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This edition of *Coalition Chronicles* focuses on the need for family law reform for survivors and their children. Survivors often encounter systems that have life-and-death impacts on their children and themselves. For many, this impact is as bad or worse than other ordeals they have gone through: They participate in legal processes that are confusing, often without representation. They are uncertain how the process will unfold, how decisions will be made, and who will make them. They are told that they need to negotiate or cooperate with the individuals who abused them, or even threatened or attempted to kill them.

When survivors receive a final order from the family court, most often they are legally obligated to have ongoing, unprotected contact with the individuals who have been violent to them. Indeed, End Domestic Abuse Wisconsin's research shows that, even when the physical violence has been significant and is well documented through previous court decisions, survivors most often leave the family law system legally required to co-parent with their abusers, with no provisions in the orders for their or their children's protection.

For advocates, these outcomes are alarming. The family law system in Wisconsin appears to be taking victims and their children out of the frying pan and putting them into the fire. Victim service providers, community leaders, faith communities, CCRs, law enforcement, and others may adopt policies and practices that appropriately prioritize survivors' and their children's safety, but the family law system has the power to unravel that progress by subjecting victims with children to legal requirements that are completely out of touch with their safety needs.

Therefore, the need for improvement is abundantly clear. Last year, with the Governor's Council on Domestic Abuse, End Domestic Abuse Wisconsin (End Abuse) released the Domestic Abuse Guidebook for Wisconsin Guardians ad Litem: Addressing custody, placement, and safety issues. We held trainings introducing the guidebook across the state, most organized by local advocates, and the feedback has been overwhelmingly positive. While this resource is having a positive effect, we know from the research that the failures of the family law system run deep and are due to more than individuals' lack of knowledge and resources. We must focus on additional, systemic improvements to family law processes. Moving forward, End Abuse will continue to work with advocates, survivors, attorneys, judicial officers and others to analyze our research findings, and to advocate for survivor-centered reforms to the family law process in Wisconsin.



How Did We Get Here? End Abuse Addresses Family Law Issues

– Tess Meuer

For decades, survivors and advocates have voiced their frustration to End Domestic Abuse WI (End Abuse) about the failure of the Wisconsin family law system to recognize or adequately address the safety concerns of domestic abuse victims and their children. End Abuse engaged in multiple efforts to improve the system's response to this issue, culminating in the passage of [2003 WI Act 130](#).

Although this law provides protection for domestic abuse victims, fifteen years later End Abuse is still flooded with examples of the same concerns and issues. While many family law players throughout the state follow 2003 Act 130 — identifying and asking for a finding of domestic abuse and requesting recommendations to address safety for the victim and child(ren) — the majority of them do not appear to do so. These include family law practitioners who make such recommendations, such as guardians ad litem, evaluators and attorneys, as well as those who accept such recommendations, including family court commissioners and judges.¹

In a renewed effort to address serious concerns about family law outcomes for victims of domestic abuse, End Abuse convened advocates in a Family Law Systems Change Workgroup from 2015-16. Through group discussion of roadblocks victims had encountered in the family law system, common themes emerged related to specific roles and processes. (See text boxes on pages 3 and 4 for some of these themes.)

A Survivor of Attempted Domestic Homicide Tells Her Story

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 guardian ad litem 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 guardian ad litem only interviewing my ex-husband once and the guardian ad litem 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 guardian ad litem 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.

1 For Wisconsin data, see *Will Data Drive Change? Research Shines a Light on the Family Law System*, page 8 of this issue.

Advocates and End Abuse staff noted problems stemming from failures of players in the family law system from start to finish: First, the **attorney** who does not know about the Act 130 provisions; does not ask the client about domestic abuse and may not know how to make such an inquiry in a manner which allows the victim to disclose; does not understand that what he or she is hearing is domestic abuse; or tells the client NOT to disclose the abuse or to minimize the abuse because the GAL or court does not wish to hear about it. Some clients hear from their attorney that they will fare better in the family law outcome by “just agreeing to joint custody.”

Next, the law mandates that the **Guardian ad Litem (GAL)** in the family law case ask about domestic abuse and report it, if found, to the court. Yet, we have heard of numerous instances in which GALs do not ask about domestic abuse; do not recognize that **what they are hearing is domestic abuse**—especially when the abuse involves coercive control; minimize the impact the abuse has on both the victim and child(ren); make recommendations that do not comport with the seriousness of the abuse within the family; routinely default to a request for joint custody; and fail to recommend any safety provisions.

Finally, **family court commissioners and judges** often rely on the GAL’s recommendations with no evidence that they have sufficiently confirmed the presence or absence of domestic abuse in the family. Courts may also tell the parties or attorneys and GALs to “go settle the case.” Some courts refuse to hear evidence of domestic abuse. Many courts do not inquire about or recognize signs of coercive control and thus do not protect families where such behavior occurs. Most courts do not insist on safety measures even when abuse is acknowledged. And courts are not familiar with lethality factors that indicate a high likelihood of domestic homicide.

All of these players are reported to engage in questionable practices that are often dangerous to victims and their children, such as: expecting joint custody as mandated by law and in the “best interest” of the child; refusing to interview or insist that parties who may have insight into the family’s behavior be interviewed; relying on the abusive partner’s characterization of what happens in the family; lacking understanding of the dynamics of domestic abuse, and therefore penalizing victims for staying in an abusive household, for failing to report the abuse, or for minimizing or lying about abuse or its impact on the children; believing that abuse stops when parties no longer live together and



Mothers’ *demeanor* is more closely associated with evaluators’ recommendations than the severity (mild v. severe), type (conflict v. coercive control), or documentation of violence.

Jennifer Hardesty, *et al.*, The Effect of Domestic Violence Allegations on Custody Evaluators’ Recommendations (2011) University of Illinois at Urbana Champaign

therefore protection is no longer needed; believing children are not affected by witnessing domestic abuse; and favoring “co-parenting” to maximize each parent’s time with the child, without thoroughly considering the impact on the child.

In addition, **all of the players** may rely on a baseless theory entitled *parental alienation syndrome* (PAS) that has been discredited as junk science. PAS has been used to deflect attention away from domestic abuse, and toward a non-abusive parent’s refusal to “cooperate” by handing over the child to the abusive parent, or attempts to point out to the court the child’s fear of the abusive parent. Allegations of PAS are best known to occur in cases in which a father has sexually abused his child.*

Although some Wisconsin courts will not allow the use of PAS, they may accept other “alienation” theories which are variations of PAS concepts. While advocates on the committee noted the above problems within the family law system, they identified the role of the GAL in family law cases as the top priority they wished End Abuse to address. While the concerns noted above often exist for victims represented by an attorney in family law cases involving custody and placement, those concerns are exacerbated when the party appears pro se. In pro se cases, there appears to be even more reliance on the GAL’s recommendation. In the estimated 70-80% of family law cases that are filed pro se, victims may be even more vulnerable to legally inadequate or dangerous outcomes.

As the Family Law Systems Change Committee completed their discussions, the Governor’s Council on Domestic Abuse and End Abuse jointly

Concerns Identified by the Family Law Systems Change Workgroup

- Domestic abuse cases need **more time and attention** to account for the safety concerns of victims and their children; these cases do not fit into “traditional” family law cases.
- The system exhibits **inherent disparity**: it benefits those who have the financial resources to hire an attorney, custody evaluator, and expert witness to dismiss or override the allegations of domestic abuse. The system fails to recognize that many victims are subject to financial abuse and control of their finances by the abuser.
- Attorneys often **do not know how** to properly investigate for the existence of domestic abuse nor how to set a case up for appeal when errors are made.
- Mediation does not consistently provide appropriate safety measures in domestic abuse cases. Victims are often **forced or coerced** into mediation and an unsafe settlement.
- The family law process and the involvement of family court counseling **services are not uniform statewide**. Even in counties with a family court counseling office, they are often nonresponsive to domestic abuse victims or not knowledgeable about domestic abuse.
- The family law system **does not provide pro bono representation in even egregious domestic abuse cases**. The system does not allow advocates to assist the victim.

* For more information about PAS, see online articles [*Parental Alienation Syndrome: 30 Years On and Still Junk Science*](#), [*Discredited Junk Science Justifies Custody for Fathers*](#), and [*Junk Science Has its Way in Court*](#).

created the [**Domestic Abuse Guidebook for WI Guardians ad Litem \(GALs\): Addressing Custody, Placement, and Safety Issues**](#) (GAL Guidebook). The GAL Guidebook details a four-step process for the detection and reporting of domestic abuse; the process is entitled SAF^{ER}: Screen, Assess, Focus on the Effects, and Recommendations. The Guidebook is based on the work of a national study group and contains national research findings suggesting that family law attorney and GAL recommendations are often based on biases that prevent them from adequately exploring whether domestic abuse occurred, or disregarding its impact when they learn that domestic abuse has occurred. (See pages 6 and 7 for more information about the SAF^{ER} framework and the GAL Guidebook.)

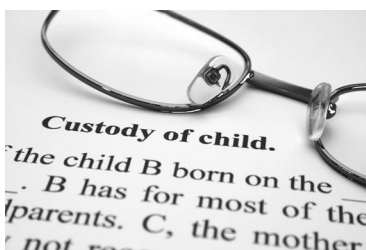
Following its release, End Abuse provided training on the Guidebook at the State Bar's Family Law conference in August 2017, and as a State Bar webinar in September 2017. End Abuse continues to provide ongoing, statewide training on the Guidebook to GALs, family law attorneys, court commissioners, and judges.

End Abuse recognizes that the impact of training is limited; unless all family law players are subject to a systematic approach when domestic abuse is present, survivors and their children will be at risk. In light of this continued risk, End Abuse undertook a research project to document what is occurring in family law cases in WI when there is known egregious domestic abuse in the family. In each case, a law officer arrested a person, a prosecutor charged that person, and the court convicted that person of abuse. This project is a first step by End Abuse to both validate the existence of and address system failures in family law outcomes for domestic abuse victims and their children. Read more about this project on page 8.

Concerns Identified by the Family Law Systems Change Workgroup: Guardians ad Litem

- GALs are sometimes **dissuaded from doing a thorough job** due to time and finances.
- The selection system for GALs can lead to the **least experienced person taking on domestic abuse cases**. The process does not insist that GALs have knowledge or training in domestic abuse dynamics, abuser tactics, and victim fears and concerns.
- GALs do not know about or use all of the legal presumptions concerning domestic abuse and child abuse in Wisconsin's laws but rather **default to joint custody**.
- **Judges often rely on the recommendations of the GAL** rather than seeking out sufficient information to determine what is in the best interest of the child and nonabusive parent.

Recommended Reading: Resources below and in boxes on pages 15-18.



"Child Custody and Domestic Violence: A Call for Safety and Accountability." Jaffe, P. G., Lemon, N. K., & Poisson, S. E.

This book was published in 2003 and centers on the culture of normalcy around divorce and the importance of considering domestic violence in post-separation arrangements. This book places an emphasis on developing an abuse-conscious analysis of custody arrangements within the family court system.

You can find a full , [**digital edition of the book on Google Books.**](#)

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Domestic Abuse for GALs in Family Law Cases:

SAF^eR Four-Part Framework

4 Steps to SAF^eR Best Interest Recommendations In Domestic Abuse-Related Custody Cases (Screen, Assess, Focus on the Effects, and Respond with Recommendations)

The SAF^eR framework, developed by a workgroup led by the Battered Women's Justice Project [BWJP]¹, includes material and practice guides informed by researchers, scholars, expert practitioners, and battered and battering parents across the country and the world.

Research findings, highlighted in boxes throughout this issue of the Chronicles, indicated that there were discrepancies between what evaluators, GALs, and family law attorneys learn and what is presented to the court in family law cases in which domestic abuse is present. The workgroup recognized that evaluators and GALs needed more accurate knowledge of domestic abuse, and to be able to check their own biases and reactions to the parent(s). This framework was developed to respond to that need.

The experiences and research findings which informed the work of the SAF^eR framework resonated deeply within the advocacy community in Wisconsin, and this issue of the Chronicles focuses on our related efforts that incorporated this work. In September 2017, the 4-part framework—outlined on the following page—was presented at a State Bar seminar for Guardians ad Litem. The Domestic Abuse Guidebook for WI Guardians ad Litem: Addressing Custody, Placement, and Safety Issues (GAL Guidebook), released in March 2017, parallels this framework. The [GAL Guidebook](#) was jointly created by the Governor's Council on Domestic Abuse and End Domestic Abuse Wisconsin.

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 leave an abusive partner, you realize that he or she is 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 guardian ad litem.

From The Domestic Abuse Guidebook for WI Guardians ad Litem: Addressing Custody, Placement, and Safety Issues, page 11

¹ The SAF^eR framework was developed by the Battered Women's Justice Project [BWJP] in consultation with the National Council of Juvenile and Family Court Judges and representatives from the Association of Family and Conciliation Courts, with support from the U.S. Department of Justice Office of Violence Against Women.

4 Steps to SAFer Best Interest Recommendations In Domestic Abuse-Related Custody Cases

Step 1: Screen

- Best Practice: Use Initial Domestic Abuse Screening Guide in ALL family law cases/with both parties.
- Initial Screening: Look for red flags
- After using the initial screening tool, IF red flags, conduct a formal interview with questions. Both the initial screening tool and the expanded questions are found in GAL Guidebook Appendices.

Step 2: Assess Nature/Context

- Context is critical: Treating all abusive behaviors the same can endanger victims, embolden perpetrators, harm children, and undermine effective interventions.
- Abuse takes many forms: examine *all* forms, per Wisconsin law. The most difficult to account for but equally damaging to family is **Coercive Control**. Statutes account for coercive control. Coercive Control is a harmful course of conduct that subordinates (or attempts to subordinate) the will of a current or former partner by: violating their physical integrity (violence); denying them respect and autonomy (intimidation); depriving them of social connectedness (isolation); appropriating or denying them access to the resources required for personal liberty (control).²

Step 3: Focus on Effects

The GAL cannot determine best interest of the child until they have determined how an abusive person parents, how the child(ren) experience and react to the abuse, the impact of the abuse, and whether/how co-parenting can be safely done.

Step 4: Respond with Recommendations

SAFeR Recommendation priorities:

- Protect children
- Ensure safety and wellbeing of the non-abusive parent
- Respect and empower the non-abusive parent
- Hold the abusive parent accountable

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In their study of 2,000 custody-mediating parents involving roughly 1,000 family law cases, Beck & Raghavan found that screening for physical violence alone failed to detect incidents of forced sex, threats to life, escalated physical violence, and the kind of relational distress that makes mediation (and, by extension, co-parenting) challenging or dangerous to battered parents. By contrast, screening for coercive control not only detected relational distress, but it also captured reports of forced sex, threats to life, and escalated physical violence in up to two-thirds of battered parents, which continued long after separation – in some cases, two to three years after separation.

Beck & Raghavan, Intimate Partner Abuse Screening in Custody Mediation: The Importance of Assessing Coercive Control, 48 Fam. Ct. Rev. 555 (2010).

² Stark, E. (2007). Coercive Control: How Men Entrap Women in Personal Life. Oxford University Press.

Will Data Drive Change? Research Shines a Light on the Family Law System

Adrienne Roach

Engaging in a study to evaluate the impact of prior criminal domestic violence convictions on the courts' child custody and placement decisions is a heavy undertaking. This study would not have been possible without the resources and support of the Director of State Court's Office, Office of Court Operations. With the help of Court Operations, we were able to access a collection of data through the state's CCAP database. This yielded mountains of data. In a perfect world, we would have studied each relevant case throughout Wisconsin.

Resource constraints prevented this project from studying case files in all 72 counties. Therefore, to ensure an unbiased, reliable, and representative set of cases, we selected cases from at least one county in each of Wisconsin's ten Judicial Districts. Higher population counties had a higher probability of selection. However, because the selection was random, smaller counties were also included in the sample. The largest county selected was Milwaukee County, with a current estimated population of just under one million people. The smallest county selected was Ashland County, with a current population of roughly 16,000 people. Other counties selected included: Adams, Barron, Brown, Chippewa, Dane, Jefferson, Kenosha, La Crosse, Marathon, Outagamie, Pierce, Portage, Shawano, Sheboygan, Walworth, Waukesha, Waushara, and Winnebago. With a simple probability sample of all ten judicial districts, we were able to account for regional differences and population variation across the state while preventing any convenience-related biases.

Using this method, we examined every divorce action involving children in which one of the parties (a parent) was convicted of a domestic abuse crime against the other party (parent) within the five years prior to the final order in the family law case.¹ We looked at family law cases commenced between 2010 and 2015 and matched these cases with criminal convictions that occurred between 2008 and 2015. We only included convictions for felony level offense and misdemeanor battery. Lesser convictions, such as disorderly conduct, were not included. Using these search criteria,



Evaluators' beliefs are more closely associated with their parenting recommendations than the actual nature, context and severity of abuse they observe.

Daniel G. Saunders, *et al.*, Custody Evaluators' Beliefs About Domestic Abuse in Relation to Custody Outcomes, National Institute of Justice (2011).

<https://www.ncjrs.gov/pdffiles1/nij/grants/238891.pdf>

¹Due to search limitations, we were only able to match family law cases with criminal convictions that occurred within the same county.

we obtained 361 matches, meaning we found 361 cases that included a criminal conviction for domestic abuse followed by a divorce involving children between the defendant and the victim. We also determined that in 102 of the matches, the victim (petitioner) also filed a restraining order against that same offender (respondent) and was granted an injunction. We examined these restraining order petitions for contextual information about the abuse, including the presence of lethality factors and documented child exposure to domestic abuse.

For this study, we relied upon volunteers to do the majority of the data collection. Because case files can be challenging to read and understand, we worked with volunteer attorneys and victim advocates who are familiar with the organization of case files and legal terminology. We conducted trainings with all volunteers before they collected data. We used a survey instrument and codebook to guide them through the data collection process. We asked concrete questions, such as the restraining order filing date and the final order on custody and placement, and encouraged volunteers to review the case files in pairs, whenever possible, to ensure higher data reliability. These measures minimized but could not remove the possibility of human error. Additionally, some case files did not include all information required for this study. For example, there was very little information available on GAL recommendations. Therefore, any assumptions or conclusions drawn from this study must take into account the small possibility of human error and the drawbacks of missing data.

We were able to reveal the study's initial key findings at a roundtable meeting convened in April 2018 with judges, attorneys, court officials, victim advocates, and other professionals. The discussion of these findings (some of which are listed below) formed the basis for the policy recommendations on page 14 of this issue. See page 10 for a more detailed summary of the research findings.

One of the most stunning findings was that joint custody is the most common outcome in cases with a history of domestic violence.

Key findings discussed at the April Roundtable Meeting

- **Most often, GAL recommendations are not apparent in the case files.**
- **When the abuser is not incarcerated, GALs are more likely to recommend joint custody than sole custody to the victim.**
- **In most cases with a history of domestic violence, safety provisions are not ordered.**
- **DV Findings are rarely used in cases with a history of domestic violence.**
- **A DV Finding and/or some reference to domestic violence generally results in better outcomes for victims.**
- **The outcomes for pro se victims are about the same as outcomes for victims represented by an attorney. However, DV Findings were more likely in cases in which the victim had an attorney.**

Wisconsin Family Law and Domestic Abuse:

Summary of Research Findings

Tony Wilkin-Gibart

Background

In 2017, End Domestic Abuse Wisconsin conducted a systemic review of family law case files in an attempt to gain a better understanding of how the family law system in Wisconsin responds to domestic abuse. The study was an effort to gauge the extent to which protections for domestic abuse victims in the family law code (often collectively referred to as “Act 130”) are or are not being utilized. More generally, the goal of the study was to gather data on the types of custody and placement outcomes domestic abuse victims and their children typically receive from the family law system in Wisconsin and to better understand some of the factors that may be driving those outcomes. (See *Will Data Drive Change?*, pages 8-9 for a discussion of the research methodology.) The final results of the study have not yet been published, but this summary previews some of the main findings of the research.

Summary of Findings

A key finding of the study is that the statutory protections for victims of domestic abuse only very infrequently have a direct impact on outcomes. For the main statutory protections for victims of domestic abuse in family law to apply, a court, as a prerequisite, must make a finding that one party engaged in a serious incident or pattern of inter-spousal battery or domestic abuse. More specifically, this court finding triggers a presumption that joint custody is not in the best interest of the child or children, and, after making this finding, the court is directed to consider the safety of the children and the victim the paramount concern in setting periods of the physical placement and deciding legal custody. The law also directs the court to order one or more safety provisions, things like requiring placement exchange between the parents to occur in a protected setting or requiring that placement with the abusive party take place under supervision. Therefore, because findings are prerequisites for the statutory protections, a key question for this research project is: how often do courts make domestic abuse findings in custody and placement cases? While the reasons for the presence or absence of a domestic abuse finding in a given case are complex, we would expect that if domestic abuse findings occur with any frequency in family law cases in Wisconsin, they would tend to occur in our sample of cases. In every one of the cases in our sample, a criminal court previously convicted the abusive parent of a domestic abuse crime no less serious than battery. However, we found that, of the 364 cases examined, fewer than 10% of cases included a formal finding of domestic abuse.

In every one of the cases in our sample, a criminal court previously convicted the abusive parent of a domestic abuse crime no less serious than battery. However, we found that, of the 364 cases examined, fewer than 10% of cases included a formal finding of domestic abuse.

While this number is very low, its practical significance might be mitigated if family law outcomes for domestic abuse victims and their children in Wisconsin otherwise reflected an attention to safety and

wellbeing. Generally speaking, this type of attention would be reflected in court orders of sole legal custody to the victim, of primary physical placement orders to the victim, and orders that include safety provisions such as supervised visitation or requiring that the exchange occur in a protected setting.

On the contrary, joint custody was the most common custody outcome of cases in our sample. In slightly fewer cases, the court awarded the domestic abuse victim sole legal custody. The most common physical placement outcome ordered by courts was primary placement with the domestic abuse victim. This occurred in over 200 cases, or about 60% of the cases examined. While the findings related to physical placement are more positive than the legal custody outcomes, we also found that the vast majority of final orders in the domestic cases—close to 70%—did not include any explicit provisions for the safety of the victim or children, such as ordering that placement exchange occur in a protected setting.

Therefore, the rarity of domestic abuse findings in this sample paints a concerning picture. The formal mechanisms for ensuring that victims and their children are protected in the family law system appear to have no direct impact on the outcomes in any but a few cases. Moreover, victims and children in our sample tended to end up with custody and placement outcomes very different from outcomes they would have received had the statutory framework been applied to the case. That is to say, instead of sole legal custody, victims were more likely to be subject to a joint custody arrangement; rather than have the court make specific provisions to reflect a high-level attention to safety in the physical placement order, victims were more likely to have orders that were silent on these matters.

Conclusion

As discussed in other articles in this issue of *Coalition Chronicles*, End Abuse continues to analyze the data we have collected, and we continue to engage a wide range of family law system stakeholders, including legal advocates, in helping us interpret the data and identify policy implications and recommendations. This work is ongoing. One of the lessons from the study is that statutory changes that would seem to benefit domestic abuse victims do not necessarily have a direct and positive impact on outcomes for many survivors. Substantive legal protections may not drive outcomes as much as the cumulative effects of practices, procedures, and background assumptions and beliefs of legal professionals. Therefore, in considering what policy improvements to pursue, End Abuse is taking a collaborative and deliberative approach as we attempt to understand what changes will most effectively address the identified challenges. We believe that actions will be most impactful if we take a holistic and practical approach to how victims enter and experience the family law system.

One of the lessons from the study is that statutory changes that would seem to benefit domestic abuse victims do not necessarily have a direct and positive impact on outcomes for many survivors. Substantive legal protections may not drive outcomes as much as the cumulative effects of practices, procedures and background assumptions and beliefs of legal professionals.

The Importance of Being Guardian ad Litem

Gricel Santiago-Rivera

Guardians ad Litem (GALs) play a crucial role in family law matters. This article will explore three key components of the GAL's role in family law cases: (1) the requirements to be able to serve as GAL; (2) the powers, real and perceived, of the GAL; and (3) issues with GALs in cases involving domestic abuse.

Requirements for Appointment as GAL for a Minor in a Family Law Matter

To understand all the requirements that must be met before an individual may serve as GAL for a minor child, we must look in several places. One aspect that is important to remember is that, unlike some other states in which psychologists or social workers may act as GALs, in the State of Wisconsin only attorneys can serve as GALs. Because of this requirement, no attorney may be appointed as GAL unless they are members in good standing of the State Bar of Wisconsin and have an active license to practice law in this state. This is the only way to ensure full representation of the GAL's client, "the best interest" of the child or children.

Because in Wisconsin GALs are attorneys, the Wisconsin Supreme Court Rules govern, under Supreme Court Rule Chapter 35 (SCR:35), eligibility criteria for attorneys being appointed as GALs, as follows. The criteria for family law cases is outlined in SCR: 35.015. An attorney must meet one of the two criteria:

1. The lawyer must have attended six hours of GAL approved education during the combined reporting period of that attorney (defined under SCR: 31.01 as December 31 every two years) at the time he or she accepts the appointment AND for the reporting period immediately preceding. At least three hours must be family court GAL education.
OR
2. The court appointing the GAL has made a finding in writing or on the record that the action or proceeding presents exceptional or unusual circumstances for which the specific lawyer appointed is otherwise qualified by experience or expertise to represent the best interests of the minor.

Practitioners who do not use systematic screening methods tend to under-detect intimate partner violence between custody-disputing parents.

Holtzworth-Munroe, Beck & Applegate, 2010; Ballard, Holtzworth-Munroe, Applegate & Beck, 2011.

The rules go on to say that, if the lawyer accepts the appointment, the lawyer is then representing to the Court that he or she is eligible to accept the appointment. In other words, it is up to the lawyer to let the Court know if they do not meet the requirements for an appointment; no separate entity checks to ensure that a specific lawyer meets the criteria.

The second set of rules for GAL appointments in family law matters can be found in Wisconsin Statutes Chapter 767. Generally, Wis. Stats. §767.407 governs the appointment of GALs in family law cases. The

Court has a mandate to appoint a GAL for a minor child in any action affecting the family if:

1. The Court has reason for special concern as to the welfare of a minor child;
OR
2. If the legal custody or physical placement of the child is contested.

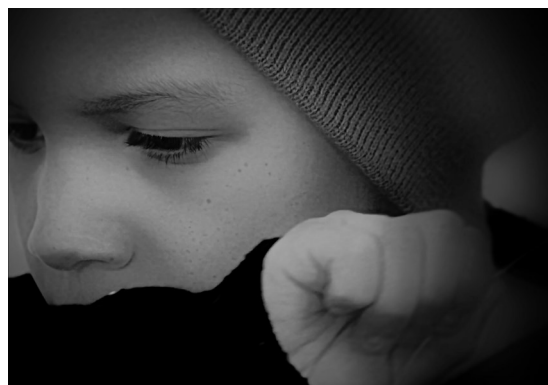
The statutes allow for one exception under #2, if the dispute is in an action to modify legal custody or physical placement AND the modification will not substantially alter the amount of time a parent may spend with the child AND the Court determines: the appointment of a GAL will not assist the Court due to the facts being clear, or that a party is seeking appointment of a GAL as a tactic or to cause a delay, and not for a purpose consistent with the best interest of the child.

Under Wis. Stats. § 767.407(1)(b), the court may also appoint a GAL if there is a stipulation for a child's legal custody or physical placement to be with an agency or a person other than the parents, or, if at the time of the action, a child is under the legal custody or physical placement of an agency or person other than the parents.

Wis. Stats. § 767.407(3) and (4) list the qualifications and responsibilities of a GAL in family law matters. There are only two qualifications listed in the family code: (1) that the person be an attorney admitted to practice in this state, and (2) that they do not have a conflict of interest.

The statutes do list a number of responsibilities for GALs, as follows:

1. To advocate for the best interest of the child as to: paternity, legal custody, physical placement and support.
2. To function independently in the same manner as an attorney for a party.
3. To consider (though not be bound by) the wishes of the minor child or the positions of others as to the best interest of the minor child.
4. To consider the legal custody and physical placement provisions of the statutes, as well as any custody studies.
5. To investigate where there is evidence of interspousal battery or domestic abuse, and to report to the court the results of the investigation.
6. To review and comment to the court on mediation agreements and stipulations, or parenting plans.
7. To communicate to the court the wishes of the child, unless the child otherwise requests.



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.

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.

Additionally, the court must appoint a GAL in a family law action in which a woman is married but is either pregnant or gave birth to a child whose biological father is not her husband. Per statute, a husband is always the legal father of a child born during a marriage; in order to rebut that presumption, there must be a best interest of the child determination, hence the appointment of a GAL.

Why Does a GAL Have so much Power?

Whether real or perceived, GALs hold a lot of power during a legal custody and physical placement dispute. This power is reflected in the comments of parties involved in such disputes, who tell us, for example, “the Judge ordered what the GAL recommended” or “my attorney told me to agree to the GAL recommendations because that’s what the Judge will do anyway” or “we were close to an agreement, but then the GAL said something, and that changed everything.” What we hear throughout the state is that after a contested hearing, Judges often do order what the GAL recommends.

The main reasons GALs have so much perceived power are: (1) the fact that they are appointed by the Court, and (2) the belief that they are a “neutral” party.

Because the GAL is appointed by the Court, he or she is perceived as a quasi-judicial figure with decision-making authority. This perception is reinforced by the facts: parties are ordered to cooperate with GAL investigations, GALs are given access to records that may otherwise not be discoverable or may not be relevant to a case, and, in some cases, GALs are given interim authority to modify Court orders, which *de facto*, gives them judicial authority.

Not only the courts, but GALs themselves perpetuate the idea that the GAL dictates what will happen in a case. GALs who have been adequately trained tend to be relaxed with their responsibilities as GALs. For example, many GALs do not subpoena witnesses for contested trials, issue recommendations that are based on their investigation but not on the evidence presented at a hearing, and simply do not meet the same obligations as required by other attorneys or parties in the case. Often, judges who are familiar with a GAL will be relaxed about his or her performance at hearings; they may allow the GAL to summarize evidence gathered during investigation even though it was never presented at trial, allow GALs to issue recommendations that are not based on the evidence, and follow the GAL's recommendations for legal custody and physical placement.

Issues with GALs in Domestic Abuse Cases

Family law cases involving domestic abuse are never easy. While Wis. Stats. Chapter 767 contains specific provisions regarding legal custody and physical placement orders when domestic abuse is present in a case, many parties and attorneys are unable to meet the burden of proof to show that domestic abuse



Even when intimate partner violence is detected, cases often proceed without accommodations for safety or power differentials.

Kernic, Monary-Ernsdorff, Koepsell, & Holt, 2005; Bow, 2006.

exists in a relationship. As the statute narrows the definition of domestic abuse, issues of coercive control are rarely considered domestic abuse under the legal definition in Chapter 767.

The statutory obligation to investigate domestic abuse and report to the Court the results of such an investigation is where many GALs fall short. Reports from domestic abuse advocates throughout the state list this as one of their main concerns in domestic abuse cases, especially given the power that GALs have in final orders regarding legal custody and physical placement. The most significant problems we have found with GAL investigations of domestic violence within a relationship are: (1) lack of knowledge of the statutory requirement to investigate, (2) uncertainty as to how to report to the court without acting as a witness, (3) improper screening for domestic abuse, (4) implicit bias against victims, and (5) what appears to be apathy, when GALs do not wish to take the time to screen for domestic abuse.

Why is it so important for GALs to investigate and for Courts to know that there is domestic abuse in a relationship when minor children are involved? Beyond the statutory requirements for GALs to investigate and for Courts to consider this information, there is by now a large body of research indicating that children are harmed by domestic abuse. Additionally, there is a strong correlation between domestic abuse and child maltreatment,¹ and higher incidences of violence when couples are separating or in the middle of a custody dispute.² If the person charged with investigating domestic abuse and reporting it to the Court does not do so, is there any doubt that the best interest of the children (the GAL's client) is *not* being served? Further, when domestic abuse is present, and the GAL does not do a thorough investigation of domestic abuse, the victim's legitimate claims of domestic abuse appear to be weak or fabricated. Such negligence often results in victims losing custody of their children or orders that do not—as required by statute—provide for the safety of the victim or the children.

GALs and judicial officers must have more comprehensive training on domestic abuse to understand the dynamics of domestic abuse, in general terms and more specifically within the context of a family law proceeding. As noted elsewhere in this issue, the [Domestic Abuse Guidebook for Wisconsin Guardians Ad Litem](#) provides GALs with appropriate tools with which to screen for domestic abuse, in compliance with statutory requirements under Wisconsin law. It also includes sample recommendations and other tools to assist in completing a full investigation in every case.

With proper training and screening tools, GALs who truly represent the best interest of the children can play a critical role in family law cases where domestic abuse is or has been present: to protect children, minimize the potential for re-victimization, and promote the development of strong parent-child relationships.

¹ 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.

² See David Adams, *Why Do They Kill? Men Who Murder Their Intimate Partners*, Vanderbilt University Press, 2007. Also, Lundy Bancroft and Jay G. Silverman, *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics*, Sage Publications, 2002.

Policy Recommendations From the Family Law Roundtable Discussion

Chase Tarrier and Tony Wilkin-Gibart

The Family Law Roundtable: In April of this year, a diverse group of family law experts and stakeholders convened in Madison, Wisconsin to engage in a multi-day discussion of our state's family court response to domestic abuse. The common goal of the participants was to better ensure that the family law system accounts for the safety and wellbeing of domestic violence victims and their children. The group of nearly 30 people represented a wide array of disciplines that all had some connection to the Wisconsin family law system including judges, guardians ad litem, attorneys, therapists, and others.

After listening to a presentation on End Abuse's internal Family Law Data Collection Project, the group was tasked with working collaboratively to identify specific barriers that impede family courts' ability to represent the best interest of children and keep victims safe. After a day of discussion, the group brainstormed possible solutions to these barriers, narrowing in on those that would present the highest likelihood of positive change while keeping in mind the feasibility of each potential solution. The following is a summary of the group's findings, as well as several possible policy recommendations to improve outcomes for children and victims of domestic violence in the family law system.

The first major barrier identified by the group was that guardians ad litem (GALs) lacked competence when considering the best interests of children in cases with domestic violence as a factor. As survivors and advocates consistently mention GALs among their top concerns with the family law system, we wanted to know what experts felt was leading



to this apparent problem. Upon further discussion, the group identified several factors that seem to stop GALs from effectively fulfilling their duties. These factors included: a lack of GAL training on domestic abuse dynamics; low GAL pay which creates a financial disincentive; lack of supervision or guidance for struggling GALs; insufficiently defined standards; and, the need for GAL appointment procedures that are transparent and ensure accountability.

To improve GAL response to domestic abuse victims and their children, the barriers outlined above must be addressed. Meeting participants identified several potential solutions that included: bringing domestic violence experts into the process before GAL appointment; facilitating systematic partnership between GALs and county social workers and other experts; creating statewide standards for GALs, including a possible district-wide certification and review process; instituting a colloquy requirement; allowing parties and family law attorneys to provide anonymous feedback on objective GAL standards; and, higher pay for

GALs to incentivize attorneys with more experience to fill this important role.

The group also identified lack of understanding and recognition by family law players of the effect that exposure to domestic violence has on children, as a serious barrier to effective response. Survivors often report that despite documented domestic violence in their case, abusers who have not demonstrably engaged in child abuse are still seen as fit for custody and placement in the eyes of the court. Knowing how severe the effects of exposure to domestic violence can be for children—often affecting them well into adulthood—there is clearly more that must be done to ensure that courts are considering exposure to violence as a factor when making determinations.

Two possible solutions were identified to encourage courts to be more mindful of exposure to violence when considering the best interests of children. The first entailed convening a work group specifically focused on child exposure to domestic abuse within the family law system to discuss possible training opportunities, connect with professional associations and court personnel, and bring up other issues related to raising awareness of child exposure to violence more broadly. The second solution was to legislatively amend the statutes to include child exposure as a mandatory consideration in cases with domestic abuse.

The fact that so many litigants are operating in the family law system pro se was also identified as a top barrier to good outcomes for children and non-abusive parents in family court. Because pro se litigants often do not have the knowledge to effectively represent themselves in domestic violence cases, many judges, commissioners, and GALs may not recognize the existence of domestic violence and its possible effect on the case.

The solutions identified to solve this problem included education and training of court officials about domestic violence and the reasons that victims often either do not self-identify, or do so late in the process. By ensuring that court officials understand the unique ways that domestic violence often presents itself in family law cases, victims' experiences are more likely to be considered and appropriately applied to the matter at hand. Stakeholders also suggested that the courts provide specific education tools and resources for family law cases on domestic violence throughout each step of the family law process, including the impact of domestic violence on children. Finally, to help pro se parties understand what is expected of them from the court's perspective, the group suggested the development and dissemination of resources for pro se litigants to be more effective self-advocates. These resources could be provided online and via other methods to ensure accessibility, and would help to streamline the court's operations and create better outcomes for children.

One more barrier identified by the discussion group as a limiting factor for good family law outcomes is the court's frequent failure to recognize the impact of coercive control on cases with domestic violence. Coercive control is in fact a form of domestic abuse itself; however, the court regularly frames coercive control as a mutual high conflict case. Therefore, courts often do not adequately protect victims and their

A Systematic Approach to Domestic Abuse— Informed Child Custody Decision Making in Family Law Cases

Gabrielle Davis

This 2015 article by Gabrielle Davis creates a model approach for family courts in dealing with cases where abuse is present. The elements of this approach are: (1) identifying domestic abuse; (2) understanding the nature and context of domestic abuse; (3) determining the implications of abuse; and (4) accounting for the nature, context, and implications of abuse in all custody-related recommendations and decisions. This article is available in the Family Court Review and on [Wiley Online Library](#).

children in the subsequent decisions on custody, placement, and other important issues.

In order to address this problem, several solutions were recommended by the group. The first was a possible change to the screening forms for domestic violence, amending them to include coercive control as a factor that can be identified by victims as they enter the court. The group also proposed amending the statutory definition of domestic violence to include coercive control, in both the family law definition and the restraining order statutes, so that judges know to consider it as a factor when determining the best interests of the child in the case. Group members also suggested coercive control as a topic for enhanced training for all court officials.

The final barrier the group identified was the fact that no official mechanism exists to ensure the court has knowledge that domestic violence is present in a particular case. This problem has several possible causes: guardians ad litem may not report domestic violence when it is present; pro se parties may not know how to effectively report domestic violence to the court; court officials may have minimal knowledge of domestic abuse protections in the family law

code; and judges may not have the ability or desire to look up the relevant criminal history in a given case. Surely these observations must be considered given the present situation, in which domestic violence is often totally ignored by the court as a mitigating factor even when criminal domestic violence convictions exist on the abusive parent's record.

The group proposed the following solutions. First, institute a standardized colloquy to make court operations more uniform and to limit the likelihood that domestic violence is overlooked by the court. Second, implement a rule or statute change allowing judicial officers to look up other cases in which parties are involved, increasing the chances that officials will see relevant criminal charges in the parties' history and make more informed determinations based on those facts. Lastly, End Abuse should consider authoring legislation that would create a separate and specific track for known domestic violence cases in the family law system, including a screening tool to ensure that cases are appropriately referred to this track. By ensuring that all cases with known domestic violence as a factor are brought into a separate part of the family law system, court officials will be better able to make decisions informed by the unique dynamics of domestic violence, offering additional protections for children and non-abusive parents.

End Domestic Abuse Wisconsin would like to thank the members of the April Family Law Roundtable Discussions for their participation in this process. We appreciate their feedback, and will continue to use the information they provided us as we consider both their recommendations for future changes to the family law system as well as other ideas generated by survivors, experts that work in the field, and End Abuse member programs.

Contact Chase Tarrier, Public Policy Coordinator (chaset@endabusewi.org) or Adrienne Roach, Policy and Systems Coordinator (adrienner@endabusewi.org) with any questions about the information presented above or the future of End Abuse's policy work in the family law system.

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In The Best Interest of Women and Children: A Call for Collaboration between Child Welfare and Domestic Violence Constituencies.

Schechter, S., & Edleson, J. L.

This 1993 briefing paper was prepared for a conference on Domestic Violence and Child Welfare. It details the overlap between intimate partner violence and child abuse and the need for cooperation between agencies working with children and agencies working with victims of domestic violence, since there is often overlap.

You can [read the paper on the ResearchGate website](#).

Family Law Attorneys Learn about Homicide Risk in Domestic Violence Cases

Sara Krall

On April 30, The State Bar of Wisconsin hosted a webinar entitled “Homicide Prevention in Family Law Cases Involving Domestic Violence.” Presenters included Tess Meuer and Sara Krall of End Domestic Abuse Wisconsin, and Attorney Deb Asher of Asher Law Office in Chippewa Falls, who courageously shared the impact of losing one of her clients to domestic violence homicide in 2016.

Separating from an abusive partner is understood to be the most dangerous time for a domestic abuse victim. Research shows that 50-75% of abused women who are murdered are either separating or have recently separated from an abusive partner.¹ Seeking legal counsel and initiating divorce is a sign of independence, and it signifies to the perpetrator that he or she is no longer in control; combined with the perpetrator’s often-present feelings of low self-esteem and self-worth, the risk of homicide or murder-suicide intensifies. The lethality risk is greatest if there have been threats to kill the victim involving a weapon or incidents of strangulation, if the perpetrator is violently or constantly jealous, or if the perpetrator has forced sex upon the victim.² Add on the hurt feelings and high-stakes decisions that often come with legal separations, and perpetrators of intimate partner violence homicides often feel as though they have “nothing left to lose,” a mindset that endangers not only the victim, but also those who may be in the path of a domestic violence perpetrator intent on causing harm.

The development of a webinar for family law attorneys on this topic was prompted by several recent domestic homicide cases in Wisconsin. A number of cases involved victims who were in the process of separating, or had recently separated from abusive partners. Additionally, there was a high-profile case in Marathon County in March 2017, in which Attorney Sara Quirt Sann was killed by Nengmy Vang, a domestic violence perpetrator who went on a shooting rampage in the Wausau area, killing four. The webinar reviewed and built upon the SAFeR framework outlined in the *Domestic Abuse Guidebook for Wisconsin Guardians ad Litem*.³ The presentation sought to give attorneys the knowledge and language to sensitively inquire about lethality risk when their clients report experiencing domestic violence, to conduct basic safety planning including a strategy for follow-up in the event the victim cannot be reached, and, perhaps most important, to swiftly connect victims with advocacy services that may be life-saving. The webinar also shared tips for proactively working to ensure their own safety when attorneys find themselves inserted into potentially volatile situations, such as meeting in locations with security, blocking their phone number, and having an office emergency communication and exit plan.

We believe that educating attorneys and other professionals on the indicators of lethality risk in domestic violence cases will both enhance their responses to victims who are at the greatest risk of death and increase their own safety when they come into contact with potentially lethal perpetrators in the course of their work.

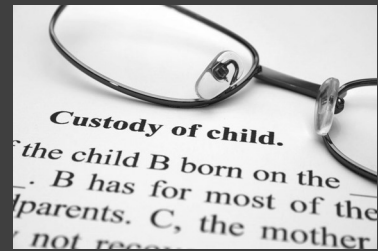
¹ *Private Violence*. Directed by Cynthia Hill, Performance by Kit Gruelle. HBO Documentary Films, 2014. www.privateviolence.com/.

² Campbell, Jacquelyn C., Daniel Webster, Jane Koziol-McLain, Carolyn Rebecca Block, Doris Campbell, Mary Ann Curry, Faye Gary et al. “Assessing Risk Factors for Intimate Partner Homicide.” *National Institute of Justice Journal* 250 (2003):14-19.

³ <https://www.wicourts.gov/publications/guides/docs/galguidebook.pdf>

Recommended Reading

The resources below were referenced in the SAFer Framework and *Domestic Abuse Guidebook for WI Guardians ad Litem (GALs): Addressing Custody, Placement, and Safety Issues.*



Child Custody and Visitation Decisions in Domestic Violence Cases: Legal Trends, Risk Factors, and Safety Concerns

This 2007 study examines the trend of states adopting domestic violence as a factor to be considered in custody decisions. It also examines the relationships between parents (both the perpetrator and victim) and how their roles in an abusive relationship may manifest in their relationships with their children. It also examines factors that promote or compromise the safety of children and survivors and why domestic violence needs to be considered as a factor in custody decisions by court officials.

[Read more about the study on VAWNET.](#)

The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics

Bancroft, L., Silverman, J. G., & Ritchie, D.

This book was published in 2002 as part of Sage Publications' Series on Violence Against Women. The authors decided to study perpetrators as parents because, prior to this study, most of the focus on children of abusive relationships had centered on their relationships with their abused mothers, since the mothers were often more accessible. This piece does a lengthy analysis of the personality traits of batterers and how those manifest in parenting. [Read an abstract](#) on the Sage Publications Website.

The Culture of Battering and the Role of Mediation in Domestic Violence Cases

Fischer, K., Vidmar, N., & Ellis, R.

This article was published in 1993 in Southern Methodist University's law review. The first portion of the study deals with defining abuse and examining relationships between batterers and victims. However, this study is particularly applicable for domestic abuse and family law outcomes as it examines how court-ordered mediation may not be in the victim's best interest and how a victim might negotiate a mediation situation.

The article has been republished on the [Duke University Law School website](#).

Fathering by Partner-Abusive Men. Attitudes on Children's Exposure to Interparental Conflict and Risk Factors for Child Abuse

This study researches the effect that intimate partner violence can have on a child's risk of maladjustment. The data comprise results from questionnaires administered to 3,824 men attending a court-ordered evaluation after they were convicted of assaulting an intimate partner, 65% of whom had a fathering role with underage children. This study uses the data from the questionnaire to analyze risk factors for child maltreatment and utilize those findings to create suggestions for professionals working with domestic offenders. The study is available on the [Sage Publications website](#).

The Dangers of Presumptive Joint Physical Custody

Gabrielle Davis, J.D., Kristine Lizdas, J.D., Sandra Tibbetts Murphy J.D., and Jenna Yauch

This 2010 article examines the presumption of joint custody, the reasons why in theory it is best for the child, and how the presumption may be quite harmful in the context of some family dynamics, particularly when one partner is abusive. [Read this article](#) on the Battered Women's Justice Project Website.



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