

Requiring Attorneys to Report Child Abuse Harms Victims of Domestic Violence and Their Children

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The excerpted draft below omits all of the footnotes and has been reduced to include only sections that may be covered in the presentation. A full draft will be available at the Works-in-Progress session.

I. STATEMENT OF THE PROBLEM

Although the awareness of domestic violence has increased over the years, victims of domestic violence are still subject to societal norms that question why she didn't leave. Battered mothers have been increasingly involved the child protection system, including being charged with "failure to protect" when their children witness domestic violence. In *Nicholson v. Scoppetta*, the highest New York Court recently held that witnessing domestic violence cannot create a presumption of harm to the child, yet the legal consequences of witnessing domestic violence are unanswered in many states.

Added onto the issue of the effect of witnessing domestic violence, attorneys in some states are mandated reporters of child abuse. This article examines the implications of requiring attorneys, particularly those that represent victims of domestic violence, to report suspected child abuse. By examining the problems with mandatory reporting with respect to domestic violence, I suggest that attorneys should not be mandatory reporters of child abuse. Mandatory reporting for attorneys interferes and conflicts with several other obligations, including the attorney-client privilege and the ethical responsibility of the duty of confidentiality.

Mandatory child abuse reporting law are inappropriate in domestic violence cases for a number of reasons, including the following: harming the safety of the client and her children, ignoring prior steps that the victim has taken to protect herself and her children, ignoring her

current efforts to seek assistance, subjecting her to criminal prosecution or an abuse and neglect case, ignoring the role of the batterer in pending or future custody or visitation matters, deemphasizing the responsibility of the batterer, ignoring the value of confidentiality, discouraging reporting of domestic violence, and perpetuating stereotypes about battered women. Moreover, victims seeking legal assistance in domestic violence cases are disproportionately poor and minorities, who are unduly impacted by the implementation of mandatory child abuse reporting laws.

Those in favor of mandatory reporting frequently fail to consider how it impacts victims of domestic violence. Mandatory reporting ostensibly preferences the safety of the child. However, any scheme that harms the mother will necessarily fail. Additionally, mandatory reporting harms attorneys by discouraging lawyers from taking cases that may involve children and domestic violence victims, by subjecting attorneys to prosecution for failure to report, by infringing upon confidentiality, and by impacting the attorney-client relationship. Mandatory reporting is also particularly problematic in a clinical teaching setting in legal education.

States are struggling with how to assist domestic violence victims with children, especially where the children may witness or be otherwise exposed to domestic violence. If exposure to domestic violence can subject a domestic violence victim to civil or criminal liability, any attorney who assists a domestic violence victim with children must consider whether or not to report each client. Where exposure to domestic violence is per se harmful, an attorney would be required to report every client. Even where there is no legal presumption of harm, the potential that a victim of domestic violence could be charged with failure to protect further complicates and distorts the role of attorneys. The complicated nature of family violence and the often undefined legal consequences of witnessing domestic violence indicate that there is

no place for mandatory reporting for attorneys. As long as there is a risk that domestic violence victims with children will be punished or subjected to legal consequences for exposing their children to domestic violence, attorneys should not be mandated reporters of child abuse.

II. CHILD ABUSE REPORTING STATUTES

Child abuse reporting laws grew out of the movement to recognize and end child abuse in the 1960s. All states have some form of child abuse reporting laws. Reporting laws are premised on obligations of outsiders to report child abuse with the expectation that the state, through a child protective mechanism, will investigate and take corrective action where needed.

Child abuse reporting laws take many forms, from permissive to mandatory reporting. Some statutes require specific persons to report, such as social workers, psychologists, or physicians. Another category of reporting laws requires all persons to report. Some state statutes specifically mention attorneys, either to exempt or include attorneys in the “all persons” statutes. Under these reporting schemes, attorneys are required to report in approximately twenty states, roughly one-third of all of the states.

III. INTERPLAY OF THE PROFESSIONAL RULES AND REPORTING STATUTES

Mandatory child abuse reporting for attorneys involves the interaction of three types of legal rules: state statutes that require child abuse reporting, statutes that govern attorney-client privilege, and the rules of professional responsibility. Mandatory child abuse reporting is a complicated issue for attorneys because mandatory child abuse reporting rules may conflict with these other obligations.

The attorney-client privilege encourages clients to consult with attorneys freely and is fundamental to the attorney-client relationship. While there is some debate as to the extent of attorney-client privilege, it certainly applies to testimonial in-court disclosures, and possibly could be invoked to prevent compelled out of court disclosures. Moreover, the attorney-client privilege is often codified in evidence law.

The attorney-client privilege has a “crime-fraud” exception that permits attorney disclosure if the attorney’s services are used to commit a crime. The crime-fraud exception applies where a client consults with an attorney with the purpose of furthering a crime. The misuse of the lawyer’s services to assist in the wrong-doing is key. It is important to examine the crime-fraud exception and other exceptions to the attorney-client privilege because a lawyer may have child abuse disclosure obligations even in the absence of reporting statutes. Under the attorney-client privilege, however, it is unlikely that a situation would exist that would permit or require disclosure under the crime-fraud exception. For example, it is difficult to imagine a scenario where a client would *use the services of the lawyer* to commit child abuse. Therefore, because it is unlikely that the crime-fraud exception exists, mandatory child abuse reporting laws conflict with the attorney client privilege typically if an attorney learns from the client that a child has been neglected or abused. Similarly, if an attorney learns that there is evidence of harm to the child from witnessing domestic violence, the attorney may be required to report that harm even where reporting conflicts with the privilege.

Like the attorney-client privilege, the duty of confidentiality, which is based in the standards of professional responsibility, is fundamental to the attorney-client relationship. Confidentiality is supported by a utilitarian theory that supposes confidentiality is needed to

encourage full disclosure of information. Mandatory child abuse reporting obviously conflicts with the duty of confidentiality.

Exceptions to the duty of confidentiality exist for “future crimes.” The future crime exception to the duty of confidentiality is broader than the crime-fraud exception to the attorney-client privilege. Because the future crime exception is broader, it presents more troubling disclosure issues for attorneys as mandated child abuse reporters. For example, even without mandatory child abuse reporting for attorneys, an attorney would be permitted to breach the duty of confidentiality and disclose child abuse or neglect where the attorney has obtained information that there will be future child abuse.

IV. CASE STUDY: NEW JERSEY’S MANDATORY CHILD ABUSE REPORTING STATUTE, ATTORNEY-CLIENT PRIVILEGE STATUTES AND DUTY OF CONFIDENTIALITY

New Jersey enacted its reporting statute in 1964 and was expanded in 1971 to include all persons. The Act requires the following:

Any person having reasonable cause to believe that a child has been subjected to child abuse or acts of child abuse shall report the same immediately to the Division of Youth and Family Services by telephone or otherwise. Such reports, where possible, shall contain the names and addresses of the child and his parent, guardian, or other person having custody and control of the child and, if known, the child's age, the nature and possible extent of the child's injuries, abuse or maltreatment, including any evidence of previous injuries, abuse or maltreatment, and any other information that the person believes may be helpful with respect to the child abuse and the identity of the perpetrator.

Although the statute is silent as to whether or not attorneys are exempted from this requirement, through its statutory language “any person”, this Act requires *everyone* to report child abuse. Case law establishes that “any person” includes even those who have an expectation of confidentiality, such as physicians and psychiatrists. Additionally, the Act provides statutory

immunity to those who report child abuse. Failure to report abuse is punishable as a disorderly persons offense, and failure to report abuse may constitute evidence of negligence.

In New Jersey, the attorney-client privilege is a rule established by both statute and evidence rules. Section 2A:84A-20 provides the following:

Subject to . . . communications between lawyer and his client in the course of that relationship and in professional confidence, are privileged, and a client has a privilege (a) to refuse to disclose any such communication, and (b) to prevent his lawyer from disclosing it, and (c) to prevent any other witness from disclosing such communication if it came to the knowledge of such witness (i) in the course of its transmittal between the client and the lawyer, or (ii) in a manner not reasonably to be anticipated, or (iii) as a result of a breach of the lawyer-client relationship, or (iv) in the course of a recognized confidential or privileged communication between the client and such witness. The privilege shall be claimed by the lawyer unless otherwise instructed by the client or his representative; the privilege may be claimed by the client in person, or if incompetent or deceased, by his guardian or personal representative. Where a corporation or association is the client having the privilege and it has been dissolved, the privilege may be claimed by its successors, assigns or trustees in dissolution.

The exceptions include the following:

Such privilege shall not extend (a) to a communication in the course of legal service sought or obtained in aid of the commission of a crime or a fraud, or (b) to a communication relevant to an issue between parties all of whom claim through the client, regardless of whether the respective claims are by testate or intestate succession or by inter vivos transaction, or (c) to a communication relevant to an issue of breach of duty by the lawyer to his client, or by the client to his lawyer. . . .

The New Jersey attorney-client privilege rules require disclosure in some circumstances. Case law establishes that the attorney-client privilege, though conflicting with mandatory reporting, is superceded and trumped by reporting laws. Therefore, an attorney who has reasonable cause to believe that a client had subjected a child to child abuse must report that abuse even where the reasonable cause developed due to privileged information. An attorney who believes that a child has been harmed by witnessing domestic violence must report even where that belief was obtained based on information covered by the attorney-client privilege.

The duty of confidentiality is set forth in New Jersey Rule of Professional Conduct 1.6 which states that “a lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b), (c), and (d).” New Jersey requires disclosure in a broad range of circumstances.

The rule on confidentiality contains the following exceptions:

(b) A lawyer shall reveal such information to the proper authorities, as soon as, and to the extent the lawyer reasonably believes necessary, to prevent the client or another person:

(1) from committing a criminal, illegal or fraudulent act that the lawyer reasonably believes is likely to result in death or substantial bodily harm or substantial injury to the financial interest or property of another;

(2) from committing a criminal, illegal or fraudulent act that the lawyer reasonably believes is likely to perpetrate a fraud upon a tribunal.

(c) If a lawyer reveals information pursuant to RPC 1.6(b), the lawyer also may reveal the information to the person threatened to the extent the lawyer reasonably believes is necessary to protect that person from death, substantial bodily harm, substantial financial injury, or substantial property loss.

(d) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary

(1) to rectify the consequences of a client's criminal, illegal or fraudulent act in the furtherance of which the lawyer's services had been used;

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, or to establish a defense to a criminal charge, civil claim or disciplinary complaint against the lawyer based upon the conduct in which the client was involved; or

(3) to comply with other law.

The statute defines “reasonable belief” as “the belief or conclusion of a reasonable lawyer that is based upon information that has some foundation in fact and constitutes prima facie evidence of the matters referred to in subsections (b), (c), or (d).”

V. PROBLEMS DEFINING CHILD ABUSE AND THE IMPACT ON CHILDREN OF WITNESSING DOMESTIC VIOLENCE

Mandatory reporting is further complicated for attorneys because of problems defining child abuse. Justice Stewart, in attempting to define pornography, once said that you know it when you see it. Similarly, there is not significant clarification, at least in New Jersey, on which acts are sufficient to trigger mandatory child abuse reporting. Although the New Jersey statute defines abuse and neglect, these definitions do not explain which facts might constitute child abuse.

The child abuse statute in New Jersey requires reporting where there is “reasonable cause” to believe that a child has been subjected to child abuse. No case law interprets the meaning of reasonable cause in the context of witnessing domestic violence. What is an attorney’s obligation to investigate whether or not there is “reasonable cause”? For example, suppose a client tells you that the batterer has been “inappropriate” with a child. Must the attorney ask follow-up questions to ascertain whether he or she thinks that the alluded-to behavior constitutes child abuse?

Lawyers who are mandated reporters of child abuse will encounter clients whose children have witnessed domestic violence in the home. Because of the reporting requirements, the lawyers must consider what harms, if any, children who witness domestic violence suffer. Depending on the prevailing law regarding the legal effect of witnessing domestic violence, a mandated child abuse reporter may have to make a report even where there was no direct child abuse. For example, if an attorney has a reasonable belief that the child has been harmed as a result of witnessing domestic violence, the attorney would be required to report.

Witnessing domestic violence certainly has *some* negative effect on children. No single theory can explain how children are affected by violence in the home. Studies confirm some of this negative effect of witnessing domestic violence, though experts disagree on the extent or consequences of that harm. It is the precise lack of agreement and definition of the harm that places attorneys as mandated reporters in a predicament. If we assume--which numerous domestic violence advocates contest--that witnessing violence is per se harmful, any domestic violence victim with children seeking legal assistance for any issue would be at risk for neglect charges.

Both reporting a batterer for direct child abuse and reporting the batterer for the effects on the child of witnessing his violence may have a negative impact on the victim of domestic violence. Despite the obvious culpability of the batterer, the victim faces consequences when a report of child abuse is called in against any perpetrator. This is particularly true where the child protective service may not have protocols for cases involving domestic violence or witnessing domestic violence.

VI. CASE LAW ON WITNESSING DOMESTIC VIOLENCE: NICHOLSON V. SCOPPETTA AND NEW JERSEY DIVISION OF YOUTH AND FAMILY SERVICES V. SS

As domestic violence becomes more recognized as a social problem, many courts have been struggling with the role of witnessing domestic violence in the child protection area.

Nicholson v. Scoppetta is a landmark case brought on behalf of mothers and their children who were separated because the mothers were victims of domestic violence. This federal class action, which highlights many of the problems with charging battered mothers with failure to protect,

was filed in April of 2000 in the Eastern District of New York against the New York child protection agency, the Administration for Children's Services (ACS).

The case challenged the removal of children from their mothers on the basis that the mothers were victims of domestic violence and had therefore failed to protect the child or children from exposure to domestic violence. These removals were frequently without court order, without offering services to the victims of domestic violence, and without returning the children to the mothers promptly even when ordered to do so by the court. The class action challenged this alleged policy of ACS under §1983 and several constitutional grounds, including that the removals violated substantive and procedural due process.

In January of 2002, the District Court granted a preliminary injunction prohibiting ACS from carrying out *ex parte* removals of children or filing neglect petitions solely because the mother is the victim of domestic violence. On appeal, rather than address the substantial federal constitutional issues, the Second Circuit certified several questions of state law to the Court of Appeals of New York, New York State's highest court. In October 2004, the Court of Appeals, answered the certified questions and found that a parent may not be presumed neglectful for exposing a child to domestic violence. In December 2004, the federal case settled.

The testimony of the named plaintiffs, as summarized in the court's preliminary injunction ruling, demonstrates the perils of removing children who have been exposed to domestic violence. For example, Ms. Sharwline Nicholson suffered a broken arm, fractured rib, and head injuries at the hands of her boyfriend when she told him that she was ending the relationship. While she was in the hospital recovering from these injuries, the children were removed from their babysitter's home. Ms. Nicholson was not informed where her two children were held. Subsequently, even though Ms. Nicholson suggested several relatives with whom the

children could stay, the children were placed in foster care with strangers. Ms. Nicholson was not permitted to return to her apartment with her children even though the abuser had never lived with her in the apartment, did not have a key to the apartment, and lived in South Carolina. No court order was sought to remove the children and a petition was not filed until five days after the children's removal. Ms. Nicholson had previously been denied an order of protection due to problems serving the abuser. Her children were not returned until 21 days later, after the children had been mistreated in foster care. Although the petition was ultimately dismissed, because the neglect report was "indicated" as to Ms. Nicholson, she remained on the State's registry as a neglectful parent.

The facts of Ms. Nicholson's case show the biases against victims of domestic violence in the child protection system. First, the child protection agents presumed that, as a victim of domestic violence, Ms. Nicholson could not care for her children. Her autonomy and her ability to assess the risks to herself and her children were neither considered nor valued. Moreover, she was repeatedly failed by the system—she did seek assistance in the form of a restraining order—and this was ignored. Ms. Nicholson was charged with neglect based on the assumption that she was as equally culpable as her batterer.

The *Nicholson* case was a clear victory for domestic violence victims. The Court of Appeals found that a showing of neglect against a non-abusive parent requires more than exposure to domestic violence: the party must establish that a child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired, as required by the statute, and the party must establish a causal connection by showing that the harm to the child is a consequence of the failure of the parent to exercise a minimum degree of care. The court also stated that whether a battered mother has failed to exercise a minimum

degree of care is “necessarily dependent on facts such as severity and frequency of the violence, and the resources and options available to her.” The court expressly recognized that considerations include the risks of leaving, whether or not the batterer has threatened to kill her if she leaves, and the risks of seeking governmental assistance, criminal prosecution, or relocation.

The Court of Appeals made several findings concerning removals most notably that, “when a court orders removal, particularized evidence must exist to justify that determination, including, where appropriate, evidence of efforts made to prevent or eliminate the need for removal and the impact of removal on the child.” Emergency removals without court order, though theoretically permissible, exist for only the “rare circumstance” where the danger is great and time fleeting. Finally, the Court of Appeals affirmed that “there can be no ‘blanket presumption’ favoring removal when a child witnesses domestic violence.”

Nicholson has been followed in a New Jersey decision, *New Jersey Division of Youth and Family Services v. SS*. The Appellate Division found that the emotional harm of witnessing domestic violence cannot be presumed in the absence of evidence of its existence or potential harm. DYFS was not entitled to assume that witnessing domestic violence caused emotional harm, but DYFS must demonstrate harm to the particular child.

In the context of mandatory reporting, under *Nicholson* and *S.S.*, an attorney would only be required to report where a child witnesses domestic violence and the lawyer reasonably believes that the child was actually harmed by witnessing the abuse and the harms were a direct consequence of witnessing the abuse. As the pre-eminent case, *Nicholson* provides some guidance to attorneys who are mandated child abuse reporters and demonstrates that at least some courts are moving away from punishing abused mothers for the acts of their abusive partners.

VII. CONSEQUENCES OF MANDATORY CHILD ABUSE REPORTING FOR ATTORNEYS

Mandatory child abuse reporting, as will be demonstrated, harms victims of domestic violence. The reporting requirement also has an unduly effect on the practice of law. Under the New Jersey mandatory reporting statute, and in many other states, attorneys can be prosecuted for failing to report child abuse. This is particularly troublesome given the uncertainties of what constitutes child abuse. Attorneys may be discouraged from representing domestic violence victims with children. The reporting requirement also tramples upon the value of confidentiality and the attorney-client privilege, which are fundamental to the attorney-client relationship.

Another harm to attorneys is the difficulty explaining mandatory child abuse reporting to the client. The reporting rule is difficult to explain particularly where the boundaries of what constitutes child abuse are not clear. What if the client and the attorney have radically different notions of what constitutes child abuse? An attorney typically attempts to explain the reporting requirement at an initial interview. Rather than using the first meeting to build trust and rapport, the early moments are spent mapping out fuzzy lines of reporting. Rather than assuring the client that the attorney is her advocate, the attorney sends the message that the client's children are more deserving of protection. By making attorneys watchdogs over their clients, it necessarily harms the quality of the attorney-client relationship. What domestic violence victim would have enough trust to be completely open and honest knowing that the very person she came to for help would *turn her in*?

As a practical matter, a client whose attorney reports may lose trust and confidence in her attorney, particularly where she faces new obstacles as a result of the investigation, and may want a different lawyer. Given the shortage of domestic violence lawyers and under-funded legal services, the client may not be able to find replacement representation. Again, the impact

of mandatory child abuse reporting is borne by poor women who may not be able to find affordable or pro bono representation.

The problems with mandatory child abuse reporting for attorneys are exacerbated in a clinical setting where student lawyers struggle with developing a client-centered approach to lawyering along with the challenges of explaining confidentiality and mandatory child abuse reporting.

VIII. CONSEQUENCES OF MANDATORY CHILD ABUSE REPORTING FOR VICTIMS OF DOMESTIC VIOLENCE

Mandatory child abuse reporting requirements have severe consequences for victims of domestic violence, including the following harms: disregarding the safety of the client and her children, ignoring prior steps that the victim has taken to protect herself and her children, ignoring her current efforts to seek assistance, subjecting the client to criminal prosecution or an abuse and neglect case, ignoring the role of the batterer in pending or future custody or visitation matters, deemphasizing responsibility of the batterer, ignoring the value of confidentiality, discouraging reporting of domestic violence, and perpetuating stereotypes about battered women.

One primary objection to mandatory child abuse reporting is that it is dangerous for battered women and their children. The most dangerous time for a battered woman is the point at which she attempts to leave or otherwise end the relationship. Reporting child abuse leads to an investigation, which could further enrage the batterer and subject the domestic violence victim and her children to further harm. By requiring mandatory reporting, we abandon women at their most dangerous time.

Requiring reporting assumes that the victim has done nothing to protect her children. She may, in fact, have a very accurate sense of when the batterer is most likely to inflict violence

upon her and may have taken steps to protect her children. The New Jersey reporting statute requires reporting prior abuse even where there is no risk of future harm. However, it makes little sense to require reporting at the very time that a woman has come forward to seek legal assistance. Why isn't seeking legal assistance, through terminating the relationship or seeking a restraining order, a sufficient step to take? It can certainly be argued that women who have sought legal assistance are protecting their children.

Even where the report is made against the abusive parent, it subjects the battered mother to possible criminal and civil sanctions. Reporting abuse does not immunize a client from criminal prosecution herself, especially where she may be charged with endangering the welfare of a child or as an accomplice. For example, in New Jersey, the immunity provision applies only to reporting and not to the underlying act or conduct. A domestic victim who reports child abuse risks having a child protection case brought against her. She may, as has been the recent trend, be charged with failing to protect her child from witnessing domestic violence. An abuse and neglect case can have severe consequences for both the parent and child. A child who faces removal may be subjected to ongoing abuse in the foster care system. The harms of removing children from the non-abusive mother are well documented. Failure to protect cases that lead to removal are harmful not only for the immediate removal but for the time it takes to get rightful custody back. Among the many problems with charging battered mothers with failure to protect, these cases discourage victims from seeking assistance.

Misapplication of failure to protect doctrine causes non-abusive battered mothers to lose custody of their children. Courts rely on the false assumptions that a domestic violence victim is capable of preventing the abuse against her or from preventing the child from witnessing abuse, such as by taking the child away, removing the abuser from the home, or otherwise separating

the child from the abuser. In practice, police, child protective services, and members of the community are frequently unsupportive and unresponsive to battered women in their efforts to end their victimization. Moreover, domestic violence victims have historically been treated poorly within the child protection system. An attorney who is required to report child abuse can offer no assurances to her client that her case will be handled uniformly, fairly, efficiently, or effectively by child protection services. Because of the harms of failure to protect cases, an attorney who is mandated to report child abuse rightfully fears that she will do harm to her client by reporting abuse.

A domestic violence victim who reports child abuse faces the hardships and intrusions of a child protection case even where the case is not against her. Child protection cases may be tracked via the child and the child's mother even where the mother is not a party to the action. As the child's parent, she will unquestionably be involved in the child protection system. For example, she may be called to testify against the batterer in court. Child protection cases often last for many years, so she is subjecting herself to ongoing state intervention and supervision. Frequent court appearances may place her job in jeopardy, exacting an uneven toll on poor women. A parent who has been involved in the child protection system often has limited employment opportunities. For example, a parent may be prohibited from working in the school system, day-care center, or otherwise working with children, a frequent employment opportunity for women. This is particularly upsetting where lack of access to financial resources is often what ties a victim to her batterer and where improving income reduces domestic violence.

Requiring battered women to report child abuse ignores the ongoing presence of the batterer in the child's life and the hurdles a battered mother faces in future or ongoing custody and visitation cases. In most jurisdictions, parents' rights to visitation or "parenting time" can

only be eviscerated in extreme situations. Therefore, a battered mother will be forever tied to the father of her child even if he has been abusive to her and even if that abuse occurred in the presence of the child. The client who reports her abusive partner will frequently have to interact with the abuser, often take the child or children to visit him, and discuss parenting decisions. Moreover, experience shows that judges do not understand the dynamics of domestic violence and rarely consider domestic violence outside the context of restraining order hearings. Requiring women to “protect” their children is not realistic in a system that favors parental equality. A battered woman with children is placed in an unworkable dilemma—she is required to leave her abuser to protect her children yet prohibited from interfering with the father’s parental rights.

Because mandatory child abuse reporting brings risks of criminal and civil sanctions to the victim of domestic violence, it deemphasizes the responsibility of the batterer. By disregarding the harms to domestic violence victims, mandatory reporting for attorneys fails to hold the correct party accountable. As a society, we should be holding the batterer accountable, rather than blaming the victim for failing to protect herself and her children.

Requiring mandatory child abuse reporting harms the value of confidentiality. Clients, especially poor ones, are not accustomed to having their confidentiality, privacy, or autonomy valued. There is a common perception that any victim seeking legal assistance opens her full life to inspection the moment she sets foot into the courthouse. Mandatory reporting is disempowering to those who most need to be empowered.

Because of the numerous harms detailed above, mandatory child abuse reporting necessarily has a chilling effect on domestic violence victims who are seeking legal assistance. Because of the real risk that a victim of domestic violence will be negatively affected by

reporting child abuse, mandatory reporting laws discourage victims of domestic violence from coming forward, or with proceeding with their involvement in the legal system.

Mandatory child abuse reporting laws assist in perpetuating stereotypes about women and mothers. Mothers are expected to place their needs second to those of children. Mandatory child abuse reporting laws presume that children's safety is paramount to or takes precedence over the mother's safety. Mandatory child abuse reporting laws ignore that a child's safety is typically inextricably linked to that of the child's mother. By preferencing the child's safety at the expense of the mothers, mandatory child abuse reporting laws perpetuate the idea of the self-sacrificing mother. Stereotypes about women are exacerbated by class and race stereotypes. Moreover, race biases are particularly troublesome where African-American children are disproportionately represented in the child protection system. Scholars, most notably Dorothy Roberts, have pointed out that the child welfare system has systematically dismantled the African-American family. Stereotypes about women who expose their children to domestic violence ignore the very real obstacles that women face when seeking to protect their children, such as the absence of social and legal support for leaving an abusive relationship.

In almost all regards, requiring attorneys to be mandated child abuse reporters is more harmful than helpful to domestic violence victims and their children. Mandatory child abuse reporting is particularly harmful to domestic violence victims seeking legal assistance. Although domestic violence victims with children often need the most legal assistance, mandatory reporting laws punish battered women seeking help.

IX. SOLUTIONS

This article has explained how mandatory child abuse reporting can be harmful to domestic violence victims and their children. Based on the problems with requiring attorneys to be mandated reporters, attorneys should be exempt from this requirement.

One response to the ambiguity of mandatory reporting laws is to clarify the reporting statutes. For example, one option would be to require reporting only for future harm, rather than for past harm. However, lawyers are not trained in assessing risk or in determining the likelihood of future abuse. Additionally, the statute could be amended to include a clearer definition of what constitutes abuse or the effect of witnessing domestic violence. This change does not eliminate many of the problems associated with mandatory child abuse reporting for attorneys, such as discouraging clients from seeking legal assistance.

Others suggest that attorneys should be appointed to represent children in all domestic violence cases. This is problematic because of the difficulty with finding and paying appointed lawyers and because this may needlessly and increasingly complicate a case. It is easy to envision a domestic violence case where there is simply no need to appoint a lawyer for the children. Moreover, this suggestion adds to the overall assumption that litigants, typically who are poor and people of color, subject their lives to never-ending scrutiny upon entering family court. Requiring children to be represented in a straight-forward restraining order case needlessly prolongs the process, tramples on the privacy of litigants, implicitly presumes the harm to children of being exposed to domestic violence, and reinforces mother-blaming.

Beyond eliminating mandatory child abuse reporting, several improvements could be implemented to assist battered women and their children. Any solution must include client counseling, client empowerment, and improving coordination between child protection workers

and domestic violence advocates. Through client counseling, attorneys can work with their clients to develop safety plans for the victims and their children. Attorneys can take an active role in enabling domestic violence victims to protect their children short of requiring reporting. One key problem with mandatory reporting is that it takes away the agency of the client by removing all decision-making from the victim. This is not the way to empower victims, particularly where such forced decision-making has proven to be harmful.

Improved coordination between child protection agencies and domestic violence services is both necessary and required to assist domestic violence victims with children. Collaborative projects assist victims in overcoming the numerous obstacles to leaving abusive situations. Rather than blaming victims for not leaving, we should be giving domestic violence victims with children the tools required to achieve safety and self-sufficiency. Collaborative projects should make services available to women and children, including assistance with relocation, finding new housing, welfare, education, safety planning, and counseling. Child safety can be improved by helping the mother to become safe.

As may be clear, the current response to family violence in most states is bifurcated: child protective services and domestic violence system. Families often do not fit neatly into one category and there may be multiple victims of violence. One collaborative solution to the problems of both child abuse and domestic violence is to explore the strengths and weaknesses of a unified domestic violence and child protection court. Principles of therapeutic jurisprudence may be especially helpful in this context.

The harms associated with requiring attorneys to report child abuse far outweigh any of the benefits. We can protect children by giving their mothers the necessary financial and emotional resources to escape a violent situation and by holding batterers accountable. No gains

are made by reinforcing stereotypes of women and punishing them for exposing their children to domestic violence.