This article explores domestic violence–related implications of federal and state initiatives seeking to establish parenting time in connection with entry of child support orders. The authors recommend and explore two critical family violence safeguards. First, parents need the information and support required by them to make deliberative decisions about parenting time, including: (1) understanding the legal meaning, consequences, and practical effect of formally establishing parenting time; (2) exploration of the extent to which various parenting time arrangements are in the best interests of the child; and (3) knowledge of the nature of dispute resolution and court processes available to them. Second, parents, rather than child support officials, should decide whether, when, and how to pursue establishment of parenting time.

Key Points for the Family Court Community:

- The impact of domestic violence on parenting and on child safety and well-being varies extensively.
- Some survivors of domestic violence are forced to make high-stakes calculations regarding the safety and well-being of their children in the context of parenting time initiatives.
- Deliberative, informed, and voluntary decision making about parenting time is a key family violence safeguard.
- Domestic violence exclusions are only partially effective, in part because they unrealistically rely on quick and accurate identification and assessment of domestic violence and its implications.
- Parents should decide whether, when, and how to establish parenting time.

**Keywords:** Child Support; Domestic Abuse; Domestic Violence; Family Violence Safeguards; Informed Decision Making; Intimate Partner Violence; and Parenting Time

**INTRODUCTION**

Policy makers and stakeholders have been engaged in a national discussion about establishing parenting time for never-married noncustodial parents when initial child support orders are entered. Doing so would provide parents, who might otherwise have to file more cumbersome court actions, with streamlined methods of formalizing parenting time arrangements. On September 29, 2014, Congress weighed in on the matter by enacting a Sense of Congress provision that “establishing parenting time arrangements when obtaining child support orders is an important goal which should be accompanied by strong family violence safeguards.”

A number of valuable domestic violence safeguards already exist and are customarily applied in child support settings, including address confidentiality, limited in-person contact, and exemptions from mandatory participation in programs and services. Those types of safeguards should continue to be maintained in all parenting time proceedings. This article focuses on two additional “strong family violence safeguards” and the practicalities—and potential impracticalities—of developing parenting time arrangements for never-married noncustodial parents who have committed or who have been subjected to intimate partner abuse by the other parent. First, it recommends expanding existing safeguards to provide the information and support never-married parents with a history of domestic abuse need to make deliberate decisions about parenting time. Second, it urges that whenever parenting time services are offered, parents, rather than child support officials and/or designees, should decide whether, when and how to pursue establishment of parenting time.
Many parenting time initiatives are in early stages of development and are currently being piloted in select jurisdictions across the country. Others have been in place for many years. These initiatives differ in many respects and their mechanics are not always fully spelled out or settled.

The domestic violence implications of parenting time initiatives depend upon a number of structural variables, including where, how, by whom, under what authority, and to what effect such plans are established. Designing and implementing strong family violence safeguards is complex because child support (and, by extension for purposes of this article, parenting time) can be established for never married parents in so many potential ways, by so many people, in so many different kinds of tribunals, according to such different laws across so many different states, and according to so many different local customs and practices.

The domestic violence implications also depend upon a number of case specific variables, such as the nature, context and impact of abuse on the parents and children, the parents’ respective skills, capacities and interests, and the parents’ relative economic standing, access to resources, and life circumstances. Designing and implementing strong family violence safeguards that accommodate the realities of people’s lives is challenging because domestic violence operates in so many different ways, under so many different circumstances, within so many different types of relationships, and among so many differently situated people.

Given the numbers and variations among parenting time proposals and the differences in the way domestic violence occurs within relationships, this article does not examine any particular parenting time program or proposal. Instead, it explains the need to support safe, informed, and voluntary parental decision making on all aspects of parenting time, including whether and when to seek it. Informed deliberate decision making constitutes a “strong family violence safeguard” that has received less attention among policymakers but should be a required focus of parenting time initiatives under the recently passed Public Law No. 113–183.

I. PARENTING TIME IS FOR CHILDREN

Children are the intended beneficiaries of parenting time. Some of the discourse around establishment of parenting time in connection with initial child support orders focuses on the rights of noncustodial parents and on providing an incentive for payment of support. While these are important considerations, they pale in comparison with the primary purpose of parenting time, which is to nurture, mentor, and provide loving and responsible care for children.

When relationships are healthy, many children and never-married parents will readily welcome and benefit from access to appropriately streamlined court, administrative, and/or community based processes for establishing parenting time and to associated resources and services. Unfortunately for some children, parenting time is fraught with uncertainty, anxiety, and risk. Indiscriminant—even if well intentioned—parenting time establishment efforts can place these children in untenable situations, and the despair and harm they experience may continue for years without respite or recognition. Often they are children whose parents have a history of domestic violence.

Domestic violence is not a uniform or static phenomenon, but varies in form, motivation, frequency, intensity, pattern and effect. Consequently, it doesn’t always create the same problems for all parents. And, since children’s relationships with their abused and abusive parents range from relatively safe and secure to dangerous, domestic violence does not create the same problems for all children. Some problems are more serious and complex than others. Some are more manageable than others.

To illustrate the variability in the nature, context and impact of domestic violence on children, consider the differences among these hypothetical children of never-married parents who have experienced intimate partner violence:

- Andy has a good relationship with both parents although they no longer live together—both parents have used violence in the past (that has not been marked by coercive-controlling
dynamics) but they have worked hard to take responsibility for the resulting harm, and both parents are now ready and able to share parenting time with Andy, who is a willing participant;

- Betsy has a troubled relationship with her abusive parent who presently lacks key parenting capacities—nevertheless, both parents think it would benefit Betsy to work in an incremental and planned way toward building parental competence and a healthier parent–child relationship, with help from responsible extended family members;

- Based on past abuse, Charlie and his victim-parent are fearful of any contact with his coercive-controlling parent who remains threatening even though there has been no recent physical violence—Charlie becomes agitated when contact is discussed;

- Delia has an abusive parent who has a long history of physically and sexually abusing her and her other parent such that both are severely traumatized;

- Although he does not know it, Ely was conceived as a result of a rape and his mother wants no contact with his father who is presently homeless.

All of these scenarios involve known intimate partner violence and unmarried parents, but when it comes to establishing parenting time, the implications are dramatically different for each. Given the variability in the nature, context and implications of abuse, including the children’s specific needs and their parents’ respective capacities and life circumstances, one cannot tell simply from knowing that a case involves domestic violence what kind of parenting time arrangement would be in the children’s best interest or what a safe and appropriate method for establishing that arrangement might be. Simply stated, the domestic violence implications of a given parenting time plan would be different for Andy than for Betsy, Charlie, Delia, or Ely. And, the domestic violence implications of a given parenting time arrangement would be different for each of their parents.

II. PARENTS MUST MAKE SAFETY CALCULATIONS AND DELIBERATE DECISIONS IN THE CONTEXT OF DOMESTIC ABUSE

Although parents enter the child support system with firsthand knowledge about the domestic abuse that has transpired and the potential needs of their children, they are often unaware of the legal meaning and effect of establishing parenting time, the various parenting time options and alternatives, possible constraints on enforcement and/or modification of parenting time orders, and the nature of the dispute resolution and court processes available to them. As will be explored, parental understanding of these aspects of establishing parenting time constitutes an important family violence safeguard that is critical to the safety and well-being of children.

When parenting time is proposed victims of domestic abuse, particularly coercively controlling abuse, may find themselves navigating a maze of critical decisions and choices where failure to make the right decisions carries serious legal, emotional, and physical consequences for their children. They confront high stakes protective parenting calculations, often with little opportunity to understand, evaluate, and weigh options in an informed and deliberate way—potentially to the peril of their children as well as themselves.

Child support agencies should support protective parenting choices and enhance the safety and well-being of parents and children by promoting self-determination and informed decision making. Achieving this goal necessitates not only incorporating traditional safeguards (such as avoiding face-to-face contact and ensuring address confidentiality), but also equipping parents to make the complex decisions that are often required when domestic violence is an issue. Parents need more than the logistical support typically offered through traditional “self-help” services—they also need deliberative support aimed at devising a path toward safety and well-being for children who may inadvertently be put at risk by parenting time initiatives.

By way of analogy, imagine that you are expected to build an electronic device and you are provided with access to a warehouse with shelves of electronic parts. Even if you acquire an instruction guide, you may not understand the purpose of the device, how it might help or hurt you,
which parts you should gather, or how to integrate them. Further imagine that if you make a mistake or use the wrong part, your device could explode. You need more than the directions for assembly—you need help figuring out what you are doing and how you should approach it.

This section surveys some of the interconnected questions, decisions, and safety calculations that parents with a history of domestic abuse encounter and may need help with as they contemplate formalizing a parenting time arrangement when a child support order is entered. As will be seen, safety calculations are far less predictable and precise than child support calculations.

A. PARENTING TIME: WHAT IS ACTUALLY BEING DECIDED?

A threshold question involves identification of the substantive parenting issues to be addressed at the time initial child support orders are entered. Much of the policy discussion centers on establishing parenting time for nonresidential parents without clearly defining what is meant by “parenting time.” According the Office of Child Support Enforcement, parenting time “commonly refers to the amount of time a child spends with each parent.” But, parenting time means different things to different people who operate under different statutory schemes. For example, in some jurisdictions, parenting time refers to where the child lives while in others, parenting time includes the allocation of authority to make decisions about or affecting the child while the child is in each parent’s care.

These are distinctions with real differences, especially for never-married residential victim-parents. In many states the never-married residential victim-parent has sole physical custody and full decision-making authority (legal custody) by operation of law. Some parenting time proposals start from this premise and focus very narrowly on whether or when a child might spend time with the other parent. In this scenario, it is possible that legal decision-making authority (decisions about health care, education, religion, etc.) may not be at issue and would continue to be exercised by the custodial victim-parent unless and until a court of competent jurisdiction issues a contrary order.

In contrast, for other parents the determination of parenting time may ultimately encompass more than whether or when a child spends time with a nonresidential parent. For example, it is easy to imagine that a nonresidential parent might instead seek to share decision making authority or physical custody, or such a parent might seek sole legal or physical custody. On a practical level, in many states it can be difficult to gauge when significant parenting time crosses into the realm of joint physical custody. Moreover, if parenting time is to be established, principles of economy might dictate that legal decision-making authority should be decided at the same time so that never-married parents do not have to go to the time, expense and inconvenience of initiating separate proceedings to work out all of their parenting-related issues.

Perpetrators of coercive controlling domestic abuse often threaten to pursue custody, initiate and prolong proceedings, and use contact with children to intimidate and harass the other parent. Consequently, victim-parents will have to determine whether seeking child support may result in formalized parenting time, additional contact with a perpetrator, and/or potentially trigger review of physical and legal custody arrangements. For never-married custodial parents who have been victims of domestic abuse, this can be a critical consideration. It means that the decision to seek child support might legally alter existing rights and responsibilities and/or impact existing informal parenting arrangements. For many families in many circumstances, that might be a perfectly appropriate and desirable outcome and would not sound any great alarms. However, where coercively controlling abuse is concerned, such a change could lead to a dangerous and potentially lethal outcome because it limits victim-parents’ legal authority to manage their own risk and risk to their children in the face of ongoing abuse. Consequently, never-married victim-parents should not approach establishment of parenting time lightly, without full knowledge of the legal consequences of that decision.

At a minimum, custodial parents (any of whom may be victims of domestic abuse) should be informed that if they apply for public benefits and/or child support, they may open themselves and their children to formal parenting time arrangements as well as limits upon their legal decision making
authority. The reality is that custodial parents who have or are experiencing domestic abuse may rationally choose to forgo various financial benefits in exchange for safety, potentially adding to the economic insecurity of children like Charlie, Delia, and Ely. As a matter of policy, parenting time initiatives should not inadvertently promote this sort of devil’s bargain.

B. PARENTING TIME: WHAT ARE THE LEGAL AND PRACTICAL CONSEQUENCES?

Parents should be cognizant of the rights and obligations associated with parenting time including the real life logistics, benefits, and risks. For example in Texas, parenting time is viewed as a right, but not a duty, of a noncustodial parent and, as is typical of other states, there is no requirement that parenting time be exercised.25 Victim-parents consequently may calculate whether it is safer to agree to parenting time that may never be used rather than contesting it. On the other hand, a parenting time arrangement might create an opportunity for a coercive-controlling parent to insist that children be consistently available for parenting time but only exercise it intermittently.

As noted previously, in some states never-married residential parents have sole physical and legal custody by operation of law. In such a jurisdiction a victim-parent will have to discern whether an otherwise agreeable parenting time arrangement would entail other shared responsibilities that could ultimately be problematic. For example, the victim-parents of Andy and Betsy may welcome a regularized parenting time arrangement but they may quite correctly predict that it would be detrimental to attempt to share decision making about medical treatment, special educational needs, or religious upbringing. Never-married parents, who never lived together and were not involved in a romantic relationship, may not have shared values or expectations about these important decisions.26

Furthermore, once a parenting time arrangement is decided, the form of memorialization has far-reaching consequences with respect to potential enforcement and modification.27 If established by court order, parenting time can be enforced through contempt proceedings but modification of the arrangement may be difficult and would require court approval. For a victim-parent this raises the specter of being held in contempt for protective parenting that shields a frightened child from parenting time for a period of time. In addition, if there are continued problems with parenting time, a victim-parent seeking to change the arrangement may need to file a court action and make an evidentiary showing of substantially changed circumstances.

In contrast, if parenting time is established by informal agreement, it may be easily modified, but not easily enforced, if it can be enforced at all. In such a situation an abusive parent may be surprised and angered to learn that parenting time will in effect be held at the discretion of the custodial parent. Thus, parents need to understand the nature and practical consequences of their commitment if they are going to make safe and informed decisions about parenting time arrangements.

C. THE PARENTING TIME ARRANGEMENT: IS IT IN A CHILD’S BEST INTEREST?

When domestic violence is an issue, parents should think long and hard about what the child’s experience of parenting time will be like, and what, if any, arrangements and safeguards will make parenting time beneficial for the child. In this regard, the circumstances of Andy, Betsy, Charlie, Delia, and Ely are quite different from each other and their various needs will also change over time. Determining what will be safe, nurturing, and developmentally appropriate is a multifaceted undertaking. Often, situations are further complicated by parenting concerns related to substance abuse, lack of safe and adequate housing, or uncertainty about new romantic partners.28

Many states and jurisdictions have promulgated standard parenting plans that are commonly incorporated into final divorce decrees for married parents who are separating.29 Some parenting time initiatives contemplate the issuance of similar presumptive parenting plans for never-married noncustodial parents upon entry of a child support order.30

Presumptive parenting plans that have been standardized for relatively functional families may or may not work well for families experiencing current or past abuse.31 This is because standard
expectations and assumptions about parenting and co-parenting can be, and often are, wrong where domestic violence is concerned. In other words, there is nothing “standard” about children’s experiences of abuse. In the scenarios described earlier, the nature, context and implications of abuse are different for Andy than they are for Betsy, Charlie, Delia and Ely. Consequently, no standard parenting time plan—even one designed specifically for domestic violence cases—can account for the unique ways in which domestic violence is enacted by abusive parents. Nor can a standard parenting time plan—even one designed specifically for domestic violence cases—address the individual needs of children and victim-parents who experience abuse differently. It is hard to imagine that the same parenting arrangement that would work well for Andy would also work well for Betsy, Charlie, Delia, and Ely.

In legal terms, presumptive parenting plans are problematic because they supplant consideration of the individual needs of children. There is no inquiry into the best interests of a child unless a parent formally objects and potentially instigates court intervention. The need to do so places factual, legal, and financial burdens on a victim-parent who may be poorly situated to sustain them. In practical effect, the presumption becomes operational for children when their parents disagree about parenting time. Thus, while the parents of Andy and Betsy may voluntarily agree to an arrangement, children like Charlie, Delia, and Ely, who arguably most need a tailored plan, but whose parents are least likely to agree on one, will be the children most likely governed by the terms of a presumptive arrangement.

Although parents may theoretically be able to object to a presumptive or standard plan if they disclose abuse, when faced with the choice between accepting one, or risking the prospect of a lengthy, contentious, and costly custody battle, many abused and abusive parents might opt for the former without fully understanding how it might, or might not, meet the needs of their children. This situation may be exacerbated if, for example, the parents assume that they can accept a standard parenting time plan so they “have something on paper” and then make whatever adjustments they need to make later, “off the record.”

Parents also need to know whether a presumptive or standard parenting order will be entered if they fail to appear or formally object. Child support is often ordered by default and these entries are sometimes accompanied by generic parenting time orders, whereby the obligor is granted “reasonable time on reasonable notice.” Based on principles of economy and convenience, it is conceivable that similar customs and practices could develop with respect to default inclusion of presumptive or standardized parenting time orders. Entry of such an order could seriously jeopardize the safety and wellbeing of children like Charlie, Delia, and Ely.

D. MEDIATION: WILL IT HELP OR HURT?

When never-married parents do not agree on a parenting time arrangement, some parenting time initiatives provide them with an opportunity to negotiate custom-made parenting plans through some form of mediation process. But for victims of intimate partner abuse, decisions about whether to mediate or seek a hearing in court are complicated and involve consideration of a myriad of factors, including, but not limited to the nature and context of abuse, the implications of abuse, and the options that are realistically available.

The decision to pursue a dispute resolution alternative involves a complicated calculation of risks and benefits. It requires a delicate weighing of multiple and often competing factors and probabilities. These factors and probabilities may relate directly to the violence itself but many may relate to matters beyond the violence, such as the quality of local services and the practicalities of everyday life.

Domestic abuse can, but does not always, impede the ability of abused and abusive parents to freely and fairly negotiate the terms of an individualized parenting plan. For instance, depending upon the nature and context of abuse, one or both parents might be unable or unwilling to participate in
good faith, or compromise, or comply with the terms of a negotiated agreement. If the parents’ relationship is or has been marked by violence, threats of violence, and/or coercive control, one parent might feel unable to assert his or her interests or make autonomous decisions without fear or threat of reprisal. S/he may feel compelled to capitulate on important issues that are contrary to the best interests of the child. Moreover, depending on the nature and context of abuse, the parents might not stand on equal footing, such that one parent is bound to sacrifice safety in order to accommodate the other’s privileged demands. It is also possible, depending on the nature and context of abuse, that both parents are fully capable of arriving at a negotiated parenting time plan without any difficulty whatsoever.

It is not easy to tell whether abused and abusive parents have the capacity to negotiate freely and in good faith. And, it is not always easy for an abused or abusive parent to say (or be believed) when s/he feels that one or the other’s capacity to negotiate is compromised by abuse. Process modifications may be helpful in averting immediate danger associated with attending mediation sessions, but they do little to protect victims and children outside of sessions or to prevent coerced agreements to unsafe parenting arrangements. Even then, it takes a highly skilled and specially trained mediator to facilitate parenting time negotiations in the context of intimate partner abuse.

Proceeding to court, instead of mediating, should be an easily available option for never-married parents. Traditional courts are not a panacea for parents with a history of domestic abuse, but for some they offer much needed protection in the form of due process guarantees, protective orders, enforcement mechanisms, and clear focus on the best interests of children.

Never-married parents seeking to establish parenting time should have the opportunity and support necessary to make voluntary and informed choices about participation in dispute resolution and traditional court processes. Not only are substantive decisions about parenting time complex and challenging where domestic violence is involved, but so too are procedural decisions about what processes to use to determine parenting time.

E. DISCLOSURE OF DOMESTIC VIOLENCE: ARE THE BENEFITS WORTH THE RISK?

In some situations intimate partner violence may be well documented or revealed by the parties. But in many cases parents may be reluctant or fearful of disclosing it. Parents who are survivors of abuse involving coercive control may be particularly concerned about putting their children and themselves at risk if they are forthcoming about abuse. Their safety may, in fact, hinge on keeping abuse a secret and screening may place them in an untenable situation. In addition to fear of retaliation and harm to children, these parents may experience trepidation about whether they will be believed, how their own use of protective violence will be viewed, and the extent to which they will be scrutinized by child protection. Some traumatized survivors may have difficulty articulating or consistently recalling abusive patterns and events.

Some victim-parents faced with parenting time decisions will have to carefully weigh the costs and benefits of disclosure of the abuse. For example, is it worth the risk of retaliation to invoke a domestic violence exception to a presumptive parenting time arrangement or to attending mediation? How much is it safe to disclose, to whom, and when? What will happen to the information? Will disclosing or not disclosing put children at greater risk?

Parents who have engaged in abuse also have reasons to withhold information about abuse. Aside from the obvious, there are also significant legal considerations, including the impact of admissions of guilt and statements against interest in subsequent legal actions, including potential criminal prosecutions. A formerly abusive parent may also be concerned about loss of professional licensure, diminished standing in the community, and other potentially negative consequences of disclosure.

Unless disclosures are made during a privileged conversation with an attorney, there is no reliable assurance of confidentiality and, in reality, survivors and perpetrators alike should think very carefully before making disclosures to child support agencies. For these and other reasons, agency workers
engaged in screening should advise parents concerning how information will be used, to whom and under what conditions it will be disclosed, and whether the screener is a mandatory reporter.

III. DOMESTIC VIOLENCE EXCEPTIONS ARE ONLY PARTIALLY EFFECTIVE

As with other child support–related initiatives, jurisdictions may as a matter of policy automatically exclude parents with a history of domestic violence or offer them the opportunity to invoke exceptions to establishment of parenting time, presumptive or standardized arrangements, and/or participation in mediation. This is an important safeguard, particularly when programs are mandated or participation is strongly encouraged.

Unfortunately these exclusions and exceptions are only partially effective for two reasons. First, automatic exclusion may prevent children and parents who would benefit from a service or process from accessing it. Second, both exclusions and exceptions are predicated on quick and accurate identification of parents and children with a history of domestic violence. Even when universal screening protocols are in place, this is a challenging endeavor.

As illustrated in the previous section, policy makers and child support agencies should not expect to identify all or even most parents and children for whom domestic violence creates parenting time problems. While domestic violence exclusions certainly do work to protect some children and parents, they are only a partial solution to the domestic violence-related dilemmas presented by parenting time establishment.

This is not to say that child support agencies should by any means abandon their screening efforts. Screening can be an important safeguard when it is conducted for the purpose of helping parents manage their risk and offering referrals for parenting time–related legal advice, advocacy, and safety planning. Screening tools and questionnaires can yield valuable information for parents when their purpose and limitations are taken into account. For example, instruments developed and validated for the purpose of risk or lethality screening can play a critical role in assessing safety issues. They are not, however, designed to provide the deeper assessment needed to understand the context and implications of abuse for the purpose of establishing parenting time or choosing a dispute resolution method. Thus, agency screening for domestic violence should be for the purpose of risk management and providing information and referrals, including, but not limited to, referrals for legal information and consultation and domestic violence advocacy.

IV. PARENT INITIATED ESTABLISHMENT OF PARENTING TIME

Most proposals link the establishment of parenting time to entry of an initial child support order, without clearly specifying who initiates the child support action or asserts the parenting time claim. However, the question of who initiates the child support action and who asserts a claim for parenting time can be of great consequence to victims of domestic violence and their children. This is especially true in public benefits cases where the state prosecutes child support proceedings without participation by the residential victim-parent.

It is one thing to offer a voluntary avenue for establishment of parenting time and quite another to mandate it in every case. Advising parents concerning the potential for parenting time and the availability of services to pursue establishment is a far safer course of action than imposing a parenting time requirement on parents who for good reasons may not want one and for whom it may be dangerous. Forcing the issue of parenting time on the parents of children like Charlie, Delia, and Ely may in itself create danger for them. In contrast, the parents of children like Andy and Betsy are well positioned to voluntarily access streamlined services for establishing parenting time.

For some victim-parents, the decision to seek child support from an abusive co-parent can be complicated. One of the many contingencies that a victim-parent must consider is whether initiation of a child support action will invite the abusive co-parent to seek parenting time or legal or physical
custody of the child under circumstances that could further endanger the child or interfere with the victim-parent’s protective efforts. That calculation often hinges not only on the danger that the abusive parent poses to the victim-parent and child, but on whether the abusive parent is likely to affirmatively assert a claim for parenting time—and what the merits of that claim might be. That safety calculation would be impeded, if not entirely foreclosed, if parenting time is established whenever the state initiates a child support action, without regard to whether the abusive parent asserts a claim for it.

Currently, the state is not authorized to assert a claim for parenting time on behalf of a nonresidential parent in the same way it is authorized to assert a claim for child support. As a matter of policy, parenting time initiatives should not extend a proxy to the state to raise a claim for parenting time on behalf of nonresidential never-married parents. Doing so could seriously impair victim-parents’ ability to manage their daily lives and protect their children from the ongoing consequences and aftermath of abuse.

Because parents know the most about the impact of domestic violence on their children and their respective capacities to parent, they should determine whether and when to formalize parenting time. Victims of coercive controlling abuse may be making life or death calculations about whether parenting time will jeopardize or protect the safety and well-being of their children. Noncustodial parents, too, may have good reason to forego or postpone the establishment of parenting time. They might recognize, for instance, that their traumatized child needs time to heal. Other parents may already have an informal parenting time arrangement in place that works for them and which they would prefer not to memorialize.

The question of who initiates the claim or request for parenting time can have significant implications in domestic violence cases. It is especially important for victim-parents to know whether their efforts to seek financial security for their children could have the unintended consequence of exposing them to greater risk of harm. It is also important for conscientious, formerly abusive parents to have the flexibility to manage their relationships with their children so they can repair the harm caused by their abuse. Abused, abusive and formerly abusive parents should not be compelled into arrangements they do not seek or that are not right for them—or worse, that set them up to fail. Child support agencies are well positioned to inform parents of community resources that they can access voluntarily, including services such as parenting education, mediation, visitation locations and supervision, and potentially parenting plan assistance. Use of such services is more likely when participation is voluntary and not associated with other punitive processes or consequences.

V. RECOMMENDATIONS AND CONCLUSION

As the foregoing illustrates, parents who have experienced domestic abuse and are contemplating parenting time confront a tangled series of issues and decisions of great consequence for their children and themselves. The depth and extent of their deliberation is often overlooked and sometimes made more challenging by policy efforts intended to benefit other families. There is no single safeguard that will effectively protect these children and parents but their safety is increased when they can manage risk and make voluntary and well-informed choices.

Child support agencies currently incorporate a number of precautions aimed at increasing safety for children and parents with a history of domestic abuse. These include providing domestic violence-specific information and plans, screening, exceptions from mandates, address confidentiality, and limiting in-person contact, to name a few. These and other safeguards are vital and should be continued and strengthened.

Agencies have a unique opportunity to improve safety and well-being by providing access to information and resources specifically designed to support informed and deliberate decision making by parents who have experienced domestic abuse. They need access to a continuum of services to obtain legal and nonlegal information, comprehensive advocacy and tactical advice. Some parents may be sufficiently informed by reading online material or specially designed brochures regarding
parenting time while others may need more intensive support, such as a professionally staffed hotline, unbundled legal services or even full legal representation.

Because many children and never-married parents will readily welcome and benefit from access to streamlined processes for establishing parenting time, child support agencies should offer opportunities for establishment of parenting time for any parent who seeks to do so. However, agencies should not themselves initiate or be mandated to establish parenting time with entry of every child support order because this unnecessarily heightens risk for children and victim-parents. Parents should decide whether and when to initiate formalization of parenting arrangements.

Never-married parents with a history of domestic abuse must be equipped with the information, services, and legal support they need to make their own voluntary and informed decisions about whether, when, and how parenting time should be established. Providing them with good information, good options, and good support will maximize the likelihood of beneficial outcomes for children.

NOTES

3. The relevance of domestic violence to the establishment of parenting plans is widely acknowledged and especially pertinent to the parenting time initiatives that are the subject of this special edition of Family Court Review. The President’s proposed budget for FY 2015 contemplates that parenting time activities will be “informed by an understanding of domestic violence and abuse victimization approaches.” Dep’t of Health & Hum. Serv., Justification of Estimates for Appropriations Committees, Promoting Parenting Time Responsibilities (Mar. 7, 2014), at 250. Moreover, the U.S. government requires that domestic violence safeguards and protocols be incorporated into all discretionary grants for parenting time in child support settings because it recognizes that “safety is a paramount consideration in the development of parenting plans.” Child Support Fact Sheet Series No. 14, Discretionary Grants for Parenting Time Opportunities for Children in the Child Support System, U.S. Dep’t of Health & Hum. Serv., Admin. for Child. & Fam. (July 2013) [hereinafter Fact Sheet No. 14].
4. The following entities have received discretionary grants to develop, implement, and test strategies to establish parenting time responsibilities when initial child support orders are entered: San Diego County California Department of Child Support Services; Florida Department of Revenue, Child Support Enforcement Program; Monroe Indiana Circuit Court; Fairfield County Ohio Child Support Enforcement Agency; and the Oregon Department of Justice, Division of Child Support. Fact Sheet No. 14, supra note 3.
5. They include Michigan; Texas; Orange County, California; and Hennepin County, Minnesota. Child Support Fact Sheet Series No. 13, Child Support and Parenting Time: Improving Coordination to Benefit Children, U.S. Dep’t of Health & Hum. Serv., Admin. for Child. & Fam. (July 2013) [hereinafter Fact Sheet No. 13].
6. Some contemplate the issuance of an all-or-nothing standard parenting time plan, while others envision mediation of a customized parenting time arrangement. Some are strictly limited to noncustodial parental contact and access, while others consider the allocation of legal decision-making authority as well. Some proposals envision the establishment of parenting time as an informal, out-of-court arrangement between the parents, while others contemplate entry of a formal parenting time court order. Some proposals suggest a voluntary process where parents may elect, but are not required, to establish parenting time, while others mandate or automate the establishment of parenting time concurrently with the entry of a child support order. Some proposals allow victims of domestic abuse to opt out of the parenting plan establishment process, while others include or exclude domestic violence cases altogether.
7. Child support can be established through different kinds of actions, including direct child support actions, parentage actions, and direct parenting time actions.
8. Unlike divorce actions, which can only be brought by the married parents themselves, different people can bring different kinds of actions that can lead to the establishment of child support. For instance, child support actions can be brought by custodial parents, third-party custodians (like grandparents and guardians), or the state, with or without the cooperation or involvement of the parents. Parentage actions can be brought by custodial or noncustodial parents or the state. Parenting time actions can be brought by custodial or noncustodial parents, but usually not the state.
9. Different tribunals have jurisdiction to hear different kinds of actions in different states. For instance, in some states, administrative tribunals have jurisdiction to hear child support matters, but not custody or parenting time questions, while others are authorized to hear all matters related to parental rights and responsibilities. Juvenile courts in most states have original and continuing jurisdiction to consider child support, custody, and parenting time in the same proceeding. See generally Jessica Pearson, Establishing Parenting Time in Child Support Cases: New Opportunities and Challenges, 53 Fam. Ct. Rev. 246, (2015).
10. The establishment of child support and parenting time is generally a matter of state law and different states have different laws, standards, and presumptions respecting the establishment of child support and parenting time. Domestic violence, as it relates to the establishment of parenting time and/or the best interests of the child, is treated differently under the laws of the

11. The administration of child support generally occurs at the county level in most states. Custom and practice varies considerably from county to county even within a single state. See generally Pearson, supra note 9, at 246.

12. See Maureen R. Waller & Allison Dwyer Emory, Parents Apart: Differences Between Unmarried and Divorcing Parents in Separated Families, 52 FAM. CT. REV. 686, 687, 699 (2014) (children born to unmarried parents who may have cohabited, may have been in a romantic relationship, or may not have cohabited or been in a romantic relationship); Solangel Maldonado, Shared Parenting and Never-Married Families, 52 FAM. CT. REV. 632, 634 (2014).


16. See Evan Stark & Anne Flitcraft, Women at Risk 76 (1996) (approximately half of children who witness domestic violence are themselves physically abused); Waller & Emory, supra note 12, at 688, 699 (unmarried parents more likely to report intimate partner violence and “single-mother families also appear to be at relatively high risk for intimate partner violence regardless of marital or relationship status at birth”).


18. Complicating circumstances can include such things the proximity of the proceeding to pregnancy, separation, and birth (which are especially dangerous times for battered women), the arrival of later born children; blended relationships where the parents have some children in common and other children not in common, persistent poverty, and homelessness, to name a few.

19. Most drafters of parenting time proposals recognize this conundrum. Consequently, proposals often include some provision to address domestic violence, either by allowing victims of domestic violence to opt out of the parenting time initiation process or by excluding domestic violence cases altogether. See generally Fact Sheet No. 14, supra note 3; Off. of Child Support Enforcement, Child Support and Parenting Time: Improving Coordination to Benefit Children, Child Support Fact Sheet Series, No. 7 (June 19, 2011) [hereinafter Fact Sheet No. 7].

20. Fact Sheet No. 13, supra note 5.


22. See Maldonado, supra note 12, at 634 (discussing states where a mother has sole legal and physical custody until entry of a court order providing otherwise).

23. Maintaining sole decision-making authority can be critical for a victim-parent. It can affect the victim-parents’ ability to safely relocate, secure appropriate interventions and services for children, maintain privacy, establish appropriate boundaries with an abusive co-parent, obtain emergency law enforcement protection, manage ongoing risk and safety concerns, promote healthy relationships between children and responsible adults, establish ground rules and expectations, and maintain a safe and secure home environment for children.


25. Key, supra note 13, at 258.

26. See Waller & Emory, supra note 12, at 699.

27. It is worth noting that the current discretionary parenting time grants “do not provide assistance for parenting time modification or enforcement.” Fact Sheet No. 14, supra note 3.

28. See Maldonado, supra note 12, at 635 (noting that low-income fathers may not have a home suitable for exercising parenting time); Waller & Emory, supra note 12, at 698.

29. See generally Pearson, supra note 10 (discussing states with standard visitation schedules provided on a presumptive basis).

30. Pearson, supra note 9, at 246.

31. Standardized orders may be inconsistent with statutory domestic violence–related child custody presumptions such as those prohibiting joint legal or physical custody arrangements and/or parenting time with an abusive parent.

32. JAFFE ET AL., supra note 17, at 21–28.

33. In fact, this concern cuts both ways. A presumptive order might not provide enough protection for children like Charlie, Delia, and Ely, but might provide too much protection for children like Andy and Betsy. Neither outcome would be in the best interests of the affected children nor adequate for their parents.

34. See also Gabrielle Davis et al., The Dangers of Presumptive Joint Physical Custody (2010), available at http://www.bwjp.org/files/bwjp/articles/Dangers_of_Presumptive_Joint_Physical_Custody.pdf (last visited Sept. 9, 2013);

35. Key, *supra* note 13, at 260 (“In effect, the standard visitation order was—and remains today—a default order which takes care of issues not agreed upon by the parties. In the absence of a parental agreement, the standard order ‘governs the relationship of separated parents for virtually every minute of the year.’ ”).

36. See generally Pearson, *supra* note 9, at 246.

37. See *id.*; Pearson, *supra* note 10, at 246; Fact Sheet No. 14, *supra* note 3.


41. See generally *Id.*

42. See generally Ver Steegh, *supra* note 39, at 188–90.

43. See Ver Steegh et al., *supra* note 38, at 978–82.

44. See *Id.*

45. See Fact Sheet No. 14, *supra* note 3.


48. Intimate partner violence takes many forms and may include violent acts, coercive controlling tactics, or a combination of both. These can only be uncovered and understood in light of the purpose, context, and meaning of abuse through time and for that reason, incident-specific screening may be misleading. For example, understanding coercive control is vital, whether or not it involves physical violence. See Connie J.A. Beck & Chitra Raghavan, *Intimate Partner Abuse Screening in Custody Mediation: The Importance of Assessing Coercive Control*, 48 Fam. Ct. Rev. 555, 556, 562 (2010) (“[O]btaining a snapshot of physical abuse, without regard to coercive control and sexual coercion, may misrepresent what are severe and less severe forms of intimate abuse. The findings of this study support the argument that coercive control is an efficient and accurate signal of relationship distress for women in a mediation sample. Using combined moderate and high coercive groups, we were able to capture information on physically forced sex, threats to life, and escalated physical violence in up to two thirds of women. In contrast, the physical abuse index missed the majority of women who reported severe distress.”).

49. Attorneys representing clients, mediators, and other professionals have an independent duty to screen for domestic violence.


51. See generally Fact Sheet No. 7, *supra* note 19.


53. Under existing law, the nonresidential parent usually must take some affirmative step to request parenting time in order for it to be considered. That request not only invokes the jurisdiction of the tribunal to hear the matter, but also extends basic due process guarantees to the residential parent, including notice and an opportunity to be heard. See generally Maldonado, *supra* note 12, at 634 (“Second, even after establishing paternity, in many states an unmarried father is not entitled to parenting time until he petitions for it, and in some states that petition must be filed in a separate proceeding”).

54. “Under current law, states may not use their IV-D funds to pay for parenting time services.” Fact Sheet No. 13, *supra* note 5. Part of the reason is that the state has a statutory interest in the establishment and collection of child support to reinsure state coffers for public benefits paid out to residential parents. It does not have the same sort of interest in the establishment and enforcement of parenting time.

55. Allowing agencies to initiate parenting time actions may run counter to the constitutional presumption that fit parents, married or not, have the right to determine the care and control of their children without state intervention. See Meyer v. Nebraska, 262 U.S. 390 (1923); Pierce v. Society of Sisters, 268 U.S. 510 (1925); Troxel v Granville, 530 U.S. 57 (2000).

56. See generally Maldonado, *supra* note 12, at 636 (“Although never-married African American fathers are significantly less likely to pay child support than White, divorced, middle-income fathers, they are more likely to have positive relationships with their children’s mothers that allow them to see their children regularly and make in-kind and caretaking contributions.”).

57. See generally *Id.* at 634 (unmarried fathers who never cohabited and have not shared caretaking responsibilities may not be confident about doing so).


59. Waller & Emory, *supra* note 12, at 700.

60. See Maldonado, *supra* note 12, at 635 (“Many low-income fathers are significantly behind on child support payments and are unlikely to file a petition for parenting time because they fear that they will be arrested for nonpayment of child support.”).
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