# Child Custody Determinations in Cases Involving Intimate Partner Violence: a Human Rights Analysis

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Intimate partner violence and child abuse are recognized both as public health concerns and as violations of human rights, but related government actions and inactions are rarely documented as human rights violations in the United States.

Men who abuse female partners are also highly likely to abuse the children of these women. However, family courts are reported to often ignore risks posed by abusive men in awarding child custody and visitation. Battered women involved in child custody litigation in Massachusetts (n=39) were interviewed. A recurring pattern of potential human rights violations by the state was documented, corresponding to rights guaranteed in multiple internationally accepted human rights covenants and treaties.

The human rights framework is a powerful tool for demonstrating the need for legal, social, and political reform regarding public health concerns. (*Am J Public Health.* 2004;94:951–957)

Intimate partner violence (IPV) and child abuse are increasingly recognized as major public health concerns both in the United States and around the world. One fourth of women in the United States[1] and one tenth to two thirds of women internationally[2] are reported to be affected by IPV. In US studies, male partners have been found to be responsible for one third of all homicides of women[3] and half of all homicides of children.[4] The international human rights community has also recognized the importance of violence in families.[5] The ratifying of the UN Convention on the Rights of the Child[6] and the UN Declaration on the Elimination of Violence Against Women[7] by a large majority of UN member states, and the legal actions based on these documents taken by various states outside the United States to protect women and children,[8,9] are examples of major human rights efforts in these areas.

Under human rights law, governments are obliged to prevent violations of rights by state actors (e.g., judges, probation officers, state-appointed custody evaluators, child protective service workers) as well as nonstate actors.[7] This extends human rights protections to IPV and child abuse, prevalent forms of violence suffered by women and children at the hands of family members. Because human rights (1) focus on the responsibility and accountability of government versus individual perpetrators, (2) encompass economic, social, and political rights, and (3) allow for connection with global legal reforms, adopting such a framework is viewed as critical for legal, social, and political change to improve the status of women and children.[5,10,11] Countries not yet legally bound under treaty provisions (e.g., the United States in the case of the Convention on the Rights of the Child) nevertheless can be understood to have an obligation to observe the "object and purpose" of these agreements.[12] Thus, these documents provide a powerful educational tool on the nature of human rights and how they are viewed internationally.[10]

Research is a critical tool for bringing pressure for compliance—that is, "exposing the actions of the State to the light of data"[13(p1264)]—and the presence of a human rights framework in research on violence against women has been specifically called for.[11] Health research that centers on human rights requires breadth in data collection beyond traditional measures to allow full details of participant experiences, and thus enhances the potential for sensitivity and relevance to local concerns as well as to international social change efforts.[5,13] Examining associations between human rights and health outcomes is often described as involving assessment of (1) the impact of health policies, programs, and practices on the promotion or violation of human rights and (2) how human rights violations may affect health.[14] Bringing health and human rights together provides powerful tools for translating the documentation of state actions that violate rights into concrete health promotion initiatives that governments are legally, politically, and morally required to address.[15,16] However, this approach has rarely been used in research efforts to inform prevention of IPV or child abuse in the United States.

Violence against women and their children in the context of child custody disputes is an important and complex issue that has historically been neglected by researchers and practitioners.[17–20] It has been widely reported that child custody and visitation arrangements provide a context for abusive men to continue to control women and their children,[17,18,21] and most highly disputed child custody cases (i.e., those requiring independent investigation/assessment) are reported to involve a history of IPV.[22,23] Further, contrary to popular belief, there is evidence that fathers who seek custody of their children through family court litigation very often obtain either primary or joint physical custody.[24]

Children's continued exposure to abusive parents may place them at increased risk for a range of serious health concerns. Children of women who have been abused by a male partner are at very high risk of being abused by these same men, with approximately half of all children of battered women abused by

their mothers' abusers.[25,26] Such children have been found to suffer high rates of mental and physical health concerns (e.g., headaches, failure to thrive, vomiting, diarrhea)[27–29] and are more likely to report distress related to postdivorce parental visitation.[30] Children exposed to a male partner's abuse are also at prenatal risk; violence against pregnant women is associated with very preterm labor and delivery, very low birthweight, and fetal or neonatal death.[31] In fact, many of the deleterious effects on children of divorce could result from conflict and violence in the home that predates, but may precipitate, separation and divorce.[17,32]

Further research on this issue[33] and significant reform of the legal system are required to provide interventions that consider the safety of women and children in such cases.[19,20,34] Unfortunately, the judiciary and other actors appointed by the state to investigate, evaluate, and make recommendations in cases involving IPV and child abuse are generally uninformed regarding these concerns,[19,34] resulting in court rulings that place women and their children in danger of continued abuse.[18,20,21,35] Several professional organizations have provided guidelines that strongly discourage granting custody or unsupervised visitation of children to men found to have perpetrated violence against the mothers of these children,[34,36,37] and 47 US states, including Massachusetts, have enacted statutes creating legal presumptions that custody of children not go to a perpetrator of intimate partner violence.[38] However, concerns about the reported lack of implementation of such measures persist.[34]

A combined health and human rights approach is particularly well suited to investigating this problem for the following reasons: (1) custody and visitation decisions, by their very nature, implicate state actors (e.g., judges, probation officers, state-appointed custody evaluators, child protective service workers) in endangerment of women and children and (2) those actions taken by state actors that result in endangerment correspond to potential violations of international human rights law related to the rights of women and children. The Battered Mothers' Testimony Project illustrates how state involvement in the public health issues of IPV and child abuse may be investigated by use of a human rights framework via documentation of the problem, dissemination of information, and pressing for reforms. What follows is a description of the methods and findings of this human rights documentation project.

## METHODS

Thirty-nine women representing 10 of the 13 Massachusetts family court districts were recruited to participate in the Battered Mothers' Testimony Project through social service agencies and legal providers serving battered women. Snowball sampling through participating women was also used. Thirty (77%) of the participants were White, 5 (13%) were African American, 2 (5%) were Latina, and 2 (5%) were Native American, closely reflecting the ethnic/racial diversity of the state of Massachusetts. (Note: Despite concerted outreach efforts, no Asian participants were located.) The age range of participants was 24 to 58 years, with the median participant age being 42 years. Fourteen participants (36%) reported earning $15 000 a year or less, 11 (28%) earned $15 000 to $25 000 a year, 8 (21%) earned $25 000 to $45 000 a year, and 5 (13%) earned over $45 000 a year. Criteria for participant inclusion were (1) experiencing violence from an intimate partner with whom they had had children, (2) engaging in custody litigation with the abusive ex-partner in a Massachusetts family court, (3) expressing dissatisfaction with family court processes/actors or perceiving that their rights may have been violated by family court state actors, and (4) willingness to speak with a documenter about these experiences.

All participants possessed some form of documentation (e.g., police reports, witness affidavits, restraining orders, child protective service reports) of IPV, with or without child abuse, as described in the study. None of the cases documented involved women's abuse of their male partners, nor were there cases involving substantiated child abuse by the mothers. Several of the women did report using alcohol, although none was noted to be an abuser of alcohol. Because the main focus of this work was accountability of the government rather than of abusive partners, documentation and descriptions of abuse suffered by participating women and their children provide a context for examining actions or inactions of family court state actors as possible human rights violations (i.e., the Battered Mothers' Testimony Project did *not* focus on actual acts of partner or child abuse as violations of participants' human rights).

A semistructured interview instrument to document the relevant experiences of battered mothers was developed. The 83-item interview queried the following concerns: (1) physical, sexual, economic, and psychological IPV and child abuse by ex-partners (both before and since separation); (2) abusive behavior of ex-partners related to family court litigation; (3) participants' ability to secure effective legal representation and other financial issues; (4) actions of family court state actors; and (5) perceived discrimination against participants in the family courts. Interviews were conducted in participants' homes, by telephone, or in project offices. The documenters who conducted the interviews were trained by the authors in human rights in the context of violence against women and in interview techniques. Interviews were audiotaped and averaged 4 hours in length. Written consent was obtained before interviews, and a payment of $50 was provided when the interview was completed.

Audiotapes were transcribed, and transcriptions were reviewed for accuracy by project staff. Pseudonyms were assigned and identifying features removed. Qualitative analysis followed the approach described by Miller and Crabtree.[39] Interview transcripts were read initially to identify emerging themes. Coding schema were then developed to define and identify particular problems faced by participants; schema were modified to reflect new understanding of emerging patterns throughout the coding process. Interrater reliability was verified through secondary review of all coded passages. Coded data were managed with a customized relational Microsoft Access 2000 database (Microsoft Corp, Seattle, Wash). Frequency of defined problems across transcripts was assessed, and human rights violations implicated were identified.

## RESULTS

Several themes emerged that corresponded to a consistent pattern of potential human

rights violations by state actors of the Massachusetts family courts against the women participating in the project and their children. These were (1) granting or recommending physical custody of children to men who had used violence against the mothers or both the mothers and their children, (2) granting or recommending unsupervised visitation of children to men who had used violence against the mothers or both the mothers and their children, (3) failing to accept or consider documentation of IPV as relevant evidence in cases of disputed child custody, and (4) failing to investigate allegations or consider documentation of child abuse as relevant evidence in cases of disputed child custody. All but one of the women participating in the project provided testimony documenting one or more of these state actor–related concerns.

Just over half (21 of 39) of all cases involved one or more state actors granting or recommending physical custody of children to men who had used violence against the mothers or both the mothers and their children. The majority (18 of 21) of these cases involved a judge granting joint or sole physical custody to the abusive male ex-partner. All 21 cases included documentation of IPV, with or without child abuse, perpetrated by male ex-partners; one third (n=7) involved documentation of both forms of violence. In addition, approximately one third of these cases (6 of 21) involved a history of physical violence against the mother during one or more of her pregnancies. Approximately two thirds (13 of 21) of men receiving custody had violated restraining orders granted by the court to participating women for protection from the violence of these men. The majority (10 of 18) of abusive men granted physical custody by judges were reported to have physically or sexually abused their children during the postseparation period (i.e., during litigation, while custody/visitation orders were in effect, or both). Approximately one fourth (4 of 18) were reported to have physically or sexually abused the mothers of these children during this same period. These details of the extensive abuse suffered by these women and their children provide insight into the relevant information potentially available to state actors in the context of their awarding physical custody to participants' ex-partners.

Slightly fewer than half (18 of 39) of cases involved family court judges granting or recommending unsupervised visitation of children to men who used violence against the mothers or both the mothers and their children. Judges were responsible for granting unsupervised visitation to an abusive male ex-partner in all of these cases; one third (6 of 18) of these cases also involved other state actors (e.g., state-appointed custody evaluators, child protective service workers) recommending unsupervised visitation to such men. All 18 cases also included documentation of IPV with or without child abuse perpetrated by male ex-partners, and over one third (7 of 18) involved documentation of both forms of abuse by these men. Over two thirds (13 of 18) of men receiving unsupervised visitation had violated restraining orders granted by the court to participating women for protection from their ex-partners' violence. Two thirds (12 of 18) of abusive men granted unsupervised visitation by judges were reported to have physically or sexually abused their children during the post-separation period. Over one third (7 of 18) were reported to have physically or sexually abused the mothers of these children during this same period. Again, these details of the abuse reportedly perpetrated against participants and their children indicate relevant information available to state actors making the described visitation decisions.

The cases of two thirds of the women we spoke with (27 of 39) involved family court state actors failing to accept or consider documentation of IPV as relevant evidence in cases of disputed child custody. Most of these cases (24 of 27) involved judges' refusal to accept or consider such documentation when it was presented by women or their counsel; this same majority (24 of 27) involved state-appointed custody evaluators, child protective service workers, or both committing this error. In approximately one third of cases (8 of 27), family court state actors representing all 3 categories refused to consider documentation of IPV. In over half of the cases (15 of 27) where state actors refused to consider such documentation, men documented to have been violent to their female partners were granted physical custody of children by family court judges. In an additional 8 of the remaining 12 cases, unsupervised visitation was awarded.

Approximately one fourth (11 of 39) of cases involved state actors failing to investigate allegations or to consider documentation of child physical or sexual abuse as relevant evidence in cases of disputed child custody. Five cases involved judges' refusal to consider such documentation or allegations; most (9 of 11) involved state-appointed custody evaluators or child protective service workers committing this same error. Nine of 11 cases included documentation of child abuse perpetrated by male ex-partners. In over one third of these cases (4 of 11), men whose abuse of their children was not investigated were granted physical custody of children by family court judges; all involved documentation of these men's child abuse. In 4 of the remaining 7 cases, unsupervised visitation was awarded.

Beyond the described refusals by state actors to consider evidence of IPV or IPV and child abuse, all 39 participants reported that state actors dismissed or minimized the relevance of this abuse to the assignment of custody and visitation, and to the conditions related to these assignments (e.g., physical exchanges of children) that might endanger women.

It is important to note that, although we collected information related to state documentation of the described family court actors' behaviors, certain behaviors (e.g., those involving refusal to consider documentation of abuse) involved reliance on the self-report of participants.

## HUMAN RIGHTS ANALYSIS

The treatment of participants in the Battered Mothers' Testimony Project was examined in the light of international human rights declarations and treaties. According to the UN Declaration on the Elimination of Violence Against Women,[7] states should exercise due diligence to prevent violence against women (box on page 954, Point 1). Findings indicate that, in the specified cases documented, family courts across Massachusetts may be failing to protect battered women and their children, and in many instances may actively endanger them by dismissing or failing to consider documentation of IPV, failing to investigate or consider allegations of child abuse against the batterer, and granting custody, unsupervised visitation, or both to bat-

**Potential Human Rights Violations: Details of Referenced International Human Rights Documents**

Point 1: Right to Due Diligence

According to the UN Declaration on the Elimination of Violence Against Women, states should "exercise due diligence to prevent, investigate and punish acts of violence against women, whether those acts are perpetrated by the State or by private persons," and a government may be held complicit in such violence where it fails systematically to provide protection from private actors who deprive any person of his/her human rights, or where the government condones a pattern of abuse through pervasive nonaction.[7]

Point 2: Consideration of the Best Interests of the Child

The Convention on the Rights of the Child (CRC) states: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration" (CRC, Article 3).[6] With regard to child custody issues, the CRC requires governments to ensure that children not be separated from their parents unless such separation is necessary for the best interests of the child (CRC, Article 9),[6] and to take positive steps to "protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child" (CRC, Article 19).[6]

Point 3: Right to Bodily Integrity

According to the Universal Declaration of Human Rights (UDHR), "Everyone has the right to life, liberty and security of person" (UHDR, Article 3), and further, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (UHDR, Article 5).[40] The right to bodily integrity is also enshrined in the key international treaty articulating fundamental civil and political rights (International Covenant on Civil and Political Rights [ICCPR], Article 9).[41] As mentioned in Point 2, the CRC requires governments to take affirmative steps to protect children from abuse and neglect by a parent, guardian, or caretaker (CRC, Article 19).[6]

Point 4: Right to Nondiscrimination

According to UDHR Articles 2 and 7[40] and ICCPR Article 2,[41] all people are equally entitled to their human rights "without distinction of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (UDHR, Article 2).[40] The Convention on the Elimination of All Forms of Discrimination Against Women specifically articulates the right of women to be treated equally with men in all areas of human society and requires governments to take affirmative measures to eliminate gender discrimination.[42]

terers. Thus, in many of the cases presently described, family courts appear not to be adhering to the due diligence standard.

Findings also indicate that the Massachusetts family courts may have failed in specified cases to sufficiently consider the "best interests of the child" (Point 2). The Convention on the Rights of the Child specifically directs governments to protect children from abuse.[6] Family courts may be understood to fail to act in the best interests of the child when they grant custody or unsupervised visitation to a batterer or child abuser, fail to consider documentation of IPV (and the implications for children), or ignore or fail to investigate allegations of child abuse.

This conduct raises additional concerns given that granting custody of children to perpetrators of IPV is strongly discouraged by Massachusetts's own laws regarding judicial conduct. The Massachusetts Presumption of Custody Law[43] directs judges not to place a child in the custody of an abusive parent, declaring this to be against the child's best interests; judges not adhering to this directive must document the basis for such contrary decisions.

The Massachusetts family courts may also be violating the human rights of battered mothers and their children to "bodily integrity" in specified cases, including freedom from violence, one of the most fundamental human rights enshrined in both the Universal Declaration of Human Rights[40] and the International Covenant on Civil and Political Rights[41] (Point 3). Our findings indicate that the family courts may be violating women's and children's rights to bodily integrity when they order custody and unsupervised visitation arrangements requiring battered women and their children to maintain ongoing, potentially dangerous contact with their abusive ex-partners. This violation is compounded in cases involving child abuse.

International human rights law also provides that "All are equal before the law and are entitled without any discrimination to equal protection of the law"[40,41] (Point 4). Findings of state actors in the family courts failing to consider documentation of IPV or to investigate allegations of child abuse indicate that battered women and their children's rights to equal protection of the law and to nondiscrimination are probably being violated.

Finally, this is but a small subset of the concerns reported to the project by women regarding their treatment by these state institutions; other concerns include (1) *economic integrity* as compromised through the unreasonable assignment of court-related costs, inadequate assignment of child support, and refusal to enforce child support orders; (2) *safety* as compromised through conducting face-to-face mediation between battered women and their abusers; (3) *discriminatory treatment* on the basis of race, ethnicity, class, sexual orientation, or immigrant status, and through the biased nature of child custody evaluations and reporting; and (4) *human dignity* as compromised through the degrading and dismissive nature of state actors' responses to the concerns of battered women attempting to protect their children. See box on page 955 for participant comments illustrating concerns and distress regarding family court experiences.

## STRATEGY FOR REFORM

The long-term value of human rights–oriented health research is determined largely

**Comments by Participants in the Battered Mothers' Testimony Project**

- "I don't think there is a worse thing in the world than not being able to protect your children. Like someone got my hands tied behind my back and I'm watching them beaten up, and I can't protect them."
- "It's absolutely crazy-making to not be permitted to protect your own child . . . to send her [on visits], to see her being abused and not be able to do anything about it."
- "I can't stress enough how awful it is, how awful it is to be battered . . . and not to be able to get away from that, to go to a court and have them give you more of the same—not only not protect you from it, but give you more of the same."
- "Unless there are major changes [in the family court process], I will never believe that a woman and [her] children will be protected."

*Source.* Cuthbert et al.[44]

by effective dissemination of findings to raise awareness of the relevant issues, the proposal of practical reforms, and the creation of a political climate to maximize the likelihood of adoption of such reforms. The project has pursued several strategies in this regard. Our first step was to hold a "human rights tribunal" in May 2002 at the Massachusetts State House. At this event, several battered mothers described succinctly and powerfully the most serious human rights abuses they had suffered for an audience of policymakers, advocates, community members, and the press. A visual display was created for the tribunal that included artistic and creative works designed to capture the impact on women and children of the abuses being denounced, and written testimonies by women who were not able to speak at the event.

Maintaining a participatory model of research, the project solicited suggestions by participating battered mothers for reform of the family courts that might afford battered women and their children greater protections, and it integrated these into the list of reforms indicated through our analyses. The major reforms called for include (1) greater accountability assigned to family court state actors, (2) transformation of the Guardian ad Litem (GAL) system to require expert consideration of IPV and child abuse, (3) enforcement of current laws and policies designed to protect victims of IPV and child abuse, and (4) creation of support systems for battered mothers involved in family court proceedings.

The final project report, released in November 2002, is available from the Wellesley Centers for Women (http://www.wcwonline.org/wrn/batteredreport.html). This report is grounded in international human rights treaties and principles, and it provides illustrations through details of cases we have investigated. The report also highlights findings from interviews with state actors and focus groups and from a written survey of service providers. Equally important, the report provides extensive specific recommendations for institutional reforms.

The final phase of the project has involved efforts to create the political climate necessary for such reforms. Strategies have included (1) presenting findings and proposed reforms to community groups, academic institutions, and professional organizations across the state; (2) identifying groups willing to take primary responsibility for promoting specific proposed reforms; (3) creating a statewide network of professionals committed to family court reform; (4) fostering the creation of localized grassroots groups to advocate for the rights of battered mothers and their children; and (5) advocating for national replication. Replication of the project is currently under way or has been completed in 5 other states in the United States.

It is very important to note that Massachusetts has taken several important steps to attempt to ameliorate the problems presently documented. For more than a decade, Massachusetts family courts have sponsored statewide training of family court judges regarding issues of domestic violence and have provided judges with forms to facilitate compliance with the state's custody presumption statute. Family court probation officers and other court employees have also received training on the handling of domestic violence in child custody disputes. The state's family courts have made training on domestic violence mandatory for investigators to receive court appointments. Additionally, a network of court-based domestic violence advocates are now available in most family courts across the state to assist battered women and refer them to legal resources. Massachusetts family courts have also developed and adopted a set of standards for GAL practice to guide investigations regarding child custody determinations. In January 2004, a process of reviewing complaints regarding GAL practice was formalized; potential consequences of this review include exclusion of the GAL from all future family court investigations. However, current state funding of the family court system is inadequate to implement this critical oversight mechanism.

Although these efforts reflect the strong commitment of many in state government to these issues, and place Massachusetts well ahead of many states in attempting to reform the family court system, it is also important to note that there is, unfortunately, no evidence that these efforts have lessened the steady stream of women seeking assistance from domestic violence service providers based on their perceived mistreatment in the family courts. Future investigations should assess how such measures have been implemented and their impact on family court practice.

## CONCLUSION

Our findings indicate that in specified documented cases, state actors in the Massachusetts family courts may be failing to act in accordance with international human rights standards when making child custody and visitation recommendations and decisions in cases involving IPV. Through such violations, they may be complicit in ongoing acts of harm against battered women and their children. Specifically, it appears that Massachusetts family courts actors involved in the cases examined (1) failed to exercise due diligence and provide equal protection under the law by their reported refusal to consider documentation of IPV or child abuse, and their re-

ported refusal to investigate allegations of child abuse in cases involving documentation of IPV; and (2) failed to protect the bodily integrity of battered women and their children and act in the best interests of children by granting physical child custody or unsupervised visitation to men who have abused the children's mothers and, in many cases, the children themselves. Accountability for these actions through meaningful oversight is critical owing to the primary role played by the family courts in protecting children in cases of disputed child custody.

It is important that these data be recognized as documentation of a set of issues based on reports of affected individuals (i.e., battered women referred to the project based on their dissatisfaction with family court outcomes or processes) rather than an attempt at definitive research into the prevalence and nature of the types of cases discussed. Research to answer these critical questions should include a representative sampling of cases, complete review of case files including GAL reports (available for review only to litigant attorneys under current Massachusetts law), judicial findings and transcripts of courtroom statements, and collection of attorney reports. Such work would greatly advance our understanding of both the problems (e.g., how often is evidence of IPV or child abuse presented and not considered, and whether lack of consideration is related to court bias or to technical rules of evidence disallowing admission of such critical information) and potential methods to improve family court practices to better protect battered women and their children. In tandem with such efforts, research is needed to understand the impact of the range of custody and visitation outcomes currently ordered through family courts on the children these courts are charged with protecting. Representative samples of families involved in custody disputes should be assessed longitudinally to answer these central questions regarding family court practice.

Because IPV and child abuse are global issues, and because human rights norms and standards are relevant internationally, the use of a health and human rights framework maximizes the relevancy of this type of research and action and the potential for replication internationally. The abuse of women and children by men is evident across the globe, as are the responsibilities of governments in regard to these concerns. Thus, the human rights analysis applied to these cases is probably relevant and may be applied in other nations whose domestic laws are quite different. Further, the focus on institutional violations and accountability may be particularly powerful in areas such as IPV and child abuse where broad social and legal changes are necessary to remedy public health concerns. As discussed earlier, this type of approach to health and human rights can lead to concrete public health initiatives to which governments may be considered obligated to respond. ■


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## Contributors

J.G. Silverman, C.V. Cuthbert, K. Slote, and L. Bancroft designed the study. J.G. Silverman and C.M. Mesh designed and performed data analyses. J.G. Silverman, C.M. Mesh, C.V. Cuthbert, K. Slote, and L. Bancroft prepared the article.


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## Human Participant Protection

The research protocol was approved by the Wellesley Centers for Women ethics committee.

## References


1. Tjaden P, Thoennes N. *Extent, Nature, and Consequences of Intimate Partner Violence: Findings From the National Violence Against Women Survey.* Washington, DC: US Dept of Justice Office of Justice Programs, National Institute of Justice; July 2000.

2. Heise L, Ellsberg M, Gottmoeller M. Ending violence against women. *Popul Rep.* 1999;27(4):1–44.

3. Rennison CM. *Intimate Partner Violence, 1993–2001.* Washington, DC: Bureau of Justice Statistics; February 2003. Crime Data Brief No. NCJ 197838.

4. Herman-Giddens ME, Brown G, Verbiest S, et al. Underascertainment of child abuse mortality in the United States. *JAMA.* 2000;282:463–467.

5. Fischbach RL, Herbert B. Domestic violence and mental health: correlates and conundrums within and across cultures. *Soc Sci Med.* 1997;45:1161–1176.

6. United Nations. *Convention on the Rights of the Child.* GA Res 44/25, annex, 44 UN GAOR Supp (No. 49) at 167, UN Doc A/44/49; 1989.

7. United Nations. *Declaration on the Elimination of Violence Against Women.* GA Res 104, UN Gaor, 48th Sess, Supp No. 49, UN Doc A/48/49; 1993.

8. *Velázquez Rodríguez v Honduras.* Case 7920, InterAm CHR 40, OEA/SerL/V/II68, Doc 8 Rev 1; 1986.

9. Grdinic E. Application of the elements of torture and forms of ill-treatment, as defined by the European Court and Commission of Human Rights, to the incidents of domestic violence. *Hastings Int Comp Law Rev.* 2000;23:217–260.

10. Levesque RJR. International children's rights—can they make a difference in American family policy? *Am Psychol.* 1996;51:1251–1256.

11. Cain JM. A global overview of ethical issues in women's health. *Int J Gynaecol Obstet.* 2000;70: 165–172.

12. United Nations. *The Vienna Convention on the Law of Treaties.* 1155 UNTS 331 (Article 18); 1980.

13. Saks MJ. The role of research in implementing the UN Convention on the Rights of the Child. *Am Psychol.* 1996;51:1262–1266.

14. Gruskin S, Tarantola D. Health and human rights. In: Detels R, Beaglehole R, eds. *Oxford Textbook on Public Health.* Oxford, England: Oxford University Press; 2001.

15. Krieger N, Gruskin S. Frameworks matter: ecosocial and health and human rights perspectives on disparities in women's health—the case of tuberculosis. *J Am Med Womens Assoc.* 2001;56:137–42.

16. Mann JM, Gostin L, Gruskin S, Brennan T, Lazzarini Z, Fineberg HV. Health and human rights. *Health Human Rights.* 1994;1:6–23.

17. Bancroft L, Silverman JG. *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics.* Thousand Oaks, Calif: Sage Publications; 2002.

18. Butts Stahly G. Women with children in violent relationships: the choice of leaving may bring the consequence of custodial challenge. *J Aggression Maltreatment Trauma.* 1999;2:239–251.

19. Lemon NKD. The legal system's response to children exposed to domestic violence. *Future Child.* 1999; 9:67–83.

20. Pagelow MD. Justice for victims of spouse abuse in divorce and child custody cases. *Violence Victims.* 1993;8:69–83.

21. Lemon NKD. Custody and visitation trends in the United States in domestic violence cases. *J Aggression Maltreatment Trauma.* 2000;3:329–343.

22. Ayoub CC, Deutsch RM, Maraganore A. Emo-

tional distress in children of high-conflict divorce: the impact of marital conflict and violence. *Fam Conciliation Courts Rev.* 1999;37:297–314.

23. Newmark L, Harrell A, Salem P. Domestic violence and empowerment in custody and visitation cases. *Fam Conciliation Courts Rev.* 1995;33:30–62.

24. Supreme Judicial Court of Massachusetts. Gender bias study of the court system in Massachusetts. *New Eng Law Rev.* 1990;24:745.

25. Hughes HM. Psychological and behavioral correlates of family violence in child witnesses and victims. *Am J Orthopsychiatry.* 1988;58:77–90.

26. Ross SM. Risk of physical abuse to children of spouse abusing parents. *Child Abuse Neglect.* 1996;20: 589–598.

27. Jaffe P, Wolfe DA, Wilson S, Zak L. Emotional and physical health problems of battered women. *Can J Psychiatry.* 1986;31:625–629.

28. Holden GW, Ritchie KL. Linking extreme marital discord, child rearing, and child behavior problems: evidence from battered women. *Child Dev.* 1991;62: 311–327.

29. Johnston JR. High-conflict divorce. *Future Child.* 1994;4:165–182.

30. Racusin RJ, Copans SA, Mills P. Characteristics of families of children who refuse post-divorce visits. *J Clin Psychol.* 1994;50:792–801.

31. Covington DL, Hage M, Hall T, Mathis MJ. Preterm delivery and the severity of violence during pregnancy. *Reprod Med.* 2001;46:1031–1039.

32. Kelly JB. Marital conflict, divorce, and children's adjustment. *Child Adolesc Psychiatr Clin North Am.* 1998;7:259–271.

33. Jaffe PG, Poisson SE, Cunningham A. Domestic violence and high-conflict divorce: developing a new generation of research for children. In: Graham-Bermann SA, Edleson JL, eds. *Domestic Violence in the Lives of Children: The Future of Research, Intervention, and Social Policy.* Washington, DC: American Psychological Association; 2001:189–202.

34. The Family Violence Project of the National Council of Juvenile and Family Court Judges. Family violence in child custody statutes: an analysis of state codes and legal practice. *Fam Law Q.* 1995;28: 197–227.

35. Chesler P. Mothers on trial: the custodial vulnerability of women. *Feminism Psychol.* 1991;1:409–425.

36. American Psychological Association Presidential Task Force on Violence and the Family. *Violence and the Family.* Washington, DC: American Psychological Association; 1996.

37. Reihing KM. Protecting victims of domestic violence and their children after divorce: The American Law Institute's model. *Fam Conciliation Courts Rev.* 1999;37:393–410.

38. Elrod LD, Spector RG. A review of the year in family law. *Fam Law Q.* 2001;34:607–657.

39. Miller WL, Crabtree BF. *Doing Qualitative Research.* 2nd ed. Thousand Oaks, Calif: Sage Publications; 1999.

40. United Nations. *Universal Declaration of Human Rights.* GA Res 217A (III), UNGAOR, Res 71, UN Doc A/810; 1948.

41. United Nations. *International Covenant on Civil and Political Rights.* GA Res 2200, UN GAOR, 21st Sess, Supp No. 16, at 52, UN Doc A/6316, 999 UNTS 171; 1996.

42. United Nations. *Convention on the Elimination of All Forms of Discrimination Against Women.* GA Res 180, UN GAOR, 34th Sess, Supp No. 46, at 194, UN Doc A/34/830; 1979.

43. Presumption of Custody Law, MGL Chapter 208, Section 31A, 1998.

44. Cuthbert C, Slote K, Driggers MG, Mesh CJ, Bancroft L, Silverman JG. *Battered Mothers Speak Out: A Human Rights Report on Domestic Violence and Child Custody in the Massachusetts Family Courts.* Wellesley, Mass: Wellesley Centers for Women; 2002.

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