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Essay

Guardians *Ad Litem*: The Guardian Angels Of Our Children In Domestic Violence Court*

Honorable Sheila M. Murphy**

I. INTRODUCTION

On September 8, 1998 at approximately 11:00 p.m., an intoxicated man struck his wife in the arm with an empty beer bottle, causing multiple lacerations.¹ He then struck her in the face with his closed fist, knocking her to the floor of their home.² The man, an alcoholic, is the father of three minor children, all of whom lived in the parents' house. The three daughters, ages eleven, eight, and five years, were at home during the incident. The two older daughters watched as their father smashed a beer bottle across their mother's arm and punched her in the face. After recovering from the blow to her face, the woman picked herself up off the floor and immediately took her children out of the house. She placed them in the back seat of her car, fastened their seatbelts, and drove away in fear for her own safety, as well as the safety of her children. The abusive husband, however, refused to let them go. He got into his car and followed his wife and children as they tried to escape. While chasing them in his automobile, he accelerated to a high rate of speed and rammed into the rear of his

*This article is dedicated to the memory of Judge Monica Doyle Reynolds (1920-1998), a courageous judge who always protected the interests of children in her court. As a circuit court judge assigned to domestic relations chancery, Judge Reynolds appointed guardians *ad litem* to safeguard children's interests. See *Curran v. Bosze*, 566 N.E.2d 1319 (Ill. App. Ct. 1990) for an example of Judge Reynolds work).

**Sheila M. Murphy is the Presiding Judge of the Sixth Municipal District of the Circuit Court of Cook County, Illinois. The author thanks Barbara A. Blaine, a 1996 graduate of DePaul University Law School and currently an Assistant Public Guardian of the Office of the Cook County Public Guardian, Walter T. Keane, 1998 graduate of the John Marshall Law School, and Christopher D. Mickus, a third year law student at the John Marshall Law School for their research and editorial assistance.

1. This story is taken from testimony at a bond hearing over which the author presided. The story consists of allegations and not findings of fact. The case is currently pending. See *Misdemeanor Complaint at 1, State of Illinois v. Euceda* (No. 98-C6015609).

2. See *id.*

wife's car.³ Based on his conduct, the husband and father was charged with child endangerment and domestic battery.⁴

The above illustration of child abuse is not an isolated incident. Every day, acts of domestic violence harm children both directly and indirectly.⁵ Consequently, the criminal justice system must acknowledge the devastating impact of abusive environments and appoint guardians *ad litem*⁶ to protect the interests of child-victims trapped in violent homes.⁷ Domestic violence perpetuates a generational cycle of

3. *See id.* at 2.

4. *See id.* at 1-2.

5. *See* CHICAGO DEPARTMENT OF PUBLIC HEALTH, CHICAGO VIOLENCE PREVENTION STRATEGIC PLAN, 22-23 (1998). Based on reports of child abuse investigated by the Department of Children and Family Services, in 1994 "approximately 207 per 100,00 children had been physically abused by a parent or caretaker . . . 68% of physical abuse perpetrators were natural parents and 10% were other relatives." *Id.*

6. A guardian *ad litem* is like a guardian angel for a child. The guardian talks to the child, siblings, relatives, teachers, neighbors, counselors or anyone who can help the guardian do the best job possible for determining the best interests of the child. According to BLACK'S LAW DICTIONARY 706 (6th ed. 1990), a guardian *ad litem* is "a special guardian appointed by the court in which a particular litigation is pending to represent an infant, ward or unborn person in that particular litigation, and the status of the guardian *ad litem* exists only in that specific litigation in which the appointment occurs." *Id.*

7. *See generally* 705 ILL. COMP. STAT. ANN. 405/2-17 (West 1992 & West Supp. 1998) (discussing when guardians *ad litem* are appointed in other proceedings). This statute mandates when a guardian *ad litem* should be appointed:

(1) Immediately upon the filing of a petition alleging that the minor is a person described in [705 ILL. COMP. STAT. 405/2-3 or 705 ILL. COMP. STAT. 405/2-4] of this Article, the court shall appoint a guardian *ad litem* for the minor if:

(a) such petition alleges that the minor is an abused or neglected child; or

(b) such petition alleges that charges alleging the commission of any of the sex offenses defined in Article 11 or in Sections 720 ILL. COMP. STAT. 5/12-13, 12-14, 12-14.1, 12-15 or 12-16 of the Criminal Code of 1961, as amended, have been filed against a defendant in any court and that such minor is the alleged victim of the acts of defendant in the commission of such offense. Unless the guardian *ad litem* appointed pursuant to this paragraph (1) is an attorney at law he shall be represented in the performance of his duties by counsel. The guardian *ad litem* shall represent the best interests of the minor and shall present recommendations to the court consistent with that duty.

(2) Before proceeding with the hearing, the court shall appoint a guardian *ad litem* for the minor if,

(a) no parent, guardian, custodian or relative of the minor appears at the first or any subsequent hearing of the case;

(b) the petition prays for the appointment of a guardian with power to consent to adoption; or

(c) the petition for which the minor is before the court resulted from a report pursuant to the Abused and Neglected Child Reporting Act.

(3) The court may appoint a guardian *ad litem* for the minor whenever it finds that there may be a conflict of interest between the minor and his parents or

violence and abuse.⁸ To bring peace to all people, we must start by protecting our children.

This article advocates the use of guardians *ad litem* for children in cases involving domestic violence. First, this article examines the effects of domestic violence on children during their childhood years and the potential for those children to become abusers as adults.⁹ Next, it discusses the need for guardians *ad litem* in custody, litigation, and parentage proceedings.¹⁰ This article then addresses additional methods for protecting children exposed to domestic violence.¹¹ Further, it maintains that children have proper standing in domestic violence court.¹² Finally, this article introduces a pilot guardian *ad litem* program and discusses the future of guardians *ad litem* in domestic violence court.¹³

II. THE EFFECT OF DOMESTIC VIOLENCE ON CHILDREN

The harmful effects of domestic violence are continuing in nature. The victim is harmed by witnessing or experiencing instances of domestic violence at a young age.¹⁴ Experiencing some form of domestic violence during formative growth periods can adversely affect the child's healthy maturation, even after the child escapes the violent atmosphere.¹⁵

A. *The Formative Years*

Domestic violence results in a wide range of psychological and physiological repercussions that affect abused spouses, partners of the abuser, and the children who witness such abuse.¹⁶ Even if children are not the direct victims of physical violence or psychological abuse,

other custodian or that it is otherwise in the minor's best interest to do so.
Id.

8. See *infra* Part II.B (discussing how children exposed to domestic violence are affected during adulthood).

9. See *infra* Part II.

10. See *infra* Part III.

11. See *infra* Part IV.

12. See *infra* Part V.

13. See *infra* Part VI.

14. See *infra* Part II.A (discussing both the developmental and psychological impacts domestic violence has on the children who witness it).

15. See *infra* Part II.B (noting the strong correlation between children who either experienced or witnessed domestic violence and adult abusers).

16. See generally Bonnie E. Rabin, *Violence Against Mothers Equals Violence Against Children: Understanding The Connections*, 58 ALB. L. REV. 1109, 1113 (1995) (noting numerous studies linking domestic violence at home to future violent tendencies by the witnesses and participants).

merely witnessing parental violence is detrimental.¹⁷

Children who witness violence against their mothers or other family members experience both behavioral and developmental harm.¹⁸ According to one author, "the witnessing may be visual, auditory (through closed doors), or inferred (through knowledge in the aftermath—bruises, parental retreat, or cries for help). . . . Observing domestic violence is as harmful for children as experiencing direct physical abuse."¹⁹ Children raised in homes where violence occurs between adult members of the household demonstrate a high incidence of psychological and behavioral dysfunction.²⁰ One study revealed that children who witness domestic violence suffer symptoms including "headaches, abdominal [pain], asthma, peptic ulcers, stuttering, uresis, depression, and suicidal behavior."²¹ In referring to children as "tag-along victims of domestic violence," Judge Michael J. Voris, a domestic relations judge in Ohio, determined that children exposed to domestic violence suffer from distinct symptoms and etiology, which adversely affect their development.²²

For example, "children exposed to battering exhibit behavioral problems such as insecurity through clinging, crying, nervousness, and a constant need to know where their mothers are."²³ Some experts

17. *See id.* "[C]linicians and advocates are impressed with the correlation between spousal abuse and child abuse . . . [and] there is no question that [children] are deeply affected." *Id.*

18. *See id.* at 1113-1114. Children who witness domestic violence develop headaches, ulcers, depression, insomnia, and other maladies. They also tend to do poorly at school as a result of their problems. *See id.*

19. Daniella Levine, *Children In Violent Homes: Effects and Responses*, 68 FLA. B. J. 62, 63 (1994) (discussing the impact domestic violence has on children who experience it and proposing intervention methods).

20. *See* Rabin, *supra* note 16, at 1113. "Emotional neglect, abuse, and separation become the norm; children are never sure who will leave and when they will leave. As witnesses or as targets, they demonstrate a high incidence of psychosomatic, psychological and behavioral dysfunction." *Id.*

21. *Id.* (citing Elaine Hilberman & Kit Munson, *Sixty Battered Women*, 2 VICTIMOLOGY 460, 463 (1978)). The Hilberman & Munson article discussed a study of sixty battered women and reported that children of these women often observed serious bouts of domestic violence, such as rape, shootings, and stabbings. *See id.*

22. Judge Michael J. Voris, *Civil Orders of Protection: Do They Protect Children, the Tag-along Victims of Domestic Violence?*, 17 OHIO N.U. L. REV. 599, 605 (1991). According to the author:

Children exposed to domestic violence have certain characteristics such as low self-esteem, depression, stress disorders, isolation, fearfulness, self-blame, poor ego definition, inadequate social skills, and limited tolerance for frustration. "These children are at high risk for suicide, alcohol and drug abuse, sexual acting out, and running away.

Id.

23. Pauline Quirion, *Protecting Children Exposed to Domestic Violence in Contested*

describe children who witness or experience domestic violence as exhibiting symptoms of post-traumatic stress disorder.²⁴ Preschoolers and young children who are victimized may also suffer from school phobias and insomnia.²⁵ Moreover, these children are unable to differentiate between abusive and non-abusive behavior as adults. This inability to differentiate between abusive and non-abusive behavior serves to perpetuate a cycle of abuse, with the individual involved suffering initially as a victim-witness and eventually becoming an abuser him or herself.²⁶

B. *The Next Generation*

The damage inflicted by a history of violence in the home does not end when the child matures or leaves the abusive atmosphere.²⁷ Domestic violence diminishes the self-esteem of children which, in turn, perpetuates the cycle of abuse.²⁸ Generally, the cycle follows gender lines.²⁹ Males tend to demonstrate symptoms such as alcoholism and a portrayal of violent behavior, leading to juvenile violations and violent adult male behavior.³⁰ Females demonstrate symptoms including “withdrawal, passivity, clinging behavior, anxiety, and depression.”³¹ Additional studies show that domestic violence causes character disorders that ultimately result in the victim

Custody and Visitation Litigation, 6 B.U. PUB. INT. L.J. 501, 511 (1997) (describing some of the symptoms of developmental harm experienced by children who witnessed domestic violence).

24. *See id.* at 512. “[M]any of the reactions of children can be classified as ‘trauma responses,’ most notably their proclivity to explosive bursts of anger and aggression, their fixation on the trauma and reduction of normal, routine activities, and somatic and emotional complaints.” *Id.*; *see also* PETER JAFFE ET AL., CHILDREN OF BATTERED WOMEN 71-73 (1990) (discussing post traumatic stress disorder, its diagnostic criteria, and its applicability to children who have been exposed to domestic violence).

25. *See Rabin, supra* note 16, at 1113 (citing Hilberman & Munson, *supra* note 21, at 463). Clinicians suggest that this insomnia is correlated with “the cycle of violence in the home, [as] much of the abuse occurs when the children are in bed.” *Id.* at 1114.

26. *See id.* at 1112-13. “Tragically, domestic violence diminishes the self-esteem of the youngest victims—the children—many of whom will perpetuate the cycle of abuse by becoming abusers themselves.” *Id.*

27. *See id.* at 1113.

28. *See id.* at 1112-13. “Studies consistently demonstrate that childhood family violence causes character disorders and a tendency to abuse one’s own spouse, one’s own siblings, and ultimately one’s own children.” *Id.* at 1113.

29. *See id.* at 1114. “Boys tend to demonstrate aggressive and disruptive behavior such as stealing, temper tantrums, truancy and fighting with siblings and schoolmates. These behaviors are notably absent in girls.” *Id.*

30. *See id.*

31. *Id.*

abusing his or her own family members.³² Further, batterers who abuse a partner or spouse are more likely to abuse their own children.³³

Children living in an atmosphere of violence suffer from abuse and neglect, which facilitates a downward spiral in their own behavior patterns.³⁴ Children involved in direct abuse and neglect judicial proceedings are represented by guardians *ad litem*.³⁵ Similarly, children involved in domestic violence also deserve the representation of an assigned guardian. Bonnie Rabin, Deputy Attorney in Charge, Juvenile Rights Division of the Legal Aid Society of New York, spoke out for the appointment of guardians *ad litem* for children in domestic violence court at a symposium in March, 1995.³⁶ Rabin stated that "children need, and often in these cases actually cry out for, independent legal counsel. That means trained, effective, educated attorneys for children."³⁷ As previously noted, children raised in an abusive atmosphere suffer regardless of whether they are the direct victim of the abuse, or a "witness" to the violence.³⁸ Because of the life-long negative implications any judicial determination regarding domestic violence may have on the welfare of the children involved, the interests of children exposed to domestic violence must be represented in court.

32. See *id.* at 1113 (citing Pearl S. Berman, Impact of Abusive Marital Relationships on Children, in *BATTERING AND FAMILY THERAPY: A FEMINIST PERSPECTIVE* 134, 141-43 (Marsali Hansen and Michelle Harway eds., 1993); Lauren E. Goldman, *Nonconfrontational Killings and the Appropriate Use of Battered Child Syndrome Testimony: The Hazards of Subjective Self-Defense and the Merits of Partial Excuse*, 45 CASE W. RES. L. REV. 185, 186 (1994)).

33. See Quirion, *supra* note 23, at 508-09. Statistics show that: "[m]ore than half of all men who abuse their partners abuse their children, and an additional eighty percent of batterers threaten to abuse their children. Children in homes where domestic violence occurs are abused at a rate 1,500% higher than the national average." The Violence Against Women Act of 1990: Hearing on S. 272 Before the Senate Comm. on the Judiciary, 101st Cong., 2d Sess. 37 (1990); see also LENORE WALKER, *THE BATTERED WOMEN SYNDROME* 59 (1984) (providing further statistics regarding child abuse correlations).

34. See Rabin, *supra* note 16 and accompanying text (discussing the symptoms exhibited by children exposed to domestic violence)

35. See 705 ILL. COMP. STAT. ANN. 405/2-17(1)(a) (West 1992 & West Supp. 1998). The statute states that, "the court shall appoint a guardian *ad litem* for the minor if . . . the minor is an abused or neglected child." *Id.*

36. See Rabin, *supra* note 16, at 1109. The symposium was entitled "Reconceptualizing Violence Against Women by Intimate Partners: Critical Issues." Rabin's article, is "an amplified version of remarks" made at the symposium. See *id.*

37. *Id.* at 1117.

38. See *supra* notes 16-26 and accompanying text.

III. CUSTODY, VISITATION AND PARENTAGE LITIGATION—THE NEED FOR GUARDIANS *AD LITEM*

The need for guardians *ad litem* is particularly necessary in custody, visitation, and parentage litigation. The presence of guardians *ad litem* would help prevent batterers from using children as tools or pawns in domestic violence court. Moreover, where the parents' attorneys fail to do so, a guardian *ad litem* could bring the issue of domestic violence, as well as any potential drug abuse by either parent, to the attention of judges making custody or visitation decisions. While mothers account for only a small percentage of batterers, guardians *ad litem* could argue for or against mothers as the appropriate caretaker of children in domestic violence situations and argue against the inappropriate solution of joint custody.³⁹ Similarly, courts should appoint guardians *ad litem* in parentage cases to argue for the appropriate caretaker of a child after paternity has been established.

A. *Custody and Visitation Litigation*

1. Custody Litigation as a Tool of the Abuser

Children are directly impacted by domestic violence when they are physically abused, as well as when they are used as pawns in custody and visitation proceedings. Children become pawns when batterers make threats about children in an effort to control the victimized spouse or partner.⁴⁰ For example, “[c]hildren of battered women are victimized by prolonged legal disputes about which parent should have custody after separation or what kind of visitation schedule is reasonable.”⁴¹ Therefore, judges must be mindful of the “potential for misuse of custody litigation by abusers”⁴²

Further, courts must ascertain whether a batterer is abusing the system to continue control. The possibility that the welfare of children in domestic violence situations may be compromised mandates that children caught in this dilemma be represented by counsel to ensure

39. See *infra* Part III.A.5.

40. See generally JAFFE, ET AL., *supra* note 24, at 107. “Even before the separation, many battered women are threatened with the fact that their husbands will want custody of the children if the women decide to leave.” *Id.*

41. *Id.*

42. *Id.* (quoting Gail Tilkin Walsh, Director of Program Development of Prairie State Legal Services in Rockford, IL). Gail Walsh stated: “[I]t is not uncommon for an abusive spouse or boyfriend to threaten to take custody of the children or to leave the victim without funds to support the children.” *Id.*

that their best interests are considered by the court.⁴³ The appointment of a guardian *ad litem* would alleviate the usage of children as leverage in disputes between partners in an abusive relationship and remind judges of this potential danger.

2. Attorneys' Failure to Introduce Evidence of Domestic Violence

Judges are not apprised of issues of domestic violence in some divorce and custody determination hearings. Judges are not apprised because attorneys in divorce proceedings often have knowledge of domestic violence but choose not to raise the issue in domestic relations court.⁴⁴ These attorneys may fail "to introduce relevant evidence on domestic violence in custody cases" for tactical reasons.⁴⁵ Additionally, proving up violence may be difficult without police reports, doctors reports, or witness testimony. Therefore, attorneys may not raise domestic violence issues that they cannot prove up. Further, often "attorneys do not thoroughly identify and preserve for trial documentary evidence of domestic violence."⁴⁶ Knowing the devastating impact domestic violence has on children, attorneys do a disservice to children if they fail to expose incidences of domestic violence in the courtroom.

Expediting custody proceedings by eliminating this issue and withholding domestic violence information from the judge is unacceptable. If a judge rules on custody and visitation without evidence of apparent domestic violence, he or she may unwittingly allow the child to suffer continued and tragic consequences. Therefore, guardians *ad litem* should be appointed to step in and inform judges of this information. If domestic violence occurs in the home, a guardian *ad litem* is the best way to represent the best interests

43. See Rabin, *supra* note 16, at 1117 (suggesting that the needs of children in domestic violence situations require independent legal counsel for the children).

44. See generally Quirion, *supra* note 23, at 502 (noting that domestic violence is not a major factor when some courts decide custody and visitation).

45. The Family Violence Project of the National Council of Juvenile and Family Court Judges, *Family Violence in Child Custody Statutes: An Analysis of State Codes and Legal Practice*, 29 FAM. L.Q. 197, 214 (1995).

46. *Id.* Such documentary evidence includes: "protection orders, both civil and criminal; 911 tapes; voice mail tapes; police reports; medical records; criminal histories; conviction records; letters written by the perpetrator; journals kept by the victim or children; and pictures of the abused women and children." *Id.* Efforts of the judge to respect family privacy, "together with no-fault divorce (which excludes evidence of fault), provides a justification for judges to reject evidence of domestic violence as irrelevant." Naomi R. Cahn, *Civil Images Of Battered Women: The Impact of Domestic Violence on Child Custody Decisions*, 44 VAND. L. REV. 1041, 1083-84 (1991) (discussing custody litigation where domestic violence issues are involved).

of the child.

3. Substance Abuse

In addition to alerting judges to the issue of domestic violence as a whole, guardians *ad litem* could also bring forth evidence of any potential substance abuse by parents in a custody or visitation proceeding. A study published by Brown University indicates that substance abuse is a significant characteristic found in domestic violence assailants.⁴⁷ The study of 64 assailants and 72 victims of domestic violence established that most of the assailants were under the influence of alcohol combined with cocaine at the time police were called to the domestic violence situation.⁴⁸ Judges need this information when determining child custody and visitation orders of protection. When a parent's use of drugs or alcohol causes him or her to commit acts of violence against the other parent, visitation should be denied or closely supervised to protect the child. No child should be forced to visit a parent who is actively using illicit drugs or alcohol. The appointment of a guardian *ad litem* ensures that the children are not exposed to parental substance abuse, and thus serves to promote the best interests of children.

4. Men Are Not Always the Abusers

Guardians *ad litem* could also argue for the best caretaker of a child in domestic violence situations. While women account for only 3-6% of defendants in reported cases of domestic violence in Illinois,⁴⁹ the court should also look to mothers when determining the potential for abuse or neglect. Guardians *ad litem* could investigate how a battered mother is coping and managing the care of her children, and present that information to the court.

For example, some mothers may be paralyzed with fear or may be more intently focused on their batterer's demands than on the care of

47. See 16 BROWN UNIVERSITY DIGEST OF ADDICTION THEORY AND APPLICATION: DATA, No. 9, 11 (1997).

48. See *id.* at 1-2; see also CHICAGO DEPARTMENT OF PUBLIC HEALTH, CHICAGO PREVENTION STRATEGIC PLAN, 39-40 (1998) (outlining a number of factors contributing to child abuse, including substance abuse). According to this source, "[e]asy accessibility and availability of alcohol and other drugs contribute to abuse, particularly for individuals and communities that may be considered 'high risk.'" *Id.* at 39-40. Additionally, according to a study conducted by the Department of Children and Family Services (DCFS) and the Office Against Substance Abuse (OASA), 46% of female Cook County DCFS participants need substance abuse treatment, whereas the number of females needing such treatment in the general population is a mere 4.2%. See *id.* at 250.

49. See ILLINOIS COALITION AGAINST DOMESTIC VIOLENCE, ILLINOIS DOMESTIC VIOLENCE ACT OF 1986: IMPLEMENTATION MANUAL, § 1-1 (1987).

their children. Others may use excessive corporal punishment in an attempt to control a child's behavior, hoping to appease a volatile mate and prevent any disturbances that might escalate the violent partner's abusive behavior.⁵⁰

The guardian *ad litem* could consider not only what the domestic violence victim may do to harm his or her children, but also whether the victim is capable of providing for the children. "[T]he injury to children may take the form of a loss of care that results when a battered woman is so seriously injured that she cannot attend properly to her children."⁵¹ Protecting children requires that all factors be reviewed before making decisions regarding custody and visitation. Guardians *ad litem* in domestic violence court could ensure that the court reviews all such factors.

5. Joint Custody—An Inappropriate Solution

When domestic violence has occurred, joint custody is an entirely inappropriate solution because it presumes that parents will cooperate with one another.⁵² The Illinois statute on joint custody states that in determining the best interests of the child, the court must consider, among other things, "the ability of the parents to cooperate effectively and consistently in matters that directly affect the joint parenting of the child."⁵³ In cases of domestic violence, such cooperation is impossible. "When there has been abuse . . . the victim can only cooperate with the abuser under duress."⁵⁴ Thus, in cases where domestic violence has occurred, duress is a reality, while cooperation and joint custody are not.

Some state statutes are much more strict than the Illinois provision.⁵⁵ For example, Delaware requires that "there shall be a

50. See Howard A. Davidson, *Child Abuse and Domestic Violence: Legal Connections and Controversies*, 29 FAM. L.Q. 357, 368 (1995) (indicating that child protective services must "try to determine whether abuse of children is a manifestation of a parent's coping with her own violent environment and whether domestic violence is a causal factor in a parent's neglect.").

51. Quirion, *supra* note 23, at 513.

52. See 750 ILL. COMP. STAT. ANN 5/602.1(c)(1) (West 1990 & West Supp. 1993).

53. 750 ILL. COMP. STAT. ANN 5/602.1(c)(1) (West Supp. 1993). "Ability of the parents to cooperate" means "the parents' capacity to substantially comply with a Joint Parenting Order [which specifies each parent's rights and responsibilities in the child's care, and procedures for making major decisions on behalf of the child]." *Id.*

54. Cahn, *supra* note 46, at 1067. "Requiring an abusive father and his victim to make joint decisions about their children necessarily continues the exposure of the children to their parents' bad relationship and may promote intergenerational messages condoning abuse." *Id.* at 1068.

55. Compare DEL. CODE ANN. tit. 13, § 705A (West, WESTLAW through 1997 Reg.

rebuttable presumption that no perpetrator of domestic violence shall be awarded sole or joint custody of any child.”⁵⁶ Similarly, the Arizona legislature requires that “[t]he person who has committed an act of domestic violence has the burden of proving that visitation will not endanger the child or significantly impair the child’s emotional development.”⁵⁷ In the absence of a similar statute in Illinois, a guardian *ad litem* can present this problem to the court and argue against joint custody.

B. Parentage Cases

Legions of children are born to parents who are not married. Just as guardians *ad litem* should be appointed to represent children in custody and visitation litigation, they should also be appointed to represent children in parentage proceedings. Guardians *ad litem* are necessary in parentage proceedings after the paternity of the child has been established. In these situations, the judge may not be fully advised of domestic violence, child abuse, or substance abuse problems that could jeopardize the safety of the child.⁵⁸ Consequently, in the absence of an independent representative for the child, a judge may unintentionally return a child to an abusive parent.⁵⁹ By bringing domestic abuse to the judge’s attention, the presence of a guardian *ad litem* would preempt this potential danger and ensure that children are not returned to violent homes following parentage proceedings.

IV. ADDITIONAL METHODS FOR PROTECTING CHILDREN EXPOSED TO VIOLENCE

In order to best safeguard the interests of children in domestic violence situations, Illinois should pursue other areas in child protection. Coupled with guardians *ad litem* to represent children, statutory protections such as requiring judges to consider domestic violence as a controlling factor in determining orders of protection for

Sess.); ARIZ. REV. STAT. ANN. § 25-403(B) (West Supp. 1997) with *infra* note 56 and accompanying text for the Illinois provision. *See also infra* Part IV.B (supporting the adoption of a rebuttable presumption standard in Illinois for abusers).

56. 88 DEL. CODE ANN. tit. 13, § 705(A) (West 1997).

57. ARIZ. REV. STAT. ANN. § 25-403(B) (West 1997). The statute states that the court “shall consider evidence of domestic violence as being contrary to the best interests of the child. If the court finds that domestic violence has occurred, the court shall make arrangements for visitation that best protect the child and the abused spouse from further harm.” *Id.*

58. *See supra* notes 45-47 (noting that attorneys for the parents do not always reveal evidence of domestic abuse).

59. *See id.*

children, a rebuttable presumption against granting custody to an abuser, and criminalizing the exposure of children to violence should be explored.⁶⁰ Additionally, under recent Illinois case law, batterers may now be forced to defend civil lawsuits brought by their children.

A. Domestic Violence as a Controlling Factor in Orders of Protection Determinations

When an order of protection⁶¹ is issued pursuant to the Illinois Domestic Violence Act, the court must address questions about the legal custody and visitation of any child involved.⁶² The requisite guideline to be followed is the “best interests of the child” standard as stated in the Illinois Marriage and Dissolution of Marriage Act.⁶³ The court must consider all relevant issues when determining the best interests of the child, including: the wishes of both the parents and the child with respect to child custody; the interaction between the child and parents, siblings, and other significant people; the child’s adjustment to his school, community, and home life; the mental and physical health of all parties involved; and any actual or threatened physical violence by the child’s potential custodian towards the child or another person.⁶⁴

60. See *infra* Part IV.A-C.

61. See 750 ILL. COMP. STAT. ANN. 60/214(a) (West 1992 & West Supp. 1998) “If a court finds that petitioner has been abused by a family or household member or that petitioner is a high-risk adult who has been abused, neglected, or exploited, as defined in this Act, an order of protection prohibiting the abuse, neglect or exploitation shall issue.” *Id.*

62. See 750 ILL. COMP. STAT. ANN. 60/101-60/401 (West 1986 & West Supp. 1998).

63. See 750 ILL. COMP. STAT. ANN. 5/601-5/801 (West 1993 & West Supp. 1998) (providing the text of the entire Illinois Marriage and Dissolution of Marriage Act); 750 ILL. COMP. STAT. ANN. 5/602(a) (West 1993 & West Supp. 1998), amended by 750 ILL. COMP. STAT. ANN. 5/602(a)(8) (West 1998) (providing the factors considered by the court when determining the best interests of the child).

64. See 750 ILL. COMP. STAT. 5/602(a) (West 1993), amended by 750 ILL. COMP. STAT. 5/602(a) (West Supp. 1998). The text of the best interest standard includes the following factors:

- (1) the wishes of the child’s parent or parents as to his custody;
- (2) the wishes of the child as to his custodian;
- (3) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other persons who may significantly affect the child’s best interests;
- (4) the child’s adjustment to home, school and community;
- (5) the mental and physical health of all individuals involved;
- (6) the physical violence or threat of physical violence by the child’s potential custodian, whether directed against the child or directed against another person;
- (7) the occurrence of ongoing abuse as defined in Section 103 of the Illinois Domestic Violence Act of 1986, whether directed against the child or directed against another person; and
- (8) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child.

While the statute clearly states that the court must weigh various factors in determining which parent should be granted custody, the statute fails to explicitly state how much weight should be given to each of the specific factors and therefore results in too much judicial discretion.⁶⁵

The Illinois statute compels the court to consider physical violence by the potential custodian "whether directed against the child or directed against another person."⁶⁶ This law apparently reflects the knowledge gained in the past two decades through studies documenting the impact of domestic violence on children. In 1982, the statute permitted the court to consider physical violence or the threat of physical violence only if it was directed at or witnessed by the child.⁶⁷ But even under the earlier statute's limitations, in 1982, an Illinois Appellate Court ruled that "a wanton and brutal physical beating by the father of a child's mother [is] an act of . . . significance when determining which parent shall be granted custody."⁶⁸

While the current statute lists physical violence as one factor for the judge to consider in determining the best interest of the child, the judge is not to consider it as a controlling factor.⁶⁹ For example, in 1988, an Illinois Appellate Court held that although a parent had committed voluntary manslaughter by killing the mother of his children, the trial court did not abuse its discretion by granting custody to the father after

Id.

65. *See id.*

66. 750 ILL. COMP. STAT. 5/602 (a)(6) (West 1993), amended by 750 ILL. COMP. STAT. 5/602(a) (West Supp. 1998).

67. *See* Ill. Rev. Stat. ch. 40, para. 602(a)(6) (West 1980). Among the factors considered by the court in deciding the best interests of the child under this statute was "the physical violence or threat of physical violence by the child's potential custodian, whether directed against the child or against another person but witnessed by the child."
Id.

68. *In re Custody of Williams*, 432 N.E.2d 375, 376 (Ill. App. Ct. 3d Dist. 1982). In response to the defendant's argument that acts of violence in the home and against a partner "should not be considered by a trial court in determining a custody question," the court stated:

[t]he conduct of [defendant] serves as a beacon to the trier of fact of his potential for violence and physical harm . . . [and although] [w]e are not confronted with murder in the instant case . . . the conduct of [defendant] was of a degree which approaches the force necessary to commit such a crime.

Id. Similarly, the reviewing court in *In re Marriage of Padiak* stated "[t]he 'best interest of the child may necessitate removing the child from the potentially harmful environment irrespective of [the child's] state of knowledge.'" *In re Marriage of Padiak*, 427 N.E.2d 1372, 1378 (Ill. App. Ct. 2d Dist. 1981). Although domestic violence was not an issue in *In re Padiak*, the court recognized that certain environments could be detrimental to the emotional development of the child. *See id.* at 1377.

69. *See In re Lutgen*, 532 N.E.2d 976, 987 (Ill. App. Ct. 2d Dist. 1988).

he completed his prison sentence.⁷⁰ The court reviewed all the relevant factors and stated that physical violence by the potential guardian was a “very sensitive issue.”⁷¹ The court claimed that its consideration must be in the best interest of the children and that the legislature had mandated six factors to be considered.⁷² With respect to every statutory factor other than the physical violence factor, the court found evidence that custody with their father was in the best interest of the children.⁷³ The court stated that the legislature had the ability to make the presence of physical violence a controlling factor when determining the issue of custody, but chose not to do so.⁷⁴ Further, the court reasoned that, “[i]n light of the legislature’s failure to [make physical violence to a parent witnessed by children a controlling factor when determining the best interest of the child], it is not the function of this court to ‘legislate’ such a change in the statute.”⁷⁵

The same reasoning and holding can be made in a similar case today. If Illinois mandated physical violence as a controlling factor in order of protections, children would be less likely to return to

70. *See id.* In *In re Lutgen*, the father choked the mother to death after seeing her kiss another man. *See id.* at 977-78. The father pled guilty to voluntary manslaughter, and served thirteen months of a four-year sentence. *See id.* at 978. Upon release from prison, the father filed for custody of the children. *See id.* “The trial court found that [the father] was a fit and proper person to have custody of the children,” and the reviewing court determined that there was sufficient evidence to support that decision. *Id.* at 984, 987. The reviewing court found that the father wished to have custody of the children and that they wanted to live with him. *See id.* at 987. The court concluded that although the murder of the mother by the father was a sensitive issue, it was but one factor to be considered when determining the best interests of the children. *See id.*

71. *Id.*

72. *See id.* at 986. The six factors to be considered by the courts when determining a child’s best interests are the following:

(1) the wishes of the child’s parent or parents as to his custody; (2) the wishes of the child as to his custodian; (3) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child’s best interests; (4) the child’s adjustment to his home, school, and community; (5) the mental and physical health of all individuals involved; and (6) the physical violence or threat of physical violence by the child’s potential custodian, whether directed against the child or directed against another person but witnessed by the child.

Id.

73. *See id.* at 987 (noting that only the sixth factor, physical violence to the custodial parent witnessed by the children, was present, and it alone did not mandate denial of custody).

74. *See id.* “[P]hysical violence to the custodial parent witnessed by the children, is but one of the factors the legislature has set forth for determining custody in the best interest of the children, and had the legislature wished to make this factor all controlling, it could have done so by the appropriate legislation.” *Id.*

75. *Id.*

situations that do not serve their best interests. Until either the legislature or the courts do so, the presence of guardians *ad litem* serving to protect children's interests is even more necessary.

B. Rebuttable Presumption Against Awarding Custody to an Abuser

The American Bar Association report, *The Impact of Domestic Violence on Children*, recommends that "[w]here there is proof of abuse, batterers should be presumed by law to be unfit custodians for their children."⁷⁶ The ABA report highlights three reasons why abusers are unfit custodians:

First, the abuser has ignored the child's interests by harming the child's other parent. Second, the pattern of control and domination common to abusers often continues after the physical separation of the abuser and victim. Third, abusers are highly likely to use children in their care, or attempt to gain custody of their children, as a means of controlling their former spouse or partner.⁷⁷

The National Council of Juvenile and Family Court Judges also supports the rebuttable presumption against custody to an abuser.⁷⁸

When a rebuttable presumption against granting custody to a batterer is utilized, the court should require the batterer to attend both rehabilitative counseling directed at assisting batterers as well as parenting classes. The court should also consider supervised visitation.

Regardless of the advantages of requiring a presumption against awarding custody to an abuser, changing the Illinois Statute may not provide a total solution.

[T]he Family Violence Project of the National Council of Juvenile and Family Court Judges recently suggested that statutory presumptions against awarding an abuser custody may not be more successful in protecting the best interests of a child than codes which list domestic violence as a factor the court must consider.⁷⁹

76. HOWARD DAVIDSON, *The Impact of Domestic Violence on Children* 13 (1994).

77. *Id.* at 13.

78. See NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, MODEL CODE ON DOMESTIC AND FAMILY VIOLENCE (1994).

79. Lynne R. Kurtz, Comment, *Protecting New York's Children: An Argument for the Creation of a Rebuttable Presumption Against Awarding a Spouse Abuser Custody of a Child*, 60 ALB. L. REV. 1345, 1374 (1997). The use of parental violence as a dispositive factor may increase unfounded allegations of abuse, may run afoul of the accused abuser's constitutional due process rights, and may hurt parents who use violence to defend themselves or their children from abuse. See *id.* at 1372-74.

Consequently, though the rebuttable presumption may not always help, at the very least, it is worth exploring. All efforts must be explored in order to reduce the incidence and impact of domestic violence on children. We must start by ensuring that guardians *ad litem* are appointed to represent children in any case where domestic violence has occurred.

C. *Criminalizing the Exposure of Children to Violence*

Exposing children to family violence should be criminalized. Because the impact of domestic violence harms children, all of society suffers as a result.⁸⁰ Society suffers because domestic violence triggers a process of intergenerational transmission that impacts children who witness violence today and then become batterers or victims as adults.⁸¹ Domestic violence “also carries a social cost to society in medical expenses, psychological counseling, and lost productivity.”⁸² Thus, according to the director of one battered women’s center, criminalizing acts of violence committed in the presence of children is necessary for four reasons.⁸³ First, aggressive arrest and prosecution policies result in a reduction of repeat offenses and domestic violence homicide rates.⁸⁴ Second, “[c]riminal sanctions send a message to child witnesses that the violence they observe in their homes . . . should not serve as a model for their future relationships.”⁸⁵ Third, criminalizing a batterer for committing acts of violence in front of children places the focus on the batterer and not the

80. See Audrey E. Stone & Rebecca J. Fialk, *Recent Development, Criminalizing the Exposure of Children to Family Violence: Breaking the Cycle of Abuse*, 20 HARV. WOMEN’S L.J. 205, 205 (1997) (stating that “[e]xposing children to family violence harms us all because the child witness learns behavior that traps generations of families in cycles of abuse.”). Audrey E. Stone is the Associate Director of Pace University’s Battered Women’s Justice Center, and has a J.D. from New York University School Law. Rebecca Fialk is a third-year law student at Pace University School of Law and a research assistant to Audrey E. Stone. See *id.*

81. See *id.* at 227; *supra* Part II.B.

82. *Id.* at 226.

83. See *id.* at 210-13 (stating that criminalizing the exposure of a child to domestic violence will reduce the incidence of the conduct; indicate to child witnesses that such conduct has negative consequences to the perpetrator; focus attention on the true wrongdoer in the violent relationship; and increase prosecutors’ success against batterers).

84. See *id.* at 210 “Cities such as San Diego, California; Quincy, Massachusetts; Duluth, Minnesota; Knoxville, Tennessee; Newport News, Virginia; and Seattle, Washington have reported significant reductions in repeat offenses and in domestic violence homicide rates as a result of implementing aggressive arrest and prosecution policies.” *Id.*

85. *Id.*

victim who is frequently accused of allowing the abuse to happen.⁸⁶ Finally, criminalizing acts of violence in the presence of children would give prosecutors another valuable tool to combat domestic violence.⁸⁷

Several states have enhanced the punishment available for batterers who commit abuse in front of children.⁸⁸ These state legislatures seek to punish batterers for the damage they cause children who witness domestic violence. For example, in Oregon, the law provides that "if a child living in the household witnesses a domestic attack, the crime is automatically bumped from a misdemeanor to a felony, increasing the possible penalty from one year in prison to five."⁸⁹ Every state, including Illinois, must reach out to meet the needs of the children who are the invisible victims of domestic violence. Accordingly, the Illinois legislature should criminalize the act of exposing children to domestic violence. In the meantime, all mediators, attorneys, and judges should be trained to recognize the symptoms of domestic violence. At the very least, guardians *ad litem* should be appointed to represent children living with domestic violence.

D. Batterers as Defendants in Tort Actions

In addition to facing criminal sanctions, batterers may now have to respond to tort actions brought by their children. In 1993, the Illinois Supreme Court set a new standard for parent-child tort immunity.⁹⁰ Before *Cates v. Cates*, parents were immune from tort action brought by their children.⁹¹ In *Cates*, the court determined that "immunity exists only to further the parent-child relationship, and where that relationship is not impacted, the policies supporting the doctrine lose their persuasive strength."⁹² With this new standard in place, batterers

86. See *id.* at 211-12. "[C]riminal codes should focus on the batterer's conduct and hold him accountable, rather than focusing on the victim's inability to free herself and her children from the abusive environment." *Id.*

87. See *id.* at 213. "Where insufficient evidence exists for prosecuting a batterer on assault charges [because of lack of cooperation of the battered victim], a case for harming the child may still be viable." *Id.*

88. Those states are California, Florida, Utah, and Oregon. See Charles E. Beggs, *Oregon Boosts Penalty For Abuse If It Happens In Front Of Children*, CHI. DAILY L. BULL., June 4, 1998, at 1.

89. *Id.*

90. See *Cates v. Cates*, 619 N.E.2d 715, 726 (Ill. 1993).

91. See *id.* at 716. In *Cates*, the defendant's minor child was seriously injured in a car accident while she was a passenger in the defendant's car during visitation. See *id.* The child's mother sued the child's father for negligence in the operation of his car. See *id.*

92. *Id.* at 726 (noting that "where the family relationship . . . has ceased to exist with respect to conduct giving rise to the injury," immunity will not be applied); see also

in Illinois may face civil litigation as more child victims recognize the damage they have suffered from watching violence committed against their parents. Depending on the age of the child, a guardian *ad litem* could inform a child of this option.

E. Holistic Programs—Help for Children Subjected to Domestic Violence

Recognizing the special needs of children, many domestic violence service providers are developing innovative, holistic programs for children. In virtually every state, including Illinois, domestic violence prevention coalitions have been formed.⁹³ For example, the Colorado Coalition Against Domestic Violence is addressing the link of domestic violence to child abuse by networking with children's rights groups, police departments, attorneys, and service providers.⁹⁴ Through state coalitions against domestic violence, a variety of related agencies can resolve to form alliances to protect children living in abusive environments. However, protection of children in the legal arena is still lacking. It is time for the Illinois legislature to step in and require the appointment of a guardian *ad litem* to cases involving children living with domestic violence.

V. CHILDREN'S STANDING IN DOMESTIC VIOLENCE COURT

One may argue that children are not direct victims of domestic violence and therefore have no standing⁹⁵ to be represented in domestic

Brenda K. Harmon, Note, *Parent-Child Tort Immunity: The Supreme Court of Illinois Finally Gives this Doctrine the Attention It's Been Demanding*, 19 S. ILL. U. L.J. 633, 634 (1995) ("The Supreme Court of Illinois recognized that the public policy principles upon which the parent-child tort immunity doctrine was founded are no longer appropriate or sufficient justifications for its existence . . . [c]hanges in society . . . have rendered the original underlying rationales obsolete.").

93. See, e.g., California Alliance Against Domestic Violence, 926 J Street, Suite 1000, Sacramento, CA 95814; Illinois Coalition Against Domestic Violence, 730 E. Vine Street, Suite 109, Springfield, IL 62703; New York Coalition Against Domestic Violence, 79 Central Avenue, Albany, NY, 12206.

94. See Dennis Kennedy, *Cooperating for Kids Sake!*, CCADV Voice, Fall 1997, at 1, 4. In order to address the link between domestic violence and child abuse, the following organizations have come together to discuss how they can coordinate services to provide for both battered women and abused children: CCADV, Project PAVE, American Humane Association, Denver Police Department, Denver District Attorney's Office, Mile High United Way, Denver Children's Advocacy Center, Colorado Association of Family and Children's Agencies, Denver Social Services, Domestic Abuse Assistance Project and victim advocates. See *id.*

95. See *Lynch v. Devine*, 359 N.E.2d 1137, 1140 (Ill. App. Ct. 3d Dist. 1977) (stating that "[t]he doctrine of standing, simply stated, requires that a party seeking relief from the courts must allege some injury in fact to some substantive, legally-

violence court. However, even if the children are not themselves physically attacked, and even if they are not present during an abusive episode, they suffer indirectly from the impact of the violence simply because they live in the abusive home.⁹⁶ Courts must act on this information. In light of both the direct and indirect detrimental aspects of violent homes, judges must consider this relevant information when making their rulings. For example, rulings regarding orders of protection in both civil and criminal cases may involve temporary custody and visitation. If a child is placed with or forced to visit an abusive parent, the child faces potential harm. Professor Diane Geraghty of Loyola University Chicago explained that "Illinois law⁹⁷ requires the appointment of a guardian *ad litem* at the time a petition is filed in all juvenile court cases in which a child is alleged to have been abused, neglected or the victim of a sex crime."⁹⁸ Furthermore, she pointed out that "[a] court may also appoint a [guardian *ad litem*] if it believes that there is a conflict of interest between parent and child or that appointment is in a child's best interest."⁹⁹ Given the negative impact domestic violence has on children-witnesses, children have standing in domestic violence court. Accordingly, guardians *ad litem* must be appointed to represent children in domestic violence court where decisions regarding visitation and custody are made.

VI. THE FUTURE OF GUARDIANS *AD LITEM* IN DOMESTIC VIOLENCE COURT

The need for guardians *ad litem* in domestic violence court is illustrated by the success of a pilot program.¹⁰⁰ Moreover, Illinois law provides the necessary directives for compensating guardians *ad litem*.¹⁰¹ Thus, no reason exists for Illinois to delay any longer in enforcing an affirmative requirement that courts appoint guardians *ad litem* to protect children's interests in domestic violence court.

protected interest of his, which is a right or interest either recognized by common law or created by statute.").

96. See *supra* Part II (discussing the affects of domestic violence on a victim-witness during formative years and the adverse effects that continue through adulthood).

97. See 705 ILL. COMP. STAT. 405/2-17(1) (West Supp. 1998) ("Immediately upon the filing of a petition . . . the court shall appoint a guardian *ad litem* for the minor if such petition alleges that the minor is an abused or neglected child; or [has been the victim of a sex crime].").

98. Diane Geraghty, *The Appointment, Training and Duties of Guardians ad litem in Illinois Child Protection Proceedings*, JUVENILE JUSTICE (Ill. State Bar Ass'n, Springfield, Ill.), Dec. 1997, at 1.

99. *Id.*

100. See *infra* Part VI.A.

101. See *infra* Part VI.B.

A. *The Success of a Pilot Program*

Guardian *ad litem* programs for children in domestic violence cases have shown encouraging success. From 1990 to 1991, the Chicago law firm of Sidley & Austin established a project that provided *ad hoc* guardians *ad litem* for the children of parents involved in domestic violence proceedings in Cook County, Chicago.¹⁰² Attorneys from the firm were appointed as guardians *ad litem* for cases in domestic violence court. They advocated for children's interests and explained how their interests could and should be considered in addition to the adult's interests. "[The program] produced . . . great benefits to the children and assisted the judge in her effort to mete out the best justice for all."¹⁰³ Although no formal study was done on the effectiveness of the Sidley & Austin pilot program, it was deemed a huge success by the children, families and attorneys, as well as the participating court.

B. *Compensating Guardians Ad Litem*

The time has come for Illinois to require guardians *ad litem* to protect children's interests in domestic violence court. Illinois case law is somewhat instructive in determining compensation for guardians *ad litem*. Moreover, Illinois law currently provides the necessary statutory directives for the funding of guardians *ad litem* for the children of parties in domestic violence court from three separate sources: The Marriage and Dissolution of Marriage Act,¹⁰⁴ the Juvenile Court Act,¹⁰⁵ and the proposed Child Advocate Act.¹⁰⁶

1. Illinois Case Law

Under Illinois case law, courts should first look to the children's parents for funding of guardians *ad litem*. Illinois case law has held

102. Telephone Interview with Pam Strobel, now General Council for Commonwealth Edison, formerly a partner at Sidley & Austin (Sept. 16, 1997). "The project became a reality through determination and an unexpected outpouring of volunteerism by the lawyers at Sidley & Austin." *Id.*

103. *Id.*

104. See Illinois Marriage and Dissolution of Marriage Act, 750 ILL. COMP. STAT. ANN. 5/101 to 5/801 (West 1993 and West Supp. 1998). "The court shall enter an order for costs, fees and disbursements in favor of the child's attorney and guardian-ad-litem, . . . [which] order shall be made against either or both parents, or against the child's separate estate." *Id.* § 5/506.

105. See Juvenile Court Act of 1987, 705 ILL. COMP. STAT. ANN. 405/1-1 to 405/7-1 (West 1993 & West Supp. 1998). "The reasonable fees of a guardian *ad litem* appointed under this Section shall be fixed by the court and charged to the parents of the minor, to the extent they are able to pay. If the parents are unable to pay those fees, they shall be paid from the general fund of the county." *Id.* § 405/2-17(5).

106. See H.B. 3412, 90th Gen. Assembly (Ill. 1998).

that parents should be asked first to pay for fees of a guardian *ad litem* appointed to represent their child,¹⁰⁷ despite the fact that they have no voice in selecting the guardian *ad litem* and despite their agreement or disagreement with the guardian *ad litem*'s actions or attitudes.¹⁰⁸ If the parents are unable to pay, a public guardian¹⁰⁹ should be appointed. Looking to the parents is appropriate because it places the responsibility directly on the party who caused the damage. If parents choose to damage their children's interests, then they should be required to pay for someone to protect those interests in the future.

2. Statutory Law

a. The Illinois Marriage and Dissolution Of Marriage Act

The Marriage and Dissolution of Marriage Act is particularly helpful in determining funding for guardians *ad litem*.¹¹⁰ It provides that after appointing a guardian *ad litem*, "[t]he court shall enter an order for costs, fees and disbursements in favor of the child's attorney and guardian-ad-litem . . . [and] [t]he order shall be made against either or both parents or any adult party, or against the child's separate estate."¹¹¹

The new Illinois statute¹¹² regarding attorney's fees under the Marriage and Dissolution of Marriage Act strengthens the court's ability to ensure payment for guardians *ad litem*.¹¹³ A judge may now order an attorney in a divorce proceeding who has been paid by one party to pay the attorneys of opposing parties directly from fees already received.¹¹⁴ Although the statute does not explicitly mention payments to guardians *ad litem*, courts have considered them attorneys

107. See *In re Kersten*, 368 N.E.2d 138, 140 (Ill. App. Ct. 2d Dist. 1977). The *Kersten* court noted that although fees are to be fixed first to the parents of the minor, "[i]f the parents are unable to pay those fees, they shall be paid from the general fund of the county." *Id.*

108. See *Kersten*, 368 N.E.2d 138, 140 (Ill. App. Ct. 2d Dist. 1977) (noting that the statute provides that parents have first responsibility for the fees of a guardian *ad litem*, although they have no input in his selection, and although he may act in a way which is contrary to their interests).

109. A public guardian is like a guardian *ad litem* except that courts provide their compensation.

110. See 750 ILL. COMP. STAT. 5/506 (West Supp. 1998).

111. *Id.*

112. Compare 750 ILL. COMP. STAT. 5/508 with ILL. REV. STAT. ch. 40 ¶ 508.

113. See 750 ILL. COMP. STAT. 5/508(a).

114. See *id.* "The court may order that the award of attorney's fees and costs . . . shall be paid directly to the attorney, who may enforce the order in his or her name, or that it shall be paid to the appropriate party." *Id.* § 5/508(a).

for parties to the case and are awarding them fees under the new guidelines. Accordingly, the Illinois legislature should amend the statute to specifically name guardians *ad litem*.

Therefore, when they are able to, parents should pay the fees for the guardian *ad litem*. When they are unable to pay, the public guardian or private attorneys who are compensated by county funds, should be appointed represent the child.

b. The Juvenile Court Act

Article II of the Juvenile Court Act¹¹⁵ addresses abused, neglected, or dependent minors. It states that as soon as a petition alleging abuse or neglect of a child has been filed, “the court shall appoint a guardian *ad litem* for the minor”¹¹⁶ With regard to compensation, the Act provides that “[t]he reasonable fees of a guardian *ad litem* appointed under this Section shall be fixed by the court and charged to the parents of the minor, to the extent they are able to pay. If the parents are unable to pay those fees, they shall be paid from the general fund of the county.”¹¹⁷ Because children exposed to family violence are indirect victims of abuse and neglect,¹¹⁸ they should be afforded the same rights as those who come to the courts as a result of direct abuse.

c. Public Guardians and The Child Advocate Act

In February, 1998, the Illinois General Assembly proposed the Child Advocate Act.¹¹⁹ The Child Advocate Act would delineate the appointment of a Child Advocate for the State of Illinois.¹²⁰ A Child Advocate is a person with knowledge of the child welfare system and the legal system who has various powers and duties in relation to the welfare of children.¹²¹ The proposed Act provides that expenses shall be paid “from moneys appropriated for that person.”¹²² Further, any fees that the State receives in proceedings brought by the Child

115. See 705 ILL. COMP. STAT. 405/2-1 to 405/2-31 (concerning abused, neglected, or dependent minors).

116. *Id.* § 405/2-17(1).

117. 705 ILL. COMP. STAT. 405/2-17(5).

118. See *supra* Part II (discussing the impact that domestic violence has on children).

119. See H.B. 3412, 90th Gen. Assembly (Ill. 1998). The Bill was referred to the House Committee on Children & Youth on March 11, 1998.

120. See 1997 Ill.H.B. 975 §5 (stating that “[t]he Governor . . . shall appoint a person with knowledge of the child welfare system and the legal system to fill the Office of the Child Advocate”).

121. See *id.* §§ 5, 30.

122*Id.* §15.

Advocate will be given to the office of the Child Advocate.¹²³ While the details of how this office will function are still being determined, it is a source to look to in protecting children in domestic violence court.

VII. CONCLUSION

Guardians *ad litem* are needed to represent the best interests of children in all domestic violence cases. Domestic violence damages a person in both the formative years of his or her life and during adulthood. Because of the huge impact domestic violence has on children, the future of each child-victim is influenced, for better or worse, by the domestic violence courts. With so much at stake, we can no longer fail to protect children when the harm of violence is manifest in generation after generation of children who grow up in violent homes. Illinois must appoint guardians *ad litem* to present the interests of children in domestic violence court.

123. *See id.*