

**POLYVICTIMIZED CHILDREN & INTIMATE PARTNER VIOLENCE:
PROMOTING HEALTHY OUTCOMES FOR CHILDREN***

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* This Article is dedicated to the late Alan N. Cooper, Judge of the Delaware Family Court. Judge Cooper had an idea that grew into the symposium *Strengthening & Protecting Families: The Intersection of Family Health Law & Domestic Violence* upon which this article is based. Judge Cooper was a visionary who cared deeply about the protection of children and families, the rule of law, and access to justice. He treated the litigants who appeared before his court, as well as the lawyers and judges of the State of Delaware with dignity and respect. He was a mentor and a friend to countless individuals. His leadership, guidance, and friendship will be missed.

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Exposure to violence is a national crisis that affects approximately two out of every three children. Of the 76 million children currently residing in the United States, an estimated 46 million can expect to have their lives touched by violence, crime, abuse and psychological trauma this year....Whether the violence occurs in the children's homes, neighborhoods, schools, playgrounds or playing fields, locker rooms, places of worship, shelters, streets, or in juvenile detention centers, the exposure of children to violence is a uniquely traumatic experience that has the potential to profoundly derail the child's security, health, happiness, and ability to grow and learn – with effects lasting well into adulthood.¹

I. INTRODUCTION

Knowledge is power.²

It is true that data only tells part of the story, used by some to reduce a complex problem to a statistic or percentage. Yet, understanding the value of information can both inform and improve our response to a given set of circumstances. It is critical that service providers, law enforcement personnel, advocates, medical professionals, and the next generation of lawyers and judges work together to understand how knowledge and information about child health must influence how we respond to family violence in our practices, agencies, and courts. Moreover, we must appreciate how particularized responses, legal remedies, and public policy initiatives can either increase healthy outcomes for children or, conversely, increase the risk of harm. It is with these foundational principles that this article explores how available research can improve outcomes for children exposed to intimate partner violence (IPV).³

The magnitude of the problem is significant. “It is estimated that between 2.3 and 10 million children witness domestic violence each year in the United States” alone,⁴ and among all the forms of violence to which children are exposed, domestic abuse is known to be one of the “most prevalent and potent

¹ ROBERT L. LISTENBEE, JR. ET AL, NAT'L TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, REPORT OF THE ATTORNEY GENERAL'S NATIONAL TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE 1,3 (2012), <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>.

² SIR FRANCIS BACON, MEDITATIONES SACRAE (1597), reprinted in BARTLETT'S FAMILIAR QUOTATIONS 164 (Geoffrey O'Brien ed., 2012).

³ The terms intimate partner violence, domestic violence, and family violence are used interchangeably herein to mean violence by one adult partner against another adult partner in a present or former intimate relationship. This article focuses on how exposure to IPV, specifically the abuse of one parent by the other parent, influences outcomes for children.

⁴ ALICIA SUMMERS ET.AL., CHILDREN'S EXPOSURE TO DOMESTIC VIOLENCE: A GUIDE TO RESEARCH AND RESOURCES 8 (Nat'l Council of Juvenile & Family Court Judges 2006), <http://www.ncjfcj.org/sites/default/files/Childrens%20Exposure%20to%20Violence.pdf>.

stressors.”⁵ Although experts have been cautioning the public concerning the adverse impact of childhood exposure to intimate partner violence (IPVE)⁶ for many years,⁷ our civil legal system continues to struggle with how evidence of this particularized harm should influence child custody determinations.

Exposure to violence places children at an increased risk of adverse health effects,⁸ with children who experience multiple victimizations “at a particularly high risk of lasting physical, mental, and emotional harm.”⁹ Moreover, cutting-edge research now indicates that IPVE in a child’s early years can have an adverse effect on brain development, which in turn can have a profound effect on how children learn, as well as their health, development, and socialization.¹⁰

It is estimated that 1 in 10 children fall into the category of *polyvictim* (individuals who are exposed to multiple and varying types of victimizations).¹¹ Yet, the intersection of polyvictimization and IPVE has received little attention from the legal community. As a result, this article examines how research relating to polyvictimization, specifically as to children who suffer IPVE as one of their multiple oppressions, should be integrated into child custody determinations.

Developing a plan to improve health, welfare, and safety outcomes for children presents challenges given the multitude of harms children experience as a result of poverty, homelessness, food insecurity, diminished social capital, bullying, crime, abuse, neglect, and exposure to violence.¹² The

⁵ See Barry Zuckerman & Megan H. Bair-Merritt, *Silent Victims: An Epidemic of Traumatized Children*, HUFFINGTON POST, May 5, 2013, http://www.huffingtonpost.com/barry-zuckerman-md/domestic-abuse-mental-illness_b_2783487.html.

⁶ The acronym IPVE is used to denote exposure to intimate partner violence (IPV).

⁷ See generally DOMESTIC VIOLENCE IN THE LIVES OF CHILDREN: THE FUTURE OF RESEARCH INTERVENTION, AND SOCIAL POLICY (Sandra A. Graham-Bermann & Jeffrey L. Edleson eds., 2001).

⁸ See David Finkelhor et al., *Children’s Exposure to Violence: A Comprehensive National Survey*, JUVENILE JUST. BULL. 1, 2 1 (Off. of Juvenile Just. & Delinq. Prevention), Oct. 2009 [hereinafter Finkelhor, *National Survey*], <https://www.ncjrs.gov/pdffiles1/ojjdp/227744.pdf>.

⁹ David Finkelhor et al., *Polyvictimization: Children’s Exposure to Multiple Types of Violence, Crime, and Abuse*, JUVENILE JUST. BULL. 1 (Off. of Juvenile Just. & Delinq. Prevention), Oct. 2011 [hereinafter Finkelhor, *Polyvictimization*], <https://www.ncjrs.gov/pdffiles1/ojjdp/235504.pdf>.

¹⁰ See *infra* Part II, notes 21-28 and accompanying text.

¹¹ LISTENBEE, *supra* note 1, at 5; see also Finkelhor, *National Survey*, *supra* note 8, explaining that:

Multiple victimizations [of children] were common: more than one-third (38.7 percent) experienced 2 or more direct victimizations in the previous year, more than 1 in 10 (10.9 percent) experienced 5 or more direct victimizations in the previous year, and more than 1 in 75 (1.4 percent) experienced 10 or more direct victimizations in the previous year.

¹² See generally Finkelhor, *National Survey*, *supra* note 8. The report provides:

piling on effect of two or more of these risk factors increases the likelihood for adverse outcomes.¹³ Yet, the foregoing risk factors are often considered in isolation as unrelated to and not arising out of the battering parent's behavior.¹⁴ This fragmented approach neglects the complex trauma children experience as a result of their multiple oppressions.¹⁵ As a result, this article considers the intersection of health and IPVE in light of the multitude of harms children experience as part of and contributing to their condition.¹⁶

Examining IPVE through a polyvictimization lens promotes several important goals and provides us with a new framework for analyzing the problem. First, it enables us to view IPVE as a condition and not as a collection of single occurrences. Second, this lens fosters a better understanding of the complex trauma children exposed to IPV experience. Third, we develop a better understanding of the critical need for early identification. Fourth, understanding IPVE as a condition informs our response to affected children. Fifth, an educated response increases the likelihood of better outcomes for children.

II. IPV EXPOSED CHILDREN AS POLYVICTIMS

A number of independent lines of thinking have pointed to the importance of examining polyvictimization in childhood. The research on cumulative adversity suggests that especially intense and long-lasting effects occur when problems aggregate, particularly in childhood. Other research shows that victimizations are not randomly distributed but tend to cumulate

This survey is the first comprehensive attempt to measure children's exposure to violence in the home, school, and community across all age groups from birth to age 17, and the first attempt to measure the cumulative exposure to violence over the child's lifetime.

The survey confirms that most of our society's children are exposed to violence in their daily lives. More than 60 percent of the children surveyed were exposed to violence within the past year, either directly or indirectly (i.e., as a witness to a violent act; by learning of a violent act against a family member, neighbor, or close friend; or from a threat against their home or school). Nearly one-half of the children and adolescents surveyed (43.6 percent) were assaulted at least once in the past year, and more than 1 in 10 (10.2 percent) were injured in an assault; 1 in 4 (24.6 percent) were victims of robbery, vandalism, or theft; 1 in 10 (10.2 percent) suffered child maltreatment (including physical and emotional abuse, neglect, or a family abduction); and 1 in 16 (6.1 percent) were victimized sexually. More than 1 in 4 (25.3 percent) witnessed a violent act and nearly 1 in 10 (9.8 percent) saw one family member assault another.

Finkelhor, *National Survey*, *supra* note 8, at 1-2.

¹³ See LISTENBEE, *supra* note 1, at 5.

¹⁴ Alessandra Guedes & Christopher Mikton, *Examining the Intersections Between Child Maltreatment and Intimate Partner Violence*, 14 W. J. EMERGENCY MED. 377, 377 (2013), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3756703/>.

¹⁵ Finkelhor, *Polyvictimization*, *supra* note 9, at 2.

¹⁶ See *infra* Part III.

*for certain individuals and in certain environments.... traumatic stress theory – the dominate framework for understanding the impact of victimization – has evolved toward the notion that for some children victimization is not a single overwhelming event... but a condition*¹⁷

According to experts, polyvictimization involves multiple victimizations of different types of harms, such as physical abuse, child maltreatment, sexual abuse, bullying and property crime, as well as exposure to abuse of a sibling, parent, peer, or community member.¹⁸ The emphasis is placed on different types of victimizations, “rather than multiple episodes of the same kind of victimization.”¹⁹ Specialists acknowledge that research in the area of polyvictimization is in the early stages and that there is a lack of consensus regarding the threshold number of different kinds of victimizations necessary for a child to qualify as a polyvictim.²⁰

For example, a 2011 survey classified children experiencing seven or more different kinds of harms as polyvictims.²¹ Despite this overly conservative threshold level, eight percent of all youth in a nationally representative sample were identified as polyvictims.²² Similarly, the Department of Justice (DOJ) and the Centers for Disease Control (CDC) maintain that approximately 1 in 10 children in the United States are polyvictims.²³

Experts contend that the diversity, nature, and repetition of the exposure to harm places children at greater risk of suffering complex trauma.²⁴ Complex trauma, in turn, is understood to arise out of a *condition* that children suffer from, such as bullying, and not the result of a particular devastating event, such as a single act of violence.²⁵

Children who experience multiple kinds of harms are at a very high risk for developmental delays and adverse health outcomes.²⁶ For example, polyvictims undergo mental and physical health problems; suffer from substance abuse; engage in risk taking behaviors; are more likely to come into contact with the juvenile justice system; and experience greater traumatic stress symptoms such as low self-esteem, anxiety, aggression, post-traumatic stress disorder, and depression.²⁷ Later in life, these individuals are more

¹⁷ Finkelhor, *Polyvictimization*, *supra* note 9, at 2 (citations omitted).

¹⁸ *Id.* at 4.

¹⁹ A.B.A., *Polyvictimization: Tips for Advocates Working With Children*, 32 No. 1 CHILD L. PRAC. 12, 12 (2013).

²⁰ Finkelhor, *Polyvictimization*, *supra* note 9, at 4.

²¹ *Id.* at 2.

²² *Id.*

²³ LISTENBEE, *supra* note 1, at 5.

²⁴ See Finkelhor, *Polyvictimization*, *supra* note 9, at 2.

²⁵ *Id.*

²⁶ See LISTENBEE, *supra* note 1, at 5.

²⁷ LINDA PILNIK & JESSICA R. KENDALL, IDENTIFYING POLYVICTIMIZATION AND TRAUMA AMONG COURT-INVOLVED CHILDREN AND YOUTH: A CHECKLIST AND RESOURCE GUIDE FOR ATTORNEYS AND OTHER COURT-APPOINTED ADVOCATES 8 (2012), <http://www.ojdp.gov/prog>

likely to engage in criminal behavior; fall prey to alcohol and drug abuse; smoke; be obese; have depression; and suffer adverse physical and mental health outcomes.²⁸

Notwithstanding the overly conservative classifications of polyvictimization, this article applies the term *polyvictim* to children who experience intimate partner violence for several important reasons detailed herein.

A. IPV Involves Persistent & Diverse Forms of Victimization

Although IPV should be understood as a distinct form of victimization, it is also misconduct comprised of many offenses.²⁹ IPVE can properly be characterized as a condition because it results from a harm (IPV) that by its very nature involves persistent and diverse forms of victimization.³⁰ For example, battering is accomplished through a course of conduct, which often includes physical abuse, harassment, intimidation, coercion, cruelty, domination, control, oppression, subjugation, and repression.³¹ A snapshot at any given point in the history of the victimization reveals offenses that can be classified as assault, offensive touching, terroristic threatening, destruction of property, trespassing, sexual assault, stalking, torture, coercion, witness intimidation, or theft.³²

In fact, batterers often employ a variety of measures to control, abuse, and oppress their victims. They physically, emotionally, and sexually victimize their partners.³³ They engage in name calling, use profanity, yell, scream, disparage, degrade, belittle, threaten, bully, intimidate, shove, slap, punch, kick, bite, burn, stalk, strangle, rape, and sodomize.³⁴ In addition, batterers

rams/safestart/IdentifyingPolyvictimization.pdf.

²⁸ PILNIK & KENDALL, *supra* note 27, at 8.

²⁹ Dana Harrington Conner, *Abuse and Discretion: Evaluating Judicial Discretion in Custody Cases Involving Violence Against Women*, 17 AM. U. J. GENDER SOC. POL'Y & L. 163, 206-07 (2009) [hereinafter Harrington Conner, *Abuse and Discretion*].

³⁰ Finkelhor, *Polyvictimization*, *supra* note 9, at 2 (examining polyvictimization as a condition); *see also infra* Part III, Section D.

³¹ The author bases the information on over two decades of experience representing survivors of intimate partner violence.

³² *Id.*

³³ In over two decades of working with survivors of intimate partner violence, both as Director of the Delaware Civil Law Clinic and as a former domestic violence attorney, the author has come in contact with countless women who have been kicked, punched, strangled and beaten beyond recognition. She has encountered women who have been sexually assaulted in the presence of their young children, a woman who was tied to a chair while boiling oil was poured over her body, which melted portions of her ear and face, a woman who was beaten with baseball bat who sustained numerous injuries including bruises, fractured ribs, and a broken leg, and a woman, also a client, who was shot and killed while her two children watched as their father murdered her. The nature of the abuse is dangerous and the aftermath is traumatizing for our adult clients and the minor children who are exposed to the batterer's horrific acts of abuse, intimidation, and control.

³⁴ The author bases the information on over two decades of experience working with survivors of intimate partner violence. *See also* Dana Harrington Conner, *To Protect or to*

control and restrict their partner's social contacts, employment, finances, freedom, and behavior.³⁵ Regrettably, IPV involving common children tends to be extensive in duration, which provides the batterers with greater access and opportunity to abuse.³⁶

In addition, the abuse is shaped by the existence and complex nature of family relationships. Batterers use the children to intimidate and control intimate partners.³⁷ They threaten to abuse the children; make reports to protective services and law enforcement; threaten to obtain sole custody; deny access to the children; and aggressively pursue court action in the areas of child custody and visitation.³⁸ They abuse family pets and engage in emotional extortion.³⁹

Given their control of the finances and efforts to diminish the victim's autonomy, batterers are often in a better position to hire legal representation, provide stable housing, maintain employment, and portray an outward appearance of stability.⁴⁰ The forgoing dynamics, in addition to social norms,⁴¹ place the batterer in a powerful bargaining position during legal negotiations and a superior position during litigation, resulting in dangerous legal, social, and health outcomes for children.⁴²

The batterer's power derives from his ability to control his partner's behavior.⁴³ This "power to control" develops over time through a variety of abusive tactics, which have an effect on both the adult victim and the

Serve: Confidentiality, Client Protection and Domestic Violence, 79 TEMP. L. REV. 877, 879 (2006) [hereinafter Harrington Conner, *To Protect or to Serve*].

³⁵ See Dana Harrington Conner, *Financial Freedom: Women, Money, and Domestic Abuse*, 20 WM. & MARY J. WOMEN & L., Winter 2014, at 339, 362-67 [hereinafter Harrington Conner, *Financial Freedom*].

³⁶ *Id.* at 348.

³⁷ LUNDY BANCROFT & JAY G. SILVERMAN, *THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS* 72 (Sage Publ'ns 2002) (describing the use of children as a weapon).

³⁸ *Id.* at 72-75.

³⁹ *Id.* at 37.

⁴⁰ See generally Harrington Conner, *Financial Freedom*, *supra* note 35.

⁴¹ See Joan S. Meier, *Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions*, 11 AM. U.J. GENDER SOC. POL'Y & L. 657, 667-68 (2003), explaining:

Despite the widespread acceptance of the growing body of evidence that adult domestic violence is detrimental to children, both courts and lawyers commonly separate the issue of domestic violence from custody/visitation, and even sometimes excuse it in a divorce context. More notably, sympathy and concern to an adult battering victim can be transformed into an attitude of disdain and outright hostility when the battered woman seeks to limit the abuser's access to his child.

⁴² The author bases the information on over two decades of experience working survivors of intimate partner violence in the area of child custody and civil protection proceedings.

⁴³ EVAN STARK, *COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE* 5 (Oxford Univ. Press 2007).

children.⁴⁴ Children who grow up experiencing IPV must adapt to an abusive and unpredictable environment,⁴⁵ while learning that power prevails and security is an illusion. This environment is a product of the batterer's behavior and should not be attributed to the abused parent.⁴⁶ As a result, the batterer's behavior repeatedly exposes children to dangerous, diverse, and highly traumatizing abuse.

B. The Co-occurrence of Primary & Secondary Victimization

IPVE children are at a significant and increased risk of experiencing multiple and different forms of victimization as both primary and secondary victims.⁴⁷ Not only do these children witness (through sight, sound, and aftermath) the abuse of their caregiver, they also suffer multiple and diverse victimizations as primary targets of physical and sexual abuse, as well as exposure to other forms of child maltreatment.⁴⁸ The link between adult IPV and child abuse is well established, and experts maintain that intimate partner violence "is the single most common context for child abuse and neglect."⁴⁹ The occurrence of child sexual abuse in the context of IPV is also supported by research, which indicates that mothers of incest victims are likely to be victimized by the adult perpetrator as well.⁵⁰ Furthermore, children who witness adult domestic violence are also at an increased risk of witnessing abuse to a sibling.⁵¹

⁴⁴ See STARK, *supra* note 43, at 5, explaining:

[T]he primary harm abusive men inflict is political, not physical, and reflects the deprivation of rights and resources that are critical to personhood and citizenship. Although coercive control can be devastating psychologically, its key dynamic involves an objective state of subordination . . . Coercive control shares general elements with other capture or course-of-conduct crimes such as kidnapping, stalking, and harassment, including the facts that it is ongoing and its perpetrators use various means to hurt, humiliate, intimidate, exploit, isolate, and dominate their victims.

⁴⁵ See generally BANCROFT & SILVERMAN, *supra* note 37, at 29-36 (describing the batterer's parenting style).

⁴⁶ See generally Lorraine Radford & Marianne Hester, *Overcoming Mother Blaming? Future Directions for Research on Mothering and Domestic Violence*, in DOMESTIC VIOLENCE IN THE LIVES OF CHILDREN, *supra* note 7, at 135-51.

⁴⁷ See Sandra A. Graham-Bermann & Jeffrey L. Edleson, *Introduction*, in DOMESTIC VIOLENCE IN THE LIVES OF CHILDREN, *supra* note 7, at 3.

⁴⁸ BANCROFT & SILVERMAN, *supra* note 37, at 42.

⁴⁹ STARK, *supra* note 43, at 42 (explaining that "estimates of the overlap ranging from 6.5% to 82%, and the number of children affected from 3.3 million to 10 million."); see also BANCROFT & SILVERMAN, *supra* note 37, at 42 (explaining that "[a]n extensive collection of published studies indicates that batterers are several times more likely than nonbattering men to physically abuse [their] children.>").

⁵⁰ *Id.* at 84 (explaining that "exposure to batterers is among the strongest indicators of risk of incest victimization").

⁵¹ See generally *id.* at 43.

C. Corresponding Harms

The ill effects of IPVE are similar to and overlap with those experienced by previously-classified polyvictims.⁵² Predictably, polyvictimized and IPVE children experience comparable adverse outcomes.⁵³ Experts maintain that children exposed to IPV are at an elevated risk for “emotional, behavioral, physiological, cognitive, and social problems.”⁵⁴ For example, IPVE children have been found to experience anxiety, fear, posttraumatic stress disorder (PTSD), aggression, depression, sleep complications, poor weight gain, as well as other physical and emotional health problems.⁵⁵ In turn, experts warn that the anxiety and depression these children experience are risk factors for suicide.⁵⁶

The duration and timing of exposure act as additional aggravators. IPV relationships tend to be long-lasting, exposing children to a multitude of harms over an extended period of time.⁵⁷ Moreover, new research indicates that IPVE is linked to adverse development of the brain, which contributes to other physical and mental health problems.⁵⁸ Thus, experiencing IPV at a very young age is particularly harmful given critical brain development that occurs in the early years.⁵⁹

⁵² BANCROFT & SILVERMAN, *supra* note 37, at 43.

⁵³ See generally *id.* at 42-43; see also Finkelhor, *Polyvictimization*, *supra* note 9, at 5; B. B. Robbie Rossmann, *Longer Term Effects of Children’s Exposure to Domestic Violence*, in DOMESTIC VIOLENCE IN THE LIVES OF CHILDREN, *supra* note 7, at 35-43.

⁵⁴ Judith M. McFarlane et. al., *Behaviors of Children Who Are Exposed and Not Exposed to Intimate Partner Violence: An Analysis of 330 Black, White, and Hispanic Children*, 112 PEDIATRICS 3, 202, 203 (2003), www.pediatrics.org/cgi/content/full/112/3/e202.

⁵⁵ *Id.*, explaining:

Infants and toddlers show poor weight gain, poor sleeping habits, irritability, and other evidence of general distress, such as regression. Preschool children demonstrate anxiety and fearfulness, with boys showing more aggressive and disruptive behaviors than girls. School-age children have been reported to have problems at school and posttraumatic stress disorder.

See also Alissa C. Huth-Bocks et al., *The Direct and Indirect Effects of Domestic Violence on Young Children’s Intellectual Functioning*, 16 J. OF FAM. VIOLENCE 269, 283 (2001) (finding that children who witness IPV have poorer verbal abilities and that “domestic violence uniquely contributes to problems in intellectual functioning above and beyond other risk factors.”).

⁵⁶ McFarlane, *supra* note 54, at 206.

⁵⁷ The author bases the information on over two decades of experience representing survivors of intimate partner violence. See also Nat’l Sci. Council on the Developing Child, *Persistent Fear and Anxiety Can Affect Young Children’s Learning and Development* 3 (Ctr. on the Developing Child, Working Paper No. 9, 2010), <http://developingchild.harvard.edu/wp-content/uploads/2010/05/Persistent-Fear-and-Anxiety-Can-Affect-Young-Childrens-Learning-and-Development.pdf>.

⁵⁸ See *infra* Part IV.

⁵⁹ See *infra* Part IV; see also Megan Bair-Merritt et al., *Silent Victims—An Epidemic of Childhood Exposure to Domestic Violence*, 369 NEW ENG. J. MED. 1673, 1674 (2013), explaining:

The physical and psychological harms that take place as a result of the nature and occurrence of victimization are aggravated by the environment in which IPV occurs.⁶⁰ The special relationship between the victim and abuser influences the level of trauma children experience, as well as their health outcomes and prospects for recovery.⁶¹ Experts agree that the harm to children is particularly significant when they witness the abuse of one parent by another parent, given the loss of trust and security, which are fundamental to family relationships.⁶² These children learn that a caregiver is capable of harming someone they love and rely upon. Moreover, the home, which should be a place of safety and security, is one of the most dangerous places for a child of IPV.⁶³

Early childhood represents the greatest period of vulnerability to stress-related changes in the brain, because of the tremendous brain growth that occurs during this period. For example, childhood IPV exposure affects the usual pruning of infants' neuro-circuitry, leading to overrepresentation of the fear-driven limbic system and underdevelopment of areas of interpretive functioning, such as the frontal and prefrontal cortexes. In addition, increased cortisol levels can result in hippocampal neuron loss and damage as well as associated learning problems and harm to emotional health.

⁶⁰ Children of IPV experience trauma in a way that is different from child victims of other crimes given the lens through which they witness the abuse. A child's experiences are influenced by the relationship between the batterer and the victim parent (co-parents, husband and wife, or dating relationship), as well as the child's own relationship to both the batterer and the adult victim. See Zvi Eisikovits & Zeev Winstok, *Researching Children's Experience of Interparental Violence: Toward a Multidimensional Conceptualization*, in DOMESTIC VIOLENCE IN THE LIVES OF CHILDREN, *supra* note 7 at 203, 206, explaining:

The child living alongside such parents learns about himself or herself and his or her environment through hostility rather than harmony, through conflict rather than intimacy, and he or she develops a rigid worldview. Within such a perception, people are divided into winners and losers, perpetrators and victims, predators and predated. Intimacy and closeness are redefined as dangerous. The child's resources in such contexts are mobilized to construct his or her life to be as tolerable and livable as possible.

See also Mary Ann Dutton, *The Dynamics of Domestic Violence: Understanding the Response from Battered Women*, 68 FLA. B.J. 24, 24 (1994) (explaining that a special relationship exists between abusers and survivors of intimate partner violence); Harrington Conner, *To Protect or to Serve*, *supra* note 34, at 877 (expanding on Dutton's theory about the unique relationship between batterers and their victims); *id.* at 879 n.6 (noting that according to Dutton, "[t]he victim learns that a certain look from the perpetrator may mean that she is in significant danger if she does not conform to his wishes, for the battered woman it is this simple act that alters her behavior in such significant ways.").

⁶¹ See LISTENBEE, *supra* note 1, at 30.

⁶² *Id.*

⁶³ The home is an extremely dangerous place for survivors and their children, with IPV occurring at or near the victim's residence in 79% of the cases. See JENNIFER L. TRUMAN & RACHEL MORGAN, U.S. DEP'T. OF JUST., NONFATAL DOMESTIC VIOLENCE, 2003-2012 10 (Vanessa Curto & Jill Thomas eds., 2014), <http://www.bjs.gov/content/pub/pdf/ndv0312.pdf>.

Doctors Barry Zuckerman and Megan H. Bair-Merritt provide the following powerful example of the trauma children experience growing up in a violent home:

A school age patient recently described to us the terror she felt while watching her father hold her mother down with a knife to her throat; the child knew she should run down to her grandparent's house but was too afraid to move. Her nightmares and fear continue to this day . . . children exposed to DV [domestic violence] experience the horror of seeing the important adults in their lives who are supposed to protect them engage in violent acts; one caregiver is a victim while the other is inflicting the violence.⁶⁴

Exposure to the systematic abuse of a loved one is particularly traumatic for children given their dependence and vulnerability. Lacking the means to stop the violence, the skills to attend to the victim-parent, and the emotional maturity to comprehend their circumstances—these children suffer a deep and particularized helplessness.⁶⁵

D. Other Pathways to Polyvictimization

Researchers identify four independent pathways leading to childhood polyvictimization: (1) exposure to family violence & conflict; (2) experiencing family disruption & adversity; (3) residing in a dangerous community; and (4) having preexisting emotional problems.⁶⁶ The foregoing pathways confirm the intersection of polyvictimization, multi-oppression, and childhood exposure to adult domestic violence. In fact, children exposed

⁶⁴ Zuckerman & Bair-Merritt, *supra* note 5.

⁶⁵ See LISTENBEE, *supra* note 1, at 32, explaining:

Children who witness or live with intimate partner violence are often burdened by a sense of loss or profound guilt because they believe that they should have somehow intervened or prevented the violence – or, tragically, that they actually caused the violence. They frequently castigate themselves for having failed in what they assume to be their duty to protect their parents or siblings from being harmed, including wishing that they could take the place of their victimized family member even if that means being horribly injured or killed themselves. Children exposed to intimate partner violence also feel a sense of terror that they will lose an essential caregiver, such as a battered parent who is severely injured and could be killed. To complicate things even further, they also often fear losing their relationship with a battering parent who may be taken away and incarcerated or even executed, and they sometimes mistakenly blame themselves for having caused the batterer to be violent. These children bring a deep sense of uncertainty and fear, as well as grief, anger, and shame, into all of their relationships for the rest of their lives if not helped to heal and recover.

⁶⁶ Finkelhor, *Polyvictimization*, *supra* note 9, at 7.

to IPV (identified as pathway one and addressed above),⁶⁷ enter polyvictimization through multiple pathways.

For example, children exposed to IPV frequently experience family disruption and adversity (pathway two), in the aftermath of domestic abuse.⁶⁸ Children of IPVE experience hardship following acts of family violence when one or more family members undergo any of the following: arrest; civil and criminal legal proceedings; incarceration; social service investigation; foster care; hospitalization; homelessness; shelter services; poverty; diminished social capital; or crisis intervention.⁶⁹ These occurrences, in turn, create additional stressors for children and increase the risk of adverse health consequences.⁷⁰

Additionally, the intersection between IPV and poverty increases the likelihood that exposed children will experience adversity, as well as the potential for residing in a dangerous community either during or in the aftermath of the violence (pathways two and three). Unraveling the connections between IPV, poverty, and community violence is complicated. Although poverty is not the cause of intra-family violence, the two are causally connected in a variety of ways.⁷¹ For example, a lack of financial resources places women and children at an increased risk of victimization and also acts as a barrier to escaping an abusive relationship.⁷² Moreover, poverty often arises once the non-offending parent and child exit the abusive home, even when financial hardship did not exist prior to separation.⁷³

⁶⁷ See *supra* Part II, sections A and C.

⁶⁸ The author bases the information on over two decades of experience representing survivors of intimate partner violence.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Harrington Conner, *Financial Freedom*, *supra* note 35, at 390-91, explaining:

[T]he mistaken conclusion could be drawn that intimate partner violence is primarily a problem that affects the poor. Yet, the relationship between domestic violence and poverty is complex. Domestic violence scholars tend to agree that intimate partner violence is blind to socioeconomic status, maintaining that whether an individual will be abused is more closely linked to the victim's gender than any other factor. Accordingly, there is much to suggest that poverty is not the cause of intimate partner violence nor does its presence alone indicate that IPV is to be expected in a particular relationship. Instead, it is the batterer's ability to restrict his victim's access to financial and social capital that places her at a greater risk of experiencing poverty at the time of separation. Furthermore, the resulting homelessness, hunger, and extreme financial hardship associated with poverty make it difficult for a survivor of domestic violence to refuse her batterer's attempts at reconciliation.

See also Jeffery L. Edleson, *Studying the Co-Occurrence of Child Maltreatment and Domestic Violence in Families*, in *DOMESTIC VIOLENCE IN THE LIVES OF CHILDREN*, *supra* note 7, at 100-01 (examining studies that suggest a "strong and significant relationships between reports of intrafamily violence and exposure to community violence").

⁷² *Id.*

⁷³ Harrington Conner, *Financial Freedom*, *supra* note 35, at 393, providing:

Furthermore, given the high rate of mental health problems experienced by the general population,⁷⁴ as well as the complex trauma caused by IPVE,⁷⁵ it is quite possible that children of batterers will travel a four-lane expressway to polyvictimization.

III. MULTIPLE-OPPRESSION

*[F]actors that increase a child's vulnerability . . .*⁷⁶

Multiple and varying victimizations, homelessness, poverty, food insecurity, diminished social capital, abuse, neglect, crime, and exposure to violence are just some of the oppressions experienced by children of batterers. And yet, the root cause of the many multiple oppressions that children of IPVE suffer can be traced back to one primary source—the actions of the batterer.⁷⁷ These oppressions combined with the ill effects of multiple and diverse victimizations are a toxic combination that leads to negative health and social outcomes that continue into adulthood.⁷⁸

A. Homelessness

Research indicates that one of the greatest causes of homelessness for both children and their abused mothers is partner violence.⁷⁹ Not only do children exposed to IPV face homelessness as a direct result of battering, they also face long-term housing instability flowing from the batterer's abuse and

Women who are abused are at an increased risk of poverty at the time of separation for a variety of reasons. Women generally, as we have seen, are more vulnerable to male exploitation given their labor force experience. Women face gender discrimination, job sex-typing, and wage gaps within the labor force; abused women in particular experience employment related problems created by their batterers. For example, batterers place restrictions on the employment or employability of their victims, wage a campaign to destroy existing employment opportunities, or use finances to abuse and control their victims.

⁷⁴ See *Improving Mental Health and Addressing Mental Illness*, THE GUIDE TO CMTY. PREVENTIVE SERVS. (May 13, 2015), www.thecommunityguide.org/mentalhealth/index.html. According to the National Institute of Mental Health, approximately “1 in 5 children and 1 in 4 adults have diagnosable mental disorders.” *Id.* (citing THE NAT'L INST. OF MENTAL HEALTH, <http://www.nimh.nih.gov/health/statistics/prevalence/any-anxiety-disorder-among-children.shtml>).

⁷⁵ See Bair-Merritt, *supra* note 59 (maintaining that “63% of child witnesses of IPV had worse emotional health than the average child.”).

⁷⁶ WORLD HEALTH ORG., WORLD REPORT ON VIOLENCE AND HEALTH: SUMMARY 16 (2002), http://www.who.int/violence_injury_prevention/violence/world_report/en/summary_en.pdf.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ See U.S. CONF. OF MAYORS, HUNGER AND HOMELESSNESS SURVEY 64 (2005), <http://www.usmayors.org/hungersurvey/2005/HH2005FINAL.pdf>.

control of their protective parent.⁸⁰ IPV affects housing stability in a variety of ways. A child may become homeless due to the escape, eviction, hospitalization, incarceration, probation, or unemployment of one or more parents of the battering relationship. The resulting housing instability, in turn, influences the child's emotional well-being, sleep patterns, appetite, peer relationships, and progress in school.⁸¹

B. Economic Insecurity

Poverty and economic insecurity follow battered mothers and their children as they flee from abuse for many of the same reasons homelessness occurs. Batterers control, restrict, and sabotage the finances, employability, employment, wages, and property of battered women.⁸² As a result, many IPVE children will likely experience poverty or some form of economic instability during their minority.⁸³

Economic instability hinders the physical and emotional well-being of children. For example, poverty and food insecurity go hand in hand.⁸⁴ Food insecurity, in turn, has a negative influence on a child's physical health, growth, emotional stability, educational development, sleep cycle, and ability to thrive.⁸⁵ These children are compromised physically, athletically, socially, and personally.⁸⁶ Food insecurity is a detriment to the physical and emotional well-being of the child, as children who worry about whether or when they will eat next become anxious, distracted, and fearful.⁸⁷ Yet, the stress related

⁸⁰ Harrington Conner, *Financial Freedom*, *supra* note 35, at 390 (explaining that “[n]ot only do women who are abused require short-term shelter services to aid them to safely extract themselves and their children from violent homes, but also economic instability resulting from the violent relationship often creates long-term housing instability.”).

⁸¹ See Heather Sandstrom & Sandra Huerta, *The Negative Effects of Instability on Child Development: A Research Synthesis*, URBAN INST., 28-30 (2013), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/412899-The-Negative-Effects-of-Instability-on-Child-Development-A-Research-Synthesis.PDF>.

⁸² The author bases the information on over two decades of experience representing survivors of intimate partner violence. See also Harrington Conner, *Financial Freedom*, *supra* note 35, at 339.

⁸³ ERIKA HARRELL ET AL., U.S. DEP'T OF JUST., PUB. NO. NCJ248384, HOUSEHOLD POVERTY AND NONFATAL VIOLENT VICTIMIZATIONS, 2008-2012 3 (Nov. 2014), www.bjs.gov/content/pub/pdf/hpnnv0812.pdf (indicating that the rate of IPV for persons in poor households was nearly four times the rate for high-income persons); see also U.S. CONF. OF MAYORS, *supra* note 79 (indicating that “domestic violence was identified as a primary cause of homelessness by 12 cities”); LISTENBEE, *supra* note 1, at 34 (“Although no community is untouched, the epidemic of children’s exposure to violence does not play out evenly across the county. Children living in poverty are far more likely to be exposed to violence and psychological trauma, both at home and in the surrounding community.”).

⁸⁴ See Sandstrom & Huerta, *supra* note 81, at 18 (defining food instability as “a lack of reliable access to proper nutrition . . .”).

⁸⁵ *Id.*

⁸⁶ *Id.* at 18-21.

⁸⁷ See *id.*

to food insecurity is but one thread in the complex web of stressors that IPVE children experience on a continuous basis.

C. *Diminished Social Capital*

Diminished social capital is a product of partner violence. Many of the same benefits associated with economic stability also flow from social support systems. Professor Moshe A. Milevshy defines social capital as “the collection of networks, cooperation, relationships, norms, mutual aid, faith, and various other forms of ‘glue’ that hold a community together.”⁸⁸ Increased social capital improves the prospect of economic security, emergency housing alternatives, employment, and the safety of battered women and their children.⁸⁹

Experts agree that social capital acts as a protective measure for “children from negative outcomes or contributing to the remediation of developmental consequences of exposure to adverse life circumstances, such as adult domestic violence.”⁹⁰ Strong connections to family, friends, neighbors, religious institutions, and other community support can ensure intervention, temporary housing, food, clothing, shelter and emotional support.⁹¹ Yet, the batterer’s ability to continue his campaign of abuse and terror is often fueled by his success at destroying the very mechanism—social support—which survivors and their children so desperately need to achieve safety and security.⁹² Consequently, this lack of social capital reduces the likelihood of escape, as well as the potential for resiliency and healing.

D. *IPVE: An Oppressive Condition*

Exposure to partner violence oppresses and overwhelms children. IPV independently presents risks to the physical and mental health of children.

⁸⁸ See MOSHE A. MILEVSKY, *YOUR MONEY MILESTONES* 108-09 (FT Press 2009).

⁸⁹ See Harrington Conner, *Financial Freedom*, *supra* note 35, at 366-69.

⁹⁰ Sandra K. Beeman, *Critical Issues in Research on Social Networks and Social Supports of Children Exposed to Domestic Violence*, in *DOMESTIC VIOLENCE IN THE LIVES OF CHILDREN*, *supra* note 7, at 222.

⁹¹ See Harrington Conner, *Financial Freedom*, *supra* note 35, at 367, explaining:

For women who are abused, strong community and family ties ensure safety, weak ties promote risk. For women in a violent relationship, social capital can take the form of family, friends, neighbors, coworkers, as well as other individuals or organizations in the community. Social capital can ensure a woman’s physical safety, as well as her financial security. For example, if she flees her abusive home in the middle of the night, a close relationship with a neighbor may enable her to stay with that individual for a day or even longer. That same neighbor may be more likely to intervene or contact the police if an altercation occurs. Friends and family can provide emotional support, as well as the material resources necessary to help the victim end the violent relationship.

⁹² *Id.* at 367-68.

Yet, IPVE—similar to the manifestation of other oppressions—rarely occurs in isolation. IPVE is likely to involve the piling on effect of multiple oppressions, many of which have been considered herein, such as poverty, homelessness, food insecurity, diminished social capital, abuse, and neglect.⁹³

Witnessing a single act of abuse to a parent may result in trauma. Yet, IPV typically involves the occurrence of repeated and varying acts of abuse over an extended period of time.⁹⁴ Children witness violence in a variety of ways during and after the battering events, as well as through exposure to *coercive control* measures that are often habitual behaviors for batterers.⁹⁵ Through sight, sound, and aftereffects, children witness the abuse of a caregiver at the hands of the other parent. They experience the aftermath of IPV episodes, including physical injuries and emotional trauma to their victim parent, the arrest or incarceration of a parent, social service or law enforcement investigations, shelter services, as well as homelessness and financial insecurity.⁹⁶

As discussed above, children of batterers are also the principal targets of victimization, enduring physical acts of violence, threats of harm, and emotional torment. They are more likely to suffer child abuse and neglect than their peers.⁹⁷ They are also more likely to suffer multiple types and repeated occurrences of abuse.⁹⁸ Regardless of the nature of the domestic victimization, direct target of abuse or secondary victim, these children are at an acute risk of suffering some of the most deleterious outcomes as a result of the abuse.⁹⁹ The potential for adversity and complex trauma should not be ignored.

⁹³ Harrington Conner, *Financial Freedom*, *supra* note 35, at 367-68.

⁹⁴ *Intimate Partner Violence: Definitions*, CTR. FOR DISEASE CONTROL & PREV., <http://www.cdc.gov/violenceprevention/intimatepartnerviolence/definitions.html> (last updated June 19, 2016) (“IPV can vary in frequency and severity. It occurs on a continuum, ranging from one episode that might or might not have lasting impact to chronic and severe episodes over a period of years.”).

⁹⁵ See STARK, *supra* note 43, at 5.

⁹⁶ The author bases the information on over two decades of experience representing survivors of intimate partner violence.

⁹⁷ See Graham-Bermann & Edleson, *supra* note 47, at 3 (describing the co-occurrence of IPV and child abuse).

⁹⁸ See Rossman, *supra* note 53, at 42, indicating that:

In a large sample of health maintenance organization service receivers, they found that receivers who had been exposed to wife abuse had an 86% chance that they had been exposed to one additional risk category and a 62% change that they had been exposed to two additional categories. With exposure to three risks, the likelihood of ischemic heart disease, stroke, diabetes mellitus, and other major medical problems increased. Again, exposure to family violence appears to be part of a lethal package for development.

⁹⁹ See Graham-Bermann & Edleson, *supra* note 47, at 3 (maintaining that “[w]itnessing domestic violence and being a victim of child maltreatment both have the potential for negative outcomes in a child’s development. Studies comparing children who have witnessed

Experts have articulated specific reasons why polyvictimization should be classified as a *condition*.¹⁰⁰ Several factors fundamental to IPVE confirm that it should also be characterized as a *condition*, and not as multiple victimizations grouped together simply because they share a common perpetrator and victim. First, IPVE stems from a distinct and ever-present harm: the abuse of one parent by the other.¹⁰¹ Second, IPVE does not result from a single occurrence or overwhelming event, but grows out of the piling on effect of cumulative adversity.¹⁰² Third, children of partner abuse are directly affected by battering as both primary and secondary victims.¹⁰³ Fourth, the manifestation of IPVE has a profound and long-term influence on a child's sense of safety, self, purpose, and humanity.

IV. HEALTH CONSEQUENCES

*Exposure to violence causes major disruptions of the basic cognitive, emotional, and brain functioning that are essential for optimal development and leaves children traumatized. When their trauma goes unrecognized and untreated, these children are at significantly greater risk than their peers for aggressive, disruptive behaviors; school failure; posttraumatic stress disorder (PTSD); anxiety and depressive disorders; alcohol and drug abuse; risky sexual behavior; delinquency; and repeated victimization. When left unaddressed, these consequences of violence exposure and the impact of psychological trauma can persist well beyond childhood, affecting adult health and productivity. They also significantly increase the risk that, as adults, these children will engage in violence themselves.*¹⁰⁴

The traumatic influence of exposure to violence is well documented. Experts maintain that exposed children experience “traumatic disruption of biological, cognitive, social and emotional regulation that has different behavioral manifestations depending on the child's developmental stage.”¹⁰⁵ As a result, Attorney General Eric Holder declares childhood exposure to violence as a national crisis.¹⁰⁶

The risks are especially high when IPV is involved. Studies suggest that children exposed to partner violence develop posttraumatic symptoms at

domestic violence with those who have been maltreated have found each to produce unique negative outcomes for the children involved.”).

¹⁰⁰ Finkelhor, *Polyvictimization*, *supra* note 9, at 2 (examining polyvictimization as a condition).

¹⁰¹ *Id.* at 7.

¹⁰² *See id.*

¹⁰³ *See* Graham-Bermann & Edleson, *supra* note 47, at 3.

¹⁰⁴ *See* LISTENBEE *supra* note 1, at 27.

¹⁰⁵ *See id.* at 29.

¹⁰⁶ Letter from Attorney General Eric H. Holder, Jr. to the National Task Force on Children Exposed to Violence (December 20, 2012), in REPORT OF THE ATTORNEY GENERAL'S NATIONAL TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE (2012), <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>.

rates comparable to or higher than children who experience natural disasters and other violent trauma.¹⁰⁷ Moreover, IPVE children experience posttraumatic symptoms for longer periods of time than other traumatized children given the nature of the violence and their prolonged exposure.¹⁰⁸

The fear and anxiety created by IPVE has a negative influence on the health, development, and socialization of children. Experts maintain that children who experience trauma related to IPVE develop behavioral problems due to the manifestation of conduct disorder, anxiety, and depression.¹⁰⁹ Exposure to IPV has “been linked to self-injurious behavior, such as suicide attempts and substance abuse,” as well as depression and anxiety.¹¹⁰ Childhood exposure to IPV has also been found to be a good predictor of whether an individual will engage in partner abuse as an adult.¹¹¹

In fact, cutting-edge research indicates that exposure at an early age can “have lifelong consequences by disrupting the developing architecture of the brain.”¹¹² Behavioral neuroscientists have found that IPVE triggers extreme and prolonged activation of the stress response system, referred to as stress system overload.¹¹³ The trigger is the elevation of stress hormones such as cortisol.¹¹⁴ Stress system overload, according to experts, is particularly problematic for infants and young children because the activation of stress hormones can disrupt the development and circuitry of the brain.¹¹⁵ The adverse effects on the brain, in turn, result in negative learning, behavior, and health outcomes.¹¹⁶

For example, these children may suffer long-term problems with “making, following, and altering plans; controlling and focusing attention; inhibiting

¹⁰⁷ See Rossman, *supra* note 53, at 37 (explaining children experience PTSD symptoms at varying rates such 30% after a natural disaster, 40% following a sniper attack, and 13% to 51% for IPV exposure).

¹⁰⁸ *Id.*

¹⁰⁹ See *id.*

¹¹⁰ *Id.* at 41.

¹¹¹ *Id.* at 40-41.

¹¹² Nat'l Sci. Council on the Developing Child, *supra* note 57, at 1.

¹¹³ *Id.* at 2-3.

¹¹⁴ *Id.* at 3, explaining:

Elevated stress hormones such as cortisol have been shown to affect the growth and performance of the hippocampus and activity of the amygdala in rodents and non-human primates, and early and persistent activation of the stress response system adversely affects brain architecture in these critical regions. Beyond the impact on these two brain structures, heightened stress has also been shown in animals to impair the development of the prefrontal cortex, the brain region that, in humans, is critical for the emergence of executive functions – a cluster of abilities such as making, following, and altering plans; controlling and focusing attention; inhibiting impulsive behaviors; and developing the ability to hold and incorporate new information in decision-making. These skills become increasingly important throughout the school years and into adulthood.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 1.

impulsive behaviors; and developing the ability to hold and incorporate new information in decision-making.”¹¹⁷ Experts maintain that these skills are particularly important to the health, education, and socialization of children.¹¹⁸ One of the most important considerations is that without early intervention the long-term outlook for children who struggle with these fundamental life skills is bleak.

V. SCIENTIFIC RESEARCH: A TOOL TO IMPROVE OUTCOMES FOR CHILDREN

*The evidence leaves no doubt that when a nonabusing parent seeks help from the courts to protect a child from exposure to domestic violence, judges' decisions can literally shape the child's brain . . .*¹¹⁹

*As the world enters the 21st century after the “decade of the brain,” researchers are being afforded the opportunity to think about longer term effects of children’s exposure to domestic violence in terms of trauma and brain-body conceptualizations. This is made possible by a growing understanding of the brain under stress and the trauma experienced by children, including exposure to adult domestic violence [IPV]. Other theoretical mechanisms that offer additional explanatory power for understanding this impact are observational learning, parent-child dynamics, and the family and societal legitimization of violence.*¹²⁰

The use of scientific research in child custody litigation is not new.¹²¹ Yet, legal experts, social scientists, legislators, medical professionals and advocates continue to debate the best practices for the “integration of scientific understanding into legal decision-making.”¹²² Lawyers for adult clients are often primarily focused on how information can influence case outcomes for their individual clients. Judges, legislators, healthcare workers, and counsel for children must concern themselves with how the use of information can support the detection of at-risk children and inform their decision-making process that best protects those children. Reliable data is both readily available and immense. Nevertheless, a modest amount of available information is utilized by our civil legal system in a way that promotes the health and welfare of at-risk children.

Several critical actions must be followed by the legal system to ensure positive outcomes for children. First, acquire a full understanding of how exposure shapes the development of children. Second, recognize the source

¹¹⁷ Nat’l Sci. Council on the Developing Child, *supra* note 57, at 3.

¹¹⁸ *Id.*

¹¹⁹ Lynn Hecht Schafran, *Domestic Violence, Developing Brains, and the Lifespan: New Knowledge from Neuroscience*, 53 THE JUDGES’ J., Summer 2014, at 33.

¹²⁰ See Rossman, *supra* note 53, at 35.

¹²¹ See Milfred D. Dale & Jonathan W. Gould, *Science, Mental Health Consultants, and Attorney-Expert Relations in Child Custody*, 48 FAM. L.Q., Spring 2014, at 1.

¹²² *Id.* at 2.

of the problem—battering behavior.¹²³ Third, identify at-risk and traumatized children. Fourth, adhere to a response that places the well-being of children above all other considerations. It is with these principles that we examine how scientific information can promote positive outcomes for children in the context of child custody determinations.

Identifying at-risk children and responding to their needs must be accomplished through a multi-systems approach that involves healthcare (doctors and nurses), social services (child protective, the welfare system, and schools), law enforcement (police), the justice system (prosecutors, defense attorneys, and judges), and the civil legal system (lawyers, advocates, and judges). Nevertheless, because of the nature of IPV, the civil legal system may be the first and only intervention opportunity for the detection, assessment, and protection of IPVE children.

Battering often occurs in secrecy and under circumstances that do not lend themselves to detection and intervention.¹²⁴ The possibility of intervention is diminished due to threats of future harm, fear, shame, love, financial constraints, and legal concerns.¹²⁵ As a result, it is less likely that medical treatment will be requested, law enforcement will be contacted, or child protective services will be alerted when IPV is present in a child custody case. Moreover, even when law enforcement is contacted, criminal charges may be dismissed, further reducing the opportunity for treatment and intervention.¹²⁶ As a result, this article focuses on the ways in which the civil legal system can take advantage of opportunities the child custody proceeding provides to identify and respond to the needs of at-risk children.

In the civil legal context, there are several ways to integrate scientific understanding into the system's response to IPVE, such as client counseling,

¹²³ Acknowledging that the batterer's behavior is the source of the harm IPVE children experience is critically important. For too long, abused mothers have been held responsible for the actions of their abusive partners. By understanding that the batterer's acts are harmful to children, the system can better protect children from that harm and provide treatment to both batterers and their children to foster healthy and safe families.

¹²⁴ The author bases the information on over two decades of experience representing survivors of intimate partner violence.

¹²⁵ *Id.*

¹²⁶ See Dana Harrington Conner, *Back to the Drawing Board: Barriers to Joint Decision-Making in Custody Cases Involving Intimate Partner Violence*, 18 DUKE J. GENDER L. & POL'Y 223, 225 (2011), explaining that:

Research suggests that battered women are often reluctant to contact law enforcement or press charges. As a result, many incidents of violence between intimate partners are never brought to the attention of law enforcement. Additionally, when a victim contacts the police, there is no guarantee that her abuser will be arrested, charged, or convicted for the crimes he has committed against her. Because these crimes are either never adjudicated or the batterer is charged with a lesser offense, the criminal evidence often carries little weight during any subsequent child custody trial. If the presumption is not triggered, domestic violence becomes just one of many factors considered. Furthermore, even if the presumption is triggered, it may be overcome.

litigation, and judicial decision-making. The first consideration is the use of experts to analyze a particular set of circumstances. Experts can inform a lawyer's advice to the client, prospects for settlement, trial strategy, and case outcomes. Experts are considered to be the key to beneficial legal outcomes for children. However, this method of infusing scientific understanding into a custody case presents challenges for survivors of domestic violence and their lawyers. Not only are good experts difficult to find, it is not possible for many survivors of IPV to retain an expert, given the expenses associated with pre-trial evaluations and trial testimony. As a result, many survivors litigate their child custody matters without the use of an expensive expert.

Another way of integrating scientific understanding into judicial decision-making is through changes in the law related to the best interest factors, legal presumptions, or predominating factors. There are, however, several drawbacks to the sole application of this approach. This approach presupposes knowledge on the part of the survivor. It assumes that survivors will have information about the vast body of research regarding the adverse health effects of childhood exposure to intimate partner violence, polyvictimization, and multiple oppressions. In addition, it assumes that survivors have a sophisticated understanding of the law and rules of evidence; the legal ability to ensure that sufficient information will be provided to trigger a presumption or alert the judicial decision-maker that a particular best interest factor weighs in their favor; or the resources to hire a skilled attorney.

Some may argue that the foregoing expectations are no different than the standard for any other case or area of the law—in that the litigants are expected to inform themselves accordingly, hire counsel, or suffer the consequences. Yet, child custody is unlike other areas of the law or even other family law matters. The fundamental principle of the custody case is promoting what is best for children¹²⁷—with its roots in equitable principles of law.¹²⁸ Although parents have legal rights and interests as to the care, custody, and control of their children, these interests must yield to the health and welfare of those children. Accordingly, the system must develop ways to detect and evaluate any and all information relevant to the court's best interest determination.¹²⁹

Hence, the preferred way to integrate scientific understanding into legal decision-making is through a blend of the forgoing mechanisms and the

¹²⁷ It is not the author's contention that the best interest standards and case law of individual jurisdictions effectively support the aforesaid fundamental principle that the ultimate goal of a child custody proceeding is what is best for children. For an in-depth analysis of the best interest standard, see Harrington Conner, *Abuse and Discretion*, *supra* note 29, at 195-97; Harrington Conner, *Back to the Drawing Board*, *supra* note 126, at 223.

¹²⁸ See *Equity*, BLACK'S LAW DICTIONARY, 618 (9th ed. 2009) (defined as "the body of principles constituting what is fair and right").

¹²⁹ See generally Harrington Conner, *Abuse and Discretion*, *supra* note 29, at 195-97 (exposing the flaws inherent in the current application of the best interest standard to custody cases involving evidence of domestic violence).

taking of “judicial notice” of the harms of exposure.¹³⁰ Educated judges have the power to take judicial notice of scientific research, relevant to the best interest of the child to inform their decision-making. This mechanism may be the most efficient and reliable way to ensure the safety and protection of exposed children. Judicial knowledge of how exposure to intimate partner violence, polyvictimization, and multiple oppressions, individually and in combination, adversely affect children is crucial to achieving legal outcomes that best promote the long-term health of children. This is particularly important given the high probability that the court will be placed in a position of first responder or as the only point of intervention in a particular case.¹³¹

Experts have identified several critical steps necessary to prevent long-term adverse outcomes to children who experience violence: (1) early identification; (2) specialized services; (3) evidence-based treatment; and (4) appropriate support.¹³² Although these steps should be followed by the various legal, social, and healthcare agencies that come into contact with children, this article applies these steps to child custody proceedings as they are frequently a family’s first contact with a system authorized, capable, and prepared to act for the protection of the child.

Early identification of all child victims is imperative to improve outcomes, as well as decrease the likelihood of recidivism and the inter-generational cycle of violence. Moreover, early identification may decrease the likelihood that at-risk children will suffer the ill effects of polyvictimization. Although there are many opportunities for identification given the variety of responders who come in contact with children through various legal, social, and healthcare systems—for many children, the custody proceeding is a prime opportunity for identifying the co-occurrence of IPVE, polyvictimization, and multiple oppressions.

The potential for early identification is fundamental to the best interest of children given the increased risks of complex trauma associated with

¹³⁰ See *Judicial Notice*, BLACK’S LAW DICTIONARY, *supra* note 128, at 923 (defining judicial notice as “[a] court’s acceptance, for purposes of convenience and without requiring proof, of a well-known and indisputable fact; the court’s power to accept such a fact.”).

¹³¹ Lawyers for battered parents may, in fact, find themselves in the position of first responder. Yet, ethical duties to the client may conflict with legal reporting obligations. Absent reporting obligations or an exception to the ethical duty of confidentiality to the client, the lawyer’s duties to the adult client diminish the opportunities for intervention prior court proceeding. Pursuant to Rule 1.6 of the Model Rules of Professional Conduct, a lawyer may not disclose information relating to the representation of the client unless the client gives consent, the disclosure is impliedly authorized, or the disclosure falls within an exception to the duty of confidentiality. MODEL RULES OF PROF’L CONDUCT r. 1.6 (AM. BAR ASS’N 2015). For example, in accordance with Rule 1.6(b)(1), a lawyer may disclose confidential information to prevent reasonably certain death or substantial bodily harm. *Id.* Moreover, an exception is available if the laws of the jurisdiction, in which the attorney practices, require disclosure. *See id.* Most jurisdictions do not mandate disclosure under the first example herein, but may require it under the second example.

¹³² See LISTENBEE, *supra* note 1, at 36.

IPVE.¹³³ As we know, these children are at a greater risk of suffering psychological trauma, physical abuse, injury, neglect, sexual assault, disruptive caregiving, as well as exposure to parent, sibling and animal abuse. Nevertheless, it is rare to find a child custody determination that analyzes IPVE from a child health and welfare perspective, in light of polyvictimization and multiple oppressions.

Today, judges and lawyers can use a variety of tools available to identify a child's experience with multiple forms of victimization in order to appropriately respond to their complex trauma. For example, the American Bar Association's Center on Children and the Law, along with Safe Start, provide a checklist and resource guide for lawyers and child advocates to aid them in identifying polyvictimization and trauma among children.¹³⁴ Judges can use this tool along with pre-trial or post-hearing child interviews to identify at-risk children. Alternatively, courts may choose to employ experts or staff with specialized training in this area to conduct child evaluations.

Judicial education is fundamental to the identification of at-risk children. Through proper training, judges will have the tools necessary to integrate scientific research into the court's decision-making process, which will enable the court to identify the risks in a particular child custody case and uncover the cause.

Once the court identifies IPVE, notice of existing scientific research will inform judicial determinations to better provide protective measures in the areas of legal custody (parental decision-making authority), residential placement, contact orders (visitation), and specialized services. For example, given the harm that flows from battering, as a general rule, the safest course of action is to entrust the battered parent with sole legal decision-making authority and residential placement. Moreover, supervised contact provisions or *stay of visitation* orders should be employed on a temporary basis to ensure the highest levels of protection for the child, while permitting the batterer to engage in treatment services that will pave the way for long-term safe and healthy contact between parent and child.

Additionally, court orders must take into account specialized services for exposed children, such as mental health evaluations, counseling, and other health services. In fact, trauma-informed treatment plans should be a customary provision for custody and contact orders involving at-risk children, and not solely reserved for dependency and neglect actions involving state intervention.

¹³³ See generally BANCROFT & SILVERMAN, *supra* note 37, at 29-52; see also Edleson, *supra* note 71, at 91-105.

¹³⁴ See PILNIK & KENDALL, *supra* note 27.

VI. CONCLUSION

*[R]eliable data . . . is important not only for planning and monitoring purposes but also for advocacy. Without information there is little pressure on anyone to acknowledge or respond to the problem.*¹³⁵

If we accept the premise that a “person’s lifelong health trajectory is established in childhood,”¹³⁶ early identification of IPVE becomes essential. Every opportunity to stop the intergenerational cycle of violence and its harms is paramount. As a result, our courts play a vital role in the protection of children at every stage and in all forums. The custody case is a rare opportunity to respond to the needs of children when their parents submit themselves to the jurisdiction, authority, and protection of the court.

Our Nation’s children must not pay the price for a system that, by default, responds to those who have the resources to retain an expert or hire the most skilled attorney. Family court is rooted in the traditional ideals of equity—to ensure what is just and fair for all who find themselves within its protective authority.¹³⁷ As such, our system must develop new ways of integrating scientific research and health data into its response to child custody cases involving abuse of one parent by the other parent.

Judges and other legal professionals have within their reach the tools necessary to procure and assess essential evidence. These measures will improve the judge’s ability to identify at-risk children, understand the harms associated with exposure, allocate the proper weight afforded to evidence of domestic violence, and put in place measures that ensure the safety and welfare of traumatized children. The response must provide the highest levels of protection while simultaneously putting in place measures, when appropriate, that afford safe and healthy contact between children and parents who engage in battering behavior.

Moreover, new research and information must be the catalyst for changes to existing laws and procedures. Knowledge is power¹³⁸—the power to effectuate change—change that is transformative in the lives of children in need.

¹³⁵ WORLD HEALTH ORG., *supra* note 76, at 5.

¹³⁶ Bair-Merritt, *supra* note 59, at 1674.

¹³⁷ See *Equity*, BLACK’S LAW DICTIONARY, *supra* note 128, at 618.

¹³⁸ BACON, *supra* note 2.