

BATTERED WOMEN, CHILD MALTREATMENT, PRISON, AND POVERTY: ISSUES FOR THEORY AND PRACTICE

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I have admired Liz Schneider since I began teaching domestic violence law in August of 1988, so I am honored to be here today. I should also add that I have admired Ann Shalleck (who invited me to this Conference) since August of 1984; I was at Community Legal Services in Philadelphia doing dependency work on behalf of women accused of neglecting and abusing their children, and Ann was my predecessor and became a mentor. So, in my brief comments, I am going to bring the two kinds of work together—dependency and neglect together with domestic violence. In doing so, I am responding to Liz’s challenge in her book for “legal advocates to describe and make visible all the dimensions of battered women’s experience as mothers within a broader gender framework.”¹

There are, of course, many ways to bring these types of work together—children who witness domestic violence are often victims themselves, and when they grow up, they may repeat the cycle of violence.² Children are often placed in the child protective services

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1. ELIZABETH M. SCHNEIDER, *BATTERED WOMEN & FEMINIST LAWMAKING* 178 (2000).

2. See generally Naomi Cahn, *Civil Images of Battered Women*, 44 *VAND. L. REV.* 1041

system because of a parent's alleged failure to protect and because of poverty caused by domestic violence.³ Joan Meier has already talked about how child protective services and domestic violence advocates are beginning to work together.⁴ And, of course, the relationship between children and domestic violence is generally well documented.⁵ Today, I'm going to talk about two issues relating to battered women and the dependency system: first, the intersection of domestic violence with the foster care system and imprisonment—including the relinquishment of battered women's children upon incarceration, regardless of whether imprisonment is for an intimate abuse-related incident;⁶ and second, the relationship between domestic violence, mistreatment of children, and receipt of welfare assistance. Further, I will explore – as Liz has done in so many other contexts—the complexity of battered mothers' personal situations, and how the law and its practice do not acknowledge those complexities when it comes to issues involving child maltreatment and imprisonment.

I. BATTERED WOMEN, CHILDREN, AND PRISON

When we talk about battered women and imprisonment, we tend to focus on battered woman syndrome, woman's agency and victimization, and clemency;⁷ conversely, I would rather focus on the mothering done by these women. First, I will briefly discuss issues

(1991).

3. See, e.g., Naomi Cahn & Joan Meier, *Domestic Violence and Feminist Jurisprudence: Towards a New Agenda*, 4 B.U. PUB. INT. L.J. 339, 351 (1995) (stating that people often perceive battered women as bad women because they fail to protect their children from abuse); Erin Richmond, Note, *The Interface of Poverty and Violence Against Women: How Federal and State Welfare Reform Can Best Respond*, 35 NEW ENG. L. REV. 569, 573-75 (2001) (explaining the direct links between domestic violence, poverty, and welfare dependency).

4. See Joan S. Meier, *Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions*, 11 AM. U. J. GENDER SOC. POL'Y & L. 657 (2003).

5. See *supra* nn.3-4

6. See Peter D. Schneider, *Criminal Convictions, Incarceration, and Child Welfare: Ex-Offenders Lose Their Children*, in AMY E. HIRSCH ET AL., CTR. FOR L. & SOC. POL'Y & COMMUNITY LEGAL SERVS., EVERY DOOR CLOSED: BARRIERS FACING PARENTS WITH CRIMINAL RECORDS 53, 53-84 (2002) (discussing the complexities of imprisonment for mothers); see also Angela Y. Davis, *Public Imprisonment and Private Violence: Reflections on the Hidden Punishment of Women*, 24 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 339, 341 (1998) (connecting race, gender, prison, and domestic violence by arguing that "domestic violence as a form of punishment is rarely perceived as integrally connected to the modes of punishment implemented by the state").

7. See, e.g., Linda Ammons, *Dealing with the Nastiness: Mixing Feminism and Criminal Law in the Review of Cases of Battered Incarcerated Women—A Tenth Year Reflection*, 4 BUFF. CRIM. L. REV. 891, 891-906 (2001) (discussing author's personal experiences with battered women).

relating to how women imprisoned for domestic violence are treated upon release under the Adoption and Safe Families Act of 1997⁸ (“ASFA”); and will then turn to issues concerning women and domestic violence within the prison system.

A. *Post-Imprisonment Issues*

I’m going to start with the story of Gwendolyn Grant, who was repeatedly battered by her boyfriend.⁹ She complained to the New York police many times about the assaults. Finally, one night when he was drunk, her boyfriend punched her in the head and then repeatedly banged her forehead into the kitchen cabinets. When he began choking her, she grabbed a kitchen knife. As he lunged at her one more time, she took the knife and thrust it into his chest, killing him.¹⁰ Upon pleading guilty to manslaughter, she was sentenced to five years probation. In some ways she was lucky—she finished her probation in three years.

Fast forwarding almost fifteen years later, Gwendolyn has been working as a dental assistant, the same job she has held for over a decade. She decided to become a foster parent for her sister’s four children, Jonee, Candice, Natasha, and Deandra, because her sister could not take care of the children and visited them only sporadically. After garnering the permission of her sister and the children’s father, she sought to adopt the four children. The adoption homestudy reported that Ms. Grant and her four nieces enjoyed a “deep bond.”¹¹

Here’s the catch though, and the purpose for this story’s retelling—under New York law, Ms. Grant is unable to adopt her

8. Pub. L. No. 105-89, 111 Stat. 2115 (2000) (codified as amended at 42 U.S.C. §§ 670-679b) (outlining requirements for federal payments for foster care and adoptions assistance). For a critique of the AFSA see Naomi R. Cahn, *Children’s Interests in a Familial Context: Poverty, Foster Care, and Adoption*, 60 OHIO ST. L.J. 1189 (1999).

9. See *In re Adoption of Jonee*, 695 N.Y.S.2d 920, 922-23 (1999) (explaining Grants’ criminal history in a submitted affidavit, which discloses self-defense during a violent struggle against her abusive “live-in paramour,” along with other documents for an adoption proceeding).

10. See Michael A. Riccardi, *Law Barring Adoptions by Felons Struck by Judge*, N.Y.L.J., Sept. 16, 1999, at 1 (commenting on a New York court’s decision to strike down, as unconstitutional, a state law that bars persons with violent felonies from adopting children); Somini Sengupta, *Criticism for Law Barring Foster Parents with Past Felonies*, N.Y. TIMES, Feb. 27, 2000, at A39 (discussing criminal background checks conducted by New York state officials on all current and prospective foster and adoptive parents). See generally Sean D. Ronan, Comment, *No Discretion, Heightened Tension: The Tale of the Adoption and Safe Families Act in New York State*, 48 BUFF. L. REV. 949 (2000) (articulating the continued struggles of developing an effective foster care system).

11. *Id.* at 923.

nieces.¹² The New York law implementing the ASFA requires that anyone convicted of a felony involving spousal abuse or a crime involving violence shall not be allowed certification as an adoptive or a foster parent. The ASFA also prevents the return of children to parents who have aided or abetted in the abuse of a child.¹³ While this legislation prevents batterers from becoming adoptive and foster parents¹⁴—unfortunately, it also prevents women who defend themselves against their abusers from being certified. This is yet another example of what Liz describes so eloquently in her book as de-contextualization (almost the de-gendering) of domestic violence.¹⁵ This legislation that disqualifies people from serving as foster and adoptive parents offers no distinction between batterers and those who are battered. Given the need for additional foster parents, as well as the pervasiveness of domestic violence, disqualifying battered women as potential caretakers serves no one's interests.

B. *Prison and Battered Women*

Ms. Grant's actions in self-defense, resulting in a criminal sentence almost barred her from legal recognition of her caretaking of her nieces. A woman's involvement in the criminal justice system may have far-reaching effects on familial relationships. Many imprisoned mothers face extreme difficulties in maintaining ties with their children.¹⁶ Incarceration may form the basis for mothers completely severing relations with their children.¹⁷ For example, in California,

12. See N.Y. SOC. SERVS. LAW § 378-a (McKinney 2001) (requiring the removal of foster children from the home of a foster parent when the foster parent's criminal history record reveals a felony conviction of, *inter alia*, homicide).

13. See Rachel Venier, *Parental Rights and the Best Interests of the Child: Implications of the Adoption and Safe Families Act of 1997 on Domestic Violence Victims' Rights*, 8 AM. U. J. GENDER SOC. POL'Y & L. 517, 520 (2000) (analyzing the functionality of the Adoption and Safe Families Act).

14. See, e.g., Lisa Demer, *Trouble Mars Foster Parents' Past; Analysis Reveals Criminal Records*, ANCHORAGE DAILY NEWS, Jan. 30, 2000, at 1A (discussing Alaska's child welfare program, which includes participants with criminal histories).

15. See SCHNEIDER, *supra* note 1, at 229 (noting that "tensions of victimization and agency and privacy consistently re-emerge in the form of resistance to [gender] equality").

16. See Schneider, *supra* note 6, at 54-55 (discussing the particular difficulty incarcerated mothers face in keeping their families together); Catherine J. Ross, *Waiting for Mommy to Grow Up: Doing Justice to the Competing Claims of Mothers and Children in the Child Welfare System*, in FEMINISM AND CHILD PROTECTION (Martha Fineman & Susan Mangold eds., forthcoming 2004).

17. See *id.* at 67-68 (providing statutory provisions regulating custodial rights of incarcerated parents). See generally Heidi Rosenberg, Comment, *California's Incarcerated Mothers: Legal Roadblocks to Reunification*, 30 GOLDEN GATE U. L. REV. 285, 316-22 (2000) (discussing California's program for incarcerated parents and

reasonable efforts toward parent-child reunification are not required if the parent has been convicted of a violent felony.¹⁸ Once the woman is imprisoned, visitation may become extremely difficult and rare.¹⁹ Moreover, visitation at the prison will undoubtedly be traumatic for the children.

Battered women are imprisoned for many reasons—some of which may be directly related to domestic violence, such as taking action against their batterer, or, as in many of the cases that Liz describes in her chapter on Motherhood and Battering, failing to prevent their batterer from harming their children.²⁰ More than 60% of female violent offenders had a prior relationship with their victims, either as an intimate, relative, or acquaintance,²¹ in just over 60% percent of the murders committed by incarcerated women, the victim was an intimate or a relative.²² Battered women may also be imprisoned for having committed other crimes.

Studies of female prison populations indicate that many of the women have been abused; helping the women with issues of domestic violence once they are released has been the focus for advocates and battered women's training programs.²³ Almost 60% of the women in state prisons had been physically or sexually abused prior to incarceration;²⁴ the rate of prior sexual abuse of women prisoners is

recommending more community facilities, improved visitation options, and increased support for kinship care providers).

18. See Schneider, *supra* note 6, at 61 n.35 (illustrating a case where an appellate court reversed an order terminating parental rights where reunification efforts ceased after both parents were incarcerated).

19. See Note, *Development in Law: Alternatives to Incarceration*, 111 HARV. L. REV. 1921, 1930 (1998) (reporting that incarcerated women tend to have very little contact with their children).

20. See, e.g., SCHNEIDER, *supra* note 1, at 157-68 (stating that the criminalization of parental inaction includes prosecuting battered women for manslaughter, child abuse, or child neglect for their "failure" to protect their children from abuse).

21. See LAWRENCE A. GREENFELD & TRACY L. SNELL, BUREAU OF JUSTICE STATS., U.S. DEP'T OF JUSTICE, WOMEN OFFENDERS 3 (1999) (stating that violent offenses for nearly one-half of the women occurred near the victim's home or school).

22. See *id.* at 4 (providing statistical information on 60,000 murders committed by women between 1976 and 1997).

23. See generally, e.g., Caroline W. Jacobus, *Legislative Responses to Discrimination in Women's Health Care: A Report Prepared for the Commission to Study Sex Discrimination in the Statutes*, 16 WOMEN'S RTS. L. REP. 153, 259 (1995) (indicating that the "female inmate population suffers from a disproportionate rate of sexual and physical abuse, incest and domestic violence," which leads to significant physical and mental disorders and illnesses and even substance abuse).

24. See GREENFELD & SNELL, *supra* note 21, at 8 (showing that 12% of incarcerated women had been abused before turning eighteen years old, and that 25% had been abused after turning eighteen years old); see also Leslie Acoca & Myrna S. Raeder, *Severing Family Ties: The Plight of Nonviolent Female Offenders and their Children*, 11 STAN. L. & POL'Y REV. 133, 137 (1999) (referring to studies of women's characteristics, such

six times higher than the comparable rate for incarcerated men.²⁵ But even this may misrepresent the rate of abuse because, as one study explained, if women have very low self-esteem, they will not be able to identify whether their mistreatment and battering constitutes abuse.²⁶ In a 1995 study of adult women incarcerated in three states, the National Council on Crime and Delinquency found that “‘a history of violent abuse is one of the most universally shared characteristics of women in prison.’”²⁷ Girls and women may become involved with the criminal justice system when they run away from homes, where they have been abused either by partners or by older relatives, and engage in prostitution or theft to support themselves.²⁸

While more than 73% of the mothers in federal prison and more than 58% of the mothers in state prison lived with their children prior to incarceration, fewer than 27% of the mothers in federal prison and fewer than 42% of the mothers in state prison had ever had personal visits with their children once incarcerated.²⁹ When men go to prison, their children are most likely to live with their mother; when women go to prison, the children are most likely to live with other relatives or be placed in foster care.³⁰ The number of battered women prisoners, and the number of women incarcerated for defending themselves (or for failing to protect others) shows the

as race and income level, in order to explain the abuse).

25. See Dana M. Britton, *Feminism in Criminology: Engendering the Outlaw*, 571 ANNALS AM. ACAD. POL. & SOC. SCI. 57, 63 (focusing on the progress of and prospects for feminism in criminology in the last twenty-five years).

26. See NICOLE HAHN RAFTER, *PARTIAL JUSTICE: WOMEN IN STATE PRISONS, 1800-1935* 178 (1985) (suggesting that fewer alternatives and social marginality partially account for impoverished and minority women's greater involvement in crime and higher rate of incarceration).

27. Acoca & Raeder, *supra* note 24, at 137 (quoting LESLIE ACOCA & JAMES AUSTIN, NAT'L COUNCIL ON CRIME AND DELINQUENCY, REPORT, *THE HIDDEN CRISIS: WOMEN IN PRISON* 57 (1996)).

28. See Myrna Raeder, *Gender and Sentencing: Single Moms, Battered Women, and other Sex-based Anomalies in the Gender-free World of the Federal Sentencing Guidelines*, 20 PEPP. L. REV. 905, 912-13 (1993) (addressing the issue of runaway girls and the effects of their decision to leave their homes).

29. See CHRISTOPHER J. MUMOLA, BUREAU OF JUSTICE STATS., U.S. DEP'T OF JUSTICE, *INCARCERATED PARENTS AND THEIR CHILDREN* 4 (2000) (providing statistical information dealing with minor children affected by the imprisonment of a resident parent).

30. See *id.* at 1 (reporting that about 90% of fathers said that at least one of their children currently live with the children's mothers, but only 28% of mothers indicated that their children currently live with their fathers); see also Harvey Wallace & Shanda Wedlock, *Federal Sentencing Guidelines and Gender Issues: Parental Responsibilities, Pregnancy and Domestic Violence*, 2 SAN DIEGO JUST. J. 395, 404, 417-18 (1994) (noting that domestic violence has provided a basis, in a few cases, for downward departures from the federal sentencing guidelines based on mitigating circumstances such as duress).

importance of addressing domestic violence within the prison system.

Some of the early women's prisons functioned as reformatories, focusing on treatment designed to socialize women into their appropriate roles as nurturers, cooks, and caretakers, and providing special programs for women that differed from those available to men.³¹ Such women's reformatories coexisted with other women's prisons, which were typically designed for older and second-time felons.³² Over the past century, however, women prisoners have been treated comparably to men; equal protection challenges on their behalf have resulted in their receiving the same programs as those available to men, although not programs that recognize any gendered differences.³³ These gendered differences—not necessarily related to biology—are manifested through the number of women versus men who were primary caretakers before incarceration, and the number of women prisoners who have been victims of intrafamily violence.³⁴ Yet, only a few programs help women handle the past abuse in their lives.³⁵ Women are decontextualized and treated as prisoners without acknowledging the “framework that renders invisible the interrelated webs of inequality: the woman's role within the family, her responsibility for children, her economic circumstances.”³⁶

31. See RAFTER, *supra* note 26, at 179 (indicating that in early nineteenth century reformatories, women experienced less stringent settings than men, such as being less likely to experience maximum security confinement and having permission to talk). However, less stringent measures also present disadvantages, such as less access to institutions graded by security level, specialized facilities, and placements near family and friends. *Id.*; see also Rebecca Jurado, *The Essence of Her Womanhood: Defining the Privacy Rights of Women Prisoners and the Employment Rights of Women Guards*, 7 AM. U. J. GENDER SOC. POL'Y & L. 1, 8-19 (1999) (discussing the constitutional concerns of modern penological philosophy).

32. See Nicole Hahn Rafter & Elizabeth Anne Stanko, *Hard Times: Custodial Prisons for Women and the Example of the New York State Prison for Women at Auburn, 1893-1933*, in JUDGE, LAWYER, VICTIM, THIEF: WOMEN, GENDER ROLES AND CRIMINAL JUSTICE 237, 238-39 (Nicole Rafter & Michelle Stanko eds., 1982) (discussing historical misconceptions that reformatories predate women's prisons).

33. See Jurado, *supra* note 31, at 17-19; Donna L. Laddy, *Can Women Prisoners be Carpenters? A Proposed Analysis for Equal Protection Claims of Gender Discrimination in Educational and Vocational Programming at Women's Prison*, 5 TEMP. POL. & CIV. RTS. L. REV. 1 (1995) (arguing that funding for prison programs are more likely to be used for male rather than female inmates).

34. See *Klinger v. Dep't of Corrections*, 31 F.3d 727, 731-32 (8th Cir. 1994), *cert. denied*, *Klinger v. Neb. Dep't of Corrections*, 513 U.S. 1185 (1995) (dismissing the plaintiff female inmates' equal protection claim because plaintiffs were not similarly situated to male inmates at another prison for purposes of prison programs and services).

35. See RAFTER, *supra* note 26, at 186-88 (providing three proposals geared toward women as more equitable treatment within prison system).

36. SCHNEIDER, *supra* note 1, at 230.

II. CHILD ABUSE, BATTERED WOMEN, AND PUBLIC WELFARE

The second cluster of issues concerns welfare reform, child abuse, and battered women. Scholars, such as Joan Meier, have begun talking about the relationship between poverty and domestic violence,³⁷ showing that domestic violence is closely intertwined with poverty; batterers may, for example, prevent women from getting and keeping jobs. Another aspect of this problem involves child neglect and abuse.³⁸ Poor women are more likely to be subjected to child protective services.³⁹ Moreover, batterers who prevent their victims from working, either directly or indirectly, are also increasing the likelihood that women will become involved with children's social services.⁴⁰

Unfortunately, poverty and child abuse are closely related - the rate of reported abuse and neglect is twenty-two times higher for children whose family income is less than \$15,000, than it is for children whose family income is greater than \$30,000.⁴¹ In a study of welfare and child abuse conducted prior to the enactment of the Temporary Assistance for Needy Families ("TANF")⁴² program, the researchers found that the families of almost 60% of the children entering foster care had a recent involvement with the public welfare system, although less than 3% of children in the public welfare system moved into foster care.⁴³ Recent public policy analysis has begun to study the

37. See Joan Meier, *Domestic Violence, Character, and Social Change in the Welfare Reform Debate*, 19 LAW & POL'Y 205, 207 (1997) (asserting that "[t]he insufficient integration of feminist - specifically domestic violence - perspectives into poverty advocacy, and of poverty concerns into advocacy for battered women, is in part what has allowed the nation's political culture to become so hostile to poor welfare mothers.").

38. See RUTLEDGE Q. HUTSON, CTR. FOR LAW & SOC. POL'Y, RED FLAGS: RESEARCH RAISES CONCERN ABOUT THE IMPACT OF WELFARE REFORM ON CHILD MALTREATMENT 5 (2001) (noting that there may be many reasons why there is a correlation between poverty and child maltreatment).

39. See Christina Paxson & Jane Waldfogel, *Work, Welfare, and Child Maltreatment*, 20 J. OF LABOR ECON. 435, 460 (2002) [hereinafter Paxson & Waldfogel, *Work*] (noting that the profile of families most likely to come to Child Protective Services ("CPS") are poor, single parent families, or two parent families with an unemployed father).

40. See HUTSON, *supra* note 38, at 15 (suggesting that "work following welfare loss may decrease the risk of CPS involvement").

41. See *id.* at 4-5 (quoting U.S. Dep't of Health and Human Servs. ("HHS") statistics from 1996); see also DOROTHY ROBERTS, *SHATTERED BONDS* 29, 31-32 (2002) (citing 1996 HHS statistics and explaining that there are many reasons for this correlation, ranging from the stress associated with poverty to greater state oversight of poor families).

42. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. §§ 601-619 (Supp. 2002). TANF is the nation's current welfare program. *Id.*

43. See HUTSON, *supra* note 38, at 8 (citing CHAPIN HALL CTR. FOR CHILD. AT THE UNIV. OF CHICAGO ET AL., HHS, DYNAMICS OF CHILDREN'S MOVEMENT AMONG THE

relationship between welfare reform and child abuse.⁴⁴ Yet these analyses rarely, if ever, address the relationship between domestic violence, welfare receipt, and child abuse. In their extensive study of child abuse and neglect from 1990-1998 (based on state level information from the National Center for Child Abuse and Neglect), Christina Paxson and Jane Waldfogel examined the impact of family structure on rates of child maltreatment.⁴⁵ They found that higher rates of poverty resulted in higher rates of substantiated reports of abuse and neglect.⁴⁶ Also, they found that an increase in welfare benefits would result in reducing cases of neglect and of foster care placements.⁴⁷ Further, while TANF may not have resulted in increased cases of child maltreatment, TANF and family caps did result in an increased number of children in out-of-home care.⁴⁸ Among other variables, Paxson and Waldfogel examined family structure, race, and education.⁴⁹

There is an unexplored link, however, between battering, child maltreatment, and poverty. As women become poorer, their children are more likely to be placed in out-of-home care.⁵⁰ One of the most

AFDC, MEDICAID AND FOSTER CARE PROGRAMS PRIOR TO WELFARE REFORM: 1995-1996 (2000), available at <http://www.aspe.hhs.gov/hsp/movement00.index.htm>).

44. See, e.g., *id.* (designing a baseline to study the effects of welfare reform on children); DAVID J. FEIN & WANG S. LEE, ABT ASSOC. INC., THE ABC EVALUATION: IMPACTS OF WELFARE REFORM ON CHILD MALTREATMENT 1-27 (2000) (studying the impact of Delaware's welfare program on child abuse and neglect); ROB GEEN ET AL., URBAN INST., WELFARE REFORM'S EFFECT ON CHILD WELFARE CASELOADS 1-52 (2001) (studying child welfare caseloads after welfare reform by interviewing various welfare and child welfare stakeholders); CHRISTINA PAXSON & JANE WALDFOGEL, JOINT CTR. FOR POVERTY RESEARCH, *Welfare Reforms, Family Resources, and Child Maltreatment, in THE INCENTIVES OF GOV'T PROGRAMS AND THE WELL-BEING OF FAMILIES* 1-47 (Bruce Meyer & Greg Duncan eds., 2000) [hereinafter PAXSON & WALDFOGEL, INCENTIVES OF GOV'T PROGRAMS] (studying the effects of state welfare programs on child maltreatment), available at <http://www.jcpr.org/book/>; Paxson & Waldfogel, *Work, supra* note 39, at 435-74 (studying the effect of parental economic circumstances on child maltreatment); Kristin Shook, *Does the Loss of Welfare Income Increase the Risk of Involvement with the Child Welfare System?*, 21 CHILD. & YOUTH SERVS. REV. 781, 781-811 (1999) (finding a link between a reduction in welfare grants and an increase in child welfare risk).

45. See PAXSON & WALDFOGEL, INCENTIVES OF GOV'T PROGRAMS, *supra* note 44, at 1-47.

46. See *id.* at 13 (noting that poverty is not related to reports of maltreatment).

47. See *id.* at 16 (finding that a 10% increase in benefit levels is predicted to reduce neglect by over 31% and to reduce out-of-home placements by almost 8%).

48. Cf. *id.* at 23 (indicating that, had family caps and TANF provisions not been adopted, the number of children in out-of-home care would have declined from 1995 to 1997).

49. See *id.* at 17.

50. See *id.* at 16 (finding that "more generous welfare benefits are associated with significantly lower levels of neglect and smaller numbers of children in out-of-home care").

significant reasons for women's impoverishment is abuse; batterers prevent women from seeking employment and harass them at work, and, even when the women have separated from their batterers, they may still suffer from psychological trauma, as well as additional physical abuse.⁵¹ As Joan Meier points out, given the emphasis in TANF on working, "violence which previously 'only' caused a victim to lose her employment or job training can now also lead to the loss of her public assistance."⁵² It is unclear what percentage of battered mothers abuse their children, although Strauss and Gelles⁵³ have found that, when spousal abuse is present, both partners are more likely to abuse their children as well.⁵⁴ Battering, which results in further impoverishment, also results in a higher likelihood of child neglect.⁵⁵ In thinking about poverty and domestic violence, we can also help improve children's care.

Federal law only increases the likelihood that battered women will lose their children. ASFA, the most recent major federal legislation concerning the abuse and neglect system, seems to accept that adoption and foster care will provide children with much needed safe families.⁵⁶ Although the ASFA reiterates prior law in that it requires states to make reasonable efforts to preserve and reunify existing families,⁵⁷ it places new emphasis on permanency planning and

51. See Meier, *supra* note 37, at 210 (citing a 1996 study by the New York City Victims Services Agency finding that 74% of employed battered women were harassed at work; 54% missed three days of work per month, and 56% were late at least five times per month).

52. *Id.* at 239 (observing that battered women cannot depend on public assistance to support them when they leave welfare).

53. See Murray A. Straus & Christine Smith, *Family Patterns and Child Abuse*, in *PHYSICAL VIOLENCE IN AMERICAN FAMILIES* 245, 252-53 (Christine Smith ed., 1995) (finding that more mothers in high-conflict marriages abused a child than other mothers).

54. See, e.g., Bernadine Dohrn, *Bad Mothers, Good Mothers, and the State: Children on the Margins*, 2 U. CHI. L. SCH. ROUNDTABLE 1, 3-4 (1995) ("In fact, some researchers argue that domestic violence may be 'the single most important context for child abuse.'"); Jane Murphy & Margaret Potthast, *Domestic Violence, Substance Abuse, and Child Welfare: The Legal System's Response*, 3 J. HEALTH CARE L. & POL'Y 88, 91 (1999) (attributing this link to two factors; (1) abuse of the child is often the extension of coercive tactics from the mother to the children; and (2) the frequent presence of drugs in domestic abuse situations, which impairs the parents' ability to care for their children).

55. See Murphy & Potthast, *supra* note 54, at 91-95 (indicating that "[t]he interconnectedness of domestic violence, substance abuse, and child welfare is well-documented.").

56. See ROBERTS, *supra* note 41, at 113-14 (noting that the consensus among politicians and the media is that "placing children in adoptive homes protects them").

57. 42 U.S.C. § 671(a)(15)(D)-(F) (Supp. 2002) (indicating that reasonable efforts are required except where the parent has "subjected the child to aggravated circumstances," or committed murder or manslaughter, severely abused the child, or

adoption. The primary purpose of ASFA was to increase the number of children adopted from the foster care system; indeed, the bill was titled the "Adoption Promotion Act of 1997" when it passed the House of Representatives.⁵⁸ While prior legislation focused on pursuing reunification before adoption, the ASFA allows for the simultaneous pursuits of "reasonable efforts to place a child for adoption or with a legal guardian [and] reasonable efforts [to reunify]."⁵⁹ Moreover, if reunification efforts conflict with a "permanency plan," then the plan takes priority.⁶⁰ This newer legislation also provides incentive payments to states to increase the number of children adopted out of foster care.⁶¹ Child welfare services expenditures, as Professor Dorothy Roberts observes, constitute 12% of the total spending on foster care; therefore, child welfare agencies are constrained in their spending on family preservation services.⁶² The ASFA therefore creates a rush to terminate parental rights, which shortchanges biological parents and creates legal orphans who will wait in futility to be adopted.⁶³

Among the services that are under funded include the support for battered women to separate from their batterer. Additional funds could be used to help them in their reunification plans with their children and provide housing apart from their batterer.

III. CONCLUSION: FAMILY VIOLENCE

The separation of children's advocates from women's advocates is becoming the subject of scholarly consideration, as well as practical reforms. Interestingly here, we have examples of public policy taking into account domestic violence in incarceration and foster parenting stories. Traditionally, public policy has been based on stereotyping passive women, who do not defend themselves, and thus do not require special exemptions from the rules applicable to incarceration. However, public policy has taken on a new form of

has had parental rights terminated for a sibling). If the parental rights were involuntarily terminated for a sibling, the circumstances and timing are irrelevant. *Id.* § 617(a)(15)(D).

58. See H.R. REP. NO. 105-77, at 2, 7 (1997), reprinted in 1997 U.S.C.C.A.N. 2739-40.

59. 42 U.S.C. § 671(a)(15)(F) (2000).

60. *Id.* § 671(a)(15)(C).

61. See *id.* § 671.

62. See ROBERTS, *supra* note 41, at 142 (citing a 1995 General Accounting Office Report).

63. *Id.* at 150-54 (stating that "[u]nder the new policy, parents' rights are treated as the chief impediment to permanency (read as adaptation) for children in foster care").

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domestic violence stereotyping—that the criminal justice system will successfully prosecute the batterer. To end the stereotyping, we need to reflect on the overall challenges facing women and brainstorm suggestions to improve women’s lives when dealing with “battered women and feminist lawmaking.” Perhaps, as a start, the list of activities that account for “participation” under TANF should be changed to include specifically helping victims develop safety plans and domestic violence groups.