The Impact of Federal and State Laws on Children Exposed to Domestic Violence

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Abstract

Until recently, few federal and state laws specifically addressed the needs of children in families in which there is domestic violence. Yet, many laws, particularly in the areas of domestic violence, family law, child welfare, welfare reform, and immigration, can have profound effects on the well-being of these children. The growing understanding by legislators and policymakers of the potential harms of domestic violence to children has resulted in recent years in statutory changes, particularly at the state level. However, laws that are enacted and implemented with inadequate knowledge of the complex dynamics of domestic violence and the unique issues battered parents and their children face may have unintended negative consequences for the children these laws are designed to protect. Collaboration across public and private social service agencies and domestic violence training for court personnel are examples of efforts that can bridge this knowledge gap and increase the likelihood that the protective intent of the laws is carried out in practice. This article analyzes current and proposed federal and state civil laws to better understand their potential impact on children affected by domestic violence. A companion article by Lemon in this journal issue examines court decisions related to these laws.

There is a tendency in law and policy to compartmentalize issues; in the case of domestic violence, to view it as a women’s issue or a criminal justice issue, but not also as a children’s issue. However, recent studies estimate the number of children who witness domestic violence to be between 3.3 million and 10 million per year and show that domestic violence can have a wide variety of harmful effects on children, as well as increasing the likelihood of their becoming victims or perpetrators of abuse themselves as adults. Because of the growing awareness of the potential effects of domestic violence on children, advocates and policymakers are increasingly recognizing the links between preventing and responding to domestic violence and protecting children. Though the trend has been
Federal and State Domestic Violence Laws

Congress' first major effort to address domestic violence was the Family Violence Prevention and Services Act, enacted in 1984.4 This legislation was designed to assist states in efforts to increase public awareness about family violence and to provide shelters and other assistance for victims of family violence and their children. It provides for technical assistance, training, and resource centers, and grants to states and nonprofit agencies to develop family violence services and model programs for youth education about domestic violence.5 Ten years later, the Violence Against Women Act of 1994 (VAWA)6 was passed, reflecting a growing national recognition that domestic violence remains a serious problem.7 The federal policies expressed in VAWA must be seen in the context of ongoing state efforts to provide legal remedies for domestic violence.

The Federal Violence Against Women Act (VAWA)

VAWA includes provisions to improve law enforcement, criminal justice, and state court system responses to domestic violence; increase the number of prevention, intervention, and counseling programs; and protect battered immigrant women from deportation. However, although VAWA is an important step toward a comprehensive, nationwide response to the problem of domestic violence, its effectiveness has been limited. The legal remedies it creates have been criticized as overly narrow8 and have been entangled in constitutional challenges.9 And, most importantly, many of its provisions have not been fully implemented because they have not been funded, or need reauthorization to continue to be funded.10

VAWA directly addresses the impact of domestic violence on children only to a limited extent, through provisions for treat-
ment and counseling for children harmed by domestic violence, for education regarding the links between domestic violence and child abuse, and for development of school curricula on domestic violence. Nonetheless, insofar as VAWA is effective in promoting the prevention of domestic violence, and effective law enforcement, court, and service system responses to domestic violence victims, these improvements will benefit victims’ children as well.

In response to the gaps in VAWA, a new legislative proposal, the Violence Against Women Act of 1999, H.R. 357, has been introduced in Congress. If passed, this legislation will reauthorize various VAWA programs that would otherwise expire, such as funding for shelters and services for domestic violence victims and their children; grants for local nonprofits to create model domestic violence programs; education and training for judges; advocacy and judicial training to assist child abuse victims; improvement of prevention, victim services, and prosecution of domestic violence in rural areas; youth education programs on domestic violence; and services for homeless and runaway youth victimized by sexual abuse. The current version of VAWA ‘99 also includes new provisions that go beyond the original VAWA legislation. The most significant of these for children include: funding supervised visitation centers for children in families affected by domestic violence; increasing access to legal services for domestic violence victims; monitoring the impact of domestic violence on employment; and improving domestic violence services targeted to older and disabled persons, immigrants, and Native Americans. As of November 1999, VAWA ‘99 and corresponding House bills were stalled in committee, but the legislation has strong bipartisan support and will be a major focus for advocacy groups in spring 2000.

State Civil Laws Addressing Domestic Violence

Although state remedies generally are not specifically targeted at children, they have substantial effects on children’s safety and welfare in that they give nonviolent parents tools to protect themselves and their children from violence. For example, all states currently have processes for victims of domestic violence to obtain restraining orders—orders issued by a judge to compel a violent person to stay a specified distance away from the victim, her home, her place of work, and so on. To obtain a restraining order, a battered parent generally must file a written petition in civil court, and then attend a hearing. Once a restraining order is issued, it can be enforced by the police; violation of a restraining order is a criminal offense.

State laws vary as to the duration and breadth of these orders. In California, for example, restraining orders can last up to three years, can protect children and other household members as well as the victim herself, and can include additional provisions such as exclusion from a shared residence, repayment of expenses caused by the violence, and mandated batterers’ treatment. Some states also allow child custody, visitation, and child support issues to be resolved in the context of a restraining order action, instead of requiring the victim to bring a separate legal case to obtain court orders on these issues.

Restraining orders can be effective only if they are accessible and enforceable. Studies have shown that, although restraining orders can be effective in reducing violence, victims often face serious barriers and problems in obtaining and enforcing them. Many states, however, have made recent efforts to improve the access to and effectiveness of these legal remedies. As required by VAWA, many states have recently enacted fee waiver provisions that eliminate or limit court filing fees for domestic violence victims seeking restraining orders, thus removing a serious financial barrier for low-income families. Several states go even further and require the perpetrator of the violence, rather than the victim seeking the order, to pay the court filing fee. Moreover, some states have responded to the concern that many domestic violence victims cannot afford to
pay lawyers, by improving opportunities for access to free or low-cost legal services.20

Despite these innovations, there is still considerable work to be done to make state domestic violence laws effective in protecting victims and their children. The American Bar Association (ABA) recommends that states make legal assistance more available and affordable to victims of domestic violence and their children by encouraging lawyers to do pro bono work in domestic violence cases, expanding legal services programs to represent parents and children affected by domestic violence, establishing specialized legal clinics, and requiring abusers to pay court costs and attorney’s fees.21 Better education and training for judges and law enforcement personnel are also needed.22

(For more information regarding court and law enforcement responses to children exposed to domestic violence, see the article by Lemon in this journal issue.)

**State Child Custody and Visitation Laws**

In addition to federal and state laws directly addressing domestic violence, state family law statutes, policies, and court decisions have a major impact on children affected by domestic violence. When a nonviolent parent seeks to leave an abusive partner with whom she has a child, disputes over child custody and visitation often arise. If courts fail to take domestic violence into account appropriately in resolving child custody and visitation disputes, parents may remain in violent homes for fear of losing custody of their children; children may be harmed by being used as pawns in abusive parents’ efforts to control their partners; and child custody and visitation decisions may fail to serve children’s best interests.

Recent developments in state laws governing custody and visitation disputes between parents show a clear trend toward recognizing that domestic violence has serious effects on children and that abusers generally are not ideal parents. However, these developments are only beginning to counteract other harmful trends such as the adoption of laws and policies pressuring parents to accept joint-custody arrangements,23 the influence of the fathers’ rights movement,24 and the judicial bias against battered women.25

**Child Custody**

More than half the states have laws requiring that domestic violence be considered when courts make child custody and visitation awards.26 These standards are an improvement over court decision making that regarded domestic violence between parents as irrelevant to child custody and visitation,27 but they still leave a great deal of discretion
to the court. As a result, judicial misconceptions about domestic violence and battered women may limit the effectiveness of these laws.  

The ABA recommends that state laws go beyond merely requiring that courts consider domestic violence as a factor in child custody decisions, to creating a presumption against giving custody of children to perpetrators of domestic violence. The ABA favors this presumption because it acknowledges that the pattern of control by batterers often continues after physical separation from their partners and that batterers are likely to use child custody issues as a means of trying to control their former partners. Several states have enacted presumptions that it is not in a child's best interest to be in the custody of a domestic violence perpetrator. Some states have created other presumptions about domestic violence and provided detailed guidance to courts in making child custody decisions. For example, some state statutes require that courts take into account the safety of both the child and the nonviolent parent when making custody decisions.

However, in addition to the trend toward favoring joint legal custody, there has been a trend toward enacting “friendly parent” provisions, which allow courts, in custody decisions, to favor the parent who is more willing to cooperate and share parenting. Such provisions pressure parents to accept joint custody, rather than risk losing custody completely by appearing to be uncooperative. These laws may be beneficial to many children, but they may also be harmful to parents and children in cases of domestic violence. Because of this risk of harm, some states that generally favor joint custody make exceptions for cases involving domestic violence.

Finally, state laws implementing the Uniform Child Custody Jurisdiction Act, which seeks to prevent parents from going to courts in other states to evade the effects of an unfavorable child custody decision, are extremely important in cases involving domestic violence. Such laws can interrupt aggressive child custody litigation tactics that are often used by batterers as part of a pattern of control and that can be harmful to children as well as to their nonviolent parents. Similarly, state statutes addressing the problem of child kidnapping by batterers are important. However, these laws need to be carefully drafted to exempt parents who, in good faith, flee with their children to escape domestic violence. (For information on court decisions regarding child custody and domestic violence, see the article by Lemon in this journal issue.)

**Child Visitation**

As with state custody laws, state visitation laws have traditionally favored ongoing contact between children and both parents. However, many state statutes now address the problems raised by visitation with parents who have perpetrated domestic violence by requiring courts to take into account the safety needs of the battered parent and the child when crafting visitation orders, by requiring the court to consider supervised visitation, or by permitting the denial of visitation rights to perpetrators when the court finds that safe visitation is not possible.

Although supervised visitation may help ensure the safety of the abused parent and the child, it can be logistically difficult and expensive, especially for low-income families who do not have the money to pay for supervision. Few communities have free programs that allow court-ordered supervised visitation to be carried out in a safe and effective manner. Without access to such facilities, battered women may have to rely on friends or relatives who are not trained to handle visitation situations that may be harmful to the battered women or their children.

Various solutions to the problem of ensuring that supervised visitation is safe and accessible have been attempted or proposed. The ABA recommends that supervised visitation costs be paid by the perpetrator of domestic violence. Some states have created state-run supervised visitation centers. California has set statutory standards for providers of supervised visita-
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Mediation of Child Custody Disputes

There is also a general trend in state family law statutes toward promoting the use of mediation as an alternative to litigation in child custody disputes. However, mediation may be problematic in cases involving domestic violence. Commentators have argued that "[e]ffective mediation requires voluntary participation, relatively equal bargaining power, similar quality of representation, and approximately equal investment in the outcome."44 Abusive relationships are often characterized by extreme imbalances of power. Moreover, the nonviolent parent often has fewer financial resources, and so may lack legal representation and/or be susceptible to pressure to make economic concessions in exchange for child custody. For these reasons, some states have exempted cases involving domestic violence from mediation requirements.45 However, such exemptions from mandatory mediation may not be of much help to low-income parents, for whom the alternative to mediation is usually litigation or negotiation without the help of a lawyer—which involves the same problems of imbalance of power. (For more information regarding mediation of custody and visitation cases involving domestic violence, see the article by Lemon in this journal issue.)

Federal and State Child Welfare Laws

Many children affected by domestic violence are also at risk of child abuse or neglect.46 All states currently have child welfare systems that receive and investigate reports of child abuse and neglect, offer services to families, provide foster homes for children who must be removed from their parents' care, and work to find permanent placements for children who cannot safely return home. State juvenile courts oversee cases of abuse and neglect, and hold hearings to determine whether a state agency may remove a child from home, or be placed for adoption (or another long-term arrangement) after termination of parental rights. (For more information on the child welfare system, see the spring 1998 issue of The Future of Children, which focuses on protecting children from abuse and neglect.)

Properly administered state child welfare systems can mitigate the effects of domestic violence on children, and provide services and support to assist the nonviolent parent in maintaining a safe and stable home for the child. On the other hand, child protection systems that ignore the special problems and dynamics of domestic violence may hastily or inappropriately remove children from battered parents and fail to support these parents' efforts to reunify with their children. Battered parents may hesitate to disclose abuse and seek help, if they fear being reported to the child welfare agency and having their children removed from home.

Federal Child Welfare Policy

Ever since the enactment of the federal Child Abuse Prevention and Treatment Act (CAPTA) in 1974,47 and the Adoption Assistance and Child Welfare Act (AACWA) in 1980, federal policymaking and funding have influenced the development of state child welfare systems. Under CAPTA, for example, all states must have systems for receiving and investigating reports from the public of child abuse and neglect.48 However, each state is free to make its own laws defining child abuse and neglect for the purposes of child welfare system involvement. These laws are distinct from (but often cross-reference) the states' criminal laws prohibiting child abuse and neglect.

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offering services to address the problems causing risk to the child. Also, in cases in which the child must be removed from home, the agency must make reasonable efforts to provide services so that the child can safety return home.\textsuperscript{50} In 1993, this federal policy goal of reuniting abused or neglected children with their families was reiterated in the Family Preservation and Support Services Act,\textsuperscript{51} which provided additional funding for services to prevent or resolve family problems that put children at risk of abuse or neglect.

However, a major revision of federal child welfare law and policy was brought about by the Adoption and Safe Families Act (ASFA) of 1997.\textsuperscript{52} In response to congressional concern that children were spending many years in foster care, ASFA emphasizes prompt termination of parental rights in cases of abuse and neglect where children cannot safely return home, and efforts to place foster children in permanent homes. ASFA includes a policy statement that children's safety and health are the most important considerations in state agencies' decisions whether to remove children from home;\textsuperscript{53} exceptions to the general requirement that state agencies make reasonable efforts to help parents resolve problems and reunify with their children;\textsuperscript{54} shortening of time lines within which states must make permanent plans for foster children, and either return them home or seek termination of parental rights;\textsuperscript{55} reauthorization of funding for preventive services and services for parents in crisis;\textsuperscript{56} and incentives for states to increase rates of adoptive placement of foster children.\textsuperscript{57}

Although the goals of shortening children's stays in foster care and improving adoption rates may benefit many children,\textsuperscript{58} ASFA has some disturbing implications for children affected by domestic violence. The new, shorter time lines for foster care cases are problematic for battered parents. Such parents may need considerable time to take steps necessary to ensure their own safety (such as moving, seeking a restraining order, and so on), recover from physical and emotional trauma, establish a new home, find a new job, and learn parenting skills needed to stop the cycle of family violence. Thus, if the new time lines are applied too rigidly, they could result in termination of these parents' ties with their children, in situations where it would be better for the child to remain somewhat longer in foster care, to allow the parent to complete the steps needed to safely reunify with the child.

On the other hand, it is not clear how much effect the new time limits will have. ASFA allows an exception to the time limits for parents who have not received the services needed for the child to return home. Because many states have severe shortages of basic services needed by battered parents, these parents may qualify for this exception.\textsuperscript{59}

Other ASFA provisions that may cause problems for children affected by domestic violence are the exceptions to the requirement that the child welfare agency make reasonable efforts to provide services to families whose children have been removed from the home. For example, although ASFA clearly states that the exception for cases involving crimes against children does not apply to the nonperpetrating parent, a finding that a battered parent has failed to protect her children from exposure to domestic violence may be interpreted as fitting within this exception. If a case involving a battered parent is found to fit within the exception, it will be placed on a fast track toward termination of parental rights. Moreover, these parents and their children will face the more immediate harm of being denied access to whatever services the state agency would otherwise offer.

Overall, the impact of ASFA on children affected by domestic violence will depend on how the act is implemented in each state, in light of each state's framework of child welfare statutes, court decisions, and agency policies and practices. State child welfare

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laws give rise to troubling issues regarding battered parents and their children, but also show some promising innovations that seek to protect children without penalizing non-perpetrating parents. The implementation of ASFA may intensify the risks of unintended harmful effects of state child welfare laws on children, and heighten the importance of state law innovations.

**State Child Welfare Laws**

As mentioned above, many states' statutory definitions of child abuse and neglect, for purposes of child welfare agency intervention, parallel or cross-reference state criminal laws. These criminal laws can strongly influence child welfare system responses to cases involving domestic violence.

For example, all but 12 states have child abuse and neglect laws that criminalize omissions as well as affirmative acts of harm, and the trend in state legislation is moving in the direction of increased liability for some of these omissions. The most common punishable omissions include leaving the child alone with a known abuser, being present when abuse takes place and failing to intervene, and failing to seek prompt medical attention for a sick or hurt child. A battered parent's failure to protect a child from exposure to harm by the abusive parent has been interpreted by agencies and courts as being a punishable omission. Such findings can cause battered parents who are unable to prevent abusive partners from harming their children to lose their parental rights, without any state efforts to help them safely reunify with their children.

Blaming battered parents for failure to protect their children, and depriving these parents of reunification services, may unfairly penalize these parents for unsuccessful attempts to protect their children or for not intervening because they feared for their own or their children's safety. These statutes allow for findings against the battered parent without considering her particular circumstances and the reasons for her inability to protect her child from harm. The underlying assumption on which these laws are based, that a good mother will always manage to protect her children from harm, fails to recognize that many battered parents lack resources to immediately escape from violent situations and feed, clothe, and house their children on their own; that attempts to escape a violent home may actually increase the battered parent's and the children's risk of being injured or killed; and that battered parents may, to protect their own and their children's lives in the long term, be compelled to endure abuse until they can develop a safe and effective plan to leave the violent situation. Only three states have laws that allow the courts to consider evidence that attempts by a battered parent to protect her children would have resulted in additional injury to either herself or her children.

Even in the absence of statutes criminalizing failure to protect a child, state child welfare laws may be interpreted and applied in ways that adversely affect battered parents and their children. Low-income battered parents in particular may be placed in a double bind, facing either staying with the batterer and risking harm to themselves or their children, or leaving,
but not finding a shelter suitable for the children. In either situation, they risk having their children taken away from them by child protective services.67

Changes in state laws are needed, away from punishing battered parents and toward providing protection and services for these parents and their children. Also needed is the education of legislators and policymakers and judges about the dynamics of domestic violence and about ways to protect children without penalizing battered parents. There are, of course, instances in which battered parents themselves abuse or neglect their children. Although state child welfare agencies must hold battered parents—like all other parents—accountable for child abuse or neglect, they should still take domestic violence into account in providing services that address the problems that led to the abuse or neglect.

Some states have begun to recognize and address the problems described above by passing laws to shift child protection agencies’ focus away from removing children from homes in which domestic violence occurs, and toward helping the nonviolent parent achieve safety for herself and her children. For example, recent California legislation requires courts in child abuse and neglect cases to consider making an order removing the violent parent from the home, instead of removing the child, and also requires child welfare agencies to assist battered parents in obtaining restraining orders and other services and supports.68 Other states also allow restraining orders against perpetrators of domestic violence to be issued in child welfare cases (instead of requiring the nonviolent parent to file a separate legal action).69 Many states have begun to create statutory presumptions that certain types of behavior, when caused by domestic violence, should not be taken into account when judging a parent’s fitness. Although most of these laws apply only in the context of custody disputes and not abuse and neglect cases, a few seem to apply to both situations.70 (For information on court decisions regarding child welfare and domestic violence, see the article by Lemon in this journal issue.)

In addition, some states are beginning to explore the integration of child welfare services, community-based domestic violence services, and improved enforcement of criminal laws against domestic violence, to better protect children affected by domestic violence. Michigan and Massachusetts, for example, have innovative programs in place that coordinate domestic violence and child welfare services.71 (For more information regarding programs that integrate child abuse and domestic violence services, see the article by Findlater and Kelly in this journal issue.)

Welfare Reform and Children Affected by Domestic Violence

Although domestic violence occurs in all socioeconomic groups, there are close correlations between poverty and domestic violence.72 Domestic violence can cause families to become poor, and make it harder for them to escape poverty, in several ways. Many perpetrators of domestic violence deliberately sabotage victims’ efforts to become financially independent by pursuing education or employment.73 Also, the physical and psychological injuries caused by domestic violence may make it harder for victims to find and keep jobs.74 To escape violence, many victims are forced to leave their homes and jobs, and flee to remote locations. Finally, some parents cannot enforce their rights to child support from an abusive non-custodial parent without endangering themselves and their children.75 The correlation also runs in the other direction: Poverty can make women and children more vulnerable to domestic violence, in that parents with less money are more likely to be economically dependent on violent partners, and less able to relocate, hire lawyers, or obtain access to health care, counseling, and other services. Because of this correlation between poverty
and domestic violence, antipoverty programs in general, and federal and state laws governing welfare programs in particular, have substantial bearing on children affected by domestic violence.

**Federal Welfare Reform Legislation**

Ever since the creation of the Aid to Families with Dependent Children (AFDC) program in 1935, the federal government has had a role in the provision of monthly cash assistance to low-income families with children. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, however, abolished the AFDC program and replaced it with the Temporary Assistance to Needy Families (TANF) program. TANF includes time limits and work requirements, among other provisions, that all states must impose on welfare recipients, but otherwise gives the states considerable latitude to redesign the eligibility rules, benefit levels, and other features of their welfare programs. (For more information on welfare reform policy, see the spring 1997 issue of The Future of Children.)

Many advocates and policymakers are concerned about the potential negative impact of welfare reform legislation on domestic violence victims. Welfare payments often provide a crucial safety net for parents fleeing domestic violence, until they become able to support themselves and their children. New eligibility restrictions and time limits may force battered parents to remain in or return to violent homes. Moreover, requiring welfare recipients to immediately seek work or attend job training as a condition of receiving benefits may create serious barriers for battered parents who need to obtain restraining orders, move, seek treatment for physical and psychological trauma, or otherwise establish their own and their children's safety before being able to enter the workplace. Also, many battered parents are at risk of workplace harassment and violence, and need to plan carefully to ensure that their abusers do not find out where they work, and/or to ensure that workplace security measures are in place. In response to these concerns, the Wellstone/Murray Amendment to the federal welfare reform legislation creates a Family Violence Option (FVO) that states may enact in order to identify victims of domestic violence, refer victims to specialized services, and exempt domestic violence victims from time limits and other mandated activities and restrictions. In April 1999, final TANF regulations were issued by the federal government, which clarified the operation of the FVO. These regulations require states, when exempting domestic violence victims from work requirements, to redetermine the need for the exemption every six months, and to integrate work into the service plan if consistent with the goal of safety. The regulations also protect states that have adopted the FVO from fiscal penalties, if they fail to meet work participation quotas or caps on time limit exemptions due to exemptions properly granted under the FVO.

**State Implementation of Welfare Reform**

As of September 1999, some 36 states have formally adopted the FVO (though only 32 of these have policies and procedures in place to implement it), 2 states permit counties to decide whether to implement the FVO, 5 states are in the process of adopting the FVO, and 6 states have not adopted the FVO but have some policies to give domestic violence victims temporary deferrals from welfare-to-work activities. Only 3 states have neither the FVO nor other policies providing for exemptions or deferrals for domestic violence victims. The scope and length of exemptions from work requirements and time limits vary greatly from state to state, from as little as 90 days, to exemptions of unlimited duration. State provisions also vary as to the requirements of proof of domestic violence to qualify for the exemptions.

It is too early to assess whether these special provisions will be effective in ensuring that state welfare reform initiatives do not
have adverse effects on battered parents and their children. Early studies, however, have already raised concerns about the lack of coordination between local welfare agencies and domestic violence service providers, inappropriate procedures to facilitate disclosure of domestic violence, and unreasonable documentation requirements for battered parents seeking exemptions. These data suggest that wide gaps may exist between official state policies and the actual practices of welfare agencies, and there may be a need for advocacy and monitoring to ensure that special provisions for battered parents within state welfare programs are actually implemented.

Other state welfare reform requirements may also have adverse effects on battered parents and their children. For example, provisions requiring welfare recipients to provide information about the fathers of their children, and otherwise cooperate with child support enforcement efforts, could put domestic violence victims and their children at risk of retaliation from violent ex-partners. The child support cooperation requirement in the federal welfare reform law does contain a "good cause" exception (as did the prior AFDC law). But, under the new law, each state defines what constitutes good cause for refusing to cooperate, and sets its own procedures for granting "good cause" waivers.

Studies have shown that few battered parents have requested these waivers (either under the old AFDC program or under TANF), and of these, only about one-third are granted. Most battered parents wish to cooperate with enforcement efforts, because they want to obtain child support and/or because they believe that cooperating will not make their situation worse (for example, the abuser already knows where they live). There is a small but significant number, however, who believe that cooperating with child support enforcement will increase the danger to themselves or their children. For these parents, better information about the availability of waivers and less burdensome documentation requirements may be necessary to ensure that they are not compelled to cooperate when it is unsafe to do so. Moreover, waivers are not a complete solution for battered parents who fear that child support enforcement efforts will lead to further violence, but also urgently need the child support money. States such as Arkansas, New Jersey, and Washington have begun to develop alternatives, such as confidential address programs, to make collecting child support less likely to lead to increased danger for battered parents and their children.

State laws exempting domestic violence victims from participating in welfare-to-work programs and from child support cooperation will not, however, fully address the needs of low-income battered parents and their children. Simply allowing victims to stay on welfare may be less harmful to them and their children than rigidly imposing work requirements and time limits, but does not address these families' long-term needs. Therefore, state implementation of the FVO will benefit children only if it includes services and support to help families protect themselves from future violence, recover from physical and emotional trauma, and take safe and effective steps toward economic self-sufficiency.

Immigrant Children Affected by Domestic Violence
Domestic violence may have especially severe effects on children in immigrant families. The cumulative effect of federal immigration laws, child welfare laws, and welfare reform provisions may be to increase these children's vulnerability, despite VAWA and other provisions intended to protect battered immigrants.

VAWA Provisions for Battered Immigrant Women and Children
Children in immigrant families may be harmed when battered parents' efforts to escape from violence are hindered by concerns about immigration status.
petition for their immigrant spouses to gain LPR status. Battered immigrant women whose spouses are citizens or LPRs often face threats to withdraw or decline to file such a petition, to deter them from leaving or taking other steps to end the violence.

To address this problem, VAWA provides that immigrants who are battered by a citizen or LPR spouse, or whose children are abused by their citizen or LPR parent, may self-petition for LPR status. If deportation proceedings have already begun, VAWA also provides that the battered immigrant may petition for a cancellation of removal to avoid being deported (if she has lived in the United States for at least three years). To qualify under this VAWA provision, an immigrant parent must show that she has suffered domestic violence from a citizen or LPR spouse (or that her child has been abused by a citizen or LPR parent), and that she or her child would suffer extreme hardship if deported.

The scope of this VAWA provision is fairly narrow, however. It applies only to battered immigrants who are or have been married to a citizen or LPR, or who can prove that a citizen or LPR parent has abused their child. VAWA does not apply when the abusive spouse or parent is not a citizen or LPR. Immigrant parents and children who are beyond the scope of VAWA are still vulnerable to the use by violent partners of the threat of deportation, to prevent them from leaving the relationship or reporting the violence. Such threats are especially potent when an immigrant parent’s children were born in the United States, because if faced with deportation, the parent would have to choose between uprooting the children from their home country, or leaving them behind.

Child Welfare Laws and Immigrant Children

As discussed above, removal of children from battered parents based on a finding of failure to protect the child has harmful consequences for children as well as their parents. For children in immigrant families, the effects may be even more severe. In order for an immigrant to qualify for LPR status and for citizenship, it must be determined that the immigrant has good moral character. A finding that a battered immigrant parent has failed to protect her child may lead not only to removal of that child from her custody, but also to a determination that she lacks good moral character. Such a determination will disallow her from gaining legal status and remaining permanently in the United States with the child.

Welfare Reform and Children in Immigrant Families

Federal welfare reform initiatives, including the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of
1996 as well as the PRWORA, severely reduced the eligibility of legal immigrants for many public benefits. Although partially restored by 1998 legislation, these benefit cuts may jeopardize the safety of children in immigrant families affected by domestic violence. Even children who are U.S. citizens and eligible for benefits, but whose parents are immigrants, may be harmed by cuts targeted at immigrants, because their immigrant parents may decline to seek benefits for them due to fear of deportation.

The IIRIRA does include some special benefits provisions for battered immigrants. However, these provisions apply only to immigrants who have a legal status petition pending (either through a spouse or relative, or under VAWA) and who can show a substantial connection between the violence and the need for benefits. Moreover, immigrant parents may hesitate to apply for benefits for themselves and their children, even when they are eligible, because of the public charge doctrine, which states that an immigrant's application for LPR status may be denied if the applicant is likely to become a public charge. Past receipt of government benefits is a factor in making this determination, although it is supposed to take into account the totality of the circumstances, and focus on the applicant's future ability or inability to support herself. However, a history of inconsistency and unfairness in the application of the public charge doctrine has left immigrant communities fearful of applying for any public benefits at all.

The cumulative effect of narrow federal protections for battered immigrant women, cuts in immigrants' eligibility for government benefits, and the public charge doctrine is likely to make it difficult for many battered immigrant parents to take steps to protect themselves and their children from future violence. Thus, children in immigrant families affected by domestic violence are an especially vulnerable population.

Conclusion

Taken together, recent trends and changes in state and federal laws concerning child custody and visitation, protection of children from abuse and neglect, and welfare benefits for low-income families may have a disturbing array of unintended negative effects on children in families where there is domestic violence, especially immigrant families. Congress and the states have, however, taken some promising steps to address these problems, both through legislation directly addressing domestic violence, and through provisions in child custody and visitation, child welfare, and welfare reform laws that take into account the unique needs of battered parents and their children.

The author wishes to acknowledge research assistants Kira Dellinger, Ruth Botstein, and Katina Ancar for their valuable assistance in the preparation of this article, and Ariella Hyman of the San Francisco Neighborhood Legal Assistance Foundation, Tanya Broder of the National Immigration Law Center, and Deana Jang of the Asian and Pacific Islander American Health Forum for their helpful comments and corrections.

2. Federal and state criminal laws concerning domestic violence also have indirect effects on children, but are beyond the scope of this article.
3. Lyon, E. Poverty, welfare and battered women: What does the research tell us? Harrisburg, PA: National Resource Center on Domestic Violence, December 1997. This is an unpublished document available from the Center at (800) 537-2238.
8. See note no. 7, Schmidt Am Busch, p. 7.


12. Similar provisions have been introduced in the Senate, as the Violence Against Women Act II, S. 51, and the Battered Women’s Economic Security Act, S. 1069.


14. For more information about VAWA ’99, see the NOW Legal Defense and Education Fund Web site at http://www.nowldef.org or contact their Washington, DC, office at (202) 544-4470.


21. See note no. 1, Davidson, pp. 9–10.

22. See note no. 17, Harrell, Smith, and Newmark, p. 80.


29. See note no. 1, Davidson, p. 13.


36. See, for example, Cal. Penal Code § 278.7 (1996), which allows abused parents to protect themselves from kidnapping charges by calling the district attorney’s office and stating that they have fled with a child to escape domestic violence.


40. See note no. 28, Enos, p. 252.

41. See note no. 33, Developments in the law, p. 1616 and n. 146.

42. See note no. 1, Davidson, p. 14.

43. See note no. 18, National Council of Juvenile and Family Court Judges, p. 47 (describing Kansas law).

44. See note no. 33, Developments in the law, pp. 1602–1603.


56. 42 U.S.C. §§ 629(a), 629A(a) (1)–(2) (1997); 629B(a) (4)–(5) (1998).


59. See note no. 52, Grimm, pp. 4-5.


62. See note no. 60, Murphy, p. 729.

63. See note no. 60, Murphy, p. 720.

64. See note no. 28, Enos, pp. 229–30.


66. See note no. 60, Murphy, p. 720.


71. See note no. 46, Aron and Olson.

72. See note no. 3, Lyon.


74. See note no. 73, Kenney and Brown, pp. 17–20; see also Shepard, M., and Pence, E. The effect of battering on the employment status of women. Affilia (Summer 1988) 3:55.


77. See note no. 67, Howell, pp. 145–49.

78. See note no. 73, Raphael and Tolman, p. 25.


82. See note no. 81, Raphael and Haennicke, p. 8. The three states are Illinois, South Carolina, and Wisconsin. Wisconsin and Illinois do allow welfare recipients to obtain domestic violence services as a work activity, but have no specific policies for domestic violence victims. South Carolina is in the process of developing domestic violence policies.

83. See note no. 81, Raphael and Haennicke, pp. 19–23.


95. The Agricultural Research, Extension and Education Reform Act of 1998, Public Law 105-185, 112 Stats. 523, restored eligibility for food stamps to about 30% of the legal immigrants who lost food stamps in 1996. Currently pending legislation, the Fairness for Legal
Immigrants Act, S. 792, H.R. 1399, would further restore food stamp and Medicaid eligibility to legal immigrants, and also includes provisions that would permit otherwise ineligible domestic violence victims to qualify for benefits if necessary to help them escape violence.


97. There are a large number of families with “mixed” immigration status. Nearly 10 million U.S. families include at least one citizen child and at least one immigrant parent. See Brady, S.A. Protecting children of immigrants is harder under new welfare, immigration laws. Youth Law News (March/April 1998) 19:6–11.

98. IIRIRA, 8 U.S.C. § 1229b (b) (2) (1997).
