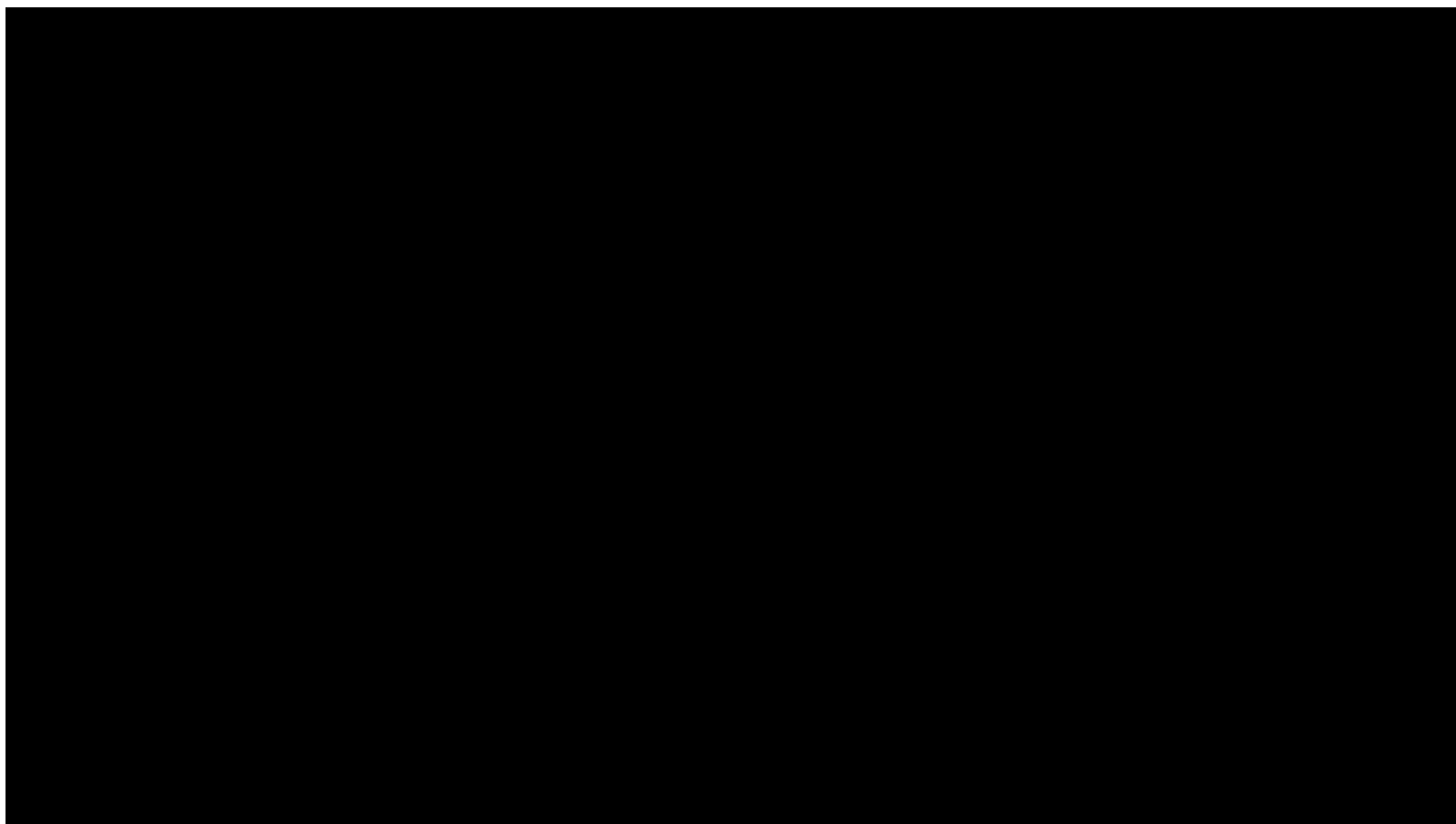


The Impact of Domestic Violence on Children: Where is the Evidence and How Do I Present It to the Court?

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Children See, Children Do



The Impact of Domestic Violence on Kids

- ▶ Children exposed to DV may suffer from significant emotional and behavioral problems related to the traumatic experience
 - ▶ Behavior problems/aggression 35%
 - ▶ Attention difficulties/hyperactive 37%
 - ▶ Learning disabilities/difficulties 19%
 - ▶ Anxiety/depression 21%

Overlay Between DV and Child Abuse

- ▶ 32-29% also reported emotional neglect
- ▶ 27-29% also reported physical neglect
- ▶ 25-38% also reported emotional abuse
- ▶ 59-61% also reported physical abuse
- ▶ 28-43% also reported sexual abuse

Infants and Toddlers

Developmental Trends

- ▶ Take in Information through senses
- ▶ Forming secure attachment
- ▶ Active explorers and learn through play
- ▶ Learn about social interaction from their families

Potential Impact of DV Exposure

- ▶ Loud noises, vivid visual images can be distressing
- ▶ Parents may not be able to consistently respond to children's needs
- ▶ Fear and instability may inhibit exploration and play
- ▶ Imitating in play may be related to aggression witnessed

Preschoolers

Developmental Trends

- ▶ Learn to express aggression and other emotions
- ▶ Egocentric thinking
- ▶ Ideas about gender roles
- ▶ Increased physical independence

Potential Impact of DV Exposure

- ▶ Learn unhealthy ways of expressing anger and aggression
- ▶ May attribute violence to something they've done
- ▶ Learn gender roles associated with violence and victimization
- ▶ Instability may inhibit independence; regressive behaviors

Children 6 to 12

Developmental Trends

- ▶ Increased emotional awareness
- ▶ Emphasis on fairness and intent
- ▶ Academic and social success at school has primary impact on self-concept
- ▶ Increased influence from school, peers, community, media
- ▶ Increased same sex identification
- ▶ Competition assumes new importance within peer group

Potential Impact of DV Exposure

- ▶ More aware of reaction to violence at home and impact on others
- ▶ Possibly more susceptible to rationalizations heard to justify violence
- ▶ Accessibility for learning may be decreased
- ▶ Possibly more influenced by messages that confirm attitudes/behaviors associated with woman abuse
- ▶ May learn gender roles associated with abuse of women
- ▶ May use hostile aggression to compete; increased risk for bullying

Adolescence

Developmental Trends

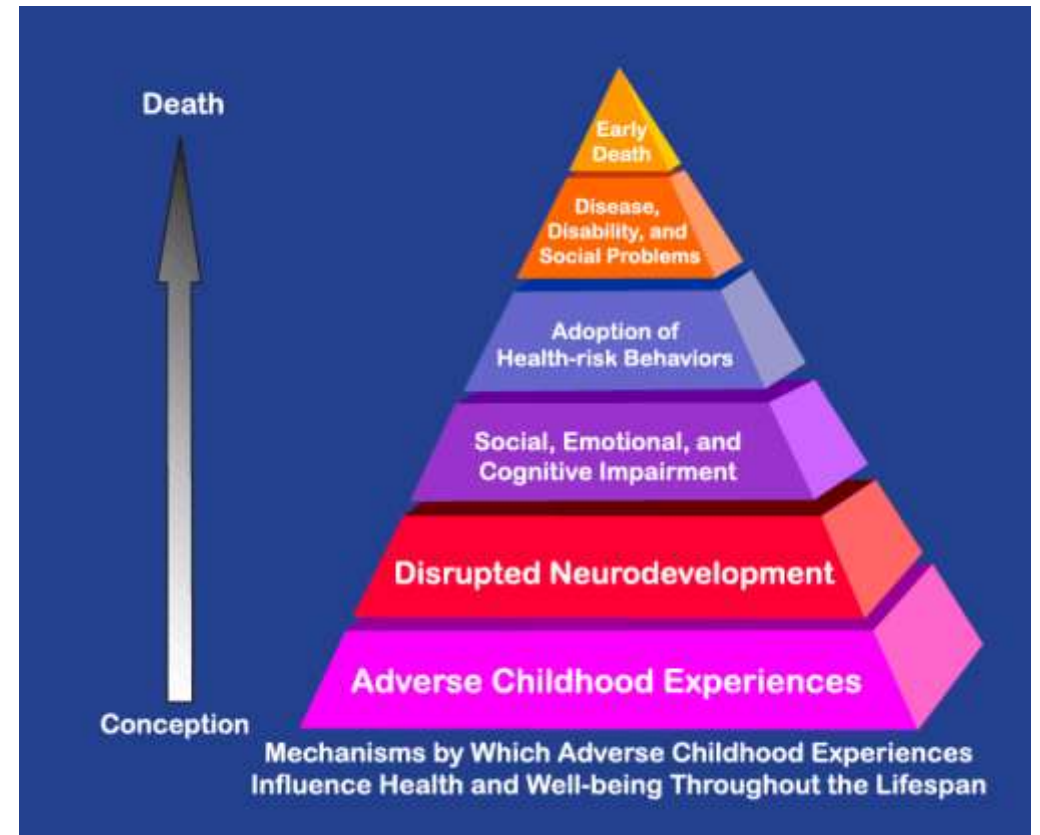
- ▶ Increased autonomy
- ▶ Puberty
- ▶ Increased peer group influence and desire for acceptance
- ▶ Dating raises issues of sexuality, intimacy, relationship skills
- ▶ Increased influence by media

Potential Impact of DV Exposure

- ▶ Family skills for respectful communication and negotiation may be poorly developed
- ▶ May try to physically stop violence; may impose will with physical intimidation or aggression
- ▶ May try to avoid violence by increasing time away from home; maladaptive coping (Drugs)
- ▶ May have difficulty establishing healthy relationships, greater risk of dating violence
- ▶ Possibly more influenced by negative media messages re gender role stereotypes

Adverse Childhood Experiences Study

- ▶ Began in 1995, 17,000 participants; conducted by CDC and Kaiser Permanente
- ▶ As the number of ACE's increase, the risk of the following also increases:
 - ▶ Alcoholism
 - ▶ Chronic obstructive pulmonary disease
 - ▶ Depression
 - ▶ Fetal death
 - ▶ Illicit drug use
 - ▶ Heart disease
 - ▶ Liver disease
 - ▶ Suicide attempts
 - ▶ Intimate partner violence



Toxic Stress

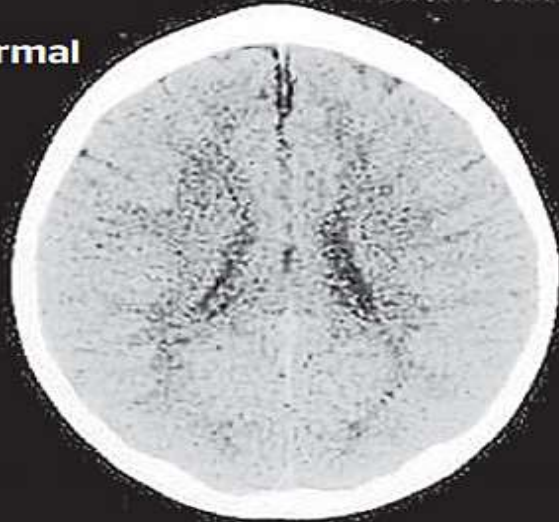
- ▶ **Toxic stress response** can occur when a child experiences strong, frequent, and/or prolonged adversity—such as physical or emotional abuse, chronic neglect, caregiver substance abuse or mental illness, exposure to violence, and/or the accumulated burdens of family economic hardship—without adequate adult support. This kind of prolonged activation of the stress response systems can disrupt the development of brain architecture and other organ systems, and increase the risk for stress-related disease and cognitive impairment, well into the adult years. --Harvard University, Center on the Developing Child

Toxic Stress

HOW STRESS CHANGES A CHILD'S BRAIN

3-YEAR-OLD CHILDREN

Normal



Extreme neglect



- ▶ Prolonged exposure to trauma triggers physiological changes in the brain
- ▶ Neural circuits are disrupted, causing changes in the hippocampus, the brain's memory and emotional center
- ▶ This can cause brain shrinkage, problems with memory, learning and behavior
- ▶ Child does not learn to regulate emotions
- ▶ Greater risk of chronic disease and mental health problems

The Impact of Domestic Violence

Assumptions the Court Makes:

- ▶ Bad Husband ≠ Bad Father
- ▶ Once the parties separate, the violence (and the impact on the child) stops

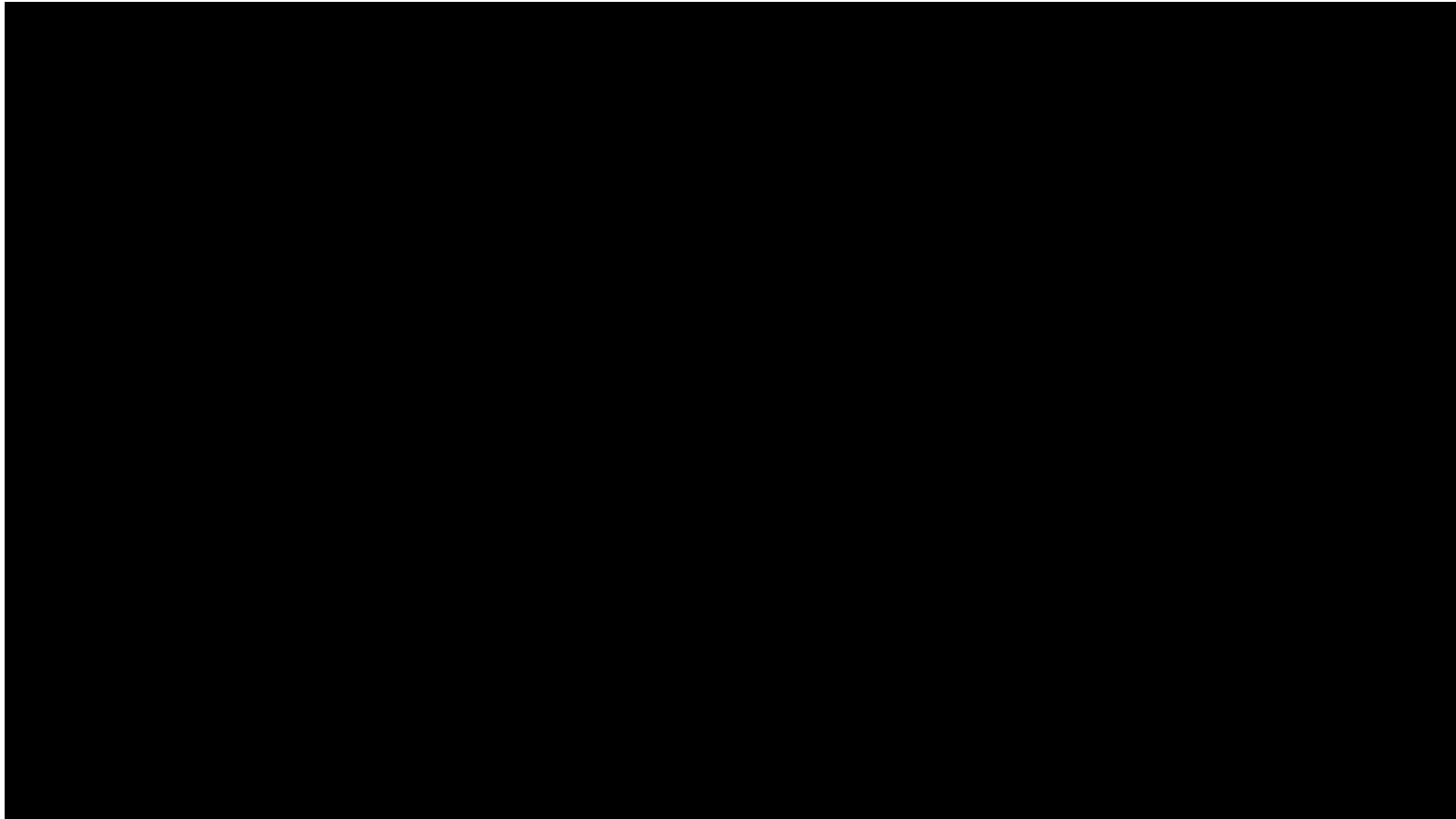
What are the problems with these assumptions?

Control Continues After Separation

- ▶ Physical violence or threats at an exchange
- ▶ Derogatory statements to a child about mom
- ▶ Keeping the child past exchange time
- ▶ Forcing mother to exchange at a different location
- ▶ Following mother home from exchange
- ▶ Pumping the child for information about mother



Squid and the Whale



Control Continues After Separation

- ▶ Refusal to keep consistency just to spite mom (schedule, homework, food, medication)
- ▶ Keeping the child's belongings
- ▶ Baseless hotline calls
- ▶ Withholding information (e.g., school or medical information)

Once there is unsupervised visitation, there is no way to stop these acts



How Do We Explain This to the
Court?

REMEMBER:

1. **The Court is a blank slate, and knows nothing about your case or the parties**
2. **Start collecting evidence early, and think creatively about what might support your case**
3. **Don't forget about laying a foundation and possible hearsay objections**



Start Collecting Evidence Early

- If you are the GAL or victim's attorney, get the child or victim into therapy right away for better therapist's notes and observations
- Check for medical records or police reports to document past abuse. Find and interview doctor, nurse, police officer, etc.
- If there has been a Children's Division investigation, request records ASAP.
 - In Jackson County, Amy Mandina – amy.e.mandina@dss.mo.gov
 - In Clay County, Sallie West – sallie.m.west@dss.mo.gov

Document and Journal Abuser Conduct and Report Violations

- As case continues:
 - Note and process all significant incidents that occur with the abuser throughout the litigation.
 - Apply for an adult or child order of protection, if needed.
 - Report violations of the adult or child order of protections if it would not threaten your client's safety.

Available Evidence

Evidence of the Abuse

- ▶ Police reports
- ▶ Children's Division records
- ▶ Photographs
- ▶ Communications/Recordings
- ▶ Calendar/Journal
- ▶ Court Documents
- ▶ Medical records (of mom)
- ▶ Counseling records (of mom)
- ▶ Witnesses

Evidence of the Impact

- ▶ **Police reports (if child present or discussed)**
- ▶ **Children's Division records**
- ▶ **Counseling records (of child)**
- ▶ **School records**
- ▶ **Communications of child**
- ▶ **Witnesses**

Important Evidentiary Considerations

- ▶ Business Records Affidavit (§ 490.692) does NOT mean evidence comes in for all purposes, does NOT fix possible hearsay problems.
 - ▶ Business Records Affidavit establishes authenticity
 - ▶ Hearsay objections – business records exception to hearsay, but does not fix hearsay within hearsay.
 - ▶ CAN use for impeachment, if stipulated, or if no objection.
- ▶ Call witness (police officer, Children’s Division employee, etc.) to testify if personal observations important.

Police Reports

- ▶ Hearsay - Relies on out of court statements offered for truth of the matter asserted. Admissible only if:
 - ▶ Stipulated or no objection
 - ▶ Impeachment/refresh
 - ▶ Hearsay exception
 - ▶ Excited utterance
 - ▶ Admission of party opponent
- ▶ Best practices – call the reporting officer

Children's Division Records

- ▶ Children's Division records
 - ▶ Not admissible unless:
 - ▶ Stipulated
 - ▶ No objection
 - ▶ Hearsay exception (e.g., PKA)
- ▶ Call Children's Division worker to testify – get around hearsay objection by calling live witness

Counseling Records of Child

- ▶ Can be the best sense of impact on child – child's statements to counselor demonstrate what they have witnessed and how they feel about what they've witnessed
- ▶ Will rely on hearsay exceptions, including PKA
- ▶ Call the counselor as a witness, if qualified as expert can testify to opinions about impact on the child

School Records

- ▶ Business Records affidavit allows admission of attendance records, disciplinary records, grades, etc.
- ▶ Evaluate the records to determine impact on child:
 - ▶ Drop in grades
 - ▶ Attendance struggles
 - ▶ Discipline issues

Communications Involving Child

- ▶ Communications include emails, text messages, Facebook/social media posts and messages, letters, cards, recordings
- ▶ Authenticity established as in letter. *State v. Harris*, 358 SW3d 172 (2011)
- ▶ If abuser admits to sending the communication, admissible
- ▶ Have abuser identify his phone number, user name, Twitter handle, etc.
- ▶ Recordings include in person, phone calls, voicemails

Witnesses

- ▶ Victim of abuse – where was child during abuse?
- ▶ Lay witnesses
 - ▶ Think creatively – teachers, coaches, day care provider – shows daily impact on emotional health.
 - ▶ Saw or heard abuse, had contact with child after abuse
- ▶ Experts
 - ▶ Therapist
 - ▶ Physician
 - ▶ DV Advocate
 - ▶ Police Detective – lethality assessments

Child As Witness

- ▶ Judges generally will not let child testify
- ▶ Judge may interview older child in camera or have GAL question in closed courtroom
 - ▶ Both parties must agree to it
 - ▶ Under oath
 - ▶ Parents not present
 - ▶ Attorneys don't question
 - ▶ Do it last so already know case
- ▶ Strong GAL important
- ▶ Section 491.725 – Child Witness Protection Act

Evidence of Impact on the Child

- ▶ Going to be shown through statements or observations of behaviors of the child
- ▶ Hearsay exceptions may apply

PKA Hearsay Exception

- ▶ In re Marriage of PKA and JEA, 725 SW2d 78 (SD 1987):
 - ▶ Paramount consideration is the welfare of the child
 - ▶ Out of court statements made by child regarding sexual abuse to the child are admissible to avoid the necessity of forcing a young child to testify as to abuse
 - ▶ The exception is to be used only where abuse may have occurred, or has been threatened, and the child might not be competent or reasonably expected to testify to it
- ▶ PKA involved sexual abuse to a child
- ▶ PKA has since been expanded to include physical and emotional abuse. See AATN, 181 SW3d 161 (ED 2006)
- ▶ PKA only applies when the child making the statement is the child that is the victim of abuse. See In re GC, 50 SW3d 408 (SD 2001)

Other Hearsay Exceptions Available for Children's Statements

- ▶ Present sense impression – describes an event happening at the time
- ▶ Excited utterance – statement made under stress of exciting/startling event
- ▶ Declaration of physical condition
- ▶ Business records
- ▶ Official records
- ▶ Judgment of previous felony convictions
- ▶ Recorded recollection

In addition, witnesses can testify to the behavior of the child (crying, sad, speechless, etc)

Protective Orders, Discovery Tools

- ▶ Prevent disclosure of information that threatens your client's safety
- ▶ Consider a wide range of objections to discovery requests
- ▶ Protective Orders allowed under Mo. Rule 56.01 (c) to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense
 - ▶ Can restrict dissemination of records



Judgment Considerations to Protect the Child

Findings Required in Abuse Case

- ▶ Section 452.375.2(6) – There are 8 statutory factors, and history of abuse is a factor to be considered in custody case. DV can be given increased weight.
- ▶ Section 452.400 – Restricted visitation requires specific finding that visitation would endanger physical/emotional health
 - ▶ **Don't be afraid to ask for SOLE custody in obvious DV case.** Try to avoid making Client communicate with abuser and probably can't co-parent with an abuser.
 - ▶ “The Court **shall** consider evidence of domestic violence” in determining the granting of visitation.

Domestic Violence Findings

- Under § 452.375.13, specific findings of fact are required
- Finding: WHETHER domestic violence has occurred
- Rules of Civil Procedure govern findings required by § 452.375.13:
 - 78.07(c): In all cases, allegations of error relating to the form or language of the judgment, **including the failure to make statutorily required findings**, must be raised in a motion to amend the judgment in order to be preserved for appellate review. *K.L.A. v. Aldridge*, 241 S.W.3d 458 (2007)
 - 55.26(a): Must state basis for claim with particularity.

Domestic Violence Findings

- Definition of “domestic violence” taken from § 452.400
- What about § 455.010?
- Also see § 452.375.2(6)
- Differences:
 - Pattern
 - Adds conclusions of law requirement
 - Only if custody awarded to abusive parent

Creative Parenting Plans

- ▶ Section 452.400: The Court “shall grant visitation in a manner that best protects the child and the (abused) parent.” Options include:
 - ▶ Supervised visitation
 - ▶ Monitored exchange program through Family Court

Creative Parenting Plans

- Language on decision-making: With joint legal custody, it's possible to name a parent the final decision maker in the event of disagreement
- Minimizing Interactions between parents
- Presence of mandatory reporters
- Visitation and exchange options
- Protective Language

Minimizing Interactions

- ▶ Limit exchanges
- ▶ Are there alternatives to speaking?
 - ▶ Text message or email
 - ▶ Traveling journal
 - ▶ Google calendar, Cozi
 - ▶ Our Family Wizard, 2Houses
 - ▶ Safe Exchange
 - ▶ Third party involvement
 - ▶ Curb-side drop-offs
 - ▶ School/daycare exchanges



Presence of Mandatory Reporters

- ▶ Why mandatory reporters?
- ▶ Court can order counseling for the children as part of the custody Judgment. § 452.318
- ▶ Examples of mandatory reporters:
 - ▶ Teachers
 - ▶ Daycare providers
 - ▶ Counselors
 - ▶ Physicians/nurses § 565.218



Visitation and Exchange Options

- ▶ Supervised visitation and exchanges
- ▶ Chuck E. Cheese
- ▶ Neutral exchange locations
- ▶ Virtual Visitation
- ▶ Police standby

Walmart 



Protective Language

- Drugs
- Alcohol
- Guns



Relocation

- Court can waive Relocation Notification Requirements of § 452.377 to protect health or safety of abuse victim or child.
- Court must make finding that the “health or safety of any adult or child would be unreasonably placed at risk by the disclosure.” § 452.377.4
- What are “exceptional circumstances”?