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Child Witnesses to Domestic Violence

In recent years, increased attention has been focused on children who may be affected by violence in the home, either as victims or as witnesses to domestic violence.¹ Research shows that even when children are not direct targets of violence in the home, they can be harmed by witnessing its occurrence.²

The witnessing of domestic violence can be auditory, visual, or inferred, including cases in which the child perceives the aftermath of violence, such as physical injuries to family members or damage to property. Children who witness domestic violence can suffer severe emotional and developmental difficulties that are similar to those of children who are direct victims of abuse.³ The legal system is beginning to recognize the need to protect and care for these children. Approximately 24 States and Puerto Rico currently address in statute the issue of children who witness domestic violence in their homes.⁴

¹ The term "domestic violence" includes "intimate partner violence," "intrafamily violence," and "domestic assault" committed against an individual by someone with whom the victim has or had an intimate relationship.

² For additional information about the impact of domestic violence on children, see Child Welfare Information Gateway's *Domestic Violence and the Child Welfare System* at <https://www.childwelfare.gov/pubs/factsheets/domestic-violence/>.

³ Schechter, S., & Edelson, J. (1999). *Effective intervention in domestic violence and child maltreatment cases: Guidelines for policy and practice*. Reno, NV: National Council of Juvenile and Family Court Judges.

⁴ The word "approximately" is used to stress the fact that the States frequently amend their laws. This information is current only through April 2016. Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Louisiana, Mississippi, Montana, Nevada, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, Utah, Vermont, and Washington address the issue in their statutes.

Circumstances That Constitute Witnessing

A child is a witness to domestic violence when an act that is defined as domestic violence is committed in the presence of or perceived by the child. In seven States, the definition goes no further than that.⁵ In 14 States and Puerto Rico, the language used is more specific, stating that witnessing by a child occurs when the child is physically present or can see or hear the act of violence.⁶ Ohio law states that witnessing occurs when the domestic violence is committed “in the vicinity of the child,” meaning within 30 feet or within the same residential unit occupied by the child, whether or not the child is present or can see the commission of the offense.

In 10 States, the laws apply to any child who may be present or a witness to the act of domestic violence.⁷ In 10 States and Puerto Rico, the laws apply specifically to a child who is related to or a member of the household of the victim or perpetrator of the violence.⁸ The law in Indiana applies only to the noncustodial child of a noncustodial parent.

Legal Consequences

In many States, a conviction for domestic violence that was committed in the presence of a child may result in harsher penalties than a conviction for domestic violence without a child present. Approximately nine States consider an act of domestic violence committed in the presence of a child an “aggravating circumstance” in their sentencing guidelines. This usually results in a longer jail term, an increased fine, or both.⁹ An additional five States, while not using the term “aggravating circumstance,” require more severe penalties.¹⁰ In five other States, committing domestic violence in the presence of a child is a separate crime that may be charged separately or in addition to the act of violence.¹¹

⁵ Arizona, California, Delaware, Florida, Louisiana, South Carolina, and Vermont.

⁶ Alaska, Arkansas, Georgia, Hawaii, Idaho, Illinois, Indiana, Mississippi, Montana, North Carolina, Oklahoma, Oregon, Utah, and Washington.

⁷ Arizona, Georgia, Hawaii, Idaho, Louisiana, Montana, Nevada, Ohio, Oklahoma, and Utah.

⁸ Alaska, Arkansas, California, Delaware, Florida, Illinois, Mississippi, North Carolina, Oregon, and Washington.

⁹ Alaska, Arizona, California, Hawaii, Mississippi, Montana, Ohio, South Carolina, and Washington.

¹⁰ Arkansas, Florida, Idaho, Louisiana, and Oregon.

¹¹ Delaware, Georgia, North Carolina, Oklahoma, and Utah.

In addition to any criminal penalties, Connecticut, Illinois, Louisiana, and Nevada require perpetrators of domestic violence to pay for any counseling that a child victim may require. Ohio and Oklahoma require the offenders to undergo counseling. Indiana requires that a noncustodial parent who has been convicted of domestic violence in the presence of his or her noncustodial child be supervised during parenting time for at least 1 year and not more than 2 years following the act of domestic violence. The court also may require the noncustodial parent to complete a batterer’s intervention program before unsupervised parenting time may be granted.

This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway. While every attempt has been made to be as complete as possible, additional information on these topics may be in other sections of a State’s code as well as agency regulations, case law, and informal practices and procedures.

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Alabama

Circumstances That Constitute Witnessing

This issue is not addressed in the statutes reviewed.

Consequences

This issue is not addressed in the statutes reviewed.

Alaska

Circumstances That Constitute Witnessing

Alaska Stat. §§ 12.55.155; 47.10.011

In criminal law: A felony offense of domestic violence that was committed in the physical presence or hearing of a child under age 16 who was, at the time of the offense, living within the residence of the victim, the residence of the perpetrator, or the residence where the domestic violence occurred is considered an aggravating factor for sentencing purposes.

In civil law: The court may find a child to be a child in need of aid if it finds by a preponderance of evidence that the child has been subjected to conduct by or conditions created by the parent, guardian, or custodian that have resulted in mental injury to the child, or placed the child at substantial risk of mental injury, due to:

- Exposure to conduct by a household member against another household member that is the crime of murder, assault, or sexual assault, or the attempt to commit these crimes
- Repeated exposure to conduct by a household member against another household member that is the crime of reckless endangerment or stalking

Consequences

Alaska Stat. § 12.55.155

Domestic violence committed in the physical presence or hearing of a child under 16 years of age is considered an aggravating factor and may allow imposition of a sentence above the presumptive range set out in § 12.55.125.

American Samoa

Circumstances That Constitute Witnessing

This issue is not addressed in the statutes reviewed.

Consequences

This issue is not addressed in the statutes reviewed.

Arizona

Circumstances That Constitute Witnessing

Rev. Stat. § 13-702(D)(18)

In criminal law: An act of domestic violence, as defined in § 13-3601(A), that was committed in the presence of a child will be considered an aggravating circumstance.

Consequences

Rev. Stat. § 13-702(D)(18)

An act of domestic violence committed in the presence of a child is considered an aggravating circumstance when determining a sentence and may result in a longer period of incarceration.

Arkansas

Circumstances That Constitute Witnessing

Ann. Code § 5-4-701

In criminal law: 'In the presence of a child' means in the physical presence of a child or knowing or having reason to know that a child is present and may see or hear an act.

Consequences

Ann. Code § 5-4-702

Any person who commits a felony offense involving homicide, assault, battery, domestic battering, or assault on a family member or household member may be subject to an enhanced sentence of an additional term of imprisonment of not less than 1 year and not greater than 10 years if the offense is committed in the presence of a child. The enhanced portion of the sentence is consecutive to any other sentence imposed.

Any person who commits the offense of aggravated cruelty to a dog, cat, or horse may be subject to an enhanced sentence of an additional term of imprisonment not to exceed 5 years if the offense is committed in the presence of a child.

Any person convicted under this section is not eligible for early release on parole or community correction transfer for the enhanced portion of the sentence.

California

Circumstances That Constitute Witnessing

Penal Code § 1170.76

In criminal law: A child is considered a witness of domestic violence when the person who commits or attempts to commit a violation of §§ 243.4 [sexual battery], 245 [assault with a deadly weapon], or 273.5 [infliction of injury on a present or former spouse], is or has been a member of the household of the child or the victim of the offense, is a marital or blood relative of the child or the victim, or the offender or the victim is the natural parent, adoptive parent, stepparent, or foster parent of the child, and the offense contemporaneously occurred in the presence of, or was witnessed by, the child.

Consequences

Penal Code § 1170.76

Such circumstances shall be considered a circumstance in aggravation of the crime in imposing a term under § 1170(b).

Colorado

Circumstances That Constitute Witnessing

This issue is not addressed in the statutes reviewed.

Consequences

This issue is not addressed in the statutes reviewed.

Connecticut

Circumstances That Constitute Witnessing

This issue is not addressed in the statutes reviewed.

Consequences

Gen. Stat. § 54-216

The Office of Victim Services or, on review, a victim compensation commissioner may order that services be provided for the restitution of any person eligible for such services in accordance with the provisions of §§ 54-201 to 54-233, inclusive. Such services may include, but shall not be limited to, medical, psychiatric, psychological, and social services and social rehabilitation services.

The Office of Victim Services or, on review, a victim compensation commissioner may order that such restitution services be provided to victims of child abuse and members of their families, victims of sexual assault and members of their families, victims of domestic violence and members of their families, members of the family of any victim of homicide, and children who witness domestic

violence, including, but not limited to, children who are not related to the victim. For the purposes of this subsection, 'members of their families' or 'member of the family' does not include the person responsible for such child abuse, sexual assault, domestic violence, or homicide.

Delaware

Circumstances That Constitute Witnessing

Ann. Code Tit. 11, § 1102

In criminal law: A person is guilty of endangering the welfare of a child when the person commits any violent felony, second-degree reckless endangering, third-degree assault, terroristic threatening, second-degree unlawful imprisonment against a victim, or third-degree child abuse, knowing that such felony or misdemeanor was witnessed, either by sight or sound, by a child younger than age 18 who is a member of the person's family or the victim's family.

Consequences

Ann. Code Tit. 11, § 1102

The crime of endangering the welfare of a child may be classified as follows:

- When the death of a child occurs while the child's welfare was endangered, endangering the welfare of a child is a Class E felony.
- When serious physical injury to a child occurs while the child's welfare was endangered, endangering the welfare of a child is a Class G felony.
- When a child becomes the victim of a sexual offense, as defined in § 761(d) of this title, while the child's welfare was endangered, endangering the welfare of a child is a Class G felony.
- In all other cases, endangering the welfare of a child is a Class A misdemeanor.

District of Columbia

Circumstances That Constitute Witnessing

This issue is not addressed in the statutes reviewed.

Consequences

This issue is not addressed in the statutes reviewed.

Florida

Circumstances That Constitute Witnessing

Ann. Stat. § 921.0024

In criminal law: It is considered domestic violence in the presence of a child if an offender is convicted of a primary offense of domestic violence, and that offense was committed in the presence of a child under age 16 who is a family or household member with the victim or perpetrator.

Consequences

Ann. Stat. § 921.0024

When domestic violence is committed in the presence of a child, the subtotal sentence points are multiplied by 1.5.

Georgia

Circumstances That Constitute Witnessing

Ann. Code § 16-5-70(d)

In criminal law: Any person commits the offense of cruelty to children in the third degree when:

- Such person, who is the primary aggressor, intentionally allows a child under age 18 to witness the commission of a forcible felony, battery, or family violence battery.
- Such person, who is the primary aggressor, having knowledge that a child under age 18 is present and sees or hears the act, commits a forcible felony, battery, or family violence battery.

Consequences

Ann. Code § 16-5-70(e)(3)

A person convicted of the offense of cruelty to children in the third degree shall be punished as for a misdemeanor upon the first or second conviction.

Upon conviction of a third or subsequent offense of cruelty to children in the third degree, the defendant shall be guilty of a felony and shall be sentenced to a fine not less than \$1,000 or more than \$5,000, imprisonment for not less than 1 year or more than 3 years, or both fine and imprisonment.

Guam

Circumstances That Constitute Witnessing

This issue is not addressed in the statutes reviewed.

Consequences

This issue is not addressed in the statutes reviewed.

Hawaii

Circumstances That Constitute Witnessing

Rev. Stat. § 706-606.4

In criminal law: The term 'in the presence of a minor' means in the actual physical presence of a child or knowing that a child is present and may hear or see the offense.

Consequences

Rev. Stat. § 706-606.4

The court shall consider the following aggravating factors in determining the particular sentence to be imposed:

- The defendant has been convicted of committing or attempting to commit an offense involving abuse of a family or household member.
- The defendant is or has been a family or household member of either a minor or the victim of the offense.
- The offense contemporaneously occurred in the presence of a minor.

Idaho

Circumstances That Constitute Witnessing

Idaho Code § 18-918(4)

In criminal law: The term 'in the presence of a child' means in the physical presence of a child or knowing that a child is present and may see or hear an act of domestic assault or battery. For purposes of this section, 'child' means a person under age 16.

Consequences

Idaho Code § 18-918(4)

The maximum penalties provided in this section shall be doubled when the act of domestic assault or battery for which the person is convicted or pleads guilty took place in the presence of a child.

Illinois

Circumstances That Constitute Witnessing

Comp. Stat. Ch. 720, §§ 5/12-0.1; 5/12-3.2

In criminal law: For purposes of this section:

- 'Child' means a person under 18 years of age who is the defendant's or victim's child or stepchild or who is a minor child residing within or visiting the household of the defendant or victim.
- 'In the presence of a child' means in the physical presence of a child or knowing or having reason to know that a child is present and may see or hear an act constituting an offense.

Consequences

Comp. Stat. Ch. 720 § 5/12-3.2

In addition to any other sentencing alternatives, a defendant who commits, in the presence of a child, a felony domestic battery, aggravated domestic battery, aggravated battery, unlawful restraint, or aggravated unlawful restraint against a family or household member shall be:

- Required to serve a mandatory minimum imprisonment of 10 days, perform 300 hours of community service, or both
- Liable for the cost of any counseling required for the child at the discretion of the court

Indiana

Circumstances That Constitute Witnessing

Ann. Stat. § 31-14-14-5

In civil law: This section applies if a court finds that a noncustodial parent has been convicted of a crime involving domestic or family violence that was witnessed or heard by the noncustodial parent's child.

Consequences

Ann. Stat. § 31-14-14-5

When a noncustodial parent has been convicted of domestic violence that was witnessed by the noncustodial parent's child, his or her parenting time with the child must be supervised for at least 1 year and no more than 2 years immediately following the crime involving domestic or family violence or until the child becomes emancipated, whichever occurs first.

As a condition of granting the noncustodial parent unsupervised parenting time, the court may require the noncustodial parent to complete a batterer's intervention program certified by the Indiana Coalition Against Domestic Violence.

Iowa

Circumstances That Constitute Witnessing

This issue is not addressed in the statutes reviewed.

Consequences

This issue is not addressed in the statutes reviewed.

Kansas

Circumstances That Constitute Witnessing

This issue is not addressed in the statutes reviewed.

Consequences

This issue is not addressed in the statutes reviewed.

Kentucky

Circumstances That Constitute Witnessing

This issue is not addressed in the statutes reviewed.

Consequences

This issue is not addressed in the statutes reviewed.

Louisiana

Circumstances That Constitute Witnessing

Rev. Stat. § 14:35.3(I)

In criminal law: When the State proves, in addition to the elements of the crime of domestic abuse battery as set forth in § 14:35.3(A), that a minor child age 13 or younger was present at the residence or any other scene at the time of the commission of the offense, additional penalties will apply, as described below.

Consequences

Rev. Stat. § 14:35.3(I); Children's Code Art. 1570.1

In criminal law: When the circumstances described above apply:

- The minimum mandatory sentence for a first or second offense shall not be suspended.
- The minimum mandatory sentence imposed for a third offense shall be 2 years without suspension of sentence.
- The minimum mandatory sentence imposed for a fourth or subsequent offense shall be 4 years without suspension of sentence.

In civil law: All court costs, attorney fees, costs of enforcement and modifications proceedings, costs of appeals, evaluation fees, and expert witness fees incurred in maintaining or defending any proceeding concerning domestic abuse assistance in accordance with the provisions of this chapter shall be paid by the perpetrator of the domestic violence, including all costs of medical and psychological care for the abused adult or for any of the children, necessitated by the domestic violence.

Maine

Circumstances That Constitute Witnessing

This issue is not addressed in the statutes reviewed.

Consequences

This issue is not addressed in the statutes reviewed.

Maryland

Circumstances That Constitute Witnessing

This issue is not addressed in the statutes reviewed.

Consequences

This issue is not addressed in the statutes reviewed.

Massachusetts

Circumstances That Constitute Witnessing

This issue is not addressed in the statutes reviewed.

Consequences

This issue is not addressed in the statutes reviewed.

Michigan

Circumstances That Constitute Witnessing

This issue is not addressed in the statutes reviewed.

Consequences

This issue is not addressed in the statutes reviewed.

Minnesota

Circumstances That Constitute Witnessing

This issue is not addressed in the statutes reviewed.

Consequences

This issue is not addressed in the statutes reviewed.

Mississippi

Circumstances That Constitute Witnessing

Ann. Code § 97-3-7(6)

In criminal law: The crime of domestic violence is committed 'in the physical presence or hearing of a child' when a child who is under age 16 was, at the time of the offense, living within the residence of the victim, the residence of the perpetrator, or the residence where the offense occurred.

Consequences

Ann. Code § 97-3-7(6)

In sentencing for the crime of domestic violence, the court shall consider as an aggravating factor whether the crime was committed in the physical presence or hearing of a child.

Missouri

Circumstances That Constitute Witnessing

This issue is not addressed in the statutes reviewed.

Consequences

This issue is not addressed in the statutes reviewed.

Montana

Circumstances That Constitute Witnessing

Ann. Code § 45-5-206(3)(a)(v)

In criminal law: If the offense [of assault of a partner or family member] was committed within the vision or hearing of a minor, the judge shall consider the minor's presence as a factor at the time of sentencing.

Consequences

Ann. Code § 45-5-206(3)(a)(v)

If the offense [of assault of a partner or family member] was committed within the vision or hearing of a minor, the judge shall consider the minor's presence as a factor at the time of sentencing.

Nebraska

Circumstances That Constitute Witnessing

This issue is not addressed in the statutes reviewed.

Consequences

This issue is not addressed in the statutes reviewed.

Nevada

Circumstances That Constitute Witnessing

Rev. Stat. § 200.485(7)

In criminal law: If it appears from information presented to the court that a child under age 18 may need counseling as a result of the commission of a battery that constitutes domestic violence, the court may refer the child to a child welfare services agency.

Consequences

Rev. Stat. § 200.485(7)

If the court refers a child to a child welfare services agency, the court shall require the person convicted of domestic violence battery to reimburse the agency for the costs of any services provided, to the extent of his or her ability to pay.

New Hampshire

Circumstances That Constitute Witnessing

This issue is not addressed in the statutes reviewed.

Consequences

This issue is not addressed in the statutes reviewed.

New Jersey

Circumstances That Constitute Witnessing

This issue is not addressed in the statutes reviewed.

Consequences

This issue is not addressed in the statutes reviewed.

New Mexico

Circumstances That Constitute Witnessing

This issue is not addressed in the statutes reviewed.

Consequences

This issue is not addressed in the statutes reviewed.

New York

Circumstances That Constitute Witnessing

This issue is not addressed in the statutes reviewed.

Consequences

This issue is not addressed in the statutes reviewed.

North Carolina

Circumstances That Constitute Witnessing

Gen. Stat. § 14-33(d)

In criminal law: The term 'in the presence of a minor' means that the minor was in a position to see or hear the assault.

A minor is any person younger than age 18 who is residing with or is under the care and supervision of, and who has a personal relationship with, the person assaulted or the person committing the assault.

Consequences**Gen. Stat. § 14-33(d)**

Any person who, in the course of an assault, assault and battery, or affray, inflicts serious injury upon another person or uses a deadly weapon on a person with whom the person has a personal relationship, and does so in the presence of a minor, is guilty of a Class A1 misdemeanor. Upon conviction, the person shall be:

- Placed on supervised probation in addition to any other punishment imposed by the court
- Sentenced to an active punishment of no less than 30 days in addition to any other punishment imposed by the court for a second or subsequent violation

North Dakota**Circumstances That Constitute Witnessing**

This issue is not addressed in the statutes reviewed.

Consequences

This issue is not addressed in the statutes reviewed.

Northern Mariana Islands**Circumstances That Constitute Witnessing**

This issue is not addressed in the statutes reviewed.

Consequences

This issue is not addressed in the statutes reviewed.

Ohio**Circumstances That Constitute Witnessing****Rev. Code § 2929.01(LL)**

In criminal law: An offense is 'committed in the vicinity of a child' if the offender commits the offense within 30 feet of or within the same residential unit as a child who is under age 18, regardless of whether the offender knows the age of the child or that the offense is being committed within 30 feet of or within the same residential unit as the child and regardless of whether the child actually views the commission of the offense.

Consequences**Rev. Code §§ 2929.12; 2929.17**

If the offense of domestic violence or assault involves a person who was a family or household member at the time of the violation, and the offender committed the offense in the vicinity of one or more children who are not victims of the offense, and the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of those children:

- The sentencing court shall consider the offender's conduct to be more serious than conduct normally constituting the offense.
- The offender also shall be required to obtain counseling.

Oklahoma**Circumstances That Constitute Witnessing****Ann. Stat. Tit. 21, § 644(H)**

In criminal law: 'In the presence of a child' means in the physical presence of a child or having knowledge that a child is present and may see or hear an act of domestic violence. For the purposes of this section, a 'child' may be any child whether or not related to the victim or the defendant.