

# Child Protection

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Are We Doing Enough to Protect Our Children from Domestic Violence?



**ON  
THE Issues**

**POLICY RECOMMENDATIONS**



The Children's  
Aid Society

[www.childrensaidsociety.org](http://www.childrensaidsociety.org)

# Child Protection

## Are We Doing Enough to Protect Our Children from Domestic Violence?

### Executive Summary

*Child abuse and neglect co-exist with the battering of the mother with alarming frequency. Children's advocates agree that a sound response to the complex realities of child protection and domestic violence should include: (1) Full implementation of an array of preventive services, plus community-based initiatives that genuinely address the need for protection of woman and children, and (2) Intensive, case-by-case assessment of risk to children, as opposed to a blanket bias in one direction or another, as the primary determinant of whether to remove children from the home.*

**G**loria Brown,<sup>ii</sup> the mother of three small children, has been the victim of her husband's violent mood swings for five years. Since he lost his job a year ago, the frequency of his violence has increased from monthly to weekly, coinciding with his weekend binges. Ms. Brown has contacted a domestic violence counselor and did file a police report when the neighbors called 911 during the last altercation. She has not, however, followed through with counseling or with recommendations to get an order of protection and exclude her husband from the household until he has taken an anger management class and sought treatment for his alcohol abuse. Meanwhile, the children, seven-year-old male twins and a five-year-old girl, witness each battering episode. Recently, when the police were called yet again by a neighbor, the police made a referral to the Administration for Children's Services (ACS). The children were placed in temporary foster care pending a removal hear-

ing to determine whether Ms. Brown is able to protect her children from this cycle of abuse.

### Nearly Half of Child Welfare Cases Cite Ongoing Domestic Violence

A 2003 review of New York State child protection cases found that between one-third and one-half of all child welfare cases described the mother as a current victim of domestic violence.<sup>iii</sup> Legal advocates for children speak of visits to homes where, under appalling living conditions, families have been under investigation for two or three years before children are removed for neglect by mothers who fail to deal effectively with their batterers.

*Children's Aid believes domestic violence affects every member of a family.*

Grave risks are posed to children who live in the presence of domestic violence. Studies show an overlap between violence towards women and violence towards children of at least 40 percent. Research also shows that the rate of child abuse and neglect in violent

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homes is 15 times greater than the national average. The battering of women who are mothers usually predates the infliction of child abuse. At least half of all batterers also beat their children. The more severe the abuse of the mother, the worse the child abuse. Older children are frequently assaulted when they intervene to defend or protect their mothers. Daughters are more likely than sons to become victims of the batterer, and their risk of sexual abuse is 6.5 times greater than that of girls in non-abusive families.<sup>iv</sup>

It has been ACS policy that allowing children to witness such violence constitutes *per se* neglect. While mindful of the statistics, domestic violence advocates believe that removing children from their mother's custody traumatizes the children further and violates the mother's due process rights. In *Nicholson v. Scopetta*, a case that challenged the removal of children who had witnessed their mother's battering, the court found that it was unacceptable to presume that a child witness to domestic violence has been neglected. The Court ordered that specific findings of fact must be made before such a judgment is warranted, taking into account the imminent or actual impairment of the child's physical, emotional or mental condition and the parent's failure to exercise a minimum degree of care in protecting the child from harm.<sup>v</sup>

Despite their differences, many children's advocates agree that a sound response to the

complex realities of child protection and domestic violence should include:

- Full implementation of an array of preventive services, plus community-based initiatives that genuinely address the need for protection of woman *and* children, and
- Intensive case-by-case assessment of risk to the child, as opposed to a blanket bias in one direction or the other, as the primary determinant of whether to remove the child from the home as part of a child-protective strategy.

### Comprehensive Preventive Services May Keep Children in their Homes

As child welfare advocates, The Children's Aid Society believes that service providers to families can and should address the needs of both children *and* parents; we also believe that while respect for domestic violence victims is

imperative, it should not compromise the safety of their children. Before the city takes steps to remove children, families should be provided with preventive services in a well-funded, coordinated approach that includes intensive mandatory assistance and high accountability from the child welfare administration at all levels of practice.

A community-wide response that utilizes an array of interventions is the most comprehensive approach to family violence and child abuse. This approach employs each sector of the justice system, including police,

*Services must address the needs of children and parents in domestic violence cases.*

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corrections, pre-trial services and prosecutors. It also engages the human services and mental health systems to create effective deterrents that safeguard women and children. These include training for all child welfare staff in every component of the goals of the intervention approach; outreach to batterers and to education and treatment groups in civil and criminal justice systems; training and monitoring for educators working with perpetrators; outreach, information and referral to battered women to enhance safety and autonomy; and community education and media initiatives to transform public understanding and response to domestic violence.<sup>vi</sup>

*New York City must do a much better job of protecting children from danger.*

### Intensive Assessment Must Follow Every Report of Suspected Abuse

Good practice also includes making a thorough assessment of the dynamics of a family whenever child abuse is suspected. Child protective agencies should take the following steps when determining whether to remove child witnesses to domestic violence from their homes:

- Assess the dynamics of a family whenever suspected child abuse is reported to determine whether *anyone* in the family has *ever* experienced abuse.
- Issue an order of protection to remove the batterer, by force if necessary, from the home. If the order is violated and the children are to remain in the home, the batterer must be taken into custody.
- Failing the victim's ability to seek and enforce, with police assistance, an order of protection, mother and children should be removed to a domestic violence shelter or to the home of family members.
- Failing the victim's ability to resist the batterer's pressure to return to the family, if the children are assessed to be in danger, they should be removed until the mother and children complete therapeutic counseling with family violence specialists.

As we work to understand the reasons for child fatalities due to abuse in New York City, we must examine whether the community is failing to provide the critical preventive services that allow a family to remain together.

Recommendations made in 2003 by the Child Welfare Watch Advisory Board remain valid:

- Hasten new investment in domestic violence programs;
- Institutionalize ACS policy reforms in front-line practice;
- Secure the right to counseling for children who witness violence;
- Build community organizing projects on domestic violence awareness;
- Include abuse and neglect cases in integrated domestic violence courts; and
- Provide domestic violence support and funding to foster care agencies.<sup>vii</sup>

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## Are We Doing Enough to Protect Our Children from Domestic Violence?

New York City could do a much better job of protecting our children from danger if a rapid response team of professionals from all sectors of the community, including police, corrections, prosecutors, human services and

mental health, can identify a family's specific needs, implement all elements of recommended treatment and provide intensive and ongoing consultation on the progress being made.

### Children's Aid on Child Protection

The Children's Aid Society believes every member of a family is affected when there is violence at home. Children's Aid's Family Wellness Program provides individual and group counseling to men, women, teenagers and children who have experienced violence in their homes or in dating relationships. We also offer case management services including help getting an order of protection, public assistance, housing, shelter, and referrals for other services when necessary. Services are offered in English and Spanish, free or at a low fee. Meetings take place in several locations in Manhattan and the Bronx. Childcare and/or counseling for children are available for some groups. For more information call (212) 503-6842/6829.

### About Children's Aid

For more than 150 years, The Children's Aid Society has been assisting New York City's children and their families without regard to race, religion, nationality or socio-economic status. Children's Aid helps children in every aspect of their lives from infancy through adolescence, providing guidance and resources to ensure a child's current well-being and future potential. With over 100 programs and more than 45 locations in New York that touch the lives of more than 150,000 children every year, Children's Aid is one of the country's largest and most innovative child and family social service agencies. Visit [www.childrensaidsociety.org](http://www.childrensaidsociety.org) or contact [policy@childrensaidsociety.org](mailto:policy@childrensaidsociety.org).

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- i One in a series of policy papers by The Children's Aid Society, 105 E. 22nd St., New York, NY 10010, (212) 358-8930.
  - ii In this actual anecdote, the family names have been changed to protect their privacy.
  - iii Child Welfare Watch, "Doing Better for Battered Moms," Fall 2003.
  - iv Straus, Gelles and Steinmetz, 1980; Hughes, 1988; Peled and Davis, 1992; Stark & Flitcraft, 1988; Pagelow, 1989; Bowker, Arbitell, and McFerron, 1988; Hilberman and Munson, 1977-78; Dobash and Dobash, 1979; and Bowker, Arbitell, and McFerron, 1988.
  - v Nicholson 2004, N.Y. Lexis 3490.
  - vi Barbara J. Hart, Minnesota Center Against Violence and Abuse, February 2000.
  - vii Child Welfare Watch, Fall 2003.