

CHAPTER SIXTEEN – DOMESTIC VIOLENCE AND CHILD SUPPORT

	PAGE
INTRODUCTION	16-1
DEFINITION	16-2
ROLE OF THE CHILD SUPPORT ATTORNEY	16-2
STEPS TO FACILITATE DISCLOSURE	16-3
COLLABORATION WITH DOMESTIC VIOLENCE SERVICE PROVIDERS	16-5
THE GOOD CAUSE EXCEPTION	16-6
RELATIONSHIP BETWEEN THE GOOD CAUSE EXCEPTION AND THE CHILD SUPPORT PROGRAM	16-8
DEVELOPMENT OF AGENCY PROTOCOLS	16-10
Pursuing Child Support Safely	16-10
Physical Safety	16-12
COORDINATION WITH COURTS	16-13
INTERGOVERNMENTAL CASES	16-15
CONFIDENTIALITY AND SAFEGUARDING INFORMATION	16-16
THE FAMILY VIOLENCE INDICATOR	16-17
CHILD SUPPORT GUIDELINES, ACCESS, AND PARENTING TIME	16-19
CONCLUSION	16-21
CHAPTER SIXTEEN – TABLE OF STATUTES AND AUTHORITIES	16-23
Exhibit 16-1: Additional Resources	16-25
Exhibit 16-2: Legal Advice vs. Legal Information	16-27

CHAPTER SIXTEEN

DOMESTIC VIOLENCE AND CHILD SUPPORT

INTRODUCTION

In the late 1970s and early 1980s, while the federal child support program was in its infancy, the federal government faced challenges and concerns over domestic violence – both addressing victims’ needs and providing guidance to prevent the violence.¹ As child support has moved from a cost recovery program to a safety net for families, with a goal of increasing families’ self-sufficiency and eliminating poverty, the connection between domestic violence and child support has become a stark reality for both the child support community and domestic violence prevention advocates. In 1996, domestic violence and child support were overtly tied together as part of the sweeping changes of welfare reform. To improve public assistance clients’ cooperation with child support, the legislation included changes to the good cause exceptions.² The legislation also required child support agencies to protect information on the whereabouts of a party or child when the release of such information may result in physical or emotional harm.³

Safely pursuing child support is a key issue for domestic violence victims, and providing child support services safely to survivors is a key issue for child support programs. Research finds that 90% of domestic violence victims want to pursue child support if they can do so safely.⁴ The child support program has a unique opportunity and responsibility to promote financial independence while reducing the risk of family violence by helping family violence survivors pursue child support safely. To do so, child support programs should also establish collaborations with domestic violence programs, courts, legal aid providers, fatherhood programs, and other entities to reduce the risk of harm to families. In this chapter, we will define domestic violence, discuss steps the child support agency and child support attorney can take to facilitate disclosure of domestic violence, discuss protocols that can help ensure the safe pursuit of child support in cases where a domestic violence victim wants to seek child support, and

¹ The Family Violence Prevention and Services Act (FVPSA) provides the primary federal funding stream dedicated to the support of emergency shelter and supportive services for victims of domestic violence and their dependents. It is administered by the Administration for Children and Families (ACF), as is the federal Child Support Program. Congress first authorized FVPSA as part of the Child Abuse Amendments of 1984, Pub. L. No. 98-457, and has amended it eight times. The most recent reauthorization was in December 2011 for five years, as part of the CAPTA (Child Abuse Prevention and Treatment Act) Reauthorization Act of 2010, Pub. L. No. 111-320.

² See HHS Office of Inspector General, *Client Cooperation with Child Support Enforcement* 2 (Mar. 2000).

³ See 42 U.S.C. § 654(26) (2018).

⁴ Esther Ann Griswold, Jessica Pearson, & Nancy Thoennes, *New Directions for Child Support Agencies when Domestic Violence is an Issue*, 58 Policy & Practice of Public Human Services 29 (Mar. 2000).

explain safeguards for confidentiality of identifying information in domestic violence cases. The chapter also includes a discussion of the relationship between the good cause exception in public assistance cases and child support, although the number of cases with good cause exceptions is small.

DEFINITION

What are we talking about when we say “domestic violence?”

Domestic violence is “coercive behavior in which one person attempts to control another through threats or actual use of physical violence, sexual assault, verbal and psychological abuse, and economic coercion.”⁵ It generally refers to such behaviors that occur between intimate partners. Often it involves the use of a combination of tactics of one partner aimed at establishing control over the other. It is not just physical violence. It may include:

- Stalking and threats to kidnap, kill, or otherwise harm family, friends, or property.
- Threats to commit suicide.
- Repeated use of degrading or coercive language.
- Controlling access to food or sleep and withholding access to money, credit cards, or medical care.
- Withholding immigration documents or threatening deportation.
- Denying contact with friends or family.

ROLE OF THE CHILD SUPPORT ATTORNEY

Economic instability is a major reason that victims stay in or return to abusive relationships. Obtaining regular, adequate child support is a critical component of self-sufficiency – if it can be done safely. Although nonlegal staff may often be the customer’s first contact with the child support agency, child support attorneys and other legal staff should be open to, and offer, customers opportunities to disclose safety concerns throughout the entire child support process. While one-third of custodial parents report domestic violence as a reason for ending their relationship with the other parent, fewer than one in 10 custodial parents have a family violence indicator flag marked on their case

⁵ Theodora Ooms, Jacqueline Boggess, Anne Menard, Mary Myrick, Paula Roberts, Jack Tweedie, & Pamela Wilson, *Building Bridges Between Healthy Marriage, Responsible Fatherhood, and Domestic Violence Programs: A Preliminary Guide* (2006) at 11. *See also* Office of Child Support Enforcement, [Domestic Violence and Child Support Bench Card: Child Support and the Judiciary](#) (Mar. 1, 2012).

(national FCR data). Child support attorneys are particularly likely to encounter safety concerns in the context of legal proceedings and hearing preparation as those actions pose heightened risks for survivors. Attorneys play an important role in evaluating cases and working with other child support program staff, the courts, and domestic violence advocates to ensure that, wherever possible, child support services are provided safely.

STEPS TO FACILITATE DISCLOSURE

Abusers can use child support as another way to maintain or regain control over their victims. They may threaten that they will never pay child support if their partner leaves. They may say that the victim will lose custody of the children if the victim asks for child support. They may use child support court and interactions at the child support agency to further harass or threaten.⁶ Such reasons may contribute to why victims may not disclose the circumstances of abuse to a child support worker or attorney. They may also be fearful of retaliation or further abuse against themselves or their children, or they may have previously disclosed the abuse to someone who did not believe them. They may not feel safe in the child support office if there are no private areas to talk or someone the abuser knows works there. They may worry about staff maintaining confidentiality of their information, especially if they have had a prior experience where a government or social services worker overpromised confidentiality. They may not understand why telling you about the abuse is important, or they may think you cannot protect them.

Each domestic violence victim's circumstances, risks, and resources will be different, and may change over time. The child support attorney should be aware of the following facts:

- Most domestic violence victims want to pursue child support *if* they can do so safely.
- Domestic violence issues can arise at any point in the child support process.
- In order for survivors to do good safety planning, they need accurate and complete information about the child support process.

⁶ See the website of the Attorney General of Texas, Child Support Division, <https://www.texasattorneygeneral.gov/child-support/get-started/child-support-and-family-violence> (last visited Feb. 4, 2021); and the website of the Washington State Department of Social and Health Services, Division of Child Support, https://www.dshs.wa.gov/esa/faq?field_topic_value=childviolence (last visited Feb. 4, 2021).

- Abuse often continues or increases after the victim separates from the abusive situation.⁷ The separation and subsequent child support actions may trigger a violent response from the abuser, even when past abuse was not physical.⁸
- Lack of economic stability is a significant reason that domestic violence victims stay in or return to abusive relationships. Fifty percent of battered women in one study said they stayed in the abusive relationship because they felt they could not support themselves and their children.⁹

Disclosing domestic violence is difficult and sometimes dangerous for the victim, but a child support attorney can take the following steps to facilitate disclosure:

- Work with the agency to develop content for the agency's website that provides custodial parents with information about how to pursue child support when there is a risk of domestic violence.¹⁰
- Continue to provide information about potential risks and safeguards at **all stages** of the process and create a safe and confidential environment for parties to disclose domestic violence concerns.
 - Remember, relationships between people are not static. Risk of abuse may become heightened during periods of stress due to outside factors, such as financial problems, job loss, and medical issues – and due to child support related factors, such as pending legal proceedings or enforcement actions.
 - Become knowledgeable about domestic violence issues to present the best information to custodial parents and staff.

⁷ Jill Davies, National Resource Center on Domestic Violence, *When Battered Women Stay . . . Advocacy Beyond Leaving* (June 2008), <https://vawnet.org/material/when-battered-women-stay-advocacy-beyond-leaving>.

⁸ Patricia Tjaden & Nancy Thoennes, National Institute of Justice and the Centers for Disease Control and Prevention, *Extent, Nature, and Consequences of Intimate Partner Violence – Findings from the National Violence Against Women Survey* (July 2000); Carolyn Rebecca Block, National Institute of Justice, *Risk Factors for Death or Life-Threatening Injury for Abused Women in Chicago* (2004).

⁹ Cris M. Sullivan *et al.*, *After the Crisis: A Needs Assessment of Women Leaving a Domestic Violence Shelter*, 7 *Violence and Victims* 267 (1992).

¹⁰ See, e.g., <https://www.texasattorneygeneral.gov/child-support/get-started/child-support-and-family-violence> (last visited Feb. 4, 2021); <https://www.domesticviolenceinfoerral.org/> (last visited Feb. 4, 2021); <https://www.doj.state.or.us/child-support/apply-for-support/confidentiality-in-unsafe-situations/> (last visited Feb. 4, 2021); <https://www.acf.hhs.gov/css/child-support-professionals/working/family-violence> (last visited Feb. 3, 2021).

- Develop a resource book to provide additional resources on domestic violence to staff and parents.
- Build strong partnerships with local and state domestic violence programs and coalitions and engage in ongoing cross-training for staff. The more staff understand about domestic violence, the better equipped they are to help victims. And the more trained domestic violence workers know about child support, the better they can assist victims seeking help, particularly financially.
 - Form partnerships with service providers to victims of domestic violence.
 - Collaborate with domestic violence programs by providing information and training about the child support process, including what enforcement options exist and how they work.
 - Learn about address confidentiality programs or other resources for victims.
 - Refer parents to domestic violence services, including legal services.

COLLABORATION WITH DOMESTIC VIOLENCE SERVICE PROVIDERS

As noted above, by helping the agency develop partnerships with domestic violence programs, the child support attorney can ensure that domestic violence service providers have a better understanding of the child support program and processes in place to help ensure a person can safely seek child support. The more accurate information that service providers have, the more capacity they have to explain child support processes to survivors and help them navigate child support services. The attorney can also work with domestic violence advocates to develop protocols for advocates to accompany survivors to child support hearings. State domestic violence coalitions are a valuable partner for professional training and development for child support attorneys and staff and as an avenue to provide child support program training to domestic violence advocates. Collaboration between the domestic violence community and child support agencies is also important because the domestic violence community can offer feedback on:

- Contextual screening questions to promote initial disclosure of domestic violence.
- Identification and adaptation of tools for assessing danger and risk after initial disclosure.
- Procedures for handling child support cases with safety risks identified.

- Policies on developing parenting plans when safety is a factor.
- Practices that enhance safety for customers and staff.
- Ways to support victims by providing legal information without providing legal advice; when dealing with unrepresented parties, child support attorneys need to be clear about their role as attorneys for the state. See Exhibit 16-2.

As the agency develops more policies and procedures that are sensitive to domestic violence issues, domestic violence victims will be more confident in the child support community's ability to respond appropriately to domestic violence concerns and more trustful in the child support program.

THE GOOD CAUSE EXCEPTION

Federal law also recognizes that victims of domestic violence may need special protections when seeking public assistance and support.

As a condition of eligibility for Temporary Assistance for Needy Families (TANF), each applicant or recipient must cooperate with the state in:

- Identifying and locating the parent of the child for whom the parent is claiming assistance;
- Establishing the paternity of the child, if necessary;
- Obtaining support payments for the applicant or recipient and for the child for whom assistance is claimed; and
- Obtaining any other payments or property due to the applicant or recipient of the child.¹¹

Cooperation is also required for a person's receipt of Title IV-E (foster care maintenance), Title XIX (grants to states for medical assistance programs), or Supplemental Nutrition Assistance Program (SNAP) benefits. There is an exception, however, to this cooperation requirement. Pursuant to federal law, the applicant or recipient does not have to cooperate with the child support program if good cause is found for refusing to cooperate.¹² When there is a finding of good cause and a determination that "support enforcement may not proceed without risk of harm to the child or caretaker relative," the child support agency may elect to close the case.¹³

¹¹ 42 U.S.C. § 608(a) (2018).

¹² 42 U.S.C. § 654(29) (2018).

¹³ 45 C.F.R. § 303.11(b)(14) (2019).

There is no federal definition of “good cause.” Typically, states exempt a TANF, IV-E, XIX, or SNAP applicant or recipient from cooperating with child support when pursuing paternity establishment or child support is reasonably expected to result in physical or emotional harm to the child or client, when the child is born as a result of forcible rape or incest, when adoption proceedings are pending, or when the client is consulting with a social service agency regarding the possibility of adoption.¹⁴ Because of changes in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA),¹⁵ states may expand or constrict the circumstances they accept as qualifying for good cause exceptions, as long as they are “taking into account the best interests of the child.”¹⁶

There are many factors that indicate potential risk of harm when pursuing child support services. The most important source of information for child support attorneys are the survivors, as they are the experts on their situation and are likely to have the best knowledge of what may trigger the other parent. Child support attorneys should pay special attention and take steps for added security if any of the following factors are present:

- The other parent has made specific threats to kill or harm the survivor or children.
- The other parent has previously choked or attempted to strangle the survivor.
- The other parent has access to firearms and/or made threats that involve a weapon.
- The other parent has harmed or killed family pets.
- The other parent has threatened suicide.
- The other parent tried to control the survivor’s daily activities or stalked/followed the survivor.¹⁷

States determine which agency – child support, public assistance, or Medicaid – is responsible for evaluating, and approving or denying, requests for

¹⁴ HHS Office of Inspector General, *supra* note 2, at 1. Prior to the passage of PRWORA, federal regulations required states to grant clients good cause exceptions when one of these circumstances existed. With PRWORA, current policy allows, but does not require, states to keep the prior federal standards for granting good cause exceptions.

¹⁵ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105.

¹⁶ 42 U.S.C. § 654(29) (2018). Some states have added circumstances that warrant an exception, such as mental incapacity of the client and cases in which conception occurred from artificial insemination. See HHS Office of Inspector General, *supra* note 2, at 4.

¹⁷ See Office of Child Support Enforcement, [Safely Pursuing Child Support: A Caseworker Desk Card](#) (Apr. 17, 2012).

good cause exceptions. They also determine what standards of proof are required to demonstrate the circumstances warranting exceptions. Some states have stringent requirements of documentation and proof.¹⁸ However, it may be difficult for victims to provide verification of domestic violence when requesting a good cause exemption for they may have had to leave their homes quickly, their abuser may have destroyed documents, or it may not be safe for them to obtain verification.¹⁹ For that reason, some states are more liberal in their requirements for documentation of good cause. Even in states with less stringent documentation requirements, good cause is very rare; less than 1% of TANF recipients (nationally) are granted good cause.

The goal of the good cause exception is to protect families and prevent harm to a party or child. Child support attorneys and staff should have a thorough understanding of how good cause is determined in their state, who determines it, and how frequently good cause is granted. Under no circumstances should child support staff or attorneys assume that because good cause was not granted to a customer, they are not victims of domestic violence and do not need protections in the child support process.

RELATIONSHIP BETWEEN THE GOOD CAUSE EXCEPTION AND THE CHILD SUPPORT PROGRAM

When the child support agency receives notice of a claim of good cause for failure to cooperate, the child support agency must suspend all activities to establish paternity or secure support until notified of a final determination by the appropriate agency.²⁰ If the child support agency receives notice that there has been determination of good cause, the agency should not undertake to establish paternity or secure support unless the agency also receives notice that there has been a determination that support enforcement may proceed without the participation of the custodial parent or caretaker relative. In that circumstance, the child support attorney can proceed to establish paternity or secure child support, but may not involve the custodial parent or caretaker relative in doing so.²¹ However, if the child support agency and the state or local assistance agency determines that support enforcement may not proceed without risk of harm to the child or caretaker relative, the child support agency may close the case.²²

If there is no good cause exception in a public assistance case, the recipient must cooperate with the child support agency in order to receive benefits. The ultimate decision about whether the participant is cooperating is

¹⁸ See, e.g., N.D. Admin. Code § 75-02-02.1-09 (2020).

¹⁹ See Office of Child Support Enforcement, [Safely Pursuing Child Support: A Caseworker Desk Card](#) (Apr. 17, 2012).

²⁰ 45 C.F.R. § 302.31(b) (2019).

²¹ 45 C.F.R. § 302.31(c) (2019).

²² See 45 C.F.R. § 303.11(b)(14) (2019).

made by the child support agency. As an employee or contractor with the agency, the child support attorney needs to understand the cooperation requirements. The attorney should know:

- Failure to cooperate may be determined at intake or may become apparent at some later time. For example, it may occur during pre-trial meetings, discovery, or the actual hearing.
- The child support agency notifies the assistance agency when the participant fails to cooperate to establish paternity and support.
- Failure to cooperate may result in a loss of benefits.²³

The attorney can also play an important role in helping the agency develop protocols to follow when evidence of domestic violence is apparent but no good cause exception is in place. Remember, the initial good cause inquiry should not end the discussion about domestic violence. There may be victims who do not follow through with the good cause process or do not claim good cause because they do not understand the good cause exception to cooperation or the agency requirements may be unrealistically high. Sometimes, they are just too fearful or too embarrassed to disclose violence. Some public assistance clients do not mention circumstances that warrant a good cause exception until they are meeting with child support staff. This may occur because child support staff often ask more detailed questions than the public assistance agency, and clients may only then realize the risk that the state may actually contact the noncustodial parent. A domestic violence victim may not seek a good cause exception because the onset or recurrence of the risk comes after the child support case has commenced.

Because the attorney has a continuing relationship with the parents as long as the case is in the system, the attorney is in an important position to observe the parties and draw conclusions about the need for protections. If the child support attorney or caseworker becomes aware of circumstances that may warrant a good cause exception, it is appropriate to suspend child support actions, explain what safety measures are available within the child support program, and, if the available safety measures within the child support process are not adequate for the victim's protection, refer the victim back to the public assistance agency to request an exception. Child support agencies also have the option of closing the case based on their own assessment that proceeding may put the parent or children at risk of harm.²⁴ Usually attorneys or caseworkers notify the public assistance agency of their action.²⁵ It is also appropriate for the attorney to refer the person to a domestic violence program for additional resources.

²³ See, e.g., 45 C.F.R. § 264.31(c) (2019).

²⁴ 45 C.F.R. § 303.11(b)(14) (2019).

²⁵ HHS Office of Inspector General, *supra* note 2, at 6.

DEVELOPMENT OF AGENCY PROTOCOLS

Pursuing Child Support Safely

In both assistance and nonassistance cases, child support agencies have developed ways to pursue child support with heightened safety for victims. Known as “yellow light” procedures, they include address confidentiality, advance warning of the initiation of certain enforcement remedies, and the avoidance of some remedies. Many child support agencies have collaborated with domestic violence advocacy groups to develop these “yellow light” procedures.²⁶ Child support attorneys often participate in these work groups to develop or revise program policy related to domestic violence. Among the topics they have jointly addressed are:

- Determining ways to inform clients about domestic violence and create a climate conducive to disclosure.
- Training child support staff on domestic violence.
- Integrating domestic violence awareness in child support agency policy and procedures.

Every child support agency should also have protocols in place to facilitate the identification of at-risk customers. The child support attorney can help the agency develop such policies and procedures.²⁷ For the agency, outreach is the first step in providing assistance to parents with potential issues. Posters, flyers, and information disseminated on the child support website, child support applications, and all child support communications can provide information and resources to customers and demonstrate the agency’s concern for the safety of families. In dealings with the parent, the child support attorney can ask contextual questions to elicit information that would help assess any potential domestic violence situation. Examples of contextual questions designed to identify domestic violence include:

- Asking customers if they have any safety concerns about seeing/meeting with the other parent in the child support office or court.
- Asking customers if they would have concerns about the other parent knowing their address or other personal contact information.

²⁶ Massachusetts, Missouri, Minnesota, and Oregon began using a three-prong approach in the late 1990s, and it is in use in more states today: fully enforce and deal with risks – “green light;” apply for good cause in the TANF case and forego child support – “red light;” or use a compromise cautionary approach, addressing protection and selective enforcement options – “yellow light.”

²⁷ See Office of Child Support Enforcement, [IM-19-06: Model Procedures for Domestic Violence Cases](#) (Aug. 21, 2019). See also Office of Child Support Enforcement, [Domestic Violence Expert-Informed Model Screening Questions and Practices](#) (Aug. 21, 2019).

- Asking customers how they think the other parent will react to notification of child support actions.
- Explaining how parenting time will or will not be included in calculations of child support and asking if they have any concerns about parenting time with the other parent.

The agency and attorney should:

- Provide clear and accurate information about available child support services or provide a concise status of an existing child support case when domestic violence is identified.
- In public assistance cases, explain the availability of the good cause waiver and other safeguards.
- Explain to new applicants the steps in the typical case and detail what enforcement actions can be taken when child support is not paid, including if, when, and how they will be notified prior to enforcement actions.
- Provide adequate time for a parent to make decisions about proceeding with child support services and leave decision-making regarding applying for child support services up to the parent.

When family violence is an issue, it is important for the attorney to share as much information as possible with the party who has been victimized about enforcement options.

- The attorney and customer should discuss possible ramifications to enforcement actions.
- To the greatest extent possible, the attorney should allow the customer to participate in the decisions about enforcement.
- If enforcement is initiated, the customer can help the attorney and agency develop steps to minimize any risk to the customer and children.
- Enforcement does not have to be all or nothing.

If the attorney learns about abuse or the potential risk of such abuse during his or her interview with either party, the attorney should ensure that information is adequately documented in the case file and other workers involved are also

informed. They should ensure that agency procedures related to placement of a Family Violence Indicator (FVI) in the system are properly followed.²⁸

Physical Safety

The attorney can also help the agency identify potential physical risks during office visits or court appearances and develop procedures to minimize those risks. Such procedures may include:

- Required check-in of all visitors/clients with proper identification.
- Interviews and conferences conducted in private space.
- Contextual screening questions during intake to promote disclosure of safety concerns.
- Locked and secured outside doors, when possible.
- Special security provided for domestic violence victims, including secured transportation to and from buildings, well-lit parking, and sheriff/security escort when requested.
- Encourage domestic violence victims to have an advocate/counselor from the local domestic violence program (if available) to accompany them to court.
- A safe, private space for the victim to call the local domestic violence hotline for emergency help if requested. The agency should have on hand information about the local domestic violence crisis center or the domestic violence hotline. If there is no local hotline, the agency can refer the victim to the National Domestic Violence Hotline at 800-799-SAFE (7233). All calls to the Hotline are confidential and interpreters are available in 140 languages.
- Assistance to the client in making arrangements related to emergency shelter, transportation, childcare, and work, if threat is imminent.²⁹

Minimizing contact between the parents can minimize risk. For example, to establish a support order, there may be an option for an informal pre-conference with the parents in separate rooms – and that may be less risky than a hearing in

²⁸ See Office of Child Support Enforcement, [The Role of the Family Violence Indicator: Safely Pursuing Child Support](#) (Oct. 11, 2011). See also the discussion herein on the Family Violence Indicator.

²⁹ See Jessica Pearson, Center for Policy Research, [Roundtable on Domestic Violence, Child Support Program and Parenting Time Orders: Research, Practice & Partnership Project, Meeting Synthesis](#) (Sep. 2013) (a summary of the presentations and discussions at the symposium held by the Office of Child Support Enforcement on March 28, 2013). See also Office of Child Support Enforcement, [Child Support Fact Series # 7– Family Violence Collaboration](#) (Jun. 19, 2011).

open court. Parents need to be able to play a part in the assessment of risk for each option.

COORDINATION WITH COURTS

The attorney can also be an advocate for victims' safety in court. Often there are local task forces or work groups that focus on how to improve court practices related to special populations, such as domestic violence victims. Child support attorneys may want to participate in such groups. They should also work with the court to ensure that there are confidentiality protections related to legal documents in cases where there is a safety risk. In addition to working with the court, there are steps a child support attorney can take in individual support cases to minimize the possibility of physical harm or intimidation:

- Inform parties that verbal and non-verbal threats, intimidation, or violence are unacceptable, and that parties should not direct remarks to each other.
- Consider allowing the victim to appear telephonically or by video conference.
- If the victim must appear in court, consider that the court date may be the first time the victim has seen the abuser in a while and prepare for that encounter.
- Recognize the likelihood of post-traumatic stress responses to impact the victim's ability to provide testimony and encourage the individual to have written testimony prepared and/or be accompanied by an advocate from a local DV program.
- Place themselves between parties and block potential non-verbal communication to threaten or intimidate.
- Minimize contact between the parties both inside and outside the courtroom with the use of:
 - Separate waiting rooms.
 - Separate seating in the courtroom.
 - Staggered exit times.

- Inform judicial officers of any safety concerns or needs.
- Have resources available in court that provide information and referrals for victims, such as the National Domestic Violence Hotline.³⁰

The attorney may need to clarify to the parties, particularly to the unrepresented noncustodial parent, that the attorney does not represent either party in any proceedings. In addition, the attorney must never put the burden for an enforcement action on a party who has been victimized, clarifying that some actions are taken because of federal or state laws. An unrepresented party may be prone to feel as if government, court, and “establishment” are all working for the custodial parent, and those feelings can exacerbate feelings of hostility and resentment that can result in outbreaks of domestic violence. The attorney can help to demonstrate that he/she does not represent either party by:

- Dealing with the parties individually, and explaining the process and the attorney’s role to both parents, which can defuse a potential volatile situation.
- Serving as a bridge between the parties and the legal proceedings by providing a roadmap for how the case will proceed.
 - Use child support agency brochures that address some of the parents’ concerns.
 - Take the time to answer questions and provide insight into how support is set and why.
- Remaining mindful of the interactions between the parties.
 - Observe body language and verbal exchanges.
 - Provide opportunities for the victim to take a break from interaction with the other party if signs of stress response are present.
 - Use existing safety measures whenever any threat is imminent.

The federal Office of Child Support Enforcement has facilitated ongoing discussions with the states about ways to best serve children and families in situations where they may be at risk.³¹

³⁰ Office of Child Support Enforcement, [Domestic Violence and Child Support Bench Card: Child Support and the Judiciary](#) (Mar. 1, 2012).

³¹ For additional resources, see Office of Child Support Enforcement, [Family Violence](#). See also [OCSE-IM-15-02: Safe Access to Child Support Services: Scope of the Issue](#) (Oct. 21, 2015).

INTERGOVERNMENTAL CASES

When multiple states or countries are involved with a case, the opportunity for disclosure of protected information increases. Because few multi-jurisdictional protocols exist, inadvertent disclosures can occur simply by following the existing procedures. Pleadings may contain protected information that might be revealed in the filing in the responding state or jurisdiction. It is important for child support agencies and attorneys to be aware of the potential risks and take steps to mitigate that risk.

- Identify key issues where safety breakdowns can occur. This can be in the pleadings, in subsequent discovery, during telephonic hearings, or at other points in the case. Absent an FVI (see later discussion), it is important to develop a protocol for protecting case information when necessary.
- Recognize that extenuating circumstances may require unconventional approaches particularly if a parent has fled to keep a child safe.³²
- Develop policy and procedures for allowing the perpetrator or alleged abuser access to specific remedies such as modification without the necessity of address disclosure of the party at risk.³³
- If appropriate in an intergovernmental case, follow procedures in the Uniform Interstate Family Support Act (UIFSA)³⁴ for nondisclosure of identifying information.

In certain circumstances, Section 312 of UIFSA (2008) permits address and/or identifying information of a child or party to be withheld from pleadings or other documents filed in connection with the proceeding. No tribunal finding of risk is required. Section 312, Nondisclosure of Information in Exceptional Circumstances, provides:

If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of specific identifying information, that information must be sealed and may not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety, or liberty of the party or child, the tribunal may order

³² See *In re M.I.M.*, 370 S.W.3d 94 (Tex. App. 2012).

³³ See *State ex rel. Dep't of Econ. Sec. v. Taxiolo*, 246 P.3d 944, 946 (Ariz. Ct. App. 2011), citing *McHale v. McHale*, 109 P.3d 89 (Ariz. Ct. App. 2005) (where the mother's address is "protected" and the father has no other forum to request modification, the agency should assist in the filing under UIFSA § 306).

³⁴ See *Unif. Interstate Family Support Act* (2008), <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=e12481bd-ac36-07ba-7d64-7841e9db5e09&forceDialog=0> (last visited June 16, 2020).

disclosure of information that the tribunal determines to be in the interest of justice.³⁵

The presence of an FVI on a state's child support system does not comply with Section 312's requirement that there must be an allegation in an affidavit or a pleading under oath that the health, safety, or liberty of the parent or child would be jeopardized by disclosure of some or all of the identifying information. If there is an FVI on a case participant, it will be necessary for the agency to include the required allegation in an affidavit or a pleading under oath if it wants the responding state to seal the identifying information and not disclose it to the other party or the public. UIFSA does not require that the affidavit or the pleading signed under oath be notarized or certified.³⁶ If there is a nondisclosure finding or order issued by a tribunal, the agency should also include it with the intergovernmental forms. For that reason, tribunals should develop procedures to ensure that the existence of a nondisclosure order is properly conveyed within the state so that the party or child also receives the benefit of these other state and federal protection mechanisms.

CONFIDENTIALITY AND SAFEGUARDING INFORMATION

Child support professionals deal with privacy and security issues every day. For domestic violence victims, confidentiality of their address, phone number, and workplace is essential to their safety. The child support caseworker or attorney should explain in detail what steps the child support program can take to protect a parent's address, and what steps the parent should take. For example, the child support agency can use the agency mailing address or other alternative address for the victim. The child support attorney should explain to the victim who will have access to disclosed information. Other important steps to follow include:

- Never contact the abusive partner for verification of any claims of violence or abuse.
- Continue to communicate openly with customers about protective measures, such as the FVI and protocols for physical safety that the child support agency takes in cases where domestic violence is an issue, even when there has been no domestic violence disclosure. Communication about child support services is the most important resource for parents with safety concerns.
- Ensure the protection of identifying information in legal pleadings or other documents.

³⁵ Unif. Interstate Family Support Act § 312 (2008).

³⁶ See Office of Child Support Enforcement, [IM-19-06: Model Procedures for Domestic Violence Cases](#) (Aug. 21, 2019).

THE FAMILY VIOLENCE INDICATOR

In an effort to ensure confidentiality in appropriate cases, PRWORA included a provision requiring states to prohibit the release of identifying information about one party or the child to another person if the state has reason to believe that the release of the information may result in physical or emotional harm to the party or child. The state must also notify the Secretary of HHS that the state has such evidence of domestic violence or child abuse and that disclosure of information could be harmful.³⁷ The mechanism for protecting such information is the placement of a Family Violence Indicator (FVI) in the State Case Registry before sending the information to the Federal Parent Locator Service (FPLS).³⁸

The FVI is a code that the child support agency places on an individual within its automated system in order to protect the person's address and other confidential information.³⁹ Each state has developed protocols for when an FVI is appropriate. The impact of the FVI differs by state. However, at the federal level, the existence of an active FVI precludes disclosure of information from the FPLS. In practice, this means that the FPLS does not disclose any matches to state child support agencies about data on this person. Alternately, if a locate request is made for a person protected by an FVI, the requesting State Parent Locator Service receives a response that disclosure of data is prohibited.

It is important to remember that a child support agency should only place an FVI designation on the person and/or child needing protection from the perpetrator of the violence or abuse. An FVI prevents the disclosure of information from all matching and locate requests for people who have an FVI. Therefore, an agency should not place the FVI on the entire case, or on the perpetrator, since this will prohibit a state from receiving locate or match information on the perpetrator.⁴⁰

The child support attorney should ensure that an FVI on the child support system automatically blocks a victim's address from appearing on pleadings and correspondence. It is also important for staff and the attorney to develop a schedule and protocols informed by collaboration with domestic violence experts to review cases where the FVI has been applied to individuals. As circumstances change and time passes, it may be appropriate to remove the FVI and allow the information flow to resume.

³⁷ See 42 U.S.C. §§ 653(b)(2) and 654(26) (2018).

³⁸ 45 C.F.R. § 307.11(f) (2019) requires states to have the ability to place a Family Violence Indicator in the State Case Registry.

³⁹ For more information about the relationship between the Family Violence Indicator and the FPLS, see Chapter Five: Location of Case Participants and Their Assets.

⁴⁰ See Office of Child Support Enforcement, [Safely Pursuing Child Support: The Role of the Family Violence Indicator](#) (Oct. 11, 2011).

Notwithstanding a person's safety concern, there may be a legitimate reason for data disclosure in certain circumstances. Federal law permits the FPLS to release information about a protected person to a state court under certain conditions. This process is known as the "FVI Override." It is important to note that an override does not remove the FVI from the FPLS. And the override request may be made only by an authorized person, as defined by federal law.⁴¹

The override process involves activity at both federal and state levels. An authorized person may petition a state court for a one-time override of the FVI so that the requestor can secure the sought-after information from the FPLS. Federal law requires the court to determine "whether disclosure to any other person of that information could be harmful to the parent or the child." To help the court determine the level of harm associated with possible disclosure to the requestor, the child support attorney may be called upon to provide information, if known, about why the FVI was set. The court will decide to grant or deny the requestor's petition. If the court denies the request, the process ends there. If the state court grants the requester's petition, it will prepare an order or request to that effect and provide the FVI override request to the State Parent Locator Service (SPLS).

Upon receipt of the override request, the SPLS determines if the entity making the request is an authorized person and confirms that the override is being sought for an authorized purpose.⁴² If those criteria are met, the SPLS forwards its request for an FVI override to the FPLS. OCSE will receive, review, and verify each FVI override request. In reviewing the requests, OCSE will confirm that:

- The request is made by an authorized person;
- The request is made for an authorized purpose; and
- The SPLS cover letter includes the required information pursuant to 45 C.F.R. § 303.70.

Based on the review of the request, OCSE will make one of three possible determinations: 1) the request is incomplete; 2) the request is approved; or 3) the request is disapproved. If OCSE approves an override request, OCSE will perform a one-time manual override of the FVI and provide the information to the requesting SPLS in a secure package. In addition to the information secured through the override, OCSE will include the identity of the state that imposed the FVI for the individual. OCSE will also notify the state that originally placed the FVI of the state making the override request.

Upon receipt of the secure package from OCSE, the SPLS will disclose the information to the state court that ordered the FVI override. That court

⁴¹ See 42 U.S.C. §§ 653(c) and 663(d)(2) (2018).

⁴² See 42 U.S.C. §§ 653(a)(2) and 663(b) (2018).

ultimately decides if disclosure of the information to any other person could be harmful to the parent or child.⁴³ If the state court decides that release of the information could be harmful to the parent or child, the court must deny the request and not release the information. The court and/or the state IV-D agency should consider procedures for the destruction of the information retrieved from the FPLS. If the state court decides that the information from the FPLS would be unlikely to cause the parent or child harm, it may release the information to the authorized person who requested the information. The state court and/or IV-D agency should develop procedures for the release of the information. A child support attorney may be called upon to assist in developing such procedures. In developing such procedures, the agency and child support attorney may want to address the following actions:

- Notification to the person whose location information has been requested.
- Notification to the requestor of the confidential nature of the information and its limited use.
- The destruction or seal of records containing the information, following its release pursuant to the court-authorized request.

Keep in mind that the FVI is a system code. The FVI protocol should not be the domestic violence protocol. The absence of an FVI does not guarantee that there are no safety concerns. Issues of concern may arise during meetings, negotiations, or hearings when the parties interact. If a child support attorney becomes aware of safety concerns, the attorney should discuss the concerns with child support staff trained in family violence response. The attorney can also recommend placing the FVI on the case, even after the case is already in progress, to prevent any further disclosure of identifying information. If there is no child support staff trained in family violence response, the attorney can make referrals to community resources or the local hotline. Discussions with the party at risk can help identify proper steps to take to avoid continuing risk, confrontation, or harm. Always act with caution when family violence may be an issue.

CHILD SUPPORT GUIDELINES, ACCESS, AND PARENTING TIME⁴⁴

Census Bureau data consistently show that parents with custody or visitation arrangements are more likely to receive child support.⁴⁵ Several studies

⁴³ See 42 U.S.C. § 653(b)(2)(B)(i) (2018). See also Office of Child Support Enforcement, [DCL-98-122: Family Violence \(FV\) Indicator Override](#) (Nov. 25, 1998).

⁴⁴ For more information on parenting time agreements, see Chapter Fifteen: Access and Parenting Time.

⁴⁵ See U.S. Census Bureau, *Custodial Mothers and Fathers and Their Child Support: 2017* (May 2020), <https://www.census.gov/content/dam/Census/library/publications/2020/demo/p60-269.pdf>.

among participants in state Access and Visitation programs have also shown that child support payments increase when parenting time is addressed.⁴⁶ However, increased opportunities for noncustodial parent involvement can pose challenges and risks for victims of domestic violence, including the potential for increased family violence.⁴⁷ Child support attorneys should also be aware of the potential for manipulation and intimidation of victims by perpetrators when calculating child support in states with guidelines that include a parenting time credit or consideration.

Because child support attorneys may play a role in developing or facilitating a parenting time agreement, they need to understand the spectrum of parenting plans with safety components. There is no consensus on the type of parenting plan that is appropriate for families with a history of domestic violence.

For some, a detailed plan may be safe, for other victims, unsafe. Standard visitation plans may provide useful examples for families. Other families may benefit from the development of more individualized plans keyed to family needs or child development. In addition to supervised visitation, graduated approaches to visitation in cases of domestic violence may be appropriate for some families.⁴⁸

In some situations, it may not be appropriate for the perpetrator of violence to spend any time with the child. The attorney needs to understand that a “one-size-fits-all” approach does not work when addressing safety concerns. All states have laws that provide for the consideration of domestic violence when making custody or visitation determinations, or developing parenting time plans.⁴⁹ Any decision regarding parenting time needs to be governed by state law and the case facts.

The attorney may also want to participate in any multipartner collaboration to improve coordination among government agencies or provide specialized services to domestic violence victims, such as supervised visitation and safe exchange services. Because at-risk families benefit from collaborations that bring together professionals from across disciplines and fields, the child support

⁴⁶ See HHS Office of Inspector General, Effectiveness of Access and Visitation Grant Programs, OEI-05-02-00300 (2002); Office of Child Support Enforcement, [Access and Visitation Program Update: FY 2018](#) (Mar. 2020). See also Center for Policy Research, [Child Access and Visitation Programs: Participant Outcomes](#) (Jan. 2006).

⁴⁷ Office of Child Support Enforcement, [Child Support Fact Series # 13 – Child Support and Parenting Time: Improving Coordination to Benefit Children](#) (Aug. 5, 2013).

⁴⁸ See Jessica Pearson, *supra* note 29.

⁴⁹ See also the Family Violence and Domestic Relations page of the website of the National Council of Juvenile and Family Court Judges (NCJFCJ), <https://www.ncjfcj.org/family-violence-and-domestic-relations/> (last visited Feb. 4, 2021). Among the resources that NCJFCJ offers is a list of *10 Things to Know About Parenting Plans in Cases Involving Domestic Violence* (2019), <https://www.ncjfcj.org/publications/10-things-to-know-about-parenting-plans-in-cases-involving-domestic-violence/> (last visited Feb. 4, 2021) and *Custody Mediation and Domestic Violence: A Resource Guide for Mediators* (2019), <https://www.ncjfcj.org/publications/custody-mediation-and-domestic-violence-a-resource-guide-for-mediators/> (last visited Feb. 4, 2021).

attorney can act as a liaison between the child support agency, fatherhood programs, and the courts and help identify community programs for family referrals.

CONCLUSION

Studies have shown that children benefit from a loving relationship with both parents. Child support professionals have a unique responsibility – and a unique opportunity – to reduce the risk of family violence and help family violence survivors pursue child support safely. Collaborating with programs that address domestic violence, fatherhood, and child welfare can simultaneously reduce family violence, increase father involvement, and improve child support outcomes. The child support attorney can help the child support agency develop policies and procedures for identifying families at risk, and policies and procedures that help ensure the safe pursuit of child support for those domestic violence victims who want child support services. The child support attorney can also play an important role in the agency's collaboration with other programs, domestic violence advocacy groups, and the courts to increase the likelihood of safely handling support cases where domestic violence is an issue.

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CHAPTER SIXTEEN

TABLE OF STATUTES AND AUTHORITIES

Statutes and Regulations	Page
42 U.S.C. § 608(a) (2018)	6
42 U.S.C. § 653(a)(2) (2018)	18
42 U.S.C. § 653(b)(2) (2018)	17
42 U.S.C. § 653(b)(2)(B)(i) (2018)	19
42 U.S.C. § 653(c) (2018)	18
42 U.S.C. § 654(26) (2018)	1,17
42 U.S.C. § 654(29) (2018)	6,7
42 U.S.C. § 654a (2018)	7
42 U.S.C. § 663(b) (2018)	18
42 U.S.C. § 663(b)(2) (2018)	18
42 U.S.C. § 663(d)(2) (2018)	18
45 C.F.R. § 264.31(c) (2019)	9
45 C.F.R. § 302.31(b) (2019)	8
45 C.F.R. § 303.11(b)(14) (2019)	6,8,9
45 C.F.R. § 303.70 (2019)	18
45 C.F.R. § 307.11(f) (2019)	17
Child Abuse Amendments of 1984, Pub. L. No. 98-457	1
CAPTA Reauthorization Act of 2010, Pub. L. No. 111-320	1
Family Violence Prevention and Services Act	1
Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105	7,17
45 C.F.R. § 264.31(c) (2019)	9

Statutes and Regulations	Page
45 C.F.R. § 302.31(b) (2019)	8
45 C.F.R. § 302.31(c) (2019)	8
45 C.F.R. § 303.11(b)(14) (2019)	8,9
45 C.F.R. § 307.11(f) (2019)	17
N.D. Admin. Code § 75-02-02.1-09 (2020)	8

Case Law	Page
<i>In re M.I.M.</i> , 370 S.W.3d 94 (Tex. App. 2012)	15
<i>McHale v. McHale</i> , 109 P.3d 89 (Ariz. Ct. App. 2005)	15
<i>State ex. Rel. Dep't of Econ. Sec. v. Taxiolo</i> , 246 P.3d 944 (Ariz. Ct. App. 2011)	15

Model Codes	Page
Unif. Interstate Family Support Act (2008)	15
Unif. Interstate Family Support Act § 306 (2008)	15
Unif. Interstate Family Support Act § 312 (2008)	15,16

Exhibit 16-1: Additional Resources

The federal Office of Child Support Enforcement (OCSE), an agency within the Administration for Children and Families (ACF), provides training and other domestic violence-related resources, including:

- [Child Support and the Judiciary Bench Card: Domestic Violence and Child Support](#)
- [Child Support Fact Sheet Number 7: Family Violence Collaboration](#)
- [Final Rule: Safeguarding Child Support Information](#)
- [Safely Pursuing Child Support: A Caseworker Desk Card](#)
- [Safely Pursuing Child Support – Training Tools](#)
- [Safely Pursuing Child Support: The Role of the Family Violence Indicator](#)
- [You Have the Right to be Safe: Child Support Information for Domestic Violence Victims](#) (English)

The Family and Youth Services Bureau, another office of the Administration for Children and Families, includes the Family Violence Prevention and Services Program. This program administers the Family Violence Prevention and Services Act (FVPSA), the primary federal funding stream dedicated to the support of emergency shelter and related assistance for victims of domestic violence and their children. See <https://www.acf.hhs.gov/fysb/family-violence-prevention-services>. The FVPSA is the primary federal funding stream for State and Territorial Domestic Violence Coalitions, which coordinate state- and territory-wide improvements within local communities, social service systems, and programming regarding the prevention and intervention of domestic violence. Every Coalition provides comprehensive training and technical assistance on a multitude of social, legal, and economic issues that affect victims' safety and well-being. For more information, see the FVPSA State and Territorial Domestic Violence Coalition Fact Sheet, https://devd8.acf.hhs.gov/sites/default/files/documents/fysb/fvpsa_coalitions_2012_1114.pdf.

There are also a number of national resources for information about domestic violence:

- The [National Online Resource Center on Violence Against Women](#) offers an online collection of research, policy and practice information, and other materials related to domestic violence.
- The [National Domestic Violence Hotline](#) provides direct assistance for victims and offers outreach/public education resources.
- The [National Judicial Institute on Domestic Violence](#) provides a list of resources.

Exhibit 16-2: Legal Advice vs. Legal Information

Why do child support attorneys give legal information?

Coming to court can be stressful, confusing, and intimidating, especially if a parent or caregiver is a victim of family violence. In order to pursue a just outcome when safety is a concern, child support attorneys (and other child support staff) need to balance the desire (and the state's interest) in not causing or exacerbating risk with the need to not cross the line of giving legal advice.

The Preamble to the American Bar Association's Model Rules of Professional Conduct notes that attorneys are "a public citizen having special responsibility for the quality of justice" When dealing with unrepresented parties, child support attorneys must clarify their role as attorneys for the state. This does not mean stating or implying disinterest, but correcting any misunderstanding of the attorney's neutrality.

The ABA's Model Rules further state: "a lawyer should further the public's

understanding of and confidence in the rule of law and the justice system ... A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance."

Providing information to child support customers fulfills the ethical and professional obligations of attorneys to preserve and improve the legal system.

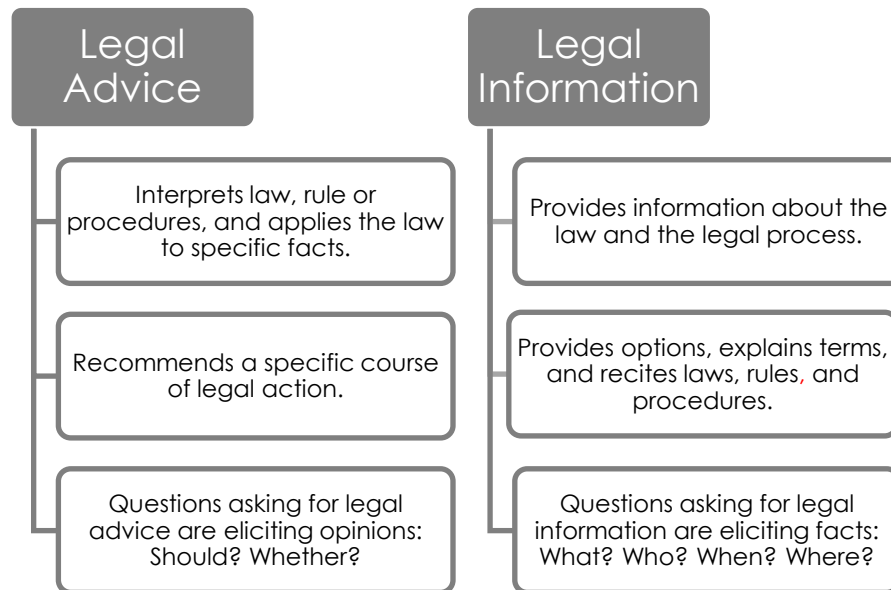
The mission of the child support program is furthered when customers have and understand the information needed to make decisions about the child support process. Helping customers figure out how to take steps to reduce risks related to family violence is a critical part of ensuring that children receive the emotional and financial support they need.

WHAT ARE THE BENEFITS OF PROVIDING QUALITY LEGAL INFORMATION?

- Customer (and staff) **safety is increased** when attorneys and other child support staff provide information in response to safety concerns.
- Providing information to customers helps equip them to take actions that increase their safety.
- Providing legal information to customers helps them help child support staff work their cases appropriately.
- Providing referrals to family violence program services and legal providers helps customers receive services and legal assistance that the child support program cannot provide.
- Providing legal information increases the public's access to justice and legal due process.

What's the difference between advice and information?

Legal advice is specific and tailored to a fact situation. It recommends a particular course of action in a specific situation. On the other hand, legal information focuses on the law and legal processes. So while legal advice is specific to a situation, legal information is more generic.



Important Tips for Referring a Customer to a Family Violence Resource

- Routinely let customers know that you can provide referrals to family violence services.
- Use local program staff and/or national hotlines as resources.
- Let customers know that they can have advocates or counselors from domestic violence programs accompany them to child support court.
- A best practice when referring a customer to a family violence professional is to make what is called a “warm referral.” That means contact information of someone whom you know, or have met at the local family violence program.
- Remember that it might not always be safe for a customer to take a brochure or write down a phone number to a hotline or local program. Let the customer know that you can provide that number at a later date when it is safer.

Resource and Referral

National Domestic Violence Hotline (800) 799-SAFE (7233)

Source: Based on multiple state court materials and the ABA Model Rules of Professional Conduct.