

# Domestic Violence And Reasonable Efforts In Juvenile Dependency Court

Practitioners in juvenile dependency court are aware that more than 50% of the cases that reach court include domestic violence as a part of the family dynamic<sup>1</sup>. Yet domestic violence is rarely the primary reason for finding a child needs the protection of the juvenile court. A search of California appellate law reveals only a few cases where domestic violence was the primary reason for court intervention<sup>2</sup>. This article will discuss what factual basis is necessary for juvenile court intervention on behalf of the children in a violent home and the role of the judge in these cases.

The fact that a parent has been the victim of domestic violence is not in and of itself a sufficient basis for reporting child abuse or neglect<sup>3</sup>. Nor is a child's exposure to a domestic violence incident a sufficient basis for reporting a suspected abuse or neglect<sup>4</sup>. In each of these situations there must be more in order to conclude that the child's physical or emotional health was endangered or that the parent is unable to protect the child from ongoing harm as a result of domestic violence as required by Welfare and Institutions Code section 300(b). The child's safety should be assessed in terms of "the nature and severity of past violence, the risk of violence in the future, the child's degree of exposure and resilience, the presence of protective factors in the immediate and extended family and available support from the community."<sup>5</sup>

If the child is struck or injured during the violent episode, juvenile court jurisdiction will likely lie<sup>6</sup>. If the children are present or aware of the ongoing violence, jurisdiction may lie. But caselaw indicates that even if the children are not present during some of the violence, jurisdiction may lie.<sup>7</sup>

In order to make a determination whether juvenile court jurisdiction lies, the judge should be prepared to ask the social worker a series of questions regarding domestic violence and the actions taken by the social worker. Preferably, the judge should ask the following questions at the initial hearing.

1. Did you screen for domestic violence at the outset of the case?
2. Does the petition allege the specific facts about the abuse?
3. What steps did you take to remove the abuser from the family home?
4. Did you consider placing the victim and child in a shelter for battered victims?
5. Did you assess the possibility of the victim and child residing with a relative?
6. Did you consider in-home services to support and protect the victim?
7. Did you secure a restraining order for the victim or assist the victim secure a temporary restraining order?
8. Since the time of removal what steps have you taken to obtain safe housing for the victim?
9. Is it safe to return the child to the victim today?
10. What would be necessary in order to make it safe to return the child to the victim?
11. Are you prepared to provide the victim support temporarily for housing and food?
12. Have you referred the victim to a domestic advocacy organization?
13. Have you assisted the victim and child apply for victim-witness funding?

The judge should ask these same questions whether the victim is male or female.

Taking extra time at the outset of a case will result in better case planning and improved outcomes for victims of domestic violence and their children.

## Endnotes:

- 1 Edwards, L., *Reasonable Efforts: A Judicial Response*, p. 51, (available at [judgeleonardedwards.com](http://judgeleonardedwards.com)).
- 2 *In re Heather A.*, 52 Cal.App.4th 183 (1996); *In re E.B.*, 184 Cal.App.4th 568; *In re T.V.*, 217 Cal.App.4th 126 (2013); *In re Basilio T.4* Cal.App.4th 155; *In re R.C.* (2012) 210 Cal. App.4th 930.
- 3 *Nicholson v. Williams*, 203 F.Supp.2d 153 (E.D.N.Y.) 2002; *Nicholson v Scoppetta*, 344 F.Supp.2d 143, (2003), and *Nicholson v Scoppetta*, 3 N.Y. 3d 357 (2004).
- 4 See *Effective Intervention in Domestic Violence and Child Maltreatment Cases*, NCJFCJ, 1999, p. 64.
- 5 *Id.*
- 6 *In re Heather A.*, 52 Cal.App.4th 183 (1996).
- 7 *In re T. V.*, 217 Cal.App.4th 126, 130 (2013).



**Judge Leonard Edwards** is retired from the Santa Clara Superior Court. He can be reached for comment at [judgeleonardedwards@gmail.com](mailto:judgeleonardedwards@gmail.com).