take a 1-week vacation with the minor children every summer. Parent A should have priority on even-numbered years and Parent B should have priority in odd-numbered years. The parent with priority should give the other parent notice of their vacation dates no later than April 30th, and the other parent shall give notice of their vacation dates no later than May 15th. In the event a party fails to inform the other party of their vacation dates, that parent will forfeit vacation for that year. Vacation weeks shall include the parent's regular weekend placement.
- f. **Sample for communication regarding changes to placement**: In the event the parties need to communicate regarding changes to the physical placement scheduled, the parties should do so via Our Family Wizard.
- **III.** Transfer of Placement Recommendations: When children are exchanged, parents are often in contact with one another, which can be dangerous when domestic abuse has been present. Consider the following samples to promote the safety of the victim and child.
 - a. Sample for exchange occurring without contact: I recommend that Parent A drops the children

- at school or daycare if there is no school. Parent B should then pick the children up from school or daycare, no later than 3:30 p.m.
- b. **Sample for exchange occurring at a safe, neutral location**: In order to ensure the safety of all parties and the minor children, I recommend the parents exchange the children at Parent A's parent's home. When Parent B arrives, Parent A shall bring the children out to Parent B's vehicle. When Parent B returns the children, he shall bring them to the door, and Parent A shall receive them. Parent B shall not enter the grandparent's house at any time.
- c. Sample for exchange occurring at a public location with surveillance cameras: In order to ensure the safety of all parties and the minor children, I recommend the parents exchange the children at Kwik Trip located at 123 Any Street in Appleton, WI. When Parent B arrives, Parent A shall bring the children out to Parent B's vehicle. When Parent B returns the children, he shall bring them to Parent A's vehicle, and Parent A shall receive them.
- d. **Sample for communication regarding tardiness or changes to an exchange**: In the event a party is going to be late to pick up or drop off the child (e.g., weather) or another emergency situation arises around the time of the exchange, the parent who has the emergency should text the other parent to inform them of the situation.
- **IV. Communication between the Parents Recommendations**: When parents have a high conflict divorce and especially when there was domestic abuse in the relationship, it may benefit the victim and child to include provisions about the means and topics of parents' future communication. There are several apps and platforms that allow parents to communicate via written messages that are then preserved you may want to explore their pros and cons, and costs, before recommending any specific platform.
 - a. **Sample for Our Family Wizard**: I recommend the parties use Our Family Wizard for all their communications, regarding the children, including calendar of extracurricular activities and reconciliation of expenses.
- **V. Special Considerations**: The following may be provisions requiring recommendations when the specific factual conditions warrant it.
 - a. **Sample for when a party has documented substance use disorder**: I recommend that Party B not consume any drugs (other than prescribed medication) or alcohol 24 hours prior to beginning their placement time with the children, and that they refrain from consuming any drugs or alcohol for the duration of their placement time with the minor child.
 - b. **Sample for when a child has a disability**: I recommend that Party B consult with the child's doctor to learn how to administer the child's medications before any overnight placement with Parent B is ordered.
 - c. Sample for when a third party poses a risk to the child's wellbeing: I recommend that when the children are placed with Parent B there is no unsupervised contact between Parent B's significant other and the children. My investigation uncovered that Parent B's significant other has a history of child abuse and neglect.
 - d. **Sample for when either or both parents must attend a parenting class**: Parent B and the children can benefit from Parent B's attendance to a parenting class. As such, I recommend the court order Parent B to enroll in and complete a parenting class (such as Positive Parenting Solutions or similar).
 - e. Sample for when there is a restraining order in place and Our Family Wizard is not an option: As there is a domestic abuse injunction that prohibits Parent B from contacting Parent A, I recommend sole legal custody to Parent A. Further, I recommend the parties agree on a third party to

communicate in event of an emergency and any issues with exchanges (e.g., tardiness due to weather).

- f. **Additional special considerations**: There will often be additional safety concerns in a family law case where there is domestic abuse requiring recommendations beyond those listed here. For instance:
 - If there is reason for concern about surveillance using the child's technology;
 - If parents do not agree about a child's social, behavioral, or developmental needs;
 - If a child has a medical condition, illness, or disability affecting care needs.

VI. Child Support: The parties must be informed if child support is established and at what amount. Your recommendations may extend to child support when there is a dispute between the parties or a deviation from the standards. As GAL, you must advocate for the best interest of the child, including a fair child support order.