

## Audio Conference Training series

### *Failure to Protect: How Can We Do More for Battered Women and Their Children?*

With Olga Trujillo, Praxis Technical Assistance Partner,  
Joyce Cook, WV Coalition Against DV, and Cathy Munster, JD



#### **Part 1; Thursday, October 16**

The Unintended Consequences of Failure to Protect

#### **Part 2; Tuesday, October 21**

Moving Beyond Failure to Protect

**At 2pm Central, dial 512-623-5114 and enter guest code 52533#**

Time zone conversion:

Eastern:	3pm to 4:30
Central:	2pm to 3:30
Mountain:	1pm to 2:30
Arizona	Noon to 1:30
Pacific:	Noon to 1:30
Alaska	11am to 12:30
Hawaii:	9am to 10:30
Puerto Rico	3pm to 4:30
Guam (next day)	5am – 6:30

**Cost:** Long distance phone call. All expenses can be covered by you OVW training funds

**Participation:** Unless the operator has muted all of the lines, please keep your telephone on mute EXCEPT when you are speaking. Press \*6 on your keypad to mute your line. To un-mute, press \*6 again.

**To leave:** Hang up your phone. This does not interrupt the session. If you need to step away temporarily, do not put the call on hold, as we may hear “on-hold” music. Simply place the receiver on your desk.

**Problems:** If you experience long-distance connection difficulties, simply redial the number again. If problems persist, please call 218-525-0487 x 100 and we’ll try to assist you.

## **Trainer Biography:**

### **Olga Trujillo**

Praxis Technical Assistance Partner

[olga@ortsolutions.org](mailto:olga@ortsolutions.org)

Olga Trujillo is a consultant and an attorney, who after nearly 13 years with the United States Department of Justice started her own consulting business to work on domestic violence, child abuse and sexual assault issues. As a consultant, Olga has worked with most national organizations addressing the issues of violence against women and children. A nationally sought speaker, Olga has appeared in several videos including “Cut it Out” a training video on domestic violence focusing on hair stylists and is featured in the video “A Survivor’s Story” a training video based on her experience and live presentations. She had an article published in “The Resource” by the National Sexual Violence Resource Center on “Living Dissociative Identity Disorder” which was reprinted in the September/October issue of the Sexual Assault Reporter. Olga also recently received the Bud Cramer Leadership Award given by National Children’s Alliance for her work to help professionals around the country better understand the impact of violence on children. In 2007, the Sunshine Lady Foundation awarded Olga with one of its Peace Awards for her work for battered women and their children.

Olga Trujillo is a survivor, who has undertaken a journey to understand the impact violence, has had on her life – from the domestic violence she witnessed as a child to the abuse she suffered as a child to the rapes she endured as an adult. Through her experience, she offers insight into what it means to be a survivor, what we can do to help families, ways you can prevent further victimization and recognize what we all do to help survivors. Latina Magazine featured Olga in its August, 2006 issue for her survival and her work on these issues.

### **Joyce Yedloski**

WV Coalition Against Domestic Violence

Joyce Yedlosky is the Protective Services Coordinator with the West Virginia Coalition Against Domestic Violence. Joyce coordinates the statewide Domestic Violence/Child Victimization Study and Policy Workgroup and the statewide Disability/Later Life Task Force which consists of statewide representatives from the domestic violence network, the court system, child and adult protective services and other representatives working with issues of domestic violence and the protection of families. Joyce has 22 years of experience working in the human services field and 17 years of experience and training with issues of domestic violence. This experience includes institutional and community mental health, home health care, foster care social work, foster parent and domestic violence advocacy. Joyce also participates on the WV Supreme Court Improvement Project, the state Citizen Review Panel, the Drug Endangered Children’s Task Force, the Children’s Justice Task Force, and the Financial Exploitation Workgroup.

### **Catherine Munster, JD**

WV Supreme Court Improvement Project

Catherine Munster has been instrumental in improving legislative policy, practice standards and compliance with national mandates in the child protection system. She has served on several boards and commissions including: the Commission on the Future of the West Virginia Judicial System, and the Adult Fatality Review Team and the West Virginia Supreme Court Improvement Board. Additionally, Catherine has authored several publications and facilitated numerous state and local presentations and training programs throughout the State regarding the law of child abuse and neglect, the use of multidisciplinary teams, the effect of domestic violence on children, and other matters related to child abuse and neglect. For the past ten years, she has provide annual trainings through the WV Supreme Court Improvement Board for judges, attorneys, CPS workers, DV advocates, children advocates and other disciplines involved with child abuse/neglect issues. Catherine is currently Of Counsel with McNeer, Highland, McMunn and Varner, L.C. and is an active member of the Coalition’s Domestic Violence/Child Victimization Study and Policy Workgroup. She obtained her Doctorate of Jurisprudence Degree from West Virginia University College of Law in 1984.

## Agenda

### **Part 1; October 16, 2008**

#### ***The Unintended Consequences of Failure to Protect***

Welcome and introductions

Failure to Protect

- How it impacts domestic violence victims
- How it's addressed around the country

Exploring a unique approach

- State-wide impact
- Why WV went a different route
- Overview of what they did
- Challenges they faced in changing statutes and policy

Closing and intro of next call

### **Part 2; October 21**

#### ***Moving Beyond Failure to Protect***

Welcome and introductions

Summary of first call

Examine the implementation of West Virginia's approach

- What are the challenges?
- How do you assess the needs of mothers and their children?
  - The impact of trauma
- What services would help?
  - survivor perspective

Closing

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**H. B. 4694**

(By Delegates Amores, Moore, Longstreth,  
Webster and Ellem)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §49-1-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-6-2, §49-6-3, §49-6-5 and §49-6-5b of said code, all relating to abuse and neglect of children; definition of battered parent; consideration of factors associated with a battered parent in abuse and neglect cases; petition to court; battered parent entitled to an attorney; court determination of battered parent; providing treatment and assistance for battered parent; consideration of acts or attempted acts of murder, voluntary manslaughter or unlawful or malicious wounding with serious injury by one parent against other parent in abuse and neglect cases; considering aggravating circumstances of abuse, neglect or violent acts of parent in temporary and permanent custody determinations when the acts are committed against the other parent; considering aggravating circumstances of abuse, neglect or violent acts of parent in temporary and permanent custody determinations when the acts are committed or against other children in the household or other children under the parent's care or custody; department's obligation to attempt to preserve the family when aggravating circumstances exist; and definitions.

*Be it enacted by the Legislature of West Virginia:*

That §49-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §49-6-2, §49-6-3, §49-6-5 and §49-6-5b of said code be amended and reenacted, all to read as follows:

**ARTICLE 1. PURPOSES; DEFINITIONS.**

**§49-1-3. Definitions relating to abuse and neglect.**

- (a) "Abused child" means a child whose health or welfare is harmed or threatened by:
- (1) A parent, guardian or custodian who knowingly or intentionally inflicts, attempts to inflict or knowingly allows another person to inflict, physical injury or mental or emotional injury, upon the child or another child in the home; or
  - (2) Sexual abuse or sexual exploitation; or
  - (3) The sale or attempted sale of a child by a parent, guardian or custodian in violation of

section sixteen, article four, chapter forty-eight of this code; or

(4) Domestic violence as defined in section two hundred two, article twenty-seven, chapter forty-eight of this code.

In addition to its broader meaning, physical injury may include an injury to the child as a result of excessive corporal punishment.

(b) "Abusing parent" means a parent, guardian or other custodian, regardless of his or her age, whose conduct, as alleged in the petition charging child abuse or neglect, has been adjudged by the court to constitute child abuse or neglect.

(c) "Battered parent" means a parent, guardian or other custodian who has been judicially determined not to have condoned the abuse or neglect and has not been able to stop the abuse or neglect of the child or children due to being the victim of domestic violence as defined by section two hundred two, article twenty-seven, chapter forty-eight of this code, which domestic violence was perpetrated by the person or persons determined to have abused or neglected the child or children.

~~(d)~~(d) "Child abuse and neglect" or "child abuse or neglect" means physical injury, mental or emotional injury, sexual abuse, sexual exploitation, sale or attempted sale or negligent treatment or maltreatment of a child by a parent, guardian or custodian who is responsible for the child's welfare, under circumstances which harm or threaten the health and welfare of the child.

~~(d)~~(e) "Child abuse and neglect services" means social services which are directed toward:

- (1) Protecting and promoting the welfare of children who are abused or neglected;
- (2) Identifying, preventing and remedying conditions which cause child abuse and neglect;
- (3) Preventing the unnecessary removal of children from their families by identifying family problems and assisting families in resolving problems which could lead to a removal of children and a breakup of the family;
- (4) In cases where children have been removed from their families, providing services to the children and the families so as to reunify such children with their families or some portion thereof;
- (5) Placing children in suitable adoptive homes when reunifying the children with their families, or some portion thereof, is not possible or appropriate; and
- (6) Assuring the adequate care of children who have been placed in the custody of the department or third parties.

~~(e)~~(f) "Imminent danger to the physical well-being of the child" means an emergency situation in which the welfare or the life of the child is threatened. Such emergency situation exists when there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited, or reasonable cause to believe that the following conditions threaten the health or life of any child in the home:

- (1) Nonaccidental trauma inflicted by a parent, guardian, custodian, sibling or a babysitter or other caretaker;
- (2) A combination of physical and other signs indicating a pattern of abuse which may be medically diagnosed as battered child syndrome;
- (3) Nutritional deprivation;
- (4) Abandonment by the parent, guardian or custodian;
- (5) Inadequate treatment of serious illness or disease;

(6) Substantial emotional injury inflicted by a parent, guardian or custodian; or  
(7) Sale or attempted sale of the child by the parent, guardian or custodian.

~~(f)~~(g) "Legal guardianship" means the permanent relationship between a child and caretaker, established by order of the circuit court having jurisdiction over the child, pursuant to the provisions of chapters forty-eight and forty-nine of this code.

~~(g)~~(h) "Multidisciplinary team" means a group of professionals and paraprofessionals representing a variety of disciplines who interact and coordinate their efforts to identify, diagnose and treat specific cases of child abuse and neglect. Multidisciplinary teams may include, but are not limited to, medical, educational, child care and law-enforcement personnel, social workers, psychologists and psychiatrists. Their goal is to pool their respective skills in order to formulate accurate diagnoses and to provide comprehensive coordinated treatment with continuity and follow-up for both parents and children.

"Community team" means a multidisciplinary group which addresses the general problem of child abuse and neglect in a given community and may consist of several multidisciplinary teams with different functions.

~~(h)~~(i) (1) "Neglected child" means a child:

(A) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when such refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian; or

(B) Who is presently without necessary food, clothing, shelter, medical care, education or supervision because of the disappearance or absence of the child's parent or custodian;

(2) "Neglected child" does not mean a child whose education is conducted within the provisions of section one, article eight, chapter eighteen of this code.

~~(i)~~(j) "Parenting skills" means a parent's competencies in providing physical care, protection, supervision and psychological support appropriate to a child's age and state of development.

~~(j)~~(k) "Sexual abuse" means:

(A) As to a child who is less than sixteen years of age, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:

(i) Sexual intercourse;

(ii) Sexual intrusion; or

(iii) Sexual contact;

(B) As to a child who is sixteen years of age or older, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:

(i) Sexual intercourse;

(ii) Sexual intrusion; or

(iii) Sexual contact;

(C) Any conduct whereby a parent, guardian or custodian displays his or her sex organs

to a child, or procures another person to display his or her sex organs to a child, for the purpose of gratifying the sexual desire of the parent, guardian or custodian, of the person making such display, or of the child, or for the purpose of affronting or alarming the child.

~~(k)~~(l) "Sexual contact" means sexual contact as that term is defined in section one, article eight-b, chapter sixty-one of this code.

~~(j)~~(m) "Sexual exploitation" means an act whereby:

(1) A parent, custodian or guardian, whether for financial gain or not, persuades, induces, entices or coerces a child to engage in sexually explicit conduct as that term is defined in section one, article eight-c, chapter sixty-one of this code;

(2) A parent, guardian or custodian persuades, induces, entices or coerces a child to display his or her sex organs for the sexual gratification of the parent, guardian, custodian or a third person, or to display his or her sex organs under circumstances in which the parent, guardian or custodian knows such display is likely to be observed by others who would be affronted or alarmed.

~~(m)~~(n) "Sexual intercourse" means sexual intercourse as that term is defined in section one, article eight-b, chapter sixty-one of this code.

~~(n)~~(o) "Sexual intrusion" means sexual intrusion as that term is defined in section one, article eight-b, chapter sixty-one of this code.

~~(o)~~(p) "Parental rights" means any and all rights and duties regarding a parent to a minor child, including, but not limited to, custodial rights and visitational rights and rights to participate in the decisions affecting a minor child.

~~(p)~~(q) "Placement" means any temporary or permanent placement of a child who is in the custody of the state in any foster home, group home or other facility or residence.

~~(q)~~(r) "Serious physical abuse" means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

~~(r)~~(s) "Siblings" means children who have at least one biological parent in common or who have been legally adopted by the same parents or parent.

~~(s)~~(t) "Time-limited reunification services" means individual, group, and family counseling, inpatient, residential or outpatient substance abuse treatment services, mental health services, assistance to address domestic violence, services designed to provide temporary child care and therapeutic services for families, including crisis nurseries and transportation to or from any such services, provided during fifteen of the most recent twenty-two months a child has been in foster care, as determined by the earlier date of the first judicial finding that the child is subjected to abuse or neglect, or the date which is sixty days after the child is removed from home.

## **ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.**

### **§49-6-2. Petition to court when child believed neglected or abused-right to counsel; improvement period; hearing; priority of proceeding; transcript.**

(a) In any proceeding under the provisions of this article, the child, his or her or parents and his or her legally established custodian or other persons standing in loco parentis to him or her shall have the right to be represented by counsel at every stage of the proceedings and shall be informed by the court of their right to be so represented and that if they cannot pay for the services of counsel, that counsel will be appointed. Counsel of

the child shall be appointed in the initial order. If the order gives physical custody of the child to the state, the initial order shall appoint counsel for the parents or, if the parents are separated or divorced, the parents or parent or other person or persons standing in loco parentis who had physical custody of the child for the majority of the time in the period immediately preceding the petition: *Provided*, That such representation shall only continue after the first appearance if the parent or other persons standing in loco parentis cannot pay for the services of counsel. Counsel for other parties shall only be appointed upon request for appointment of counsel. If the requesting parties have not retained counsel and cannot pay for the services of counsel, the court shall, by order entered of record, appoint an attorney or attorneys to represent the other party or parties and so inform the parties. Under no circumstances may the same attorney represent both the child and the other party or parties, nor shall the same attorney represent both parents or custodians. However, one attorney may represent both parents or custodians where both parents or guardians consent to this representation after the attorney fully discloses to the client the possible conflict and where the attorney assures the court that she or he is able to represent each client without impairing her or his professional judgment; however, if more than one child from a family is involved in the proceeding, one attorney may represent all the children. A parent who has been judicially determined to be battered shall be entitled to his or her own attorney. The court may allow to each attorney so appointed a fee in the same amount which appointed counsel can receive in felony cases. Any attorney appointed pursuant to this section shall by the first day of July, one thousand nine hundred ninety-three, and three hours per year each year thereafter, receive a minimum of three hours of continuing legal education training on representation of children, child abuse and neglect: *Provided, however*, That where no attorney who has completed this training is available for such appointment, the court shall appoint a competent attorney with demonstrated knowledge of child welfare law to represent the child. Any attorney appointed pursuant to this section shall perform all duties required as an attorney licensed to practice law in the State of West Virginia.

(b) In any proceeding brought pursuant to the provisions of this article, the court may grant any respondent an improvement period in accord with the provisions of this article. During such period, the court may require temporary custody with a responsible person which has been found to be a fit and proper person for the temporary custody of the child or children or the state Department or other agency during the improvement period. An order granting such improvement period shall require the Department to prepare and submit to the court a family case plan in accordance with the provisions of section three, article six-d of this chapter.

(c) In any proceeding pursuant to the provisions of this article, the party or parties having custodial or other parental rights or responsibilities to the child shall be afforded a meaningful opportunity to be heard, including the opportunity to testify and to present and cross-examine witnesses. The petition shall not be taken as confessed. A transcript or recording shall be made of all proceedings unless waived by all parties to the proceeding. The rules of evidence shall apply. Where relevant, the court shall consider the efforts of the state Department to remedy the alleged circumstances. At the conclusion of the hearing, the court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether such child is abused or neglected and, if applicable, whether the parent, guardian, or custodian is a battered parent, all of

which shall be incorporated into the order of the court. The findings must be based upon conditions existing at the time of the filing of the petition and proven by clear and convincing proof.

(d) Any petition filed and any proceeding held under the provisions of this article shall, to the extent practicable, be given priority over any other civil action before the court, except proceedings under article two-a, chapter forty-eight of this code and actions in which trial is in progress. Any petition filed under the provisions of this article shall be docketed immediately upon filing. Any hearing to be held at the end of an improvement period and any other hearing to be held during any proceedings under the provisions of this article shall be held as nearly as practicable on successive days and, with respect to said hearing to be held at the end of an improvement period, shall be held as close in time as possible after the end of said improvement period and shall be held within sixty days of the termination of such improvement period.

(e) Following the court's determination, it shall be inquired of the parents or custodians whether or not appeal is desired and the response transcribed. A negative response shall not be construed as a waiver. The evidence shall be transcribed and made available to the parties or their counsel as soon as practicable, if the same is required for purposes of further proceedings. If an indigent person intends to pursue further proceedings, the court reporter shall furnish a transcript of the hearing without cost to the indigent person if an affidavit is filed stating that he or she cannot pay therefor.

**§49-6-3. Petition to court when child believed neglected or abused -- Temporary custody.**

(a) Upon the filing of a petition, the court may order that the child alleged to be an abused or neglected child be delivered for not more than ten days into the custody of the state department or a responsible person found by the court to be a fit and proper person for the temporary care of the child pending a preliminary hearing, if it finds that: (1) There exists imminent danger to the physical well-being of the child; and (2) there are no reasonably available alternatives to removal of the child, including, but not limited to, the provision of medical, psychiatric, psychological or homemaking services in the child's present custody: *Provided*, That where the alleged abusing person, if known, is a member of a household, the court shall not allow placement pursuant to this section of the child or children in said home unless the alleged abusing person is or has been precluded from visiting or residing in said home by judicial order. In a case where there is more than one child in the home, or in the temporary care, custody or control of the alleged offending parent, the petition shall so state, and notwithstanding the fact that the allegations of abuse or neglect may pertain to less than all of such children, each child in the home for whom relief is sought shall be made a party to the proceeding. Even though the acts of abuse or neglect alleged in the petition were not directed against a specific child who is named in the petition, the court shall order the removal of such child, pending final disposition, if it finds that there exists imminent danger to the physical well-being of the child and a lack of reasonable available alternatives to removal. The initial order directing such custody shall contain an order appointing counsel and scheduling the preliminary hearing, and upon its service shall require the immediate transfer of custody of such child or children to the department or a responsible relative which may include any parent, guardian, or other custodian. The court order shall state: (1) That continuation in the home is contrary to the best interests of the child and why; and (2) whether or not the

department made reasonable efforts to preserve the family and prevent the placement or that the emergency situation made such efforts unreasonable or impossible. The order may also direct any party or the department to initiate or become involved in services to facilitate reunification of the family.

(b) Whether or not the court orders immediate transfer of custody as provided in subsection (a) of this section, if the facts alleged in the petition demonstrate to the court that there exists imminent danger to the child, the court may schedule a preliminary hearing giving the respondents at least five days' actual notice. If the court finds at the preliminary hearing that there are no alternatives less drastic than removal of the child and that a hearing on the petition cannot be scheduled in the interim period, the court may order that the child be delivered into the temporary custody of the department or a responsible person or agency found by the court to be a fit and proper person for the temporary care of the child for a period not exceeding sixty days: *Provided*, That the court order shall state: (1) That continuation in the home is contrary to the best interests of the child and set forth the reasons therefor; (2) whether or not the department made reasonable efforts to preserve the family and to prevent the child's removal from his or her home; (3) whether or not the department made reasonable efforts to preserve the family and to prevent the placement or that the emergency situation made such efforts unreasonable or impossible; and (4) what efforts should be made by the department, if any, to facilitate the child's return home: *Provided, however*, That if the court grants an improvement period as provided in section twelve of this article, the sixty-day limit upon temporary custody is waived.

(c) If a child or children shall, in the presence of a child protective service worker, be in an emergency situation which constitutes an imminent danger to the physical well-being of the child or children, as that phrase is defined in section three, article one of this chapter, and if such worker has probable cause to believe that the child or children will suffer additional child abuse or neglect or will be removed from the county before a petition can be filed and temporary custody can be ordered, the worker may, prior to the filing of a petition, take the child or children into his or her custody without a court order: *Provided*, That after taking custody of such child or children prior to the filing of a petition, the worker shall forthwith appear before a circuit judge or a juvenile referee of the county wherein custody was taken, or if no such judge or referee be available, before a circuit judge or a juvenile referee of an adjoining county, and shall immediately apply for an order ratifying the emergency custody of the child pending the filing of a petition. The circuit court of every county in the state shall appoint at least one of the magistrates of the county to act as a juvenile referee, who shall serve at the will and pleasure of the appointing court, and who shall perform the functions prescribed for such position by the provisions of this subsection. The parents, guardians or custodians of the child or children may be present at the time and place of application for an order ratifying custody, and if at the time the child or children are taken into custody by the worker, the worker knows which judge or referee is to receive the application, the worker shall so inform the parents, guardians or custodians. The application for emergency custody may be on forms prescribed by the supreme court of appeals or prepared by the prosecuting attorney or the applicant, and shall set forth facts from which it may be determined that the probable cause described above in this subsection exists. Upon such sworn testimony or other evidence as the judge or referee deems sufficient, the judge or referee may order the

emergency taking by the worker to be ratified. If appropriate under the circumstances, the order may include authorization for an examination as provided for in subsection (b), section four of this article. If a referee issues such an order, the referee shall by telephonic communication have such order orally confirmed by a circuit judge of the circuit or an adjoining circuit who shall on the next judicial day enter an order of confirmation. If the emergency taking is ratified by the judge or referee, emergency custody of the child or children shall be vested in the department until the expiration of the next two judicial days, at which time any such child taken into emergency custody shall be returned to the custody of his or her parent or guardian or custodian unless a petition has been filed and custody of the child has been transferred under the provisions of section three of this article.

(d) For purposes of the court's consideration of temporary custody pursuant to the provisions of subsection (a) or (b) of this section, the department is not required to make reasonable efforts to preserve the family if the court determines:

(1) The parent has subjected the child, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent to aggravated circumstances which include, but are not limited to, abandonment, torture, chronic abuse and sexual abuse;

(2) The parent has:

(A) Committed murder of the child's other parent, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;

(B) Committed voluntary manslaughter of the child's other parent, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;

(C) Attempted or conspired to commit such a murder or voluntary manslaughter or been an accessory before or after the fact to either such crime; or

(D) Committed unlawful or malicious wounding that results in serious bodily injury to the child, the child's other parent, or to another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent; or,

(3) The parental rights of the parent to ~~a sibling~~ another child have been terminated involuntarily.

#### **§49-6-5. Disposition of neglected or abused children.**

(a) Following a determination pursuant to section two of this article wherein the court finds a child to be abused or neglected, the department shall file with the court a copy of the child's case plan, including the permanency plan for the child. The term case plan means a written document that includes, where applicable, the requirements of the family case plan as provided for in section three, article six-d of this chapter and that also includes at least the following: A description of the type of home or institution in which the child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to assure that the child receives proper care and that services are provided to the parents, child and foster parents in order to improve the conditions in the parent(s) home; facilitate return of the child to his or her own home or the permanent placement of the child; and address the needs of the child while in foster care, including a discussion of the appropriateness of the services

that have been provided to the child. The term "permanency plan" refers to that part of the case plan which is designed to achieve a permanent home for the child in the least restrictive setting available. The plan must document efforts to ensure that the child is returned home within approximate time lines for reunification as set out in the plan. Reasonable efforts to place a child for adoption or with a legal guardian may be made at the same time reasonable efforts are made to prevent removal or to make it possible for a child to safely return home. If reunification is not the permanency plan for the child, the plan must state why reunification is not appropriate and detail the alternative placement for the child to include approximate time lines for when such placement is expected to become a permanent placement. This case plan shall serve as the family case plan for parents of abused or neglected children. Copies of the child's case plan shall be sent to the child's attorney and parent, guardian or custodian or their counsel at least five days prior to the dispositional hearing. The court shall forthwith proceed to disposition giving both the petitioner and respondents an opportunity to be heard. The court shall give precedence to dispositions in the following sequence:

- (1) Dismiss the petition;
- (2) Refer the child, the abusing parent, the battered parent or other family members to a community agency for needed assistance and dismiss the petition;
- (3) Return the child to his or her own home under supervision of the department;
- (4) Order terms of supervision calculated to assist the child and any abusing parent or battered parent or parents or custodian which prescribe the manner of supervision and care of the child and which are within the ability of any parent or parents or custodian to perform;
- (5) Upon a finding that the abusing parent or battered parent or parents are presently unwilling or unable to provide adequately for the child's needs, commit the child temporarily to the custody of the state department, a licensed private child welfare agency or a suitable person who may be appointed guardian by the court. The court order shall state: (A) That continuation in the home is contrary to the best interests of the child and why; (B) whether or not the department has made reasonable efforts, with the child's health and safety being the paramount concern, to preserve the family, or some portion thereof, and to prevent or eliminate the need for removing the child from the child's home and to make it possible for the child to safely return home; (C) what efforts were made or that the emergency situation made such efforts unreasonable or impossible; and (D) the specific circumstances of the situation which made such efforts unreasonable if services were not offered by the department. The court order shall also determine under what circumstances the child's commitment to the department shall continue. Considerations pertinent to the determination include whether the child should: (i) Be continued in foster care for a specified period; (ii) be considered for adoption; (iii) be considered for legal guardianship; (iv) be considered for permanent placement with a fit and willing relative; or (v) be placed in another planned permanent living arrangement, but only in cases where the department has documented to the circuit court a compelling reason for determining that it would not be in the best interests of the child to follow one of the options set forth in subparagraphs (i), (ii), (iii) or (iv) of this paragraph. The court may order services to meet the special needs of the child. Whenever the court transfers custody of a youth to the department, an appropriate order of financial support by the parents or guardians shall be entered in accordance with section five, article seven of this

chapter; or

(6) Upon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and, when necessary for the welfare of the child, terminate the parental, custodial ~~(or)~~ and guardianship rights and ~~(or)~~ responsibilities of the abusing parent and commit the child to the permanent sole custody of the nonabusing parent, if there be one, or, if not, to either the permanent guardianship of the department or a licensed child welfare agency. The court may award sole custody of the child to a non-abusing battered parent. If the court shall so find, then in fixing its dispositional order the court shall consider the following factors: (A) The child's need for continuity of care and caretakers; (B) the amount of time required for the child to be integrated into a stable and permanent home environment; and (C) other factors as the court considers necessary and proper. Notwithstanding any other provision of this article, the court shall give consideration to the wishes of a child fourteen years of age or older or otherwise of an age of discretion as determined by the court regarding the permanent termination of parental rights. No adoption of a child shall take place until all proceedings for termination of parental rights under this article and appeals thereof are final. In determining whether or not parental rights should be terminated, the court shall consider the efforts made by the department to provide remedial and reunification services to the parent. The court order shall state: (i) That continuation in the home is not in the best interest of the child and why; (ii) why reunification is not in the best interests of the child; (iii) whether or not the department made reasonable efforts, with the child's health and safety being the paramount concern, to preserve the family, or some portion thereof, and to prevent the placement or to eliminate the need for removing the child from the child's home and to make it possible for the child to safely return home, or that the emergency situation made such efforts unreasonable or impossible; and (iv) whether or not the department made reasonable efforts to preserve and reunify the family, or some portion thereof, including a description of what efforts were made or that such efforts were unreasonable due to specific circumstances.

(7) For purposes of the court's consideration of the disposition custody of a child pursuant to the provisions of this subsection, the department is not required to make reasonable efforts to preserve the family if the court determines:

(A) The parent has subjected the child, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent to aggravated circumstances which include, but are not limited to, abandonment, torture, chronic abuse and sexual abuse;

(B) The parent has:

(i) Committed murder of the child's other parent, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent;

(ii) Committed voluntary manslaughter of the child's other parent, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;

(iii) Attempted or conspired to commit such a murder or voluntary manslaughter or been an accessory before or after the fact to either such crime; or

(iv) Committed a felonious assault that results in serious bodily injury to the child, the child's other parent, ~~(or)~~ to another child of the parent, or any other child residing in the

same household or under the temporary or permanent custody of the parent; or

(C) The parental rights of the parent to ~~(a sibling)~~ another child have been terminated involuntarily

(b) As used in this section, "no reasonable likelihood that conditions of neglect or abuse can be substantially corrected" shall mean that, based upon the evidence before the court, the abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help. Such conditions shall be considered to exist in the following circumstances, which shall not be exclusive:

(1) The abusing parent or parents have habitually abused or are addicted to alcohol, controlled substances or drugs, to the extent that proper parenting skills have been seriously impaired and such person or persons have not responded to or followed through the recommended and appropriate treatment which could have improved the capacity for adequate parental functioning;

(2) The abusing parent or parents have willfully refused or are presently unwilling to cooperate in the development of a reasonable family case plan designed to lead to the child's return to their care, custody and control;

(3) The abusing parent or parents have not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health or other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as evidenced by the continuation or insubstantial diminution of conditions which threatened the health, welfare or life of the child;

(4) The abusing parent or parents have abandoned the child;

(5) The abusing parent or parents have repeatedly or seriously injured the child physically or emotionally, or have sexually abused or sexually exploited the child, and the degree of family stress and the potential for further abuse and neglect are so great as to preclude the use of resources to mitigate or resolve family problems or assist the abusing parent or parents in fulfilling their responsibilities to the child;~~(or)~~

(6) The abusing parent or parents have incurred emotional illness, mental illness or mental deficiency of such duration or nature as to render such parent or parents incapable of exercising proper parenting skills or sufficiently improving the adequacy of such skills; or

(7) The battered parent's parenting skills have been seriously impaired and said person has willfully refused or is presently unwilling or unable to cooperate in the development of a reasonable treatment plan or has not adequately responded to or followed through with the recommended and appropriate treatment plan.

(c) The court may, as an alternative disposition, allow the parents or custodians an improvement period not to exceed six months. During this period the court shall require the parent to rectify the conditions upon which the determination was based. The court may order the child to be placed with the parents, or any person found to be a fit and proper person, for the temporary care of the child during the period. At the end of the period, the court shall hold a hearing to determine whether the conditions have been adequately improved and at the conclusion of the hearing shall make a further dispositional order in accordance with this section.

**§49-6-5b. When efforts to terminate parental rights required.**

(a) Except as provided in subsection (b) of this section, the department shall file or join in a petition or otherwise seek a ruling in any pending proceeding to terminate parental

rights:

(1) If a child has been in foster care for fifteen of the most recent twenty-two months as determined by the earlier of the date of the first judicial finding that the child is subjected to abuse or neglect or the date which is sixty days after the child is removed from the home;

(2) If a court has determined the child is abandoned; or

(3) If a court has determined the parent has committed murder or voluntary manslaughter of another of his or her children or the other parent of his or her children; has attempted or conspired to commit such murder or voluntary manslaughter or has been an accessory before or after the fact of either crime; has committed unlawful or malicious wounding resulting in serious bodily injury to the child or to another of his or her children or to the other parent of his or her children; or the parental rights of the parent to a sibling have been terminated involuntarily.

(b) The department may determine not to file a petition to terminate parental rights when:

(1) At the option of the department, the child has been placed with a relative;

(2) The department has documented in the case plan made available for court review a compelling reason, including, but not limited to, the child's age and preference regarding termination or the child's placement in custody of the department based on any proceedings initiated under article five of this chapter, that filing the petition would not be in the best interests of the child; or

(3) The department has not provided, when reasonable efforts to return a child to the family are required, the services to the child's family as the department deems necessary for the safe return of the child to the home.

# Child Abuse/Neglect Petitions In Circuit Court Involving Domestic Violence

## Considerations for Filing a Child Abuse/Neglect Petition (Chapter 49)

- Imminent danger to the child;
- Level of threat or injury to the child
- Level of cooperation of parents
- Capability of parents
- Whether or not the harm can be controlled with outside factors (relatives, accessible/available services) to demonstrate reasonable efforts to prevent removal (except when reasonable efforts are not required by law)

**Circuit court child abuse/neglect petitions can be effective in holding batterers accountable for the abusive behaviors while protecting both the child and adult victims.**

Petitions where both parents are at fault	Petitions where CPS co-petitions with Adult Victim	Petitions advocating for battered parent adjudication
Batterer is at fault for abuse to adult victim and child  Adult victim is at fault for knowingly allowing abuse/neglect or direct abuse and neglect that is co-occurring with DV (physical abuse to child, illegal drug use impairing parenting, etc.)  Parent refuses to identify who caused the abuse/neglect  CPS can't determine who did what  Both parents receive counsel	Batterer is at fault for abuse to adult victim and child  Adult victim took reasonable steps to protect child while under threat of harm (not knowingly allow), and does not have other form of co-occurring threat of harm to the child  Adult victim feels safe to co-petition  Adult victim & CPS can make separate verifications  Both parents receive counsel  Petitions can be amended if circumstances change or are discovered  Adult victim must identify abuser and admit that child abuse/neglect occurred  Can terminate parental rights of batterer	Batterer is at fault for abuse to adult victim and child  Adult victim did not condone abuse, but could not stop it because of DV perpetrated by the batterer §49-1-3 (c) (Carefully assess adult victim accommodating batterer vs. condoning)  Adult victim does not feel safe to co-petition or cooperate with CPS  Both parents receive counsel  Burden of proof is on the department to show the adult victim as battered parent  Adult victim must identify abuser and admit that child abuse/neglect occurred

# Child Abuse/Neglect Petitions In Circuit Court Involving Domestic Violence

## Supporting Adult and Child Victims of Domestic Violence When Circuit Court Petitions are Necessary

Domestic Violence Advocates and child protection workers each have a role in supporting and protecting adult and child victims of domestic violence. Below are some guidelines for supporting adult and child victims of domestic violence when circuit court petitions are necessary.

	Petitions where both parents are at fault	Petitions where CPS co-petitions with Adult Victim	Petitions advocating for battered parent adjudication
DV Advocates	<ul style="list-style-type: none"> <li>• Include the adult victims in the reporting process — including empowering adult victims to make the report with the DV advocate</li> <li>• Assist the adult victims with services to decrease the risk of harm to the children</li> <li>• Provide services to children to promote healing/protection</li> <li>• Collaborate with CPS worker to provide protection for adult and child victims</li> </ul>	<p>Empower the adult victim to co-petition by understanding the advantages:</p> <ul style="list-style-type: none"> <li>• Right to counsel</li> <li>• Can remove batterer from home</li> <li>• Custody can remain with adult victim</li> <li>• Review hearings hold batterer accountable</li> <li>• Can provide better protection than PO</li> <li>• Batterer required to complete services before gaining access to children</li> <li>• Can terminate parental rights of batterer</li> </ul> <p>If CPS does not co-petition, consider advocating with CPS for co-petitioning or battered parent when appropriate</p>	<p>Inform the adult victim of the ramifications battered parent adjudication:</p> <ul style="list-style-type: none"> <li>• Custody can be with adult victim or state</li> <li>• “Battered parent” is a “no-fault” finding (not abusing or neglecting)</li> <li>• Services will be offered to decrease the risk to adult victim and children</li> <li>• Adult victim’s parental rights can be terminated if parenting skills are seriously impaired and if adult victim is unwilling or unable to provide safety through an appropriate safety plan</li> <li>• If CPS does not advocate for battered parent, adult victim’s attorney can</li> </ul>
CPS Workers	<ul style="list-style-type: none"> <li>• Consider services to protect the adult and child victims while also holding the adult victim accountable for her/his abusive/neglecting behaviors</li> <li>• Hold batterer accountable for child victimization caused by domestic violence</li> </ul>	<ul style="list-style-type: none"> <li>• Use co-petitioning unless the adult victim is abusing or neglecting or unwilling to co-petition</li> <li>• Refer adult victims to DV advocates to assist them throughout the process</li> <li>• Invite and involve DV advocates throughout the process</li> </ul>	<ul style="list-style-type: none"> <li>• If co-petitioning is not used, the state has the burden of proof for battered parent or abusing/neglecting</li> <li>• Adult victims may appear non-cooperative due to extreme fear of batterer</li> <li>• Explain to adult victim the ramifications of battered parent adjudication</li> </ul>

# Summary Sheet

## About Child Abuse & Neglect Petitions: Co-Petitioning and Battered Parent Adjudication

This document was developed by the WCADV Domestic Violence/Child Victimization Study and Policy Workgroup in collaboration with the WV Department of Health and Human Resources Division of Training. The document is designed to be informational and does not constitute legal advice.

### Co-Petitions

#### What is a co-petition?

- A petition to the circuit court in a child abuse and neglect proceeding.
- The DHHR and non-offending parent are listed as co-petitioners.
- The offending parent is listed at the respondent.
- CPS policy supports the use of co-petitions (effective June 1, 2006) where previously petitions were not filed when there was a protective parent

#### When can a co-petition be used?

- When CPS investigation reveals abuse and neglect of a child by a parent sufficient to warrant a circuit court child abuse and neglect petition, and the other parent is non-offending.
- A non-offending parent is a parent who did not directly threaten or harm the child, did not condone the abuse or harm to the child and took such steps to protect the child which were reasonable given the threat of harm to the adult victim (in domestic violence cases).
- DHHR policy states that co-petitions should be considered first with every case that rises to the level of a petition.
- Both DHHR and the non-offending parent must agree to file the co-petition.
- DHHR cannot force the non-offending victim to file a co-petition
- The circuit court can order DHHR to co-petition with a non-offending parent if the non-offending parent files the petition (through the prosecutor without DHHR) and the judge finds the petition has merit.
- Any reasonable person can co-petition.

#### How is the co-petition filed?

- DHHR files the co-petition through the prosecuting attorney
- Separate verifications are filed by DHHR and the co-petitioner (they do not have to agree on the verifications)
- Imminent danger language should not be used in the filing of the co-petition— with co-petitions legal and physical custody remain with the non-offending parent
- After the co-petition is filed in circuit court, the co-petitioner, if they are a non-offending parent, can be appointed an attorney separate from the respondent's attorney (the prosecutor represents DHHR)

- If DHHR becomes aware that the co-petitioner is an offending parent, the petition can be amended to make the former co-petitioner (now offending parent) the respondent. Some practitioners are hesitant to co-petition fearing that their may be undiscovered concerns about the co-petitioner. When physical custody is with a parent, whether in a co-petition or a petition where the parent with physical custody is named as a respondent, an amended petition must be filed for DHHR to change physical custody.

## **Battered Parent Adjudication**

### **What is Battered Parent Adjudication?**

- "Battered parent" means a parent, guardian or other custodian who has been judicially determined not to have condoned the abuse or neglect and has not been able to stop the abuse or neglect of the child or children due to being the victim of domestic violence as defined by section two hundred two, article twenty-seven, chapter forty-eight of this code, which domestic violence was perpetrated by the person or persons determined to have abused or neglected the child or children
- The judicial ruling is made in a child abuse and neglect proceeding in circuit court
- The batterer has to be the person abusing the adult victim and creating the harm to the child giving rise to the petition.

### **When would battered parent adjudication apply?**

- When a non-offending parent has been a victim of domestic violence (defined by section two hundred two, article twenty-seven, chapter forty-eight of WV code), is unwilling (due to fear or other reasons) to co-petition with DHHR and a CPS investigation reveals that a child abuse and neglect petition is needed.

### **How is a battered parent adjudication made?**

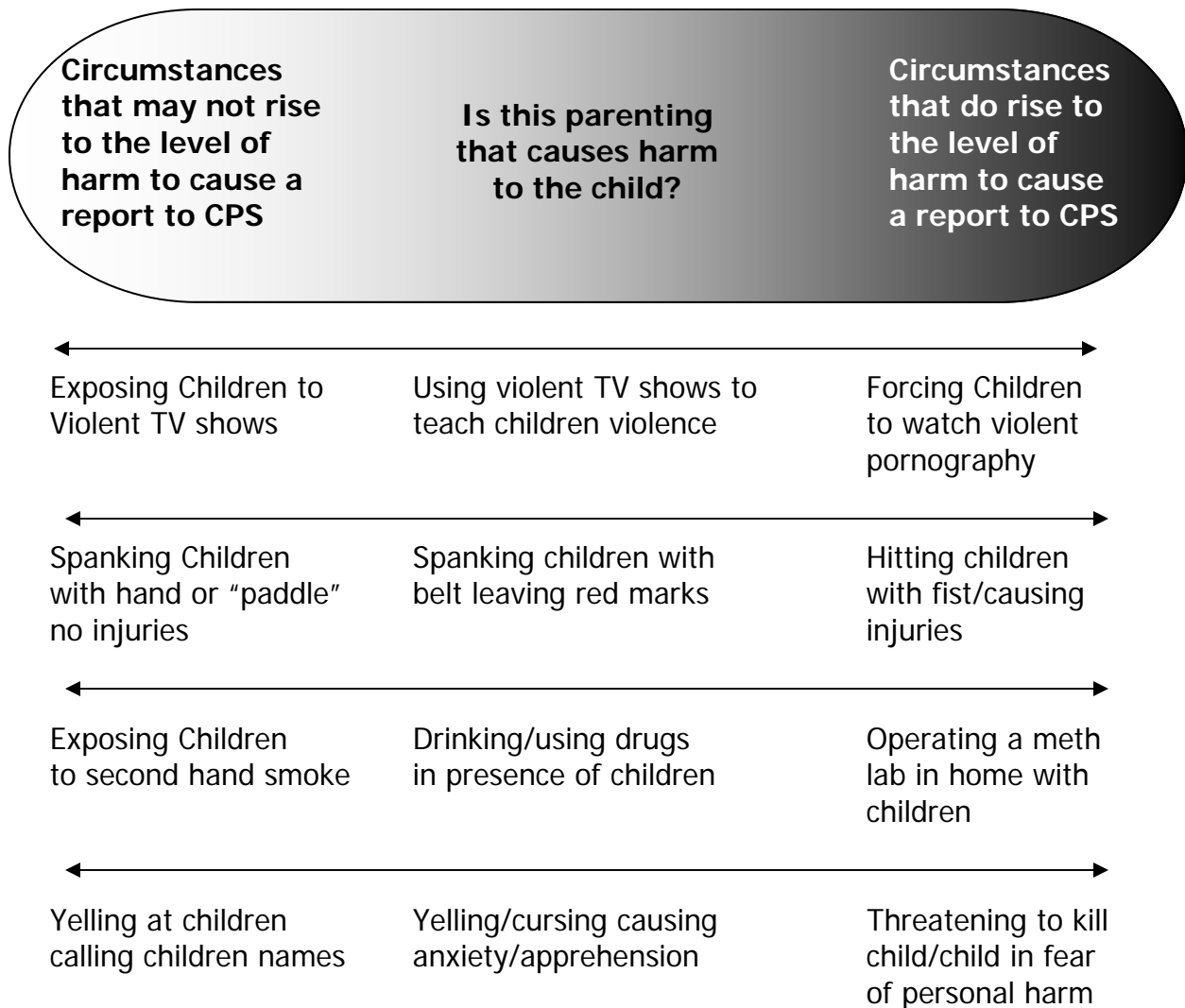
- The DHHR is named as the petitioner and the adult victim and the batterer are both named as the respondents.
- DHHR can request a battered parent adjudication when filing the abuse and neglect petition
- The attorney representing the adult victim of domestic violence can make a case for battered parent adjudication if the DHHR has named the adult victim as a respondent in the abuse and neglect petition
- If a battered parent is initially adjudicated abusing/neglecting and then facts of the domestic violence become evident (that were not evident at the time of adjudication), the adjudication can be changed to battered parent.
- TPR for adjudicated battered parent happens only if parenting skills are impaired and the parent refuses or is unable to cooperate with a reasonable treatment plan.

# When does harm to a child rise to the level of child abuse and neglect?

MANDATORY REPORTERS must report to CPS (WV Code §49-6A-2 ) when they have:

- “Reasonable cause to suspect that a child is neglected or abused;”
- Observed “the child being subjected to conditions that are likely to result in abuse or neglect;”
- Reason to believe “that the child suffered serious physical abuse or sexual abuse or sexual assault, the reporter shall also immediately report, or cause a report to be made, to the division of public safety and any law-enforcement agency having jurisdiction to investigate the complaint”

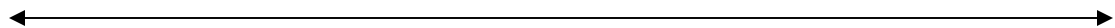
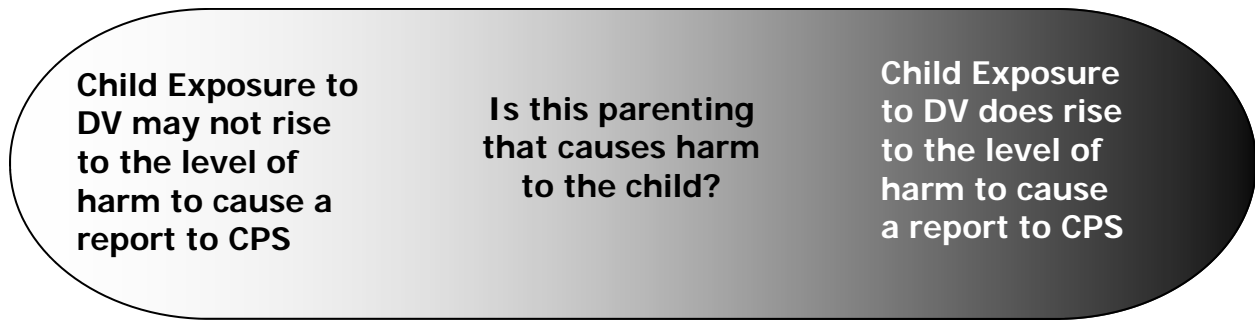
**Guideline for determining if parental behaviors create harm or threat of harm that rises to the level of child abuse/neglect:**



## When does domestic violence rise to the level of child abuse and neglect?

- Determine if a pattern of power and control exists. If not, what is happening may not be domestic violence but some other form of violence in the family.
- While power and control domestic violence always has an impact on children, it does not always create harm or threat of harm that necessitates state intervention.

### Guideline for determining if exposure to domestic violence creates harm or threat of harm that rises to the level of child abuse/neglect:



- No physical injury to child
- Child is not afraid of bodily injury to self or others in family
- Child is not using violence
- Spanking is primary form of discipline
- Authoritarian parenting style
- Yelling, calling kids and parents names
- Domestic violence batterer has been out of the home and does not contact child or adult victim

- No physical injury to child
- Child is anxious about following rules of batterer
- Child is fearful of controlling batterer
- Adult victim has been injured by batterer
- Adult victim is fearful of batterers controlling behaviors—follows batterers rules
- Child is hyper vigilant or acting out in school
- Adult victim takes child to relative during "explosive" incident
- Adult victim is "accommodating" batterer

- Child is injured while protecting adult victim during violent incident
- Batterer threatens to kill adult victim and/or child
- Child is in fear of bodily injury from batterer
- Child is using violent behaviors at school or home
- Adult victim is afraid of bodily injury or death

## Systemic Change For A Safer State of Family

### West Virginia Summary of Systemic Change Resulting From Statewide Collaborative Initiatives

Systemic Change	Adult and Child Safety	Batterer Accountability
Procedural rules to monitor and hold accountable referrals to CPS from Family Court	Safety services directed to proper jurisdiction and followed for compliance with statutes	Accountability for child victimization is held through CPS proceedings instead of custody or protective order proceedings
Policy eliminating “failure to protect”	Safety services provided for adult and child victims	Responsibility for harm to child is placed on the batterer
Co-Petitioning (CPS with the Battered Parent in the CPS court process)	<ul style="list-style-type: none"> <li>• Safety services provided for adult and child victims</li> <li>• Battered parent receives attorney</li> <li>• Battered parent is not a respondent/defendant</li> </ul>	The petition is filed against the batterer for the harm to the child
“No-Fault” Battered Parent Adjudication	<ul style="list-style-type: none"> <li>• Safety services provided for adult and child victims</li> <li>• Battered parent receives attorney</li> <li>• “Battered parent” is a not at fault but a victim</li> <li>• May have removal of the child that can range from temporary removal to termination of parental rights (only in special circumstances that are different than other TPR proceedings)</li> </ul>	The petition is filed against the batterer for the harm to the child
Including in the definition of child abuse child’s exposure to domestic violence <u>when the exposure rises to a level of harm to the child</u>	<ul style="list-style-type: none"> <li>• Combined with above options, the risks to the child are attributed to the batterer</li> <li>• Is not per se child abuse</li> <li>• Without the options above, there could be unintended consequences of failure to protect and unnecessary removals</li> </ul>	Including exposure to DV in the child abuse definition is <u>necessary</u> to hold batterers accountable for the harm to the child
Mandatory training & cross trainings	Keeps “attitudes” and practice in compliance with policy	Keeps “attitudes” and practice in compliance with policy