

Supporting Survivors in Contested Custody Cases: Trauma-Informed Strategies for Building on Parenting Strengths when Mental Health is a Factor*

Trauma Informed Legal Advocacy (TILA) Project – Practice Scenarios Series

Nothing in this document is intended as legal advice. If you need legal advice, contact an attorney.

As legal advocates and lawyers, you may work with survivors whose abusers use their mental health history to discredit them as parents in custody cases. As recommended by Denice Wolf Markham, JD, of Life Span Center for Legal Services & Advocacy, one way that you can respond is to work with survivors to build on their parenting strengths while the case is pending. According to Markham, “In our experience, some concerns and factors [related to the survivor’s parenting] can be addressed or improved upon while waiting for a case to ripen for trial.”¹

This document offers three practice scenarios where a legal advocate or lawyer can use trauma-informed strategies to build on a survivor’s parenting strengths while a custody case is pending. In each scenario, we will examine (1) which factors the court might consider important to deciding custody, (2) how knowledge of trauma, mental health, and domestic violence can help us understand what might be happening from the survivor’s perspective, and (3) how to use trauma-informed strategies to help the survivor build on their strengths in each area that

Finding a Lawyer

To find your local legal aid agencies, visit www.womenslaw.org. This site also provides extensive information about the divorce, custody, and order of protection laws in each state. You can also try contacting your state bar association, to see if a pro bono lawyer is available to take the case. You can find your state bar association and other lawyer referral programs through the American Bar Association’s directory, available at www.findlegalhelp.org.

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¹ Markham, D.W. (2004). Module IV, Legal Issues, in *Access to Advocacy: Serving Women with Psychiatric Disabilities in Domestic Violence Settings: A Curriculum for Domestic Violence Advocates*. Available at www.nationalcenterdvtraumamh.org.

The law allows judges to consider the mental health of both parents when deciding custody. But as a result of stigma, there is a risk that the mental health factor will be given undue weight. And this risk is especially high in domestic violence cases.

is relevant to the court's decision.

If you already have experience with family law courts, you know that judges must decide custody cases using the "best interests of the child" standard. The factors that judges use to determine the "best interests of the child" are different in every state, but some common examples include (1) the relationship between the child and each parent; (2) the home environments offered by each parent; (3) the child's adjustment to the home, school, and community; (4) the wishes of the child and the wishes of each parent; (5) the mental and physical health of each parent and of the child; and (6) any history of domestic violence.²

Thus, the law allows judges to consider the mental health of the parents as one factor when deciding custody. In considering the mental health of the parents, the judge should consider evidence about the specific ways that any mental health condition of the parents affects the best interest of the child, balancing this with all other relevant factors.³ But as a result of the stigma attached to mental health conditions, there is a risk that this factor will be given undue weight.

This risk is especially high in domestic violence cases.

People who are abusing their partners often use their partner's mental health history to undermine, sabotage, and control them. In the context of potential custody battles, this includes using the survivor's mental health history to make threats about winning custody. Survivors often report not leaving abusive relationships because they are afraid that their abusive partners will convince the judge that they are "crazy" and win custody.⁴ This strategy is very effective because, due to the high level of stigma attached to mental health conditions, parents with mental

² National Network to End Domestic Violence (2008), WomensLaw.org, <http://www.womenslaw.org/>

³ For a discussion of the need for a more explicit "nexus requirement" between the mental health condition of a parent and the impact on the best interests of the child, see Geva, A.S. (2012). Judicial Determination of Child Custody When a Parent is Mentally Ill: A Little Bit of Law, a Little Bit of Pop Psychology, and a Little Bit of Common Sense. *U.C. Davis Journal of Juvenile Law & Policy*, 16(1).

⁴ This and other tactics were documented in Warshaw C., Lyon E., Phillips H., Bland P., Hooper M., *Mental Health and Substance Use Coercion Survey: Report on Findings from the National Center on Domestic Violence, Trauma & Mental Health and the National Domestic Violence Hotline* (forthcoming).

health conditions are in fact at a high risk of losing custody.⁵ In domestic violence cases, abusive partners may claim that their partners are “dangerous” due to their mental health conditions, when this is not true, and in fact, they themselves are the ones who have been violent.

Working with survivors to build on their parenting strengths can reduce the chances that these tactics will be successful. All parents have strengths that they can build on, as well as challenges that they may be working to overcome. In the context of domestic violence, abusers may have intentionally undermined survivors’ parenting, while the abusive relationship may also have had indirect effects on parenting capacity.⁶

The suggestions incorporated here build in part on a list written by Denice Wolf Markham on ways that a legal advocate or lawyer can support a survivor while a case is pending,⁷ as well as on suggestions from the Temple University Collaborative on Community Inclusion of Individuals with Psychiatric Disabilities.⁸

Scenario 1: Building Social Networks

The person you are working with has temporary custody of her three young children. She needs help, but says she has no one. She has some family nearby, but says she doesn’t talk to them anymore.

Step 1. What will the court see?

Judges often consider the social support available to each parent, as well as the social environment provided to the children by each parent, as one factor when deciding custody. Within a social network, parents and children have access to emotional as well as tangible supports, such as help with childcare and transportation. Social networks can also provide access to relationships that

Finding a DV Advocate

To find an advocate, call the National Domestic Violence Hotline at 1-800-799-7233.

⁵ National Council on Disability (2012). Chapter 7: The Family Law System: Custody and Visitation, *in* Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children. Available at <http://www.ncd.gov/publications/2012/Sep272012/>.

⁶ Bancroft, L.R. & Silverman, J.G. (2002). *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics*. Thousand Oaks, CA: Sage Publications, Inc.

⁷ Markham, D.W. (2004).

⁸ For resources from the Temple University Collaborative on Community Inclusion of Individuals with Psychiatric Disabilities, see <http://tucollaborative.org/resources/resources.html#parenting>.

support the healthy development of the child. In general, judges prefer not to remove a child from an environment where they are flourishing. Furthermore, in cases where the survivor's mental health is raised as a factor, some judges will look at the social support available to the survivor as part of their consideration of how this factor impacts the "best interests of the child."

If the information provided in Scenario 1 was the only information provided to the court on this issue, what might the judge think? There is no information about why the survivor does not have any contact with her family, which might be concerning to the judge. There is no evidence that the survivor is working to rebuild social connections. If the children are not yet in school, they may not have access to any family or community support system at all. Furthermore, there is no information that the survivor is facilitating their involvement in activities, through which they can build their social skills and supportive social connections.

Step 2. What's happening from her perspective?

Both domestic violence and trauma can impact social networks. As advocates, we know that many abusers actively work to isolate their partners. Abusers may prevent their partners from maintaining social networks, such as by not allowing them to visit or communicate with friends and family. Abusers may also intentionally interfere with and sabotage their partners' relationships. The survivor may also be more isolated if they do not speak the dominant language, especially if they are not connected to a local community that shares their language, or if they previously moved away from their family and friends in order to be with their partner, and they have not yet established new connections.

An abusive relationship can also have indirect impacts on a survivor's social network. For example, family members may feel frustrated with a survivor if they don't see past efforts on her behalf as being helpful or successful, or if they themselves feel helpless. By leaving the abusive relationship, survivors sometimes lose access to other relationships and their community. For example, it may be too dangerous for her to contact someone from her past, or her partner may have maintained control of those relationships.

Furthermore, we know that survivors may experience traumatic mental health effects of domestic violence. In addition, many abusers intentionally do things to undermine their partners' mental health. A trauma-informed perspective can help us recognize how experiences of abuse and trauma may be impacting how a person engages in relationships. For example, experiences of betrayal can make it harder to trust. Survivors may avoid social activities in order to

"One factor that the judge might look at is your social support—your friends and family. Many of the people I work with have lost relationships with friends and family because of the abuse. If you like, we can think together about some ways that you can work to reconnect with friends and family, or make new connections, while your case is pending."

avoid running into people connected with their ex-partner or to protect themselves from situations that don't feel safe or that evoke trauma-related thoughts or feelings. If a survivor is dealing with chronic physical and/or mental health conditions resulting from the abuse, this can affect their ability to engage in social activities. Abusive partners may also convince their partners that they are not deserving of friends, or that they are not valuable as a friend to another person.

Thus, a number of factors may be impacting a person's lack of social connections. It takes time and energy to overcome these obstacles in order to rebuild disconnected relationships and build new relationships. If a survivor has recently left an abusive relationship, they might also experience high levels of stress that interfere with their ability to engage in relationships. For example, if they are still in danger or if leaving the relationship has left them without financial resources, they may be managing these issues as well. They may feel that building relationships is not a priority or they may feel overwhelmed thinking about the time and energy that it would require to rebuild a social network.

Step 3. What might help?

As a legal advocate or lawyer, part of your work in preparing someone for custody proceedings is to let the person know what the judge might consider when making this decision. You can share what you know about how judges in your area are likely to weigh the presence of social support as one factor, and if possible, you can offer support in rebuilding her social networks.

If the person you are working with accepts your help, you can begin by exploring what some of the obstacles might be to building or rebuilding social networks. In doing this, it can be helpful to acknowledge that maintaining social networks can be hard for anyone, that abusers often intentionally isolate their partners, and that many people lose relationships as a direct or indirect result of the abusive relationship. You might also share information about the ways that trauma can affect a person's ability to trust other people or to feel safe reaching out.

You might discuss how past relationships may have been impacted by the abusive relationship, and whether reconnection seems possible.

"A lot of the people I work with tell me that their ex-partner made it difficult for them to maintain relationships with family and friends, or that their friends and family have stopped supporting them because they stayed in the relationship. It can feel hard at first, but it's often worthwhile to try and reconnect with people you have had good relationships with in the past. Is there anyone who used to support you a lot but doesn't anymore? If so, we could explore what it would look like to reconnect with them."

You can also support survivors in exploring opportunities for new relationships. It can be especially helpful for survivors to connect with neighbors, family members who live close by, and other parents with children close in age to the survivor's children. Taking part in activities is a good way to meet new people with shared interests and values. This might include becoming involved in activities at the child's school, community-based organizations, or faith-based groups. Becoming engaged in activities with the children can be an especially good way for the survivor to build their and their children's social networks. Activities provide children a chance to make friends and learn social skills, as well as an opportunity for the survivor to meet other parents. In addition, receiving regular positive encouragement from adults can contribute to children's resiliency in the face of difficulty. In many cases, judges will consider whether the parents are facilitating healthy routines with the child and involvement in activities. It's often possible to find activities that are free or low-cost. Many domestic violence programs provide programming for children. In addition, activities might be offered through the child's school (including after school programs), local park districts, community centers, or faith-based groups.

Scenario 2: Mental Health Treatment

The parent you are working with says that she is prescribed medication and has seen a therapist for years for anxiety and depression. She recently stopped taking her medication and seeing her therapist.

Step 1. What will the court see?

When a parent's mental health condition is raised as a factor in a custody cases, judges will usually prefer to see that the parent is following through with any treatment that they've been prescribed, including therapy and medication. Judges will also consider the parent's behavior and demeanor at court, as well as any evidence presented of their behavior outside of the courtroom. In some cases, the judges may have the opportunity to consider assessments made by custody evaluators and any expert witnesses.

Step 2. What's happening from her perspective?

The survivor may want to be taking her medication and/or seeing her therapist regularly, but there may be obstacles, such as the cost of treatment. She may have been able to receive treatment under past insurance coverage that is no longer active. Or she may be having a difficult time renewing her prescription or making appointments with her therapist due to lack of transportation or childcare.

It's also possible that her current treatment plan is not working for her. She may be dissatisfied with the side effects of the medication or feel that it's not working. Furthermore, many therapists are not trauma informed and many do not understand domestic violence. Many therapists do not have a very wide range of cultural competencies. As a result, the survivor may not feel safe or comfortable with her therapist for these or other reasons.

If the survivor has recently left an abusive relationship, it's also possible that the person who was abusing her was inappropriately involved with her treatment. In fact, many survivors report that their abusers attempt to control their mental health treatment as part of a larger pattern of abuse and control.⁹ Thus, continuing care with past treatment providers may not be safe.

It's also important to note that, whether or not someone has received mental health treatment in the past, the stress of the legal proceedings can contribute to anxiety and depression, which may impact the survivor's demeanor and behavior. In fact, in one study, the rate of depression was higher among survivors involved in legal proceedings than survivors in DV shelter settings or in mental health settings.¹⁰

Step 3. What might help?

When we are working with someone to prepare them for legal proceedings, we have much less ability to make changes to the physical and programmatic environment than when we are supporting someone within our own service agency—and we cannot change the way the courts make decisions (at least not overnight). Part of trauma-informed practice under these circumstances is to share the information we have not only about the law but also about the process itself and what it will be like. We must prepare survivors for proceedings that likely are not accessible, culturally aware, or trauma informed—and often times not understanding about domestic violence at all. Doing this in a way that is validating and normalizing communicates that we are aligned with the survivor, and not with the legal system that she may experience as harmful.

⁹ See Warshaw, et al, *Mental Health and Substance Use Coercion Study*, supra note 4.

¹⁰ Warshaw, Brashler & Gill, *Mental health consequences of intimate partner violence*, Mitchell and Anglin (eds.), INTIMATE PARTNER VIOLENCE: A HEALTH BASED PERSPECTIVE. New York: Oxford University Press (2009) ("In a meta-analysis of mental health conditions experienced by survivors of IPV, the weighted mean prevalence across settings was 50% for depression, 61% for PTSD, and 20.3% for suicidality (44). Rates of depression were highest among women in IPV shelters (63.8%) and court-involved women (73.7%), PTSD rates were highest for women in shelters (66.9%) and drug treatment programs (58.1), and rates of suicide attempts were highest among women seen in psychiatric settings (53.6%).").

Thus, in this context, we must communicate what we know about how the courts are likely to react when mental health issues are used against survivors. This includes the fact that judges often put great weight on compliance with treatment when mental health is raised as an issue in a custody case.

"It's not always fair, but family law judges often want to see that people are complying with their mental health treatment."

After sharing what we know, we can offer help figuring out how best to prepare for this. If the person we are working with accepts our help, then as a first step, we can explore why a survivor stopped treatment. In this scenario, a helpful guiding question (often used in trauma-informed practice) might be, "What's stopping her?" With this question in mind, we can work to identify and address barriers such as cost, transportation, or lack of childcare. Then, we can work on possible solutions. For example, in this case, the treatment provider might be able to offer assistance with some of these obstacles, especially if it is a community-based program.

"I know there are lots of reasons why someone might stop their mental health treatment. Is it okay if we talked about what might be happening for you? Then we can work together to get ready for any questions or concerns that judge might have about this."

If the current medication or therapist is not working for the person you are working with, you can help them to identify the reasons why it is not working. It may be possible to make changes so that her mental health concerns are being addressed in a way that fits with her needs and values. This may include finding the survivor a new mental health treatment provider, someone she can trust. In these cases, it can help to have invested in building relationships with the mental health providers in the community. For domestic violence programs that encounter this situation frequently, building these relationships in advance can be critical. In some cases, finding a new provider may not be possible. In these cases, survivors may need to weigh the pros and cons of continuing with their previous treatment until other options are available.

Nonetheless, mental health treatment often won't meet all of someone's emotional needs. Even if a survivor is caring for her mental health, the legal process can still be overwhelming. Because judges are not always trauma informed, they may look negatively on a survivor whose demeanor or behavior in the courtroom reflects the effects of trauma and stress. For these reasons, supporters can also assist the survivor in building on their skills for managing their emotions and stress. This can include having survivors ask themselves these questions:

1. What things can I do to care for myself every day while this case is going on?
2. If I become stressed, how will I know? What will that look like? How will others know?

3. If I do get stressed, what can I do to manage those emotions? What can other people do to help? How will they know what to do?
4. What if I get stressed in the courtroom? What kinds of things can I do to manage those emotions? Is there anything that other people can do to help?

To reduce stress, survivors in recovery from a substance use disorder may also find it useful to consider revising their sobriety plan and/or seeking increased support for the duration of the case, even if they have been sober for a long time. Both lawyers and legal advocates can bring up the issue of substance use in a normalizing way, communicating the extent of and limitations on confidentiality.

"A lot of the people I work with tell me that they use alcohol or other drugs to deal with stress, and as you know, court can be very stressful. If this is something you worry about at all, we can talk about it and our conversation would be confidential."

If you need to assist a survivor in locating mental health support, you may want to use this resource: *Locating Mental Health and Substance Abuse Supports for Survivors: A Reference Sheet for Domestic Violence Advocates*, available at www.nationalcenterdvtraumamh.org.

Scenario 3: Dealing with Anger & Managing Expectations

The survivor you are working with feels deeply angry. She often talks about how everyone is against her. She says her ex-partner doesn't deserve to see his children and wants him to be brought to justice.

Step 1. What will the court see?

Judges want to be assured that the children's well-being is the parent's primary concern. In this scenario, the judge may think that the survivor is more concerned with getting back at her ex-partner than about caring for her children. The judge may think that the survivor will not facilitate the relationship between the abuser and the children—a factor that judges often consider when deciding which parent the child will live with.

The judge may also react negatively if the survivor expresses that everyone is against her. If the judge sees the court process as fair and neutral, they may find the survivor's feelings toward it unreasonable and combative. If the abuser has raised the survivor's mental health history, the judge may attribute the survivor's feelings to her "mental health issues."

Step 2. What's happening from her perspective?

Of course, it's normal for survivors to be angry about what they have experienced. This doesn't mean that their children's well-being isn't their primary concern, even though the anger may be "louder" in the moments when the survivor is interacting with the legal system.

It's also normal to react with anger when we are emotionally or physically threatened. A survivor involved in a custody case is at risk (whether minimal or high) of losing custody of her children to her abuser. In addition, a survivor's involvement in the court process itself or her compliance with orders of the court (such as visitation orders) may put her or her children at risk of violence. A survivor's disclosure of abuse may be minimized and her concerns about the risk of future violence may not be taken seriously. All of these circumstances can impact the physical and emotional safety of a survivor and her children.

Anger and frustration may also arise around the functions or limitations of the family court systems, especially when there is a mismatch between the survivor's expectations and the reality of the court process. One clear example is when the survivor wants her abuser to be "brought to justice" by the family court system. She may expect the family law court to consider the abuser's wrongful behavior in making its decisions about custody and property distribution, but this will not happen. Anger and frustration may also arise when there is a mismatch between the survivor's understanding of someone's role and the reality of their function in the court process. For example, she may experience a custody evaluator or other court professional as sympathetic, but later learn that they support an outcome that she feels is unsafe for the children.

Step 3. What might help?

As we know, expressions of anger may be a response to concerns about physical and emotional safety. If you haven't already, it can be helpful to explore whether the survivor's expressions of anger are related to underlying concerns that can and should be brought to the attention of the court.

Managing Expectations

The idea of "managing" someone's expectations can sound patronizing, especially when we acknowledge that often the expectations of the person we are working with are in fact quite reasonable. We should be entitled to expect family courts to treat us with respect and to make decisions that keep us and our children safe. Court systems should meet these expectations, but we know that sometimes they don't. When we do trauma-informed legal work, we can keep in mind that "managing expectations" does not mean telling someone that their expectations are unreasonable—but rather sharing what we know about the limitations of the legal system.

When You Are Angry in Court

Quick Tips for Survivors

Sadly, it is not unusual to feel attacked or hurt during court proceedings. But there are some things courts almost always respond to negatively, even when it is unfair. Here are some quick tips based on what we know about how courts often respond when people express anger:

1. Don't focus on "getting back" at your ex-partner. Even though you're angry, focus on what is most important to you—your children. You know this, but the court does not. Show the judge that your primary concern is your children's well-being.
2. Don't refuse to cooperate with your ex-partner or ask for restrictions on visitation or parenting time without giving specific reasons why it would not be safe for the children.
3. Don't bad-talk your ex-partner in front of the children. However, if you are afraid for their safety, do find an advocate who can help you safety plan with the children.
4. Don't use demonizing words like "evil" or "the devil" to describe your ex-partner or members of his family, even if what they did was terrible. Instead, say what they did and how it made you feel (e.g., afraid).
5. Don't expect justice. It isn't fair, but family law courts are not going to make things right. Judges make decisions based on the best interests of the child, not what the parents deserve.

This is intended for educational purposes only; this is not legal advice.

This can take some time. Although a survivor may express general feelings of anger, distrust, or a desire to punish the abuser or teach them a lesson, unpacking these feelings may result in information about specific incidents, such as times that the abuser has hurt her or the children. For example, in this scenario, the survivor is saying that the abuser "doesn't deserve" to see his children. Many things may be contributing to this assertion, including that the abuser hurt the children. It can be very effective to work with survivors to translate generalized feelings, especially anger, into factual statements about events that happened and their emotional and physical impact on the survivor and her children. Similarly, in the context of custody evaluations, the Leadership Council on Child Abuse & Interpersonal Violence recommends that survivors offer information about facts and events, and "describe" rather than "interpret" the abuser's behavior.¹¹

Regardless of the reasons for a survivor's anger, it is important to address how that anger will look in court. A key component of trauma-informed legal advocacy is remaining aligned with the person we are working with while communicating what we know about the system is likely to respond. In this context, that means communicating how the court is

¹¹ Leadership Institute on Child Abuse & Interpersonal Violence, Preparing for Custody Evaluation: A Guide for Victims of Domestic Violence (2013): http://www.leadershipcouncil.org/1/pas/eval_guide.html

likely to react to her anger, while validating feelings of anger as normal and okay (so long as they are not being wielded abusively toward you or others).

In addition, it is often worthwhile to take the time to explain what a survivor should expect from being involved in the court process in general. Share information about the roles of different court personnel and the functions and limitations of the court system itself. Someone not familiar with legal processes would not know that family law courts cannot award “justice.” Neither would they know that these courts do not decide custody, parenting time, or visitation arrangements based on what one parent deserves.

Although it may seem obvious to someone who has worked with the legal system for a long time, it can be helpful for the supporter to talk through what family law courts can and cannot do, and what they will and will not consider important to their determination of the child’s best interests. Managing expectations, avoiding surprises, and reducing the risk of misunderstandings can help a survivor to participate more fully in the process.

“You’ve expressed a lot of anger about everything that’s going on with your case. You have every right to be angry. I would be angry too, if I were in your shoes. I do feel worried that the court is not going to be understanding. I’ve seen the courts respond very negatively when people show anger, and I don’t want that to happen to you.”

It can also be helpful to support a survivor in finding safe ways and places to release their feelings of anger. If it seems appropriate, you can explore if there are people in her life that she can talk with, or strategies that she can use to safely express her anger and have it heard.

More Resources

Resources on Domestic Violence and Custody Cases

WomensLaw.org, a project of the National Network to End Domestic Violence (2008): <http://www.womenslaw.org>

Managing Your Divorce: A Guide for Battered Women, by the Family Violence Department of the National Council on Family and Juvenile Court Judges (2010). Available at http://www.ncjfcj.org/sites/default/files/pro_se_web.pdf

Legal Resource Kit: Domestic Violence and Custody, by Legal Momentum Foundation (2005). Available at <https://www.legalmomentum.org/sites/default/files/kits/dv11resources-1.pdf>

Safety Planning for Unsupervised Visitation

Barbara J. Hart's Collected Writings: <http://www.mincava.umn.edu/documents/hart/hart.html#idp1910368>

Resources on Parenting with a Mental Illness

Children of Parents with a Mental Illness (COMPI) (resources for parents and children): <http://www.copmi.net.au>

Parenting Well (resources for parents): <http://www.parentingwell.org>

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