



# Child Welfare and Domestic Violence:

*The Report on  
Intersection and Action*

May 12, 2021



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# SUMMARY

Domestic violence<sup>1</sup> floods the Los Angeles County foster care system. In October 2020, of the nearly 38,618 open cases, at least 19,937, or 51.6%, involved allegations of domestic violence.<sup>2</sup> In a time where traditional systems and structures are being reexamined,<sup>3</sup> strategies and efforts toward reducing involvement in foster care have become more urgent than ever. In homes where domestic violence is present, the survivor<sup>4</sup> of domestic violence, can lose custody of their child(ren) under state dependency law. Among other reasons, children may be declared dependent where the court finds the child is neglected pursuant to the survivor parent's failure to protect the child from the conditions that the abusive adult imposes on the household. Yet removing children from their homes and placing them in foster care for an isolated domestic violence incident can result in further trauma for both the domestic violence survivor and the children.

**This dilemma and its consequences within the child welfare system are the focus of this report. The role of law enforcement in domestic violence incidents and in supporting child welfare investigation is also acknowledged<sup>5</sup> and yet, outside the scope of this research and report. This report also:**

- Reviews relevant literature and current efforts relating to domestic violence and child welfare;
- Highlights approaches to domestic violence where child welfare is concerned in other jurisdictions around the United States; and
- Proscribes recommendations aimed at 1) improved training; 2) enhanced specialization; and 3) reform within the existing child welfare system and legislative structure.

# RESEARCH PROCESS

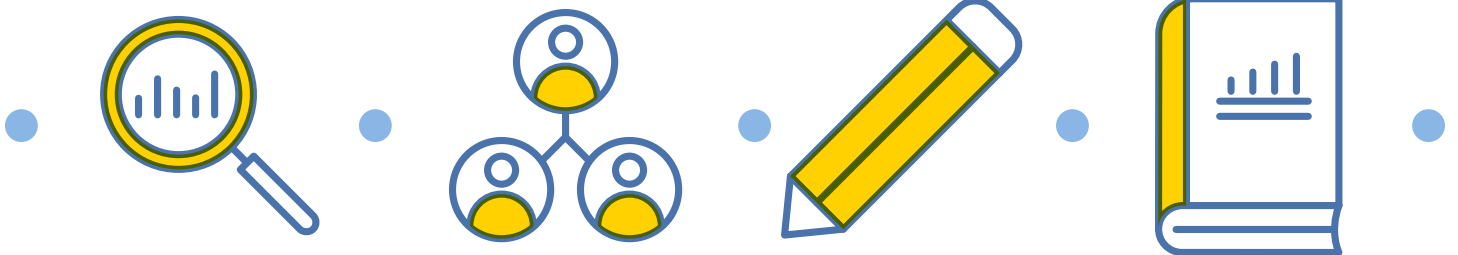
The UCLA Pritzker Center for Strengthening Children and Families unites a multidisciplinary network across campus and throughout LA County to identify prevention strategies that safely reduce the need for foster care, while supporting equitable reform to our child welfare system. Collaboration is at the heart of the UCLA Pritzker Center. Our work comes to life through research, education, and partnership. As a bridge from UCLA and into neighborhoods across the region, we team with researchers and community leaders to boldly challenge and resolve systemic issues that have made Los Angeles County's child welfare system the largest in the nation.

The research activities which led to this report were generously supported by the Pritzker Foster Care Initiative, Van Nuys Charities, and the Blue Shield Foundation of California. A number of Los Angeles County-based domestic violence and child welfare organizations provided support and technical assistance. This work was completed pursuant to approval from the UCLA Institutional Review Board.

This research transpired throughout 2020. Prior to the global pandemic, site visits were made to a number of Los Angeles County-based shelters and domestic violence organizations. Following the declaration of the global pandemic, all of the work moved online. Pursuant to an Institutional Review Board (IRB) protocol, 19 formalized listening sessions were conducted, resulting in 427 excerpts from participants. Qualitative thematic analysis was used to identify commonalities and differences in the participants' perspectives concerning specific issues about domestic violence

and the child welfare system. In total there were 72 formalized participants, out of which 14 identified as survivors of domestic violence. Among the 14 self-identified survivors three were under the age of 18 when they were experiencing domestic violence. The vast majority of participants were females. There was a total of four men participants, three of which identified as survivors of domestic violence. Additional participants had experience working with and for survivors of domestic violence. Thus, participants included social workers, nurses, and attorneys who worked in a variety of organizations including nonprofits and community based organizations, legal aid offices, and the Department of Children and Family Services (DCFS) among others.

An online survey reflecting the feedback of 122 participants was also completed. Other individuals were consulted outside the formalized interview process, resulting in significant feedback from the community. We made every attempt to capture this feedback accurately and direct it toward sound and thoughtful recommendations. This report and its recommendations are grounded in these conversations and the lessons inherent in them. We acknowledge both the limitations of making recommendations directed at a system that many argue should be abolished.<sup>6</sup> To that end, these proposals are intended to illuminate the options available while greater systemic reforms are imagined and implemented, with a particular emphasis on change driven by and for the families most impacted.<sup>7</sup>



# BACKGROUND

Domestic violence is a pattern of harm resulting from the exercise of power and control in a relationship.<sup>8</sup> This exercise of power and control can include (but is not limited to) physical violence, financial control and abuse, stalking, psychological aggression, forced isolation from supportive persons, and control relating to immigration status.<sup>9</sup> It is often a cyclical pattern of abuse and can escalate in frequency and severity over time.<sup>10</sup> In many instances, there are a number of co-occurring needs that a family may experience, including, but not limited to substance use, mental health issues, and difficulty meeting basic needs due to poverty and systemic failures toward alleviating economic challenges facing the underserved, and working families.<sup>11</sup> Racism and other disparities compound these harms significantly.

Domestic violence is a global problem impacting people of every race, nationality, ethnicity, class, age, and gender identity. Yet, researchers have consistently found that there are gender, race, and class differences in the rates of victimization.<sup>12</sup> For example, when compared to their White and Latino/a counterparts, Black Americans have reported higher rates of intimate partner violence and compared to women who make more money, women who earned less than \$25,000 or experienced food and housing insecurity reported higher rates of domestic violence.<sup>13</sup> At least 15 million Americans have experienced sexual violence, physical violence, or stalking by an intimate partner in their lifetime.<sup>14</sup> Of those experiencing physical intimate partner violence, 75% of survivors have children under the age of 18 years at home.<sup>15</sup> During the COVID-19 pandemic, it is estimated that officially reported incidents of domestic violence increased by 8.1% in the United States in 2020 following the imposition of stay-at-home orders.<sup>16</sup>

Los Angeles county is home to the largest dependency system<sup>17</sup> in the world.<sup>18</sup> 38% of all children in foster care in California are in Los Angeles County.<sup>19</sup> The dependency system in Los Angeles County is comprised, predominantly, of children and families of color.<sup>20</sup> Black families, and thus Black children, are disproportionately represented in this system.<sup>21</sup> Despite its stated goal to reduce harm and protect victims, the child welfare system can produce intergenerational trauma in its separation of families.<sup>22</sup> These harms, however, must be balanced with the harm of exposure to domestic violence.<sup>23</sup>

Due to mandatory reporting laws and other systemic policies, when survivors experience domestic violence and seek help and/or come into contact with law enforcement, they may subsequently become involved with the child welfare system if there are children in the home.<sup>24</sup>

When a case come to the attention of the Los Angeles County Department of Children and Family Services (“DCFS”), an investigation into the family’s circumstances will help clarify the reasons for referral to the agency.<sup>25</sup> A primary focal point of the investigation is the risk to the child, and therefore, the parent’s protective capacity to offset it.<sup>26</sup> In cases involving domestic violence, an evaluation of protective capacity can include a consideration of whether the survivor has completely separated from the person who perpetrated the domestic violence and is able to provide material necessities for their child(ren).<sup>27</sup> In the event the case becomes subject to court oversight, the child may be adjudicated dependent under California law if the court finds that the parents cannot care for the child.<sup>28</sup> For the reasons that follow, both the processes and the policies which result in the removal of children from the care of their protective parent are ripe for evaluation and reform.

# DOMESTIC VIOLENCE AND REMOVAL – BALANCING THE RISK OF HARM

Much of the child welfare system's aim is to reduce risk of harm to children in the face of abuse or neglect. To the extent that domestic violence poses a risk of harm to children, many are not familiar with the actual psychological risk to the child. The following aims to better articulate those risks, and the strategies that could possibly offset prospective harm.

## Risks and Consequences of Exposure to Domestic Violence for Children

The trauma of domestic violence has profound longitudinal health impacts for adult survivors and their children.<sup>29</sup> Exposure to domestic violence is considered an adverse childhood experience linked to various poor health outcomes in childhood and adulthood.<sup>30</sup> Adverse childhood experiences (ACEs) are a form of toxic stress in early life, defined as “severe, prolonged, or repetitive adversity” in the absence of nurturing adult relationships.<sup>31</sup>

The relationship between ACEs and poor health can be explained by the dysregulation of the chronic stress response, also known as the hypothalamic-pituitary-adrenal axis. In the short term, this stress response is adaptive, but chronic activation of the hypothalamic-pituitary-adrenal axis due to ACEs can lead to dysfunction across multiple physiological levels, such as chronic basal inflammation, impaired cellular immunity, abnormal glucose metabolism, and altered brain structure and function.<sup>32</sup> The prolonged activation of the stress response following ACEs perturbs the body's immune and metabolic systems so much so resulting in significant morbidity and mortality risk over the life course.<sup>33</sup>

Witnessing domestic violence during childhood can lead to neurobiological changes, adjustment and behavioral problems, as well as increase the risk for mental illness like post-traumatic stress disorder.<sup>34</sup> Child-witnessed domestic violence is associated with reduced volume in the visual cortex of the brain and weakened neural connections between the

visual cortex and the limbic system of the brain.<sup>35</sup> Even observing verbal abuse between caregivers without any physical violence is related to a significant reduction of white matter volume in the temporal gyrus, a brain region that correlates with verbal IQ and language comprehension.<sup>36</sup> In sum, early childhood exposure to domestic violence may compromise cognitive functioning and emotional regulation by negatively impacting a child's developing brain.<sup>37</sup>

Moreover, a secure, consistent relationship between caregiver and child is essential for healthy development.<sup>38</sup> However, domestic violence may interfere with a survivor's ability to provide optimal caregiving because of related psychopathology, such as depression and anxiety.<sup>39</sup> Consequently, the adult survivor may find it challenging to buffer the harmful effects of a child's chronically activated stress response. In this way, domestic violence can disrupt a child's developing sense of security and overwhelm the child's capacity for self-regulation, thereby elevating the risk for psychiatric disorders.<sup>40</sup>

## Consequences of Family Separation and Child Welfare Involvement for Children

Although the health impacts of domestic violence exposure during childhood are profound, they should be weighed against the harms of family separation. The allegation that an abused parent is failing to protect their child from domestic violence in the home opens the door to a child welfare investigation, which can ultimately lead to the separation of children from their families. While there is limited research evaluating the outcomes of foster care placement in the setting of domestic violence, there is emerging research isolating the impacts of foster care placement from that of child maltreatment, more broadly.<sup>41</sup> Extension of this research to cases of failure to protect from domestic violence suggests that removing children from their primary caregivers and placing them in foster care can often result in significant harm as well.<sup>42</sup>



While foster care is considered a protective intervention in certain child maltreatment cases, there is limited evidence to support such a drastic intervention for children witnessing domestic violence, especially when there is serious trauma associated with family separation and unstable foster care placement as well. Of all the ACEs that disrupt attachment relationships between children and their caregivers, forced separation from a caregiver is the most significant independent predictor of risk for emotional and behavioral problems in childhood.<sup>43</sup> In fact, children who experience foster care demonstrate higher levels of behavioral problems compared to maltreated children who remain at home.<sup>44</sup>

Furthermore, child welfare involvement represents an additional risk for psychopathology independent of child maltreatment.<sup>45</sup> Adults who experienced out of home placement between the ages of two to six had greater odds of psychiatric and neurodevelopmental disorders than those adults who were never removed from their homes as children but experienced similar early life circumstances.<sup>46</sup> Parent-child separation in early childhood is also associated with shortened telomeres, a biomarker of molecular aging, which may explain in part these poor mental health outcomes observed later in life.<sup>47</sup> Additionally, in comparison to maltreated children who remain with their birth families, children in foster care are more likely to develop a reactive attachment disorder, where the child is unable to establish lasting, healthy bonds with caregivers.<sup>48</sup> Not only do these children have “difficulty forming emotional attachments to others,” but they also have increased risk of depression, anxiety and hyperactivity along with reduced frustration tolerance.<sup>49</sup> The mental health burden stemming from child welfare involvement cannot be understated when making the decision to separate children from their families.

In particular, placement instability, or “the unplanned termination of a foster care placement,”<sup>50</sup> further contributes to the adverse health outcomes affecting children’s cognitive development,<sup>51</sup> behavioral wellbeing,<sup>52</sup> and physical development.<sup>53</sup> The trauma of

placement disruption makes it challenging for children to form secure attachments to their new foster parents and consequently, they display behavioral problems, which only increases their risk for another disrupted placement.<sup>112</sup> Unfortunately, placement changes are a common occurrence among foster children,<sup>113</sup> and children with unstable foster care placements have blunted cortisol production patterns indicating dysregulation of their chronic stress response.<sup>54</sup> In the absence of consistent and responsive caregiving, children will suffer the harmful effects of a chronically activated stress response due to placement instability.

Given the substantial disruption experienced by children as they leave their familiar environments to enter foster care, it is no wonder the health consequences of foster care placement are both pervasive and longitudinal. Most notably, individuals who were placed in out-of-home care as children had increased all-cause mortality risk across ages 20 to 56 compared to those who experienced child maltreatment but remained at home.<sup>55</sup> Similarly, children placed in foster care were more likely to enter the criminal justice system as adults than maltreated children who stayed with their families<sup>56</sup> For these reasons, it is important to carefully consider the health impacts of foster care and work towards keeping families safely together.

*“We need to think about the harm that investigations cause; we need to think about the harm even temporary removals cause. If the only allegation is failure to protect, removal from mom for two weeks may seem like a safe thing to do from the social worker's perspective, but are we thinking about what it means for parents and children to be separated, even for a short period of time?”*

– Legal Aid Provider, Interview



# UNDERSTANDING DOMESTIC VIOLENCE

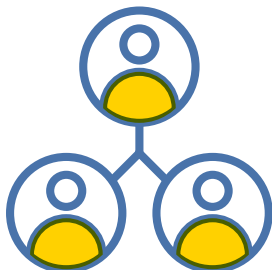
Domestic violence presents complex and challenging circumstances, which are often compounded by other factors and family dynamics. Understanding domestic violence is critical toward making appropriate recommendations and case plans for all parties involved, including the judicial officers, attorneys, social workers, and other professionals involved with the case. Several of the practitioners who we interviewed highlighted the importance of and need for specialized training on domestic violence. One judge who we interviewed said that the most impactful training she received was the *In Her Shoes* exercise.<sup>57</sup> This exercise conveys the cyclical nature of domestic violence and the difficult choices that a survivor faces when attempting to leave a domestic violence situation. There are several personal, cultural, financial, and social obstacles to a survivor's ability to leave a domestic violence situation which can be difficult to comprehend for those who have never themselves been in such a situation.<sup>58</sup>

## RECOMMENDATION 1:

### TRAINING

***Training on domestic violence for professionals involved in the child welfare system to understand domestic violence, the power and control dynamics, and the trauma experienced by survivors is needed.***

The current lack of training can result in state actors not believing survivors. Not understanding the dynamics of power and control can lead to a state actor blaming survivors for not leaving a domestic violence situation, an unwillingness or inability to recognize protective parenting capacities which a survivor demonstrates, and recommending services or solutions which make things worse, fall back on a quick fix of removing children from the situation, or which do not address the root causes of domestic violence. On the flip side, some behaviors that bring a family to the attention of DCFS, such as yelling or verbally fighting in front of children, might be mislabeled as domestic violence. Yelling or fighting between parents, in particular, may be due to undeveloped communication skills, especially in young couples, and might be better remedied through couples counseling or healthy relationship classes—not a batterer's intervention program.



# CALIFORNIA'S CHILD WELFARE SYSTEM

## - A SURVIVOR'S JOURNEY

In Los Angeles County, the child welfare system operates pursuant to California law and local DCFS policies. The juvenile court may also apply various local court rules in its operation. For many families, the first contact with the child welfare system will be due to mandatory reporting. In most cases, after a series of court hearings and the introduction of services intended to remedy to reasons for removal, reunification or a permanency plan will be imposed. This section follows a chronological journey from the outset of involvement with the child welfare system to its conclusion.

### Mandatory Reporting

California law outlines the professionals<sup>59</sup> subject to mandated reporting responsibilities when they reasonably suspect<sup>60</sup> domestic violence, child abuse, or child neglect.<sup>61</sup> The responsibilities of a mandated reporter are outlined in California's criminal penal code. Failure to report an incident of known or reasonably suspected child abuse or neglect is a "misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars (\$1,000) or by both that imprisonment and fine."<sup>62</sup>

Reporting, especially among teachers and school personnel, is a straightforward procedure, leaving little to discretion. In Los Angeles County, calls may be made to 9-1-1 or the LA County child abuse hotline. Calls to either 9-1-1 or the hotline may result in an investigation by DCFS. Mandatory reporting laws intend to "protect vulnerable populations who may otherwise be unable to protect themselves and to respond to violence that often occurs in the private sphere."<sup>63</sup> In the course of a day, a family may encounter several mandatory reporters, such as a teacher, doctor, nurse, therapist or coach. Families of color and low-income families encounter mandated reporters at a greater frequency and are the subject of more reports than wealthy and White families.<sup>64</sup>

Unlike mandated reporting laws for child abuse or neglect, in California, only a health practitioner who provides medical services for a physical condition is mandated to report *domestic violence* to a local law enforcement agency pursuant to the California Penal Code.<sup>65</sup> However, some mandated reporters may err on the side of caution due to the risk of child safety and criminal penalties for not reporting and thus, when they gain knowledge of child-witnessed domestic violence, may report anyway.<sup>66</sup> Additionally, with respect to mandatory reporting and domestic violence, some have argued that mandatory reporting is tied to a view that survivors have a diminished capacity to care for their children when experiencing domestic violence.<sup>67</sup> We hope to challenge this perception in this report and convey that a survivor in fact demonstrates several protective capacities which a state actor may overlook. While a survivor may exhibit promising parenting skills, the mere suggestion of domestic violence could result in not only a call to the child abuse hotline, but also a full investigation by both DCFS and law enforcement, and possible removal of the child(ren). This phenomenon subjects survivors to a paradox: "Abuse survivors who flee without their children are demonized, and women who stay in abusive relationships are critiqued and blamed, particularly when they have children. The service provider may have a pre-selected answer for solving the abuse, but this may run contrary to the survivor's vision."<sup>68</sup> Furthermore, mothers of color are more likely than White mothers to be reported to child welfare agencies for domestic violence related concerns.<sup>69</sup> A UCLA Pritzker Center survey— 52.9% of respondents strongly agreed or agree that mandatory reporting complicates working with families experiencing domestic violence.



*"The punitive structure of mandated reporting in California encourages folks to report when their gut says something is wrong or seems off because, if they are wrong, they could face of liability or find themselves in the news, and we don't see the harm in making a report. This creates a dynamic where people report, just to be safe, for reasons they can't quite pinpoint, which are often rooted in implicit bias."*

-Legal Aid Provider, Interview




## RECOMMENDATION 2:

# GUIDANCE ON DOMESTIC VIOLENCE

Mandated reporters are often tasked with evaluating private family behaviors for indications of child abuse and neglect. This evaluative process invites prejudices and may lead to false reports where a mandated reporter substitutes their preexisting prejudices for a parent's judgment. **Mandated reporters should be legally required to all engage in baseline training which includes, at minimum, modules on the dynamics of power and control present in domestic violence situations and implicit bias training.** We recognize that this training will not erase all prejudice from the judgments of mandated reporters, but hope that it can reduce some of the racial disparities present in child welfare referrals and promote a careful evaluation of harm instead of blanket domestic violence referrals.

## Investigation

Domestic violence is complex.<sup>70</sup> Many child welfare practitioners are ill equipped to navigate and respond to this complexity due to limited training or minimal exposure to and understanding of domestic violence.<sup>71</sup> Some of this complexity is due to the cultural stigma<sup>72</sup> surrounding domestic violence and the co-occurring conditions<sup>73</sup> that both survivors and person who causes harm's experience. At the investigation stage, social workers are seeking to understand the circumstances of a family, while also assessing the need for removal of the child(ren). In some instances, social workers may suggest, or require, a restraining order, which may be impractical for several reasons.<sup>74</sup> It is at this stage, when the child is most at-risk of removal, that effective and supportive services directed at safely keeping the family together must be considered. Understanding the complexities at this stage of the case, some jurisdictions have incorporated staff specialized in domestic violence to support their social workers.



*“We need to think about the harm that investigations cause. Are we really thinking about what it means for parents and children to be separated even for a short period of time?”*

– Legal Aid Provider, Interview



## Domestic Violence Specialists

San Francisco Department of Children, Youth and their Families (SF-DCYF) employs a Domestic Violence Specialist, in partnership with the Riley Center, a local community-based organization that serves survivors. The Domestic Violence Specialist at SF-DCYF works alongside social workers to evaluate cases, prepare safety plans, and make recommendations for intervention services to the court. In our conversations with staff in this role, we learned about the ability to aid social workers in designing feasible safety plans for families, assigning relevant and helpful services, and encouraging the social workers and courts to use trauma-informed language in their official communications. Massachusetts has a similar model in their Department of Children and Families. In Massachusetts, there is a Domestic Violence Unit within the Department of Children and Families which “consults with social workers . . . on cases to assist staff in designing safe interventions, that decrease risk and keep children with the non-abusive parent, when it is possible.”<sup>75</sup>

### RECOMMENDATION 3: DV SPECIALISTS

The domestic violence specialist plays a unique role within the child welfare agency, often assisting child welfare workers toward understanding the unique and dynamic issues present by domestic violence. **Los Angeles County may consider the implementation of a similar model, aimed at safely reducing removals, through a pilot study and partnership with a local DV organization.** From this piloted program, Los Angeles County may determine the impact on removal and reunification, and subsequently consider countywide expansion of the initiative.

### Family First Prevention Services Act

The Family First Prevention Services Act (FFPSA), enacted as part of Public Law (P.L.) 115—123, authorized new optional title IV-E funding for time-limited prevention services for mental health, substance abuse, and in-home parent skill-based programs for children or youth who are candidates for foster care.<sup>76</sup> In order to qualify for services covered by FFPSA, the child must be deemed “at-risk” of entering foster care.<sup>77</sup> States define when a child is “at-risk” and California is currently drafting its policy.<sup>78</sup> Additionally, a program must be evidence-based in order for the FFPSA to cover the cost of its services.

The FFPSA Clearinghouse reviews and rates programs to determine their qualification for FFPSA claiming based on proposals from states, input from other stakeholders, environmental scans, and an inventory of the literature.<sup>79</sup> There is currently no approved service or program that specifically addresses the needs of domestic violence survivors.

### RECOMMENDATION 4: APPROVE DV PROGRAMS UNDER FFPSA

States define when a child is “at-risk” and California is currently drafting its policy. **California Should Include Parent and Child Survivors of Domestic Violence as an Eligible Candidate Population for Family First Prevention Services Act (FFPSA) Funding and Submit Domestic-Violence Focused Intervention Programs and Services to the FFPSA Clearinghouse for Review and Approval.** Policymakers may be reluctant to include such a broad population in their definition of “at-risk” due to the limited funding available. However, because domestic violence is such a pervasive issue that brings so many children into foster care, this population of survivors must be candidates for FFPSA coverage if the number of children in care is going to be significantly reduced. Moreover, although some programs already approved by the FFPSA clearinghouse can be utilized for survivors, no approved program is currently explicitly tailored to serve survivors of domestic violence.<sup>80</sup> We recommend that more programs specific to the plight of domestic violence survivors be nominated for approval and approved for FFPSA coverage.

### The Role of the Court

The role of the court and its judicial officers in dependency matters cannot be overstated. For this reason, specialized courts within the juvenile system have shown to be effective in adjudicating complex cases with difficult issues such as human trafficking and domestic violence. Some of the most illuminating interviews we conducted were with practitioners in Lincoln County, Nebraska. In Lincoln County, there is a specialized domestic violence track in the county’s dependency court. A judge, who has a background working with families who have experienced domestic violence, presides over all cases determined to involve domestic violence. All the lawyers who appear in front of this judge get specialized training on the dynamics of domestic violence. And all the social workers

who bring cases in front of this judge also receive domestic violence training. The program is evaluated by University of Nebraska's Center on Children, Family, and the Law.

Los Angeles County has had great success with specialized juvenile courts. Stemming from the successful movement to shift the narrative from "child prostitution" to "commercial sexual exploitation of children," the Dedication to Restoration through Empowerment, Advocacy, and Mentoring ("DREAM") Court for commercially and sexually exploited children and youth ("CSEC/Y") under DCFS's jurisdiction was established.<sup>81</sup> The specialized practices of the DREAM Court include:

a specialized CSEC/Y docket, a dedicated judge who handles all CSEC/Y-related cases to maintain consistency, special training for judicial officers, court staff, and lawyers (e.g., dependency attorneys. . . and county counsel), multidisciplinary case planning, more frequent court visits (. . . at least once every three months in the DREAM Court, as compared to once every six months in other juvenile courts), a stronger emphasis on youth voice, and a strengths-based, rather than deficit-focused, approach.<sup>82</sup>

When the court was established in 2016, all new cases filed under WIC 300(b)(2), involving CSEC/Y "whose parents or guardians were unable or unwilling to protect them"<sup>83</sup> from commercial sex exploitation were automatically assigned to the DREAM Court. Any existing case involving CSEC/Y could be transferred to the DREAM court at any Status Review Hearing or, on request of any party, a hearing could be held to determine whether the case would be transferred.<sup>84</sup> The Judicial Officer makes the final determination as to whether the case could be transferred. If the transfer is approved, the entire family's case is transferred to the DREAM Court, not just the part involving the CSEC/Y. The implementation of this specialized DREAM Court was paired with a regular multi-disciplinary team (MDT) meeting structure.<sup>85</sup>

## RECOMMENDATION 5:

### PILOT A SPECIALIZED COURT

**Los Angeles County could consider creating a specialized domestic violence dependency court track.** Opponents of this proposal may argue that we cannot replicate the system from a single county in Nebraska due to the size and scale of the Los

Angeles dependency court system, especially given the number of cases involving domestic violence. However, a pilot court may provide invaluable guidance toward answering questions about size, scale and sustainability.

## Statutory Responses to Domestic Violence

The UCLA Pritzker Center conducted a 50 State Survey with the purpose of comparing statutory responses to domestic violence within the child welfare system across the United States. Although many families experience domestic violence when they enter the child welfare system, the majority of jurisdictions do not explicitly contemplate domestic violence in their relevant child abuse/neglect<sup>86</sup> statutory schemes. Instead, considerations of domestic violence are left to local child welfare agencies and the impact of domestic violence on a child welfare case can vary based on the social worker, lawyer, or judge's interpretation of the abuse/neglect statute. The following subsections identify three different types of child abuse/neglect statutes.<sup>87</sup>

### Failure to Protect Statutes

Failure to protect statutes are commonly utilized to declare children dependent in situations involving domestic violence. These statutes contemplate an omission on the part of the parent(s). Although a finding of failure to protect is intended to bring a family to the attention of social service agencies so that the family can benefit from services and support, some social workers interpret both the language and the outcome of a "failure to protect" allegations as placing the blame on survivors for the conditions of the survivor's own victimization.<sup>88</sup> This narrative reaches survivors which can lead to them blaming themselves as well when the whole system, from the language that the statute and state actors use to the way the state treats survivors, places the blame on survivors.

California's statutory definition of abuse/neglect contains such a failure to protect provision. The California Welfare and Institutions Code §300(b)(1) states:

The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately

supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse. A child shall not be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family.<sup>89</sup>

For survivors of domestic violence in particular, there are several parts of this section that can lead to a survivor to temporarily lose custody of their child due to the conditions of their victimization. The term "substantial risk" means that in order to invoke this statute, harm does not have to occur.<sup>90</sup> Additionally, a child can be removed under §300(b) due to "the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse."

In domestic violence cases, these provisions enable the agency to argue that a domestic violence survivor suffers from mental illness as a result of the trauma of

domestic violence and thus unable to provide sufficient care for their child.<sup>91</sup> This argument pathologizes domestic violence in a manner that is harmful to survivors when compounded with the other stigma surrounding domestic violence.<sup>92</sup>

Failure to protect statutes also position the survivor as the problem, while shifting the burden away from the person who creates the harm to account for the violence in the relationship. In a UCLA Pritzker Center survey, 88% of respondents strongly agreed or agreed that survivors of domestic violence who stay with the person who perpetrates the harm may risk losing custody of their children due to "failure to protect."

In conversations with survivor advocates and lawyers, they highlighted the ways in which child neglect framed as *failure to protect* faults the survivor and fails to acknowledge the barriers a survivor must overcome to leave a domestic violence situation. There is a myriad of personal, cultural, financial, and social obstacles that inhibit a victim's ability to leave their perpetrator.<sup>93</sup> Some of these obstacles include (but are not limited to) fear of retaliation, lack of economic resources, immigration concerns, language barriers which prevent access to supportive services, isolation forced by the person who is controlling the survivor and thus a lack of a support network, and hope that one's partner will change.<sup>94</sup>



*"Failure to protect disadvantages the victims, for crimes of the perpetrator."*

- Legal Aid Provider, Interview



People who commit domestic violence employ various strategies to retain power and control. Isolation is a common tool used to exercise power and control, and is exacerbated by other circumstances such as immigration status or language barriers which prevent a survivor from accessing support services.<sup>95</sup> In its many forms, isolation may result in limited access to others who could serve as a source of support.<sup>96</sup> Isolation may also limit employment opportunities, and therefore make the survivor financially reliant on the person controlling the survivor or causing harm.<sup>97</sup> These factors make homelessness increasingly likely among domestic violence survivors and their children, thus reducing the feasibility of “leaving.”<sup>98</sup> Some survivors may remain in the household to appease the person creating the harm as a protective measure to safeguard their children and prevent the person creating the harm from targeting the child(ren) or retaliating in a violent manner.<sup>99</sup> In fact, the most life-threatening period in an abusive relationship is once the survivor has attempted to leave, as over 70% of domestic violence murders occur after the survivor has left.<sup>100</sup> The survivor’s fear that a person creating harm may follow through on their threats cannot be discounted.<sup>101</sup> One victim advocate who we spoke to emphasized the fear that a survivor experiences. She stated that it is often hard for a judge to understand the fear of a domestic violence survivor. Because of this complexity, a survivor must make difficult choices every day to ensure the safety of themselves and their children. Despite these obstacles, domestic violence survivors may eventually leave the situation, although it on average takes five to seven attempts spanning several years.<sup>102</sup> A victim’s perceived “inaction” is therefore often the result of a calculation to maximize both the safety of the child and victim. These calculations hardly demonstrate a failure to protect, but rather a classic Hobson’s choice—no choice at all.

The protective capacity plays a prominent role in a social worker’s evaluation of a survivor’s ability to care for their child.<sup>103</sup> In balancing the risk to the child with the protective capacity of the parent, a social worker may consider whether the survivor has moved into a domestic violence shelter, changed the locks on the house, or asked a relative move in. A social worker may also envision protective capacity as looking like a survivor working to obtain a restraining order.<sup>104</sup> Yet, as explained, these indicators of protective capacity can be difficult for a domestic violence survivor to achieve due to barriers to seeking help including fear, stigma, and language barriers.<sup>105</sup>

Many failure to protect statutes place limits on the court’s ability to make inferences from certain conditions. For example, in California, “[a] child shall not be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family.”<sup>106</sup> And in Massachusetts, “inadequate economic resources or . . . the existence of a handicapping condition” cannot alone form the basis of a finding of neglect.<sup>107</sup> Advocates for statutory reform may consider making domestic violence an exception to the definition of neglect, much like how homelessness or poverty is currently an exception in California and Massachusetts.<sup>108</sup>

The Family Violence Appellate Project recently successfully advocated for the publication of two appellate cases that will positively impact the experiences of victims and survivors in dependency proceedings. In *In re JM* where the California Court of Appeals recognized that even where a survivor does “not immediately break free from the cycle of abuse,” it is not necessarily in the child’s best interest to deny the survivor who later separates from the person who creates the harm and demonstrates protective capacities the opportunity to reunify with their child.<sup>109</sup> In *In re I.B.* (2020), the court engaged in an in-depth discussion of the “enormous difficulty in separating from a controlling and dominating abuser” and how “the path to independence from an abusive relationship is neither linear nor the same for everyone.”<sup>110</sup> In this case, the court reasoned that despite the time it took for the mother to fully separate from her abusive partner, there were several indicators that the mother had worked to improve her self-esteem and become independent enough to adequately support and care for her child.<sup>111</sup> The court held that sufficient evidence supported finding that the mother permanently ended the relationship with the abusive father and it was in the child’s best interest to be returned to her mother’s care.<sup>112</sup> These cases demonstrate the importance of litigation in mitigating the impacts of the failure to protect statute on the lives of survivors.

## Environmental Circumstances Statutes

Some statutes focus on the environment created by the caregiver and how that environment creates a risk of harm for the child. Whereas failure to protect statutes address the parent’s omissions, an environmental statute addresses the overall conditions of the home. Environmental neglect is the second most common type of neglect alleged in child maltreatment cases.<sup>113</sup>



One example of an *environmental* statute is North Carolina's definition of "neglected juvenile" which states:

(15) Neglected juvenile.--Any juvenile less than 18 years of age (i) who is found to be a minor victim of human trafficking under G.S. 14-43.15 or (ii) whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; **or who lives in an environment injurious to the juvenile's welfare.** . . .<sup>114</sup>

An injurious environment is one that places the child "at a substantial risk to suffer from any physical, mental, or emotional impairment as a consequence of living in [the parent's] home."<sup>115</sup> Exposure to domestic violence is one condition which can create an injurious environment and thus constitute a finding of neglect leading to the removal of a child.<sup>116</sup>

One recent North Carolina demonstrates how an environmental statute can penalize a parent for any choice they make. In *Matter of B. T. J.*, the Department of Social Services ("DSS"), North Carolina's child welfare agency, reasoned that because the mother obtained a domestic violence protective order against the child's father, the father could not care for the child. When DSS received a report that the mother had overdosed in the child's presence, DSS filed a petition alleging that the child was neglected and dependent because neither parent could care for the child.<sup>117</sup> Here, the mother did what she was supposed to, she obtained a restraining order from an abusive partner.<sup>118</sup> But, as a result, the child was placed in foster care because while the investigation was pending, DSS felt like neither parent could care for the child.<sup>119</sup> Despite the mother's attempts to seek treatment for her drug addiction, the court terminated the mother's parental rights due to her inability to maintain stable housing and employment.<sup>120</sup> The *environmental* definition of neglect was key to this determination because the court found that the mother's recent drug relapse, lack of stable housing, and lack of employment was not enough to rectify the issues that led to the finding of neglect in the first place nor "diminish the probability that [the child] would likely be neglected again if he returned to her care."<sup>121</sup>

South Dakota also has an *environmental* definition of abuse/neglect. In South Dakota, an abused or neglected child is one "(3) Whose environment is

injurious to the child's welfare."<sup>122</sup> Environmental statutes allow courts to impose their own morality and judgment on the actions of parents.<sup>123</sup> In *Matter of D.A.B.*, the Supreme Court of South Dakota affirmed the trial court's finding that an injurious environment was present where the mother "was still associating with the abusive stepfather on a regular basis."<sup>124</sup> The trial court reasoned that the "potential harm would result if the parent-child relationship were to continue under these circumstances. Little purpose is served if a dependent and neglected child remains in such a potentially injurious environment."

## Specification Statutes

The last category of child abuse/neglect statutes specifically address the uniqueness of domestic violence. These statutes were the focus of the out-of-state interviews for this project.

In Washington the statute defining child neglect explicitly states, "[p]overty, homelessness, or exposure to domestic violence as defined in RCW 26.50.010 [domestic violence definition statute] that is perpetrated against someone other than the child does not constitute negligent treatment or maltreatment in and of itself."<sup>125</sup> One interviewee from Washington emphasized that despite the statutory text, it can be difficult for a survivor to utilize this statutory provision. This lawyer noted that child welfare social workers may not consider the statute when removing children, and thus it is up to parents to appeal the removal decision. Furthermore, although a parent's victimization itself cannot be a ground for removal, the ways in which a parent responds to their victimization and the conditions that these responses create for a child can be a ground for removal.<sup>126</sup>

New York's statute<sup>127</sup> is similar to California's, but New York case law has resulted in added considerations for the juvenile court. In *Nicholson v. Scoppetta*, the Court of Appeals of New York held that when a court is tasked with deciding whether a child should be removed from its home:

The court must do more than identify the existence of a risk of serious harm. Rather, a court must weigh, in the factual setting before it, whether the imminent risk to the child can be mitigated by reasonable efforts to avoid removal. It must balance that risk against the harm removal might bring, and it must determine factually which course is in the child's best interests. Additionally, the court must specifically consider whether

imminent risk to the child might be eliminated by other means, such as issuing a temporary order of protection or providing services to the victim.<sup>128</sup>

After *Nicholson*, the Administration for Children's Services (ACS), New York's child welfare agency, removed fewer children from their parents and charged fewer survivors "of domestic violence with neglect solely because of the exposure of their children to domestic violence."<sup>129</sup> Additionally, *Nicholson* has led to increased training of child welfare workers.<sup>130</sup> Statutory change has also resulted from the decision which mandated domestic violence training for all child welfare workers.<sup>131</sup> Despite these positive changes, there are still several ways in which the child welfare system in New York needs improvement. Nevertheless, *Nicholson* has forced courts and social workers to take a more nuanced approach to domestic violence and child welfare and balance the harms of removal with the harms of domestic violence.

#### RECOMMENDATION 6:

### STATUTORY CHANGE

In a UCLA Pritzker Center survey, 66.1% of respondents strongly agreed or agreed that child abuse and neglect laws penalize domestic violence survivors unfairly. ***California may consider statutory change which takes into account additional factors when faced with an allegation of domestic violence as contributing to parental deficiency.*** Meanwhile, case law can serve as an important vehicle toward change. Indeed, the focus on services, coupled with the understanding that removal shall not take place solely because of domestic violence, has enhanced training and investigation. ***California should consider similar legislative and practice-based reforms pursuant to the guidance set forth in Nicholson.***

### Reunification Services

Following a child's removal, barring exceptional circumstances, services will be ordered to facilitate reunification. The following outlines considerations at this stage of the case where domestic violence played a role in the child's removal.

Despite the pervasiveness of domestic violence in the United States, 77% of respondents to a UCLA Pritzker Center survey agreed or strongly agreed that mothers experiencing domestic violence can face difficulty receiving help for domestic violence. There are several

reasons why a survivor may experience difficulty accessing domestic violence advocacy services. Many workers at help-providing organizations are mandated reporters and thus a survivor may be afraid to risk removal of their child in order to receive help. The stigma surrounding domestic violence might lead to an unwillingness of survivors to disclose the conditions of their victimization. Domestic violence itself is a highly stigmatized condition and its underlying causes, such as mental health struggles, carry their own stigma as well.<sup>132</sup> A person's culture may further stigmatize the circumstances giving rise to domestic violence, such as a father's inability to financially support his family or seeking help for mental health problems and thus impede a survivor's willingness to seek help or engage with services.<sup>133</sup>

Immigrant and undocumented women who are victims of domestic violence may not seek out services of community organizations such as domestic abuse shelters, child welfare organizations and police enforcement because of isolation,<sup>134</sup> cultural differences,<sup>135</sup> language barriers,<sup>136</sup> and fear of law enforcement.<sup>137</sup> Furthermore, the immigrant women's legal status can be tied to her marriage with the person who is causing harm or exercising control over the survivor. Additionally, xenophobia and racism among first responders and other victim services providers may prevent a survivor from seeking services.<sup>138</sup>

These factors necessitate a unique menu of services, which are both essential and required in most circumstances under California law, toward the goal of preventing the removal of children in the first place or reunifying families. Nevertheless, in a UCLA Pritzker Center survey, 62.3% of respondents agreed or strongly agreed that once in foster care due to domestic violence, it is difficult for families to reunify due to an absence of effective services. Our interviews yielded insightful commentary around the services provided to families experiencing domestic violence. Many interviewees mentioned that the services recommended and sometimes required by DCFS and the dependency court system for survivors are not specified to the complex dynamics of an individual's specific situation. Some interviewees reported that judges will assign anger management and batterers interventions services interchangeably, despite the different goals and applicability of the programs. Even more narrowly, teen parents in foster care involved in "teen dating violence" possess especially unique needs, requiring even more specific and targeted support.<sup>139</sup>





*"I would like to see more of an emphasis on financial support. We can give the family all of the mental health support to process what is going on but at the end of the day if that woman who was previously a stay home mom has no job and doesn't even know how to get a job, she may unlikely to leave the home, and more likely to ensure risk to meet the needs of her children."*

– Child Advocate, Interview



## RECOMMENDATION 7:

### TARGETED DOMESTIC VIOLENCE SERVICES

It follows that training and a better understanding of domestic violence would lend itself to more nuanced service recommendation. To increase the likelihood of reunification, reduce recidivism and help family reunification, ***a more nuanced approach to services should be developed, and more targeted and effective domestic violence services should be provided. These services should have provided to families free of charge, and in a culturally competent manner.*** Furthermore, while many services are funded pursuant to contracts with various LA County agencies, most of the domestic violence organizations interviewed, were not contractors with DCFS, despite service delivery to DCFS involved families. ***This arrangement should be evaluated to ensure equity among service providers supporting DCFS families, and in furtherance of compensating the organizations that support the mission of reunifying families.***

#### Housing and Financial Support

As an extension of services, housing and financial support are critical toward family reunification. Over 90% of UCLA Pritzker Center survey respondents agree that economic issues relating to housing and employment make it difficult for domestic violence victims to escape a domestic violence situation and build a new life for themselves and their children. Multiple studies have shown that stable housing or a stable income can reduce child neglect and abuse.<sup>140</sup> One of the former foster youth we interviewed highlighted the impact of his father's inability to provide for his family on his sense of masculinity, which led to the father violently exercising control over the family.<sup>141</sup>

For survivors of domestic violence, housing is a barrier to leaving an abusive situation. A UCLA Pritzker Center survey found that 73.7% of respondents strongly agree or agree that shelter and housing options for mothers experiencing domestic violence are limited. A survivor might be subject to financial abuse or isolation from family and friends and thus not have the financial means to find safe housing. Furthermore, a survivor may be worried that the perpetrator of the abuse may find them at the new location and continue to abuse. Domestic violence shelters provide a great resource to survivors but there are not enough beds in domestic violence shelters to keep up with the demand. Additionally, many non-domestic violence shelters cannot accommodate large families or families with older male children, have entry requirements, prohibitions on bringing pets, and other rules.

## RECOMMENDATION 8:

### REEVALUATE ENTRY REQUIREMENTS AND FUND SHELTER SERVICES

***Shelters may consider reevaluating their rules and entry requirements to make their services more accessible to families.*** Likewise, these programs ***should be compensated by the relevant agencies for the support and services they provide to families experiencing domestic violence.***



## Men and Fathers

In many policy initiatives surrounding child welfare and domestic violence, strategies focused on engaging with men and fathers are few and far between. A parent's own family history can impact how they parent, communicate, and process emotions. But there are few groups that allow men and fathers in particular to unlearn unhealthy relationship behaviors. There are several programs in Los Angeles addressing this core issue including Project Fatherhood at Children's Institute, Inc.,<sup>142</sup> the Men's Talking Circle and Men's Fatherhood Program at the East Los Angeles Women's Center,<sup>143</sup> and the Men/Fathers program at Korean American Family Services. These programs allow men to reflect on past relationships, learn about cultivating healthy relationships in the future, learn strategies for healthy conflict resolution, and build healthy coping skills in a non-judgmental environment. Cultural competency is a key focus of these programs which often have mentors or graduates of the program come back to guide new learners through the learning and healing process. Additionally, these programs recognize the impact of trauma, including how intergenerational trauma informs behavior.

### RECOMMENDATION 9:

## SERVE MEN AND FATHERS COMPREHENSIVELY

The success of initiatives focusing on men and fathers in Los Angeles has inspired this recommendation **o support existing and to create new preventative and reparative programs which engage men and fathers.** The programs currently available, which DCFS and the dependency court recommends, for men and fathers who may be cause harm are costly and unwelcoming. For example, many courts require people who cause harm to go to a "batterer's intervention program," which can be very costly,<sup>144</sup> start off with an accusatory tone by blaming the person ordered to attend in the title, and deter engagement for those who do not yet recognize their actions as abusive. A fatherhood intervention program, if evidence-based, could potentially be supported through the Family First Prevention and Services Act.



# CONCLUSION

**There are several opportunities for the state actors of the child welfare system and service providers to meet the needs of children and families who experience domestic violence. In conclusion, this report puts forth nine recommendations that fall into three primary categories: training, specialization, and reform.**

## Training:

Domestic violence is highly stigmatized and often misunderstood. Baseline training on the dynamics of power and control present in domestic violence situations is needed across the child welfare system. Everyone involved, from the dependency court judges to the social workers, and all attorneys who interact with families should receive training about domestic violence and the roles that their colleagues across the system can play in helping families heal.

## Specialization:

Some jurisdictions have explored specialized courts or social workers within the child welfare agency to assist with the unique nature of domestic violence child welfare cases. Los Angeles County should consider creating specialist positions within the dependency court system and DCFS in order to provide ongoing, expert support for families who experience domestic violence. Likewise, a nuanced focus on the needs of men and fathers, and families experiencing housing instability must be addressed.

## Reform:

Significant opportunities exist for legislative reform and policy change. These changes can safely support families in avoiding separation where possible and enhancing the likelihood of reunification.

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## Project Team

Research activities were supervised by Taylor Dudley, JD, and Todd Franke, PhD. Students involved in this work included Kelsey Atkinson, Cecilia Bobbitt, Jendalyn Coulter, Laura Liévano-Karim, Mariam Khan, Taylor Thaxton, Celine To and Nicole Yee.

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# ENDNOTES

1 Throughout this report, the term domestic violence is used to denote harmful and complex circumstances involving power and control between intimate partners. This term encompasses what is also known as domestic abuse, relationship abuse, and other forms of interpersonal violence. This violence is not only physical but can include other forms of abuse such as stalking, financial abuse, emotional abuse, isolation, and verbal abuse. *See What is Domestic Abuse?*, UNITED NATIONS, <https://www.un.org/en/coronavirus/what-is-domestic-abuse> (last visited May 1, 2021) [<https://perma.cc/P5MU-L2YA>] (“Domestic abuse, also called “domestic violence” or “intimate partner violence,” can be defined as a pattern of behavior in any relationship that is used to gain or maintain power and control over an intimate partner. Abuse is physical, sexual, emotional, economic or psychological actions or threats of actions that influence another person. This includes any behaviors that frighten, intimidate, terrorize, manipulate, hurt, humiliate, blame, injure, or wound someone...”). The distinction between intimate partner violence and domestic violence, is that domestic violence includes violence within intimate spaces, such as the home, as opposed to just intimate partnerships, and can also encompass others residing within the intimate space, such children and the elderly. This term is also more frequently used in the child welfare community, and therefore the chosen term for this report.

2 *See* E-mail [internal], to Taylor Dudley, Admin. Dir., UCLA Pritzker Ctr. for Strengthening Child. and Families (Oct. 20, 2020, 4:22 PM PST) (on file with UCLA Pritzker Center). Importantly, at least some of these cases also included other allegations prompting a child welfare investigation.

3 *See, e.g.*, Alan Dettlaff, Kristen Weber, Maya Pendleton, Bill Bettencourt & Leonard Burton, *What It Means To Abolish Child Welfare As We Know It*, THE IMPRINT (Oct. 14, 2020 11:45 PM) <https://imprintnews.org/race/what-means-abolish-child-welfare/48257> [<https://perma.cc/8H6C-WQJJ>].

4 In this report, the term “survivor” is used to denote victims and survivors of domestic violence. For some, the term victim can be empowering in legitimizing the harm done to them. For others, the term survivor is empowering in showing that the person has overcome abuse. Some may identify as both victims and survivors concurrently or at different points in their lifetimes/processes. Additionally, some may just identify as a victim or a survivor. For consistency, this report uses the term “survivor,” but a service provider should follow the lead of the person seeking support and identify them as they wish. *See, e.g.*, WOMEN AGAINST ABUSE, *The Language We Use*, <https://www.womenagainstabuse.org/education-resources/the-language-we-use> [<https://perma.cc/C8KS-3XH3>] (last visited May 1, 2021).

5 *See generally* LOS ANGELES DEP’T OF CHILD AND FAMILY SERVS., Policy 0070-547.13, Concurrent Investigations with Law Enforcement (Dec. 23, 2014), [http://m.policy.dcfslacounty.gov/Content/Concurrent\\_Investigation.htm](http://m.policy.dcfslacounty.gov/Content/Concurrent_Investigation.htm) [<https://perma.cc/3442-GQW8>].

6 *See, e.g.*, Dorothy Roberts, *Abolishing Policing Also Means Abolishing Family Regulation*, THE IMPRINT (June 16, 2020 5:26 AM) <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480> [<https://perma.cc/65N6-F53M>].

7 *See* Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 STAN. L. REV. 1241, 1246 (1991) (“Where systems of race, gender, and class domination converge, as they do in the experiences of battered women of color, intervention strategies based solely on the experiences of women who do not share the same class or race backgrounds will be of limited help to women who because of race and class face different obstacles.”)

8 *See, e.g.*, *What is Domestic Abuse?*, UNITED NATIONS, <https://www.un.org/en/coronavirus/what-is-domestic-abuse> (last visited May 1, 2021) [<https://perma.cc/P5MU-L2YA>]. *See also* Karin Wang, *Battered Asian American Women: Community Responses from the Battered Women’s Movement and the Asian American Community*, 3 ASIAN AM. L.J. 151, 154–55 (1996).

9 *See, e.g.*, Carolyn M. West, *Hidden in Plain Sight: Structural Inequalities and (In)visible Violence in the Lives of African American Women*, in TALKING ABOUT STRUCTURAL INEQUALITIES IN EVERYDAY LIFE: NEW POLITICS OF RACE IN GROUPS, ORGANIZATIONS, AND SOCIAL SYSTEMS 85, 86 (Ellen Short and Leo Wilton eds., 2016). *See also* Wang, *supra* note 8, at 155. *See also* Carolyn M. West, *African Immigrant Women and Intimate Partner Violence: A Systematic Review*, 25 J. AGGRESSION, MALTREATMENT & TRAUMA 4, 12 (2016) (“According to the participants, perpetrators used government systems to abuse them. For example, West African immigrant women reported that their abusive partners used the power of their immigration status (e.g., husband’s U.S. citizenship) to keep the woman in a subordinate position: “When he say sometimes like, ‘I’m American citizen! He can do whatever he want to do’”) (citing Adeyinka M. Akinsulure-Smith, Tracy Chu, Eva Keatley, & Andrew Rasmussen, *Intimate Partner Violence Among West African Immigrants*, 22 J. AGGRESSION, MALTREATMENT & TRAUMA 109, 117 (2013)).

10 *See, e.g.*, Wang, *supra* note 8, at 155

11 *See, e.g.*, Robin Mason & Susan E. O’Rinn, *Co-occurring Intimate Partner Violence, Mental Health, and Substance Use Problems: A Scoping Review*, 7 GLOB. HEALTH ACTION 1, 13 (2014) (finding that intimate partner violence is significantly associated with mental health problems and that frontline workers in the mental health and substance abuse sections lack the training to address these co-occurring problems).

12 *See* West, *supra* note 9, at 86.

13 *Id.* (citing MATTHEW BREIDING, J. CHEN, & MICHELE BLACK, CTRS. DISEASE CONTROL, NAT’L CTR. INJ. PREVENTION & CONTROL DIV. VIOLENCE PREVENTION, INTIMATE PARTNER VIOLENCE IN THE UNITED STATES–2010 (Feb. 2014) [https://www.cdc.gov/violenceprevention/pdf/cdc\\_nisvs\\_ipv\\_report\\_2013\\_v17\\_single\\_a.pdf](https://www.cdc.gov/violenceprevention/pdf/cdc_nisvs_ipv_report_2013_v17_single_a.pdf) [<https://perma.cc/5JFG-9PWD>]).

14 *Preventing Intimate Partner Violence*, CTRS. DISEASE CONTROL, NAT’L CTR. INJ. PREVENTION & CONTROL DIV. VIOLENCE PREVENTION, (Oct. 9, 2020) <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html> [<https://perma.cc/PT6P-8L36>] (last visited Apr. 27, 2021).

15 Z. WEINBAUM, T. STRATTON, S. ROBERSON, E. TAKAHASHI, & M. FATHEREE, *Women experiencing intimate partner violence, California, 1998-2002*, in WOMEN’S HEALTH: FINDINGS FROM THE CALIFORNIA WOMEN’S

HEALTH SURVEY, 1997-2003, Ch. 12, (Z. Weinbaum & T. Thorfinnson eds., 2006)..

16 ALEX R. PIQUERO, WESLEY G. JENNINGS, ERIN JEMISON, CATHERINE KAUKINEN, & FELICIA MARIE KNAUL, COUNSEL ON CRIMINAL JUSTICE, DOMESTIC VIOLENCE DURING COVID-19: EVIDENCE FROM A SYSTEMIC REVIEW AND META-ANALYSIS 9 (Feb. 2021) [https://cdn.ymaws.com/counciloncj.org/resource/resmgr/covid\\_commission/Domestic\\_Violence\\_During\\_COV.pdf](https://cdn.ymaws.com/counciloncj.org/resource/resmgr/covid_commission/Domestic_Violence_During_COV.pdf) [<https://perma.cc/4PP2-REVQ>].

17 In Los Angeles County, child welfare cases proceed in Dependency Court, which is distinct from Family Court and within the juvenile division. Dependency proceedings are governed by the Welfare and Institution Code while Family Court proceedings are governed by the Family Code. Although both Family Courts and Dependency Courts have jurisdiction over the custody and visitation of children, Dependency Court orders take precedent. *See e.g.*, Superior Ct. of Cal. County of Los Angeles, *What does the Juvenile Dependency Court do?*, <http://www.lacourt.org/division/juvenile/JV0011.aspx> [<https://perma.cc/D4R5-2839>] (last visited Apr. 27, 2021). *See also*, SUPERIOR CT. OF CAL. COUNTY OF LOS ANGELES, Chapter Seven Juvenile Division Rules: Jurisdiction, Confidentiality, and Access to Records Proceedings, or Juveniles, Local Rule 7.1, 151, <https://www.lacourt.org/courtrules/CurrentCourtRulesPDF/Chap7.pdf> [<https://perma.cc/GX7T-LDFH>] (last visited Apr. 27, 2021).

18 *See e.g.*, Daniel Heimpel, *Sheila Kuehl Charts Path for Nation's Largest Child Welfare System*, THE IMPRINT (Jan. 25, 2018 9:30 AM) <https://imprintnews.org/featured/sheila-kuehl-charts-path-nations-largest-child-welfare-system/29574> [<https://perma.cc/4DNY-5M6D>] (last visited Apr. 27, 2021).

19 Alliance for Children's Rights, *Who We Serve*, <https://allianceforchildrensrights.org/who-we-serve/> [<https://perma.cc/B52F-B25K>] (last visited Apr. 27, 2021).

20 *See* Emily Putnam-Hornstein, Eunhye Ahn, John Prindle, Joseph Magruder, Daniel Webster & Christopher Wilderman, *Cumulative Rates of Child Protection Involvement and Terminations of Parental Rights in a California Birth Cohort, 1999-2017*, AM. J. PUB. HEALTH (forthcoming 2021) (manuscript at e3) ("The cumulative percentage of Black and Native American children who had CPS encounters [in California] was significantly higher than that of other children. In the cohort overall, approximately half of Black (46.8%) and Native American (50.2%) children were investigated for alleged maltreatment before aged 18 years; both groups experienced all levels of CPS involvement at more than twice the rate of White children in the cohort."); *See generally* CHILDREN'S BUREAU/ACYF/ACF/HHS, RACIAL DISPROPORTIONALITY AND DISPARITY IN CHILD WELFARE 2 (Nov. 2016) [https://www.childwelfare.gov/pubpdfs/racial\\_disproportionality.pdf](https://www.childwelfare.gov/pubpdfs/racial_disproportionality.pdf) [<https://perma.cc/Y3Cu-67FY>]. *See also* 'Abolition Is the Only Answer': A Conversation with Dorothy Roberts, RISE MAGAZINE (Oct. 20, 2020), <https://www.risemagazine.org/2020/10/conversation-with-dorothy-roberts/> [<https://perma.cc/57JC-L8LS>] (last visited Apr. 27, 2021).

21 In 2019, Black children were 2.79 times more likely to be the subject of dependency proceedings in California than White children, 2.29 times more likely than Latino children, 7.07 more likely than Asian children, and 1.21 more likely than Native American children. *See generally*, D. Webster et. al., U. Cal. at Berkeley Cal. Child Welfare Indicators Project, *CCWIP reports* (2020) <https://ccwip.berkeley.edu/childwelfare/reports/DisparityIndices/STSG/r/rts/s> [<https://perma.cc/3E4J-4JR3>].

22 *See* CHILDREN'S RIGHTS LITIGATION COMMITTEE OF THE AMERICAN BAR ASSOCIATION SECTION OF LITIGATION, TRAUMA CAUSED BY SEPARATION OF CHILDREN FROM PARENTS: A TOOL TO HELP LAWYERS 6 (American Bar Association 2020).

23 *See infra* pp. 6-7 (discussing the need to balance the risk of harm from domestic violence with the risk of harm resulting from family separation).

24 *See, e.g.*, Carrie Lippy, Selima N. Jumarali, Nkiru A. Nnawulezi, Emma Payton Williams, & Connie Burk The Impact of Mandatory Reporting Laws on Survivors of Intimate Partner Violence: Intersectionality, Help-Seeking and the Need to Change 35 *Journal of Family Violence* 255, 256 (2020).

25 L.A. Cnty. Dept. Child. Fam. Servs., DCFS Investigations, <https://dcfs.lacounty.gov/parents/investigations/> [<https://perma.cc/NJM6-BLNP>] (last visited Apr. 27, 2021).

26 DIANE DEPANFILIS, CHILD PROTECTIVE SERVICES: A GUIDE FOR CASEWORKERS 15 (2018) <https://www.childwelfare.gov/pubPDFs/cps2018.pdf> [<https://perma.cc/C53T-BEH7>].

27 An evaluation of protective capacity is required as several points in the LA DCFS Structured Decision Making tool. *See* LOS ANGELES DEP'T OF CHILD AND FAMILY SERVS., Policy 0070-548.24 (Nov. 27 2019) [http://m.policy.dcfslacounty.gov/Src/Content/Structured\\_Decision\\_Making.htm](http://m.policy.dcfslacounty.gov/Src/Content/Structured_Decision_Making.htm) [<https://perma.cc/WD7U-9RMN>].

28 *See* Cal. Welf. & Inst. Code § 300 (Deering 2021) ("A child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: (b)(1) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . ."). *See also* *In re Heather A.*, 52 Cal.App.4th 183 (Cal. Ct. App. 1996) (upholding substantiation of petition for parent's "failure to protect" under Cal. Welf. & Inst. Code § 300(b) due to child's exposure to domestic violence sometimes known as "secondary abuse," sufficient to constitute child abuse).

29 *See generally* Jacquelyn C. Campbell & Linda A. Lewandowski, *Mental and Physical Health Effects of Intimate Partner Violence on Women and Children*, 20 *PSYCHIATRIC CLINICS OF NORTH AMERICA* 353 (1997); Jacquelyn C. Campbell, *Health Consequences of Intimate Partner Violence*, 359 *LANCET* 1331 (2002).

30 *See generally* Hillary A. Franke, *Toxic Stress: Effects, Prevention and Treatment*, 1 *CHILDREN* 390 (2014).

31 *See generally* Hillary A. Franke, *Toxic Stress: Effects, Prevention and Treatment*, 1 *CHILDREN* 390 (2014).

32 *See generally* Kathryn K. Ridout, Mariam Khan, and Samuel J. Ridout, *Adverse Childhood Experiences Run Deep: Toxic Early Life Stress, Telomeres, and Mitochondrial DNA Copy Number, the Biological Markers of Cumulative Stress*, 40 *BIOESSAYS* 1 (2018).

33 *See generally* M.A. Bellis et. al., *Measuring Mortality and the Burden of Adult Disease Associated with Adverse Childhood Experiences in England: A National Survey*, 37 *J. PUB. HEALTH* 445 (2015).

34 *See generally* Areti Tsavoussis, *Child-Witnessed Domestic Violence and its Adverse Effects on Brain Development: A Call for*



- Societal Self-Examination and Awareness*, 2 FRONTIERS IN PUB. HEALTH 1 (2014).
- 35 See generally Isabelle Mueller & Ed Tronick, *Early Life Exposure to Violence: Developmental Consequences on Brain and Behavior*, 13 FRONTIERS BEHAV. NEUROSCIENCE 1 (2019).
- 36 See generally *id.*
- 37 See generally *id.*
- 38 See generally Hillary A. Franke, *Toxic Stress: Effects, Prevention and Treatment*, 1 CHILD. (BASEL) 390 (2014).
- 39 See generally Mueller & Tronick, *supra* note 35.
- 40 See generally Ronald C. Kessler et. al., *Childhood Adversities and Adult Psychopathology in the WHO World Mental Health Surveys*, 197 BRIT. J. PSYCHIATRY 378 (2010).
- 41 See generally Shanta Trivedi, *The Harm of Child Removal*, 43 N.Y.U. Rev. L. & Soc. Change 523 (2019).
- 42 See generally Brenda M. Ewen, *Failure to Protect Laws: Protecting Children or Punishing Mothers?*, 3 INTERPERSONAL VIOLENCE 84 (2007).
- 43 See generally Kristen R. Choi et. al., *The Impact of Attachment-Disrupting Adverse Childhood Experiences on Child Behavioral Health*, 221 J. PEDIATRICS 224 (2020).
- 44 See generally Catherine R. Lawrence, Elizabeth A. Carlson & Byron Egeland, *The Impact of Foster Care on Development*, 18 Dev. & Psychopathology 57 (2006).
- 45 See generally Michael W. Naylor, Sarah M. Wakefield, Wynne Morgan, & Alka Aneja, *Depression in Children and Adolescents Involved in the Child Welfare System*, 28 Child & Adolescent Psychiatric Clinics N. Am. 303 (2019).
- 46 See generally Sylvana M. Côté, Massimiliano Orri, Mikko Marttila, & Tiina Ristikari, *Out-of-Home Placement in Early Childhood and Psychiatric Diagnoses and Criminal Convictions in Young Adulthood: A Population-Based Propensity Score-Matched Study*, 2 LANCET CHILD & ADOLESCENT HEALTH 647 (2018).
- 47 See generally Xingxing Chen et. al., *Associations Between Early Life Parent-Child Separation and Shortened Telomere Length and Psychopathological Outcomes During Adolescence*, 103 PSYCHONEUROENDOCRINOLOGY 195 (2019).
- 48 See generally *id.*
- 49 See generally ELIZABETH E. ELLIS, MUSA YILANLI, & ABDOLREZA SAADABADI, *REACTIVE ATTACHMENT DISORDER* (2021).
- 50 See generally ERIN SUGRUE, ALIA, *EVIDENCE BASE FOR AVOIDING FAMILY SEPARATION* (2019) <http://www.thetcj.org/wp-content/uploads/2019/10/Alia-Research-Brief-2019.pdf> [<https://perma.cc/BR98-C4H4>].
- 51 See generally Phillip A. Fisher, Anne M. Mannering, Amanda Van Scoyoc, & Alice M. Graham, *A Translational Neuroscience Perspective on the Importance of Reducing Placement Instability Among Foster Children*, 92 CHILD WELFARE, no. 5, 2015, at 9.
- 52 See generally David M. Rubin, Amanda L. R. O'Reilly, Xianqun Luan, & A. Russell Localio, *The Impact of Placement Stability on Behavioral Well-Being for Children in Foster Care*, 119 PEDIATRICS 336 (2007).
- 53 See generally Dana E. Johnson et. al., *Caregiving Disruptions Affect Growth and Pubertal Development in Early Adolescence in Institutionalized and Fostered Romanian Children: A Randomized Clinical Trial*, 203 J. PEDIATRICS 345 (2018).
- 54 See generally Philip A. Fisher, Mark J. Van Ryzin & Megan R. Gunnar, *Mitigating HPA Axis Dysregulation Associated with Placement Change in Foster Care*, 36 PSYCHONEUROENDOCRINOLOGY 531 (2011).
- 55 See generally Menghan Gao, Lars Brännström, & Ylva B. Almquist, *Exposure to Out-of-Home Care in Childhood and Adult All-Cause Mortality: A Cohort Study*, 46 INT'L J. EPIDEMIOLOGY 1010 (2016).
- 56 See generally Joseph J. Doyle Jr., *Child Protection and Adult Crime: Using Investigator Assignment to Estimate Causal Effects of Foster Care*, 116 J. Pol. Econ. 746 (2008); Miyoung Yoon, Anna E. Bender, & Jiho Park, *The Association Between Out-of-Home Placement and Offending Behavior Among Maltreated Youth: A Systematic Review*, 95 Child. & Youth Services Rev. 263 (2018).
- 57 Washington State Coalition Against Domestic Violence, *In Her Shoes* <https://wscadv.org/training-kits/in-her-shoes/> [<https://perma.cc/MY3W-8324>] (last visited May 1, 2021).
- 58 See *infra* p. 16 (discussing the myriad of reasons why it is difficult for a survivor to escape a domestic violence relationship).
- 59 See list of mandated reporters at Cal. Pen. Code § 11165.7 (a) (Deering 2021).
- 60 Reasonable suspicion “means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on the person’s training and experience, to suspect child abuse or neglect. “Reasonable suspicion” does not require certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect; any “reasonable suspicion” is sufficient.” Cal. Pen. Code § 11166 (c) (Deering 2021).
- 61 A mandatory reporter in California must report, “whenever the mandated reporter, in the mandated reporter’s professional capacity or within the scope of the mandated reporter’s employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.” Cal. Pen. Code § 11166 (Deering 2021).
- 62 Cal. Pen. Code § 11166 (c) (Deering 2021).
- 63 Lippy et al., *supra* note 24, at 255 (citing Carol E. Jordan & Adam J. Pritchard, *Mandatory reporting of domestic violence: What Do Abuse Survivors Think and What Variables Influence Those Opinions?*, 36 J. INTERPERSONAL VIOLENCE 4170 (2018)).
- 64 See CHILD INFO. GATEWAY, *RACIAL DISPROPORTIONALITY AND DISPARITY IN CHILD WELFARE* 6 (Nov. 2016). See also *Our Systems Meant to Help Are Hurting Black Families*, NAT’L INSTITUTE FOR CHILD.’S HEALTH QUALITY, <https://www.nichq.org/insight/our-systems-meant-to-help-are-hurting-black-families> [<https://perma.cc/B6TH-M7XM>].

65 Cal. Pen. Code § 11160 (Deering 2021).

66 See Thomas L. Hafemeister, *Castles Made of Sand—Rediscovering Child Abuse and Society's Response*, 36 OHIO N.U.L. REV. 819, 829 (2010) (“Potential observers of child abuse are encouraged to err on the side of over-reporting to protect a child’s safety.”). The reasonable suspicion standard also prompts mandated reporters to err on the side of caution and report suspected child abuse. See David Wolowitz, *Mandatory Reporting Laws & Schools: Making Sense Out of Disorder*, 53 N.H.B.J., Winter 2013, at 6, 6 (“If teachers and school officials have any doubt about whether to report, it is likely that they have a suspicion and should err on the side of reporting.”). Cf. Alison B. Vreeland, Note, *The Criminalization of Child Welfare in New York City: Sparing the Child or Spoiling the Family?*, 27 FORDHAM URB. L.J. 1053, 1076 (2000) (“The police act swiftly so as to ensure that if a mistake is made, they will have erred on the side of caution. Police Commissioner Safir has stated that “even if we make a mistake in an intervention, that’s a mistake that doesn’t really harm a child.””).

67 “The application of mandatory reporting laws to abuse survivors can . . . be said to infantilize them, deny their autonomy, be re-victimizing by mirroring the abuser’s coercion and control, and unnecessarily interfere with their parental rights. These “protective” laws can be further critiqued for disproportionately monitoring and regulating low-income families, and particularly individuals of color.” Jane Stoever, *Mirandizing Family Justice*, 39 HARV. J.L. & GENDER 189, 233 (2016) (citing Linda G. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550, 550 (1999) (arguing that “mandatory state interventions . . . are in danger of replicating the rejection, degradation, terrorization, social isolation, mis-socialization, exploitation, emotional unresponsiveness, and close confinement that are endemic to the abusive relationship.”)).

68 Stoever, *supra* note 67, at 209.

69 “Mothers of color are also more likely to be referred to CPS for [intimate partner violence]-related concerns relative to White mothers who are more likely to be referred for mental health and other issues” Lippy et al., *supra* note 24, at 255 (citing Sonia Dosanjh, Georgeanna Lewis, David Mathews, and Mohit Bhandari *Child Protection Involvement and Victims of Interpersonal Violence: Is There a Bias?* 14 VIOLENCE AGAINST WOMEN 833, 840 (2008)).

70 See *supra* note 8 (defining domestic violence).

71 See generally James N. Bow and Paul Boxer, *Assessing Allegations of Domestic Violence in Child Custody Evaluations*, 18 J. INTERPERSONAL VIOLENCE 1394, 1395 (2003) (“Perpetrators often use intimidation and harassment, and children become pawns in the legal process. Allegations and counterallegations are common. Perpetrators of domestic violence are masters at denying, minimizing, and blaming the victim. They are also good at projecting a nonabusive image meaning they can present to the court and evaluator as calm, loving, and sensitive. The absence of a single psychological profile of the perpetrator or victim of domestic violence, along with the lack of adequate documentation of domestic violence in most cases, makes it difficult for the evaluator to ascertain the veracity of the allegation”) (internal citations omitted)).

72 See generally Christine Murray, Allison Crowe, & Whitney Akers, *How Can We End the Stigma Surrounding Domestic*

and Sexual Violence? A Modified Delphi Study with National Advocacy Leaders, 31 J. Fam. Violence 271, 273 (2016).

73 See, e.g., Mason & O’Rinn, *supra* note 11, at 13.

74 There are two primary reasons why restraining orders can be impracticable to obtain. First, to obtain a restraining order, a survivor must navigate the opaque family court process and often needs to appear in court twice. See e.g., Carolyn N. Ko, *Civil Restraining Orders for Domestic Violence: The Unresolved Question of Efficacy*, 11 S. CAL. INTERDISC. L.J. 361, 365 (2002). In California, to prepare for the first court appearance, the survivor must fill out an application explaining why they need the restraining order. *Id.* The process of filling this form out can be difficult for non-English speakers and requires the survivor to relive their trauma to explain why they need the restraining order. Then, the survivor, now the petitioner, must appear before the judge and again reexplain their trauma. *Id.* This process only leads to a temporary restraining order, usually for the duration for a few weeks or months until the hearing for a restraining order of a longer duration. *Id.* To obtain a restraining order of a longer duration (3 to 5 years), a survivor must serve notice of the hearing and request for order on the person they are seeking to be protected from and both must have the opportunity to testify at the subsequent hearing. *Id.* 365–66. Second, a restraining order might place additional stress on the family. A restraining order typically orders that the parties terminate all contact with each other. *Id.* at 365. This can lead to financial stress in requiring that the family retains two residences and prevent restorative processes from commencing due to a prohibition on all types of communication.

75 Mass. Dep’t Child. & Families, *Working with Families: Child Welfare and Domestic Violence 1* (Dec. 2009) <https://www.mass.gov/files/documents/2016/07/pm/promising-approaches-publication.pdf> [<https://perma.cc/24PY-9FYZ>].

76 *Title IV-E Prevention Program*, CHILDREN’S BUREAU, ADMIN. CHILD. & FAMILIES, U.S. DEP’T HEALTH & HUMAN SERVICES (Mar. 17, 2021), <https://www.acf.hhs.gov/cb/title-iv-e-prevention-program> [<https://perma.cc/GN77-JD3G>].

77 *Family First Prevention Services Act*, NAT’L CONF. STATE LEGISLATURES (Apr. 1, 2020) <https://www.ncsl.org/research/human-services/family-first-prevention-services-act-ffpsa.aspx> [<https://perma.cc/NK7R-DVAP>].

78 CHAPIN HALL AT U. CHICAGO AND L.A. CNTY. DEP’T CHILD. & FAMILY SERVS., *FAMILY FIRST IN LOS ANGELES COUNTY: EVIDENCE-BASED PROGRAMS TO CONSIDER* (Dec. 2020).

79 TITLE IV-E PREVENTION SERVICES CLEARINGHOUSE, <https://preventionservices.abtsites.com> [<https://perma.cc/B3L6-VC3D>] (last visited May 1, 2021).

80 See generally *Id.*

81 See generally ALLISON NEWCOMBE, ERIN FRENCH, KATE WALKER BROWN, & MICHELLE GUYMON, L.A. CNTY, NAT’L CTR. YOUTH L., *BUILDING BRIDGES: HOW LOS ANGELES COUNTY CAME TOGETHER TO SUPPORT CHILDREN AND YOUTH IMPACTED BY COMMERCIAL SEXUAL EXPLOITATION 29* (2020) <https://lacounty.gov/wp-content/uploads/LA-County-Story-Building-Bridges.pdf> [<https://perma.cc/T244-VM5X>].

82 CARLY B. DIERKHISING, KATE WALKER BROWN, MAE ACKERMAN-BRIMBERG, & ALLISON NEWCOMBE, *COMMERCIALLY SEXUALLY EXPLOITED GIRLS AND*

YOUNG WOMEN INVOLVED IN CHILD WELFARE AND JUVENILE JUSTICE IN LOS ANGELES COUNTY: AN EXPLORATION AND EVALUATION OF PLACEMENT EXPERIENCES AND SERVICES RECEIVED 13 (2018) [https://youthlaw.org/wp-content/uploads/2018/11/CSEC-Research-Report\\_Placement-Exp-Svcs-Recd\\_NCYL\\_Cal-State.pdf](https://youthlaw.org/wp-content/uploads/2018/11/CSEC-Research-Report_Placement-Exp-Svcs-Recd_NCYL_Cal-State.pdf) [<https://perma.cc/6Z8Q-BMEM>].

83 NEWCOMBE, FRENCH, WALKER BROWN, & GUYMON, *supra* note 81, at 29

84 Los Angeles County Department of Children and Family Services, *For Your Information* Issue 16-22 (June 7, 2016) [https://pubftp.dcfslacounty.gov/Policy/FYI/2016/001592\\_FYI\\_16-22\\_Dream\\_Court\\_6-7-16.pdf](https://pubftp.dcfslacounty.gov/Policy/FYI/2016/001592_FYI_16-22_Dream_Court_6-7-16.pdf), [<https://perma.cc/PM5G-DSNR>] (last visited Apr. 27, 2021)

85 *Id.* “Upon assignment of the case to DREAM Court, a MDT will take place the Wednesday the week before the scheduled court hearing. CSEC cases in the DREAM Court will be scheduled on Thursdays following the MDT. MDTs will include all or some of the following: the CLC attorney, DCFS, Department of Mental Health (DMH), Department of Health Services, Probation Department, an assigned child advocate, and Alliance for Children’s Rights education advocate (when there is an education issue). DCFS CSEC trained staff from the Runaway Outreach Unit (ROU) will facilitate the MDTs and will invite the case carrying CSW and SCSW to participate in the MDT. A MDT Action Plan will be developed at the MDT meeting, which will be written up by the CSEC ROU representative and shared with the DREAM Court Judge and other team members prior to the hearing. The Action Plan will outline the case plan and objectives as well as next steps and responsible parties; the MDT write-up is NOT to be attached to the court report.”

86 The language “abuse/neglect” is used because some statutes define a failure to protect or the conditions created by domestic violence as child abuse and others define it as child neglect.

87 Some statutes are less explicit in their categorization. *See, e.g.*, COL. REV. STAT. § 19-3-102 (2021) (“(1) A child is neglected or dependent if: (a) A parent, guardian, or legal custodian has abandoned the child or has subjected him or her to mistreatment or abuse or a parent, guardian, or legal custodian has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse and prevent it from recurring; (b) The child lacks proper parental care through the actions or omissions of the parent, guardian, or legal custodian; (c) The child’s environment is injurious to his or her welfare; (d) A parent, guardian, or legal custodian fails or refuses to provide the child with proper or necessary subsistence, education, medical care, or any other care necessary for his or her health, guidance, or well-being . . .”).

88 *See, e.g.*, Amanda Mahoney, *How Failure to Protect Law Punish the Vulnerable*, 29 Health Matrix 429, 441 (2019) (arguing that failure to protect laws are disproportionately enforced against mothers: “Although FTP laws are written in gender-neutral language, they are disproportionately enforced against women. This is because our society tends to place a much higher burden for raising children on the mother than on the father. . . . Even when there is evidence of a loving, non-abusive relationship between the child and mother, judges still tend to impose harsh punishments on a mother who failed to protect. It has been declared that a mother who loves her children should have an even greater instinct to protect them from harm. Historically, even when a mother does try to intervene and fails, it

is typically seen as inaction by the police and courts. Frequently, these cases involved mothers with limited resources; namely, mothers who work and need to leave their children in the care of their partners.”) (internal citations omitted). *See also* Pat Beal et al., *Florida Blames Mothers When Men Batter Them—Then Takes Away Their Children*, USA TODAY (Dec. 17, 2020, 3:30 AM) <https://www.usatoday.com/in-depth/story-series/2020/12/16/florida-blames-mothers-when-men-batter-them-then-takes-their-children/6507973002/> [<https://perma.cc/VFP6-AF37>].

89 Cal. Welf. & Inst. Code § 300(b) (Deering 2021).

90 *See, e.g., In re T.V.*, 157 Cal. Rptr. 3d 696, 699 (Cal. Ct. App. 2013) (“[e]ven though [the child] had not been physically harmed, the cycle of violence between the parents constituted a failure to protect her ‘from the substantial risk of encountering the violence and suffering serious physical harm or illness from it.’”). *See also In re R.C.*, 148 Cal. Rptr. 3d 835, 844 (Cal. Ct. App. 2012) (“Children can be ‘put in a position of physical danger from [spousal] violence’ because, ‘for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg. . . .”) (citing *In re Heather A.*, 60 Cal. Rptr. 2d 315, 321 (Cal. Ct. App.) (1996)).

91 *See e.g., In re R.T.*, 399 P.3d 1, 9 (Cal. 2017) (finding a “substantial risk” of “serious physical harm” due to the mother’s “self-destructive behavior”). *See also In re A.R.*, 175 Cal. Rptr. 3d 851, 856, (Cal. Ct. App. 2014) (finding “ample evidence to support [a failure to protect] finding. Mother . . . knew about father’s long-standing history of substance abuse. Because father frequently beat her, she clearly knew that he was violent and physically abusive. . . . He stalked and threatened mother and she was by her own admission scared to death of him. . . . Despite this, she gave up trying to see the girls after one unsuccessful request for help from the police and moved out of state, where she started a new family with another man. We recognize that mother was justifiably in fear of father, but that should have motivated her to take more steps to regain custody of her children. She never fully acknowledged that her efforts to regain custody of the children were halfhearted at best. We also recognize that mother was coming to terms with her mental health and substance abuse problems. Even so, her ultimate success remained for future determination. These factors supported a finding that mother still might not be able to adequately protect the minors.”).

92 Domestic violence is fraught with stigma and incorrect stereotypes that social workers must work through when evaluating cases. *See generally*, Christine Murray, Allison Crowe, & Whitney Akers, *How Can We End the Stigma Surrounding Domestic and Sexual Violence? A Modified Delphi Study with National Advocacy Leaders*, 31 J. FAM. VIOLENCE 271, 273 (2016) (“Anticipated stigma describes “the degree to which people fear or expect stigmatization...if others know about their experiences.” Some ways that anticipated stigma impacts survivors include believing that friends and family members will not want to help, fearing negative outcomes if their abuse experiences were to become known in their workplaces, and predicting that health-care professionals will judge them upon disclosure. Stigma internalization refers to “the extent to which people internalize negative IPV beliefs.” Some self-perceptions associated with stigma internalization include self-blame, shame, embarrassment, guilt, and low self-esteem. Cultural stigma describes “societal ideologies that delegitimize people who experience IPV.” Cultural attitudes that contribute to IPV stigmatization include



judgment, blaming, minimizing the extent of the problem, and stereotypes about the types of people who are abused. Together, these components can make it more difficult for victims to seek help, although this can vary based on the extent to which the survivors view the IPV as central to their identities and salient in their lives.”) (internal citations omitted).

93 See Mahoney, *supra* note 88, at 437.

94 See ALYCE D. LAVIOLETTE AND OLA W. BARNETT IT COULD HAPPEN TO ANYONE: WHY BATTERED WOMEN STAY 8 (2nd ed. 2000).

95 See, e.g., Margaret Abraham, *Isolation as a Form of Marital Violence: The South Asian Immigrant Experience*, 9 J. Soc. Distress and the Homeless 221, 222 (2000) (stating that past research has indicated that social isolation is strongly related to a risk of domestic violence and that for South Asian women who were the subject of this study, “especially recent immigrants who come as dependent spouses to the United States, isolation is one of the most painful manifestations of marital abuse perpetuated against them.”) . See also Gill Hague, Ravi Thiara, and Audrey Mullender, *Disabled Women, Domestic Violence, and Social Care: The Risk of Isolation, Vulnerability and Neglect*, 41 BRITISH J. SOC. WORK 148, 155 (2010) (finding that isolation contributed to the vulnerability of disabled survivors in abusive relationships in the United Kingdom).

96 See National Coalition Against Domestic Violence, *Why Do Victims Stay?*, <https://ncadv.org/why-do-victims-stay> [<https://perma.cc/L6DS-SCHV>] (last visited May 1, 2021). See also LaViolette and Barnett, *supra* note 94, at 149.

97 See Mahoney, *supra* note 88, at 452. (“An abused woman will be aware of the risk of even more severe abuse if she tries to leave or seek help. . . . [S]he feels both retaliation from the abuser and criminal liability.”) (internal citations omitted).

98 See, e.g., Joanne Pavao, Jennifer Alvarez, Nikki Baumrind, Marta Induni, & Rachel Kimerling, *Intimate Partner Violence and Housing Instability*, 32 Am. J. Preventative Medicine 143, 143 (2007) (finding that women who experienced intimate partner violence in California were four times more likely to experience housing stability than women who did not experience intimate partner violence). See also Claudia Boyd-Barrett, *For Survivors of Violence and Their Kids, a Push to Prioritize Housing*, CAL. HEALTH REP., (Jun. 25, 2020) <https://www.calhealthreport.org/2020/06/25/for-survivors-of-violence-and-their-kids-a-push-to-prioritize-housing/> [<https://perma.cc/5MG9-SMAM>].

99 See generally Stephanie Holt, Helen Buckley, & Sadhbh Whelan, *The Impact of Exposure to Domestic Violence on Children and Young People: A Review of the Literature*, 32 CHILD ABUSE & NEGLECT 797 (2008).

100 See generally Jacquelyn C. Campbell, Nancy Glass, Phyllis W. Sharps, Kathryn Laughon, and Tina Bloom, *Intimate Partner Homicide: Review and Implications of Research and Policy*, 8 TRAUMA, VIOLENCE & ABUSE 246, 254 (2007).

101 See National Coalition Against Domestic Violence, *Why Do Victims Stay?*, <https://ncadv.org/why-do-victims-stay> [<https://perma.cc/Q6H7-3ZHE>] (last visited Apr. 27, 2021).

102 KATHLEEN J. FERRARO, BATTERED WOMEN: STRATEGIES FOR SURVIVAL, IN VIOLENCE BETWEEN INTIMATE PARTNERS: PATTERNS, CAUSES, AND EFFECTS 124, 133 (Albert P. Cardarelli ed., 1997).

103 For example, according to the Structured Decision Making tool employed by Los Angeles County Department of Children and Family Services, a social worker must evaluate a parent’s protective capacity at several points in their investigation and response. See LOS ANGELES DEP’T OF CHILD AND FAMILY SERVS., Policy 0070-548.24 (Nov. 27 2019) [http://m.policy.dcfslacounty.gov/Src/Content/Structured\\_Decision\\_Making.htm](http://m.policy.dcfslacounty.gov/Src/Content/Structured_Decision_Making.htm) [<https://perma.cc/WD7U-9RMN>].

104 See *In re Jonathan B.*, 185 Cal. Rptr. 3d 308, 312 (Cal. Ct. App. 2015).

105 See e.g., Crenshaw, *supra* note 7, at 1248–49 (“Language barriers present another structural problem that often limits opportunities of non-English-speaking women to take advantage of existing support services.”)

106 Cal. Welf. & Inst. Code § 300(b) (Deering 2021).

107 Code of Mass. Regs. Title 110, § 2.00 (West.). See *In re Laurent*, 87 Mass. App. Ct. 1, 6, 22 N.E.3d 974, 978–79 (2015) (rejecting the lower court’s finding of parental unfitness because “it is clear that the ultimate determination of unfitness rested primarily on the judge’s assessment that the mother’s cognitive disabilities would impact her ability to “understand” and “follow through on her understanding” of [the child’s] needs if he were returned to her care. The judge found that there was no evidence that the mother’s substance abuse problems and her involvement in abusive relationships, the issues which caused the department to remove Laurent from the mother’s care, and which were responsible for the loss of at least one of the mother’s other children, are currently concerns in the mother’s life.”)

108 *But see* discussion of Washington’s statutory definition of abuse and neglect *infra* p. 17.

109 See *In re J.M.*, 263 Cal. Rptr. 3d 687, 699–700 (Cal. Ct. App. 2020) (“That Mother did not immediately break free from the cycle of abuse does not render it in J.M.’s best interests to deny him the opportunity to be raised with his biological mother and extended family, with all the benefits courts recognize this could offer him, particularly when, at the time of the hearing on her petition, Mother had for over a year avoided contact with Father and maintained stable, appropriate housing and gainful employment.”).

110 *In re I.B.*, 266 Cal. Rptr. 3d 814, 834 (2020).

111 *Id.* at 835–37.

112 *Id.* at 834, 838–39.

113 61.6% of reported cases of neglect concern environmental conditions. See Ferol E. Mennen, Kihyun Kim, Jina Sang, & Penelope K. Trickett, *Child Neglect: Definition and Identification of Youth’s Experiences in Official Reports of Maltreatment*, 34 CHILD ABUSE & NEGLECT 647, 652 (2010).

114 N.C. Gen. Stat. Ann. § 7B-101 (15) (2020) (emphasis added).

115 Matter of: J.A.M., 795 S.E.2d 262, 266 (N. C. Ct. App. 2016), *rev’d sub nom.* Matter of J.A.M., 809 S.E.2d 579 (2018).

116 See, e.g., Matter of S.R.F., 853 S.E.2d 415, 419-20 (N.C. 2021).



117 Matter of B.T.J., No. 230A20, 2021 WL 1047365, at \*1 (N.C. Mar. 19, 2021).

118 *Id.*

119 *Id.*

120 *Id.* at 3-4.

121 *Id.* at 4.

122 S.D. CODIFIED LAWS §26-8A-2 (3) (2020).

123 Michael F. Sullivan, *Child Neglect: The Environmental Aspects*, 29 OHIO STATE L. REV. 85, 85 (1968).

124 Matter of D.A.B., 313 N.W.2d 787, 788 (S.D. 1981).

125 Wash. Rev. Code 26.44.020 (2021). This was added to the definition of the neglect statute in 2007. *See also* In Matter of Dependency of D.L.B., 376 P.3d 1099, 1110 (Wash. 2016) (“being the victim of domestic violence is not a parental deficiency”)

126 *See In re* Dependency of G.G., 334 P.3d 234, 243 (Wash. Ct. App. 2015) (“Although domestic violence victims face great challenges, a parent must exercise good judgment to avoid genuine risk of harm to her children. Here, the focus of the trial court’s finding was not based on [parent’s] status as a domestic violence victim; it was her *failure to make appropriate choices* and participate in recommended services to address parental deficiencies related to domestic violence trauma that placed her children at risk of harm”). *See also* In Matter of Dependency of D.L.B., 376 P.3d 1099, 1110 (Wash. 2016) (finding a “parental deficiency” in a mother who was a victim of domestic violence where she (1) had several past relationships with abusers and was currently in a relationship with an abuser, (2) had maintained two past abusive relationships despite no-contact orders, (3) misrepresented the nature of these relationships and the abusive conditions of her current relationship to the department of children and family services, and (4) the mother’s current abusive relationship and decision to hide it from the Department raised concerns about “control issues and the potential for stress in the home as [the mother] plan[ne]d for [her children] to be raised in [this man’s] home.” The Washington Supreme Court affirmed the trial court’s finding “that these facts damaged [the mother’s] credibility and indicate[d] an inability to put into practice what was taught/discussed at [the domestic violence] programs in which [the mother had] participated.”) (internal citations omitted). *But see In re* Dependency of G.G., 361 P.3d 726 (Wash. Ct. App. 2015) (C.J. Madsen dissenting) (“The “appropriate choices” phrase implies that a woman can avoid domestic violence by carefully choosing her romantic partners, that by failing to do so she makes inappropriate choices, and that by making such poor choices she is an unfit mother. Such reasoning is at odds with the statutory definitions of “dependent child,” “abuse or neglect,” and “negligent treatment or maltreatment,” all relevant terms in this case. *See* RCW 13.34.030(6)(b) . . . (16) (abuse or neglect of child based on negligent treatment or maltreatment expressly excludes exposing child to domestic violence against person other than the child).”).

127 N. Y. Fam. Ct. Act §1012(f) (LexisNexis 2021) (““Neglected child” means a child less than eighteen years of age (i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the

failure of his parent or other person legally responsible for his care to exercise a minimum degree of care”).

128 *Nicholson v. Scopetta*, 820 N.E.2d 840, 852 (N.Y. 2004) (emphasis in original).

129 Kathleen A. Copps, comment, *The Good, the Bad, and the Future of Nicholson v. Scopetta: An Analysis of the Effects and Suggestions for Further Improvements*, 72 ALB. L. REV. 497, 510 (2009) (citing Letter from Nicholson Review Committee to Judge Jack B. Weinstein (Dec. 17, 2004), at 4, 11, available at <http://www.lansub.com/news/> (follow “nicholsonrc.doc” hyperlink) [hereinafter NRC Letter] (stating that “the number of children removed due to domestic violence and the number of neglect petitions filed against mothers solely because they were victims of domestic violence appear[s] to [have] decline[d] significantly”).

130 *See id.* at 512 (“The preliminary injunction in *In re Nicholson* specifically required that a training program be implemented that informed all ACS employees of the requirements of the injunction and required that a supervisory program be implemented to ensure that the requirements were carried out in practice”) (internal citations omitted).

131 *See id.* at 512. *See also* N.Y. Soc. Serv. § 17(g) (LexisNexis 2021).

132 *See generally* Murray, Crowe, & Akers, *supra* note 92.

133 *See, e.g.,* Crenshaw, *supra* note 7, at 1248.

134 *See, e.g.,* Cecilia Menjivar & Olivia Salcido, *Immigrant Women and Domestic Violence: Common Experiences in Different Countries*, 16 Gender & Soc’y 898, 904-06 (2002) (discussing the impact of isolation on help-seeking).

135 *See, e.g., id.*, at 910-11 (“In evaluating their situation, immigrants frame their current experiences using their home countries as a point of reference and assess their present situation in relation to what they left behind. Often, women arrive from countries where domestic violence simply is not reported because of a lack of legal protection or cultural prescriptions that prevent women from reporting violence. . . . [E]ventually, immigrant women learn about their new rights and about police protection in the destination country. This has an impact on reporting domestic violence to local authorities, but it does not imply that immigrants’ claims always will be treated fairly in the criminal justice systems of receiving countries.”) (internal citations omitted).

136 *See, e.g., id.*, at 903 (“Language is a factor that impedes women from learning and accessing services in receiving communities.”) (internal citations omitted).

137 *See, e.g., id.*, at 908-09 (“Failure to report abuse stems from either fear of their spouse’s finding out or procedures that state agencies, such as the U.S. Immigration and Naturalization Services, launch.”).

138 *See id.* at 901 (2002) (in an interview with a police department, the authors reported the police department perceived responding to domestic violence incidents among immigrant groups was a “waste” of resources).

139 *See* Chafica Khodr Agha, *Addressing Teen Dating Violence as a Long-Term Strategy for Domestic Violence Prevention*, NAT’L

CTR. FOR VICTIMS OF CRIME, (Nov. 13, 2020), <https://www.ncvctta.org/post/addressing-teen-dating-violence-as-a-long-term-strategy-for-domestic-violence-prevention> [<https://perma.cc/VU2H-YQC6>] (arguing that teen dating violence is a unique form of domestic violence and suggesting tailored trauma-informed interventions to prevent further domestic violence later in life). See also Rebecca Pensak, *Must be 18 or Older: How Current Domestic Violence Policies Dismiss Teen Dating Violence*, 21 Wm. & Mary J. Women & L. 499 (2015).

140 See e.g., Emily C. B. Brown, Michelle M. Garrison, Hao Bao, Ping-ping Qu, Carole Jenny, & Ali Roqhani-Rahbar, *Assessment of Rates of Child Maltreatment in States with Medicaid Expansion vs States Without Medicaid Expansion*, 2 JAMA NETWORK OPEN, no. 6, 2019, at 1, 1 (finding that “there were fewer cases of reported neglect . . . in states that expanded Medicaid than during that time in nonexpansion states”). See also James C Doidge et al., *Economic predictors of child maltreatment in an Australian population-based birth cohort*, 72 CHILD. AND YOUTH SERVS. REV. 14 (2017) (finding that “economic factors were significant predictors of physical abuse, sexual abuse, and witnessing of domestic violence but not of emotional abuse or neglect” and “that strategies that reduce economic disadvantage are likely to hold significant potential to reduce the prevalence of child maltreatment.”).

141 Stress due to economic insecurity is a predictor of domestic violence. See Deborah Capaldi, Naomi Knoble, Joann Shortt, & Hyoun Kim, *A Systematic Review of Risk Factors for Intimate Partner Violence*. 3 PARTNER ABUSE 231, 240 (2012).

142 See generally, LEADERSHIP CTR. AT CHILD.’S INST., INC., FATHERHOOD: INSIGHTS AND PERSPECTIVES FROM LEADERS IN THE FATHERHOOD MOVEMENT, [https://17ihe82xpmj33g4l3s1s5x6r-wpengine.netdna-ssl.com/wp-content/uploads/2018/09/fatherhood\\_insights\\_perspectives.pdf](https://17ihe82xpmj33g4l3s1s5x6r-wpengine.netdna-ssl.com/wp-content/uploads/2018/09/fatherhood_insights_perspectives.pdf) [<https://perma.cc/P2AL-BFFG>].

143 See *Male Engagement*, E.L.A. WOMEN’S CTR. [https://www.elawc.org/male\\_engagement](https://www.elawc.org/male_engagement) [<https://perma.cc/722R-MATW>] (last visited May 1, 2021).

144 For example, Los Angeles County-approved batterers intervention programs range from \$1,300 to \$1,800. For list of approved programs see *Approved 52-Week Batterers’ Intervention Programs*, CNTY L.A. PROBATION DEP’T (Feb. 2021) <http://www.lacourt.org/division/criminal/pdf/DomesticViolenceProgram-List.pdf> [<https://perma.cc/TK58-7R33>].





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