



# THE IMPACT OF DOMESTIC VIOLENCE IN THE CHILD WELFARE SYSTEM

## KEY POINTS FOR COURT PROFESSIONALS AND ADVOCATES

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### INTRODUCTION

When immigrant families affected by domestic violence are involved in the child welfare system, professionals need to assess carefully how barriers to reunification may change the shape of their intervention. Immigrant families have different vulnerabilities to domestic violence and unique barriers impeding their ability to reunify. The aggressive federal timelines in child welfare cases also mean that immigrant parents must move quickly to preserve their rights, secure legal counsel, and engage in the case plan. At the same time, due process and notice requirements may cause the case to move more slowly and make communication with parents, relatives, and providers more difficult. These differences may mean that child welfare agencies shift to different models of reunification when traditional models become ineffective, in order to meet their federally mandated reasonable efforts requirements.

This tip sheet provides key points for court professionals, advocates, and social workers on some of the most common ways that immigrant families in the child welfare system are affected by domestic violence and how families affected by domestic violence interact with the system itself.

### **01 Immigrant domestic violence victims involved in the child welfare system are uniquely vulnerable to violence, power and control, and systemic inequity.**

Research has shown that immigrant victims of domestic violence have significant barriers to help-seeking, legal assistance, and resources (Tahirih Justice Center, 2017; Rosenberg & Grab, 2015, p. 5). Abusers often leverage the fear of deportation or loss of children to prevent disclosure of abuse (National Latin@ Network: A Project of Casa De Esperanza, n.d.). Abusers also may capitalize on an immigrant victim's status by subjecting the victim to economic and physical isolation, seizing the victim's legal

documents, or limiting the victim from learning English (Futures Without Violence, 2016). When victims do seek help, they often are confronted with a lack of culturally responsive service providers, discrimination, insufficient language access, and systemic inequality across the legal system (Battered Women's Justice Project, 1997, p. 3; Minoff, 2018).

These barriers do not vanish when families enter the child welfare system. Research indicates that children of color have disproportionate rates of removal, heightened challenges to reunification, and higher rates of adoption and non-reunification (Children's Bureau, 2016). As succinctly noted by the Family Violence Prevention Fund (2005), "Racial inequities and cultural biases result in the over-representation of families of color in the child welfare system, and deepen tensions between communities of color and the child welfare system" (p. 10). These structural barriers to services include deportation, extended periods of separation from children and families, a lack of equitable and culturally responsive providers, as well as preexisting implicit bias within the child welfare system itself. All of these vulnerabilities face an immigrant family involved in the child welfare system.

One of the most persistent barriers within both the domestic violence and child welfare systems is the continuing need for equal language access. Title VI of the Civil Rights Act of 1964 provides a bright-line federal regulation that requires all recipients of federal financial assistance, including child welfare agencies and state court systems, to comply with equal language access (Family Violence Prevention Fund,

2005). This requirement also falls upon local child welfare agencies providing reunification services and extends to reunification service providers contracted with child welfare agencies (United States Department of Justice, 2016). Unfortunately, throughout the country, language barriers continue to prevent immigrant victims from accessing legal, medical, and law enforcement services (Lee, Lundin, Mercado, & Uliasz, 2019; Asian Pacific Institute on Gender-Based Violence, 2019). Likewise, insufficient language access impedes federally mandated reunification services for victims and their families.<sup>1</sup> It is vital that reunification services (and translation for court and child welfare proceedings) be provided to immigrant families. Further, professionals should take care not to utilize children or relatives to translate for parents in confidential child welfare settings, particularly in cases that involve domestic violence. Not only is this risk-laden, but it also may be culturally inappropriate (Hedges, 2000).

## **02 Remember that batterers may utilize the court process (including child welfare investigations) to exert power and control over victims.**

Batterers often use the court process to exert power and control over victims of domestic violence (Klein, 2019). While this behavior is not unique to immigrant victims, it becomes particularly risk-laden in child welfare proceedings with immigrant families. Child welfare cases involve near constant investigation, with information being reported to the court through guardians ad litem, court appointed special advocates, minor's counsel, social workers, and parent's counsel.

<sup>1</sup> See e.g., *In re J.P.*, 14 Cal. App. 5 616 (2017) (Stating that failure to provide reunification services in a parent's language is inherently unreasonable and possibly unconstitutional).

This structure provides multiple avenues for batterers to spread misinformation purposefully about victims, obfuscate evidence of abuse, and threaten victims with bad information (National Council of Juvenile and Family Court Judges, 2008). Social workers and court officers who are untrained in domestic violence may cause greater danger by validating and communicating misinformation to the court as legitimate. The added dimension of misinformation further impedes the court from making effective decisions in cases where already there are structural barriers to safety. This behavior is particularly dangerous where there are allegations of child sexual abuse (Meier, Dickson, O’Sullivan, Rosen, & Hayes, 2019).

In addition, child welfare systems themselves are often hostile to victims of domestic violence, shifting dimensions of power in favor of abusers (Failure to Protect Working Group, 2000). The Family Violence Prevention Fund (2007) noted that “Mothers generally are the primary caretakers of their children and, as a result, are often the easiest parent to engage or punish. . . . This persistent attention to mothers, while useful if it involves listening to her and seeking to address her needs for safety, support and services, too often turns into mother-blaming, extending the shame and guilt she may already feel as a victim of abuse” (pp. 25, 26). The family of *Effective Intervention* research also notes that best practices focus upon the removal of the abuser rather than the victim to preserve the integrity of the family and limit system-induced trauma (Schechter & Edleson, 1999, p. 110).

However, immigrant families may not have this option. In situations where both parents are separated, and no relatives are available for placement, children will suffer the catastrophic system-induced trauma of removal from family and exposure to domestic violence.

### **03 Immigrant families affected by domestic violence may face profound challenges participating in traditional reunification models.**

Traditional models of reunification may not be effective for immigrant families experiencing domestic violence. Although federally mandated reasonable efforts standards require child welfare agencies to provide reunification services for all families,<sup>2</sup> immigrant victims of domestic violence may have difficulty participating in local services and visitation, two of the most common pillars in a child welfare case. Many local service providers do not provide adequate language access for immigrant parents, despite federal regulations requiring they do so. Further, undocumented immigrant parents may be placed in immigration custody or separated from their children due to their status. Indeed, conviction of a domestic violence crime, violation of a restraining order, or stalking are all bases for deportation.<sup>3</sup> Custodial facilities for immigration custody may lack services entirely or make visitation with foster homes or relative placements impossible. Reunification case plans that are mandated under federal law<sup>4</sup> also provide for aggressive timelines under the Adoption and Safe Families Act (Park, 2014).<sup>5</sup> These timelines

2 45 C.F.R. 1356.21 (2020).

3 8 USC § 1227(a)(2)(E).

4 42 U.S.C. 671(16) (2020).

5 42 U.S.C. § 675(5)(E) (1997).

are linked to services that often are unavailable to parents who may spend months in immigration custody.

Professionals should remember that the imposition of a case plan that does not provide available services fails to meet reasonable efforts requirements.<sup>6</sup> Social workers working with immigrant families should be mindful of United States Immigration and Customs Enforcement (ICE) (2017) directives that instruct child welfare coordinators to make appropriate efforts “to allow a detained alien parent or legal guardian to make arrangements for their minor child(ren), including through increased access to counsel, consular officials, family and dependency courts, child welfare authorities’ personnel, and/or family members or friends in order to arrange guardianship, or to obtain travel documents or otherwise make necessary travel arrangements, for his or her minor child(ren). . . .”(p. 2). In particular, ICE directives also may influence where a parent is detained in order to make visitation most efficient and to allow “participation in family court or child welfare proceedings” (United States Immigration and Customs Enforcement, 2017. p. 3).

## **04 Domestic violence and immigration status affects relative placement.**

Relative placement in immigrant domestic violence cases requires careful planning and assessment. In any circumstance, child welfare agencies should respond to domestic violence cases with a victim-centered approach, focusing on victim safety, trauma responsiveness, and batterer accountability (National Council of Juvenile and Family Court Judges, 2008).

This strategy requires careful consideration of the dimensions of power and control and family dynamics when placing minors. Placement in relative care is almost always beneficial for permanency (National Council of Juvenile and Family Court Judges, 2005), cultural responsiveness, and the potential for increased sibling contact (Edwards, 2018; Epstein, 2017). However, relative placement in cases involving domestic violence should be carefully considered to avoid placement with relatives who minimize domestic violence or align with the perpetrator of domestic violence. Placement in such homes may be counterproductive to reunification or dangerous. In any situation involving domestic violence, there will be some level of emotional alignment with the parties, but this should not be a barrier to relative placement, particularly if child welfare agencies can provide ongoing support to relative placements about domestic violence dynamics.

When immigrant families are involved in child welfare proceedings, loving and beneficial relative placements may exist outside the country. Professionals should remember that under the Fostering Connections to Success and Increasing Adoptions Act<sup>7</sup> adult relatives of a child should also be noticed under federal law for possible placement purposes. There is no constitutional barrier to placing minors outside of the country in relative care, and child welfare agencies can work with their local consulate to assess beneficial and loving relative placement abroad (Prandini, Adamson, & Desai, 2019, p. 43). This is particularly important in border communities where relative connections often overlap the border itself. For this reason, it

6 42 U.S.C. 671 (a)(15)(B) (2020).

7 42 U.S.C. 671(a)(29) (2020) (Fostering Connections to Success and Increasing Adoptions Act of 2008).



is critical that professionals identify and assess *all* potential relative placements, and avoid implicit bias toward domestic placements in lieu of foreign relative placements.

## **05 Immigrant parents may not receive legal notice of child welfare proceedings.**

“Notice” is a legal term that means a person is advised of a legal proceeding against the person. Notice to parents of immigrant youth is a critical part of child welfare proceedings, particularly for families affected by domestic violence. If a parent does not receive notice, the parent may never be provided an opportunity to meet with counsel, challenge the factual basis of the case, begin reunification services, or may even lose the chance to have the minor placed back in the parent’s custody. In extreme situations, inadequate notice can lead to the erroneous termination of parental rights, adoption, and appellate review.<sup>8</sup> In addition, the legal standards governing proper notice sometimes conflict with the strict federal timelines governing limitations on reunification, resulting in confusion at the trial level.

In all circumstances, parents are entitled to notice of child welfare proceedings. Additionally, the regulations of the ICE Agency require that “if practicable [the Agency] arrange for detained parents and guardians to appear in person at family court or child welfare proceedings when the detained parent or guardian’s presence is required to maintain or regain custody of minor children” (United States Immigration and Customs Enforcement, 2017, p. 41). In practice, this often requires communication between the court,

counsel, and the facility. Professionals should be mindful to maintain a good line of communication well prior to hearings to ensure that appearances can be practically arranged bearing in mind that the ICE is a federal, not state, agency. An excellent resource for notice and appearances is available in the Immigrant Legal Resource Center’s [\*Strengthening Child Welfare Practice for Immigrant Children and Families\*](#).

When immigrant parents are deported to their country of origin they also are entitled to notice of child welfare proceedings. However, international notice is governed under separate legal doctrines. Notice to parents in foreign countries may be accomplished under either the Hague Conventions (Convention on the Service Abroad, 1965) or through the Inter-American Convention on Letters Rogatory (Organization of American States, 1975). In either case, the process for accomplishing notice may take several months. Therefore, child welfare professionals should strive to make contact with parents as soon as possible to allow them to engage with counsel and begin reunification services. In many instances the reunification process may continue while notice is pending. It is also possible for a parent to waive notice (or accept informal notice through alternative means) when advised by counsel. In addition, all professionals should be mindful that the Uniform Child Custody Jurisdiction and Enforcement Act may require notice to foreign courts at the outset of a proceeding if the home state of the child is a foreign country (National Council of Juvenile & Family Court Judges, 2018).

8 See e.g., *In Re M.S.* 32 Cal.App.5th 1177 (2019) (Insufficient notice to mother in Mexico resulting in overturning of termination of parental rights).

## **06 Children in immigrant families affected by domestic violence need access to effective mental health treatment.**

Exposure to domestic violence causes severe trauma to children (Tsavoussis, Stawicki, Stoicea, & Papadimos, 2014). This trauma is further exacerbated by parental separation in child welfare proceedings (American Psychological Association, 2018). The longer this trauma goes untreated, the more damage it can do to young children in the child welfare system. Long term, untreated mental health eventually may impact the ability of parents to reunify safely and permanently with children and cause lasting problems into adulthood. Additionally, chilling effects such as the fear of deportation or discovery of abuse may have impeded both medical and mental health treatment prior to involvement in child welfare (Yoshikawa, Chaudry, Garcia, Koball, & Francis, 2019, p. 12). The exposure to domestic violence in immigrant children, coupled with the heightened barriers to mental health services in immigration and refugee populations, suggest that trauma-informed intervention is a necessary component of any case plan (Chamberlin, 2014).<sup>9</sup> Court professionals should carefully consider any child welfare service plan that does not include similar services for children exposed to domestic violence.

Additionally, mental health services for immigrant children in the child welfare system should be culturally responsive (National Childhood Traumatic Stress Network, 2007). Immigrant children often have mental health needs that are ancillary to domestic violence but arise out of the experience of migration, acculturation, or loss of family, home, and

culture. Indeed, interventions that are not culturally responsive may arguably not meet reasonable efforts requirements. Cultural responsiveness affects the reliability of treatment and is a critical dimension of psychiatric and therapeutic assessment (U.S. Department of Health and Human Services, 2001). Court professionals and advocates should also be mindful when reviewing the therapeutic goals of children in services that the diagnosis of mental health conditions is assessed through the lens of a child's culture (Substance Abuse and Mental Health Administration, 2014).

Finally, the American Academy of Pediatrics (n.d.) notes that mental health needs for immigrant youth can include a variety of factors such as the "perceived risk of deportation...acculturation, persistent poverty, perceived lack of opportunity, intergenerational conflicts...explicit societal prejudice" as well as the loss of "direct support of extended family networks, familiar cultural expectations and important intimate relationships such as with extended family members." Border youth who are involved in the child welfare system may specifically require unique mental health services focusing on environmental and acculturation factors that heighten their vulnerability (Flores & Kaplan, 2009). Thus, professionals should be mindful of therapeutic goals that are overly narrow in mental health support case plans for immigrant children exposed to domestic violence.

<sup>9</sup> Not all children will suffer traumatic symptoms, but virtually all children will be affected by the experience of exposure to domestic violence.

## **07** **Victims and children may be entitled to immigration relief through the child welfare system.**

Immigration relief is a critical component of support for immigrant families affected by domestic violence in the child welfare system. Although the immigration system and child welfare system are separate, there are many ways of securing relief. The best method of ensuring immigration relief for children is by seeking the appointment of an immigration counsel through the juvenile court. An immigration counsel can properly analyze the circumstances of a case, advise the guardian ad litem or trial counsel on how to proceed, and file the necessary documents on the child's behalf. An independent counsel is recommended, as immigration law is highly complicated and often time-sensitive. Undocumented children in the juvenile system may be eligible for Special Immigration Juvenile Status (SIJS), a specialized form of status available to children in state custody.<sup>10</sup> Additionally, undocumented children may sometimes be eligible for U.S. citizenship but lack documentation or records. These forms of relief often require unique expertise outside the gamut of most child welfare counsel, and professionals should be aware that counsel appointed to handle immigration cases may be eligible for Title IV-E reimbursement (Hardin, 2019). If independent appointment is not available, court professionals should seek assistance through legal aid organizations, immigration clinics, or national technical assistance providers.

For parents, the fear of deportation or negative immigration consequences is a heavy burden to carry while performing the exhausting task of reunification.

Parents in the child welfare system can be supported by referral to immigration counsel, legal aid organizations, or through legal clinics. Appointment of counsel to assist parents (particularly survivors) in acquiring legal status also can be a critical component of reunification itself and building bridges between the court system and litigants. One of the most common forms of relief available for domestic violence victims is through a U-Visa, a form of relief available for immigrant and undocumented victims of domestic violence (United States Citizenship and Immigration Services, n.d.). However, U-Visas are not the only form of immigration relief available and a comprehensive analysis of immigration relief should always be done by a lawyer skilled in immigration law.

Finally, it is important to remember that the immigration status of a parent, or their ability to speak English, should not be utilized as a factor in whether or not a parent can protect the child (Zug, 2014). Professionals should be ever mindful of implicit bias toward undocumented and immigrant parents (and relatives) in the child welfare system. It is improper for courts or legal professionals to use a parent's undocumented status as an argument for removal and doing so may violate constitutional protections. Unfortunately, this has happened multiple times in many different states (Zug, 2014). Professionals should also be mindful of bias in reports to the court from child welfare agencies or counsel and take steps to address any form of bias.

<sup>10</sup> 8 C.F.R. 204.11.

## **08 Reasonable efforts for immigrant families affected by domestic violence should be assessed in light of barriers parents have to reunification.**

Federal law mandates that the state agencies make reasonable efforts to reunify parents with removed children (Children’s Bureau, 2019, p. 2). However, immigrant families affected by domestic violence face unique and difficult barriers to reunification. A court analyzing reasonable efforts should consider these additional barriers an immigrant family faces during reunification, including language access, poverty, trauma, relative placement in foreign countries (which may impede visitation), the inability to access services while in detention, or a lack of culturally responsive services.<sup>11</sup> What is reasonable for one family may not be sufficient for an immigrant family with few resources or social support.

One of the most progressive pieces of legislation in this area is the Reuniting Immigrant Families Act (SB 1064), which was enacted in California in 2012 (Immigrant Legal Resource Center, 2014). This legislation delineated aspects of reasonable efforts for immigrant parents, such as requiring child welfare agencies to consider the “particular barriers a detained or deported parent faces in accessing services and maintaining contact with the child” (ABA Center on Children and the Law’s Child Welfare and Immigration Project, 2015).<sup>12</sup> Additionally, this legislation also mandated that child welfare agencies work with foreign child welfare authorities if parents were deported, identify services in foreign countries which could meet reunification goals, and ensure transportation and visitation of children. These goals can be thought of as a best practice model for working with immigrant families in the child welfare system.

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<sup>11</sup> Federal law under Title IV-E requires that the court make reasonable efforts findings from the inception of the case.

<sup>12</sup> See also, Cal. Welf. & Inst. § 361.5(e)(1)(E).



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