



NATIONAL CENTER TO ADVANCE PEACE
for Children, Youth, and Families



**Betrayed by the System:
How Failure to Protect
Laws Harm the Families
They Promise to Save**



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Introduction

Survivors of domestic violence often face impossible choices like navigating harm in their homes while also trying to protect their children, all under the scrutiny of systems that do not always understand their realities. One of the most harmful and misunderstood ways the child welfare and criminal legal systems respond to survivors is through the use of failure to protect laws and policies.

This brief was developed to support survivors, advocates, and allied professionals in understanding how failure to protect laws are being applied, and misapplied, across the country. It explains how vague legal definitions and punitive policies result in child removals, criminal charges, and the termination of parental rights for survivors who are doing their best to stay safe. It also outlines critical opportunities to shift these systems away from punishment and toward protection, support, and justice.

What Does Failure to Protect Mean?

Failure to protect is a legal concept that requires a parent or caregiver to be responsible for keeping a child safe from abuse or neglect. This means that if a child is harmed by someone else, the parent or caregiver can be held legally responsible for not preventing that harm—even when they themselves are experiencing violence or threats.

These laws were originally intended to hold caregivers accountable in situations of serious parental neglect or willful failure to act in the best interest of the child. The goal was to protect children from ongoing danger, not to punish parents who are also survivors of abuse. However, the broad and often vague language of these laws has led to their misuse against survivors of domestic violence, especially mothers. As a result, many survivors are punished not for neglect, but for being unable to escape or prevent violence in their homes. This represents a serious departure from the original purpose of child protection laws, which were meant to create safety for children, not punish their protective parents.

Even when survivors are doing everything they can to protect their children, they are too often blamed for “allowing” their child to witness or be near violence in the home. This can lead to child removal, termination of parental rights, or even criminal charges. In most cases, it is the survivor and child, not the person who uses violence, who is punished most.



Where These Laws Show Up

Failure to protect isn't always explicitly written into the law. Even when not explicit, however, it shows up in three places:

Criminal Statutes	Laws that allow for fines or prison time.
Child Abuse and Neglect Statutes (Family Law)	Laws that define what counts as abuse or neglect.
Child Welfare Policies and Procedures	The rules that guide how child protection agencies work.

Criminal Charges for Survivors

In at least 33 **states**¹, survivors can be **charged with a crime** for “failing to protect” their children from domestic violence. In some places, this could mean being charged with a **misdemeanor**, but in others, the charges can lead to **decades or even life in prison**.

Survivors deserve and should have access to protective responses and support. Instead, these laws punish them for not doing the impossible—stopping abuse by someone else, often under threat to their own safety. These laws have real consequences:

¹ Alaska, American Samoa, Arizona, Arkansas, California, Delaware, Florida, Hawaii, Idaho, Illinois, Iowa, Kentucky, Maine, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin.

01

A mother in Oklahoma, was sentenced to 30 years in prison for failing to protect her children from abuse by her partner—even though it was her partner who had broken their infant daughter’s ribs and femur. While Hall received decades behind bars, her abuser served only two years. After serving 15 years of her sentence, Hall was finally granted a commutation by the Oklahoma parole board.²

02

A Missouri survivor of domestic violence, was sentenced to 20 years for failing to protect her son from sexual abuse by her husband. Mackey was being physically abused and had no knowledge of the sexual abuse until her son disclosed it. Yet, she was held responsible and punished more harshly than the person who committed the abuse—her husband, who received a 15-year sentence.³

These cases illustrate how *failure to protect* laws are often misapplied in ways that ignore the dynamics of abuse and the realities survivors face. Instead of offering safety, the system re-traumatizes survivors, criminalizing them for the violence they experience and failing to hold abusers accountable.

Child Removal

In all 50 States, the District of Columbia, and U.S. territories, domestic violence in the household is either expressly or implicitly included in the definition of

² Katie J.M. Baker, An Abused Woman Was Sentenced to 30 Years in Prison — Even Though Her Abuser Only Got Two, BuzzFeed News (Oct. 2, 2015, 12:41 PM), <https://www.buzzfeednews.com/article/skbaer/tondalo-hall-abuse-release-prison-oklahoma>.

³ Alex Campbell, She Was Sentenced to 20 Years for Her Boyfriend’s Crime. Now He’s Out of Prison, BuzzFeed News (Dec. 28, 2015, 9:01 AM), <https://www.buzzfeednews.com/article/alexcampbell/mothers-imprisonment-leads-rape-victim-to-wish-he-had-never>.

child abuse or neglect, which may result in a child being taken away from a parent, even if that parent is the survivor of domestic violence. In 41 States, D.C., and the U.S. territories, ambiguous language in these state statutes imply that a survivor parent may be punished for “failing to protect” their child. Ambiguous language in these statutes includes terminology such as “emotional abuse,” “psychological abuse,” “children who witness DV,” or “children subjected to an injurious environment,” all of which can be construed against and used to punish the survivor of domestic violence and by extension, their children.

Many states have child welfare policies that list domestic violence as a factor that can lead to the removal of a child from their home. These policies often overlook the survivor’s efforts to stay safe, the serious risks survivors may face when trying to leave an abusive partner, and the barriers they face—like lack of affordable housing, legal protections, or support services.

In addition, these policies frequently lack a clear definition of what domestic violence is. This can result in case notes or court records that wrongly describe a survivor as “engaging in domestic violence,” simply because they were present in the home where violence occurred. These misunderstandings can have long-term consequences for survivors and their families.

The harm that children experience from being removed from their parent—especially when that parent is the non-abusive caregiver—is often ignored. Research, including *The Nicholson Brief*, shows that child removal itself can be deeply traumatic and cause lasting harm.

Finally, while it may appear that decisions are made by frontline caseworkers, in practice, removal decisions are often made by supervisors or managers within the agency and by an individual worker alone. This lack of transparency can leave survivors confused about who is making decisions about their family, and why.

While child welfare policies can and do put survivors at risk of being punished for the violence they experience, some states have taken steps, though often limited, to recognize and protect survivor parents. According to an analysis by [Victor et al. \(2021\)](#), 15 states⁴ have policies that include explicit language shielding survivors from being charged with “failure to protect.” However, these protections frequently come with conditions. In the States that include language shielding survivors, they are oftentimes required to meet certain requirements to enjoy the protections offered, such as leaving the abusive partner, cooperating with child welfare services, or participating in court-ordered programs. These conditions often fail to account for the realities survivors face, such as the risk of escalated violence when leaving, lack of safe and affordable housing, and system barriers to accessing support.



Termination of Parental Rights

Termination of parental rights (TPR) is one of the most extreme actions a court can take. TPR legally and permanently severs the relationship between a parent and their child. A parent whose rights have been terminated loses all legal authority and responsibility, including custody, visitation, and decision-making for their child.

⁴ In a study of 41 State Child Welfare manuals that were available to the public, 36% (or approximately 15 States) had exonerating language for survivors. See Victor et. Al. (2021).

When domestic violence is present in the home, even if the survivor is not the person causing the harm, child welfare systems may view the survivor as having “failed to protect” the child. If the child is removed because of this, the survivor may face significant pressure to comply with strict case plan requirements under difficult or unsafe conditions.

Any time a child is removed from their parent, the risk of TPR becomes a real possibility. Federal law allows states to file for termination if a child remains in out-of-home care for 15 of the last 22 months, unless there are compelling reasons not to do so. If a survivor is unable to meet the requirements of the case plans, such as finding safe and stable housing, separating from the abusive partner, or attending court-ordered services, within that timeframe, they may face permanent loss of parental rights.⁵

Too frequently, the system fails to consider the realities survivors face: the danger of leaving, lack of access to housing, child care, or financial support, and barriers to services that are often not trauma-informed. As a result, survivors may be set up to fail, punished not only for the violence they experienced, but also for being unable to navigate systems that weren’t built for their safety.

Why This Matters

These laws and policies hurt survivors and hurt their children. They send the message that if you’re a victim of domestic violence and don’t leave fast enough (or at all), if you do not have access to resources, or if you don’t do everything “just right,” you’ll be blamed and your parenting will be deemed inadequate. But leaving can be one of the most dangerous times for a survivor.

⁵ Adoption and Safe Families Act of 1997, 42 U.S.C. § 675(5)(E) (2023) (“[T]he State shall file a petition to terminate the parental rights of the child’s parents ... if the child has been in foster care under the responsibility of the State for 15 of the most recent 22 months.”).

Research consistently shows that the risk of serious harm or death increases significantly when a survivor attempts to or has recently left an abusive partner. According to the National Coalition Against Domestic Violence, 75% of domestic violence-related homicides occur when the survivor is trying to leave or has recently left the relationship.⁶ Another study by the U.S. Department of Justice found that women who separated from the person that uses violence experienced a 75% higher risk of being killed by them than those who stayed.⁷ Not only are survivors at risk when they try to leave, but the person who uses violence may threaten or attempt to harm the children as well, or use visits with the children to continue the abuse or turn children against their survivor parent.

Survivors often stay because they are protecting their children in the best way they know how—by trying to manage the danger from within the relationship, especially when systems like law enforcement, courts, or shelters have failed them in the past or are simply inaccessible.

Failure to protect laws ignore how complex, dangerous, and isolating it can be to escape violence. Instead of centering safety and support, these laws focus on punishment—forcing survivors into impossible choices and risking further harm to both them and their children.



⁶ Nat'l Coal. Against Domestic Violence, *Domestic Violence and the Workplace* (2020), <https://ncadv.org/STATISTICS>.

⁷ Jacquelyn C. Campbell et al., *Assessing Risk Factors for Intimate Partner Homicide*, 250 *Nat'l Inst. Just. J.* 14 (2003), <https://www.ojp.gov/pdffiles1/jr000250e.pdf>.

What Needs to Change?

Reform Legal Frameworks and Statutory Language

Laws and policies must change to reflect the full context of domestic violence. Neither survivors of domestic violence nor their children should be punished for the harm they experience. Yet current child welfare laws often use vague and confusing language. Terms like “emotional harm,” “injurious environment,” or failure to protect, that provides caseworkers and judges a wide latitude of discretion in interpretation and application. Decisions are too often made without a full understanding of the survivor’s efforts to keep their child safe, the risks of leaving, or the system barriers they face. Survivors and their children deserve laws and policies that are clear, consistent, protective, and reflective of the experiences and challenges that survivors and their children face, and not punitive.

Some states are leading the way by adopting more survivor-centered language. These models recognize the realities of domestic violence and offer promising practices:⁸

New York

The law explicitly states that a child witnessing domestic violence is not in itself sufficient grounds for child removal or findings of maltreatment. This helps limit unnecessary removals and ensures that survivors are not automatically blamed.⁹

⁸ Priscilla A. Victor et al., Domestic Violence Survivors in the Child Welfare System: A State-by-State Analysis of Failure to Protect Laws, Policies, and Court Decisions, 27 J. Fam. Violence 421 (2021), <https://link.springer.com/article/10.1007/s10896-021-00301-2>.

⁹ N.Y. Fam. Ct. Act § 1012(e) (McKinney 2023) (“A person is not considered to have neglected a child for the sole reason that the child has been exposed to domestic violence.”).

Illinois

The state's law protects survivors by requiring courts to consider whether a parent was the victim of domestic violence when evaluating alleged neglect or abuse. The law also prohibits removal solely on the basis of exposure to domestic violence, unless there is a specific finding of harm to the child.¹⁰

California

California law requires courts to consider the protective actions of the non-offending parent and the risk of further harm if the child is left with the non-offending parent, when determining if removal is necessary. It explicitly instructs courts to consider the safety challenges survivors may face when trying to leave.¹¹

States across the country can adopt similar language and protections. Laws should:

- ✦ Clearly state that exposure to domestic violence does not, by itself, constitute child abuse or neglect;
- ✦ Place responsibility on the person causing harm, not the survivor;
- ✦ Require courts and agencies to assess the safety actions taken by survivors and the risks they face;
- ✦ Acknowledge that access to housing, financial resources, and legal services significantly affects a survivor's ability to leave;
- ✦ Avoid policies that punish survivors for not taking specific actions like leaving, calling the police, or seeking an order of protection when doing so may place them in more danger.

¹⁰ 325 Ill. Comp. Stat. 5/3 (2023) (defining abuse and neglect with exemptions for non-offending parents and requiring consideration of whether the parent was a victim of domestic violence).

¹¹ Cal. Welf. & Inst. Code § 300 (West 2023) (requiring courts to consider whether the non-offending parent made reasonable efforts to protect the child, even if those efforts did not include leaving the abusive partner).

Implement Survivor-Centered Protections

Survivors deserve systems that support, not punish them, for trying to stay safe. Child welfare systems must be equipped to respond with compassion and care. This includes:



Offering housing, counseling, legal help, child care, and safety planning that aligns with what survivors say they need, not what the system thinks they should need.



Avoiding conditions that force survivors to give up autonomy in order to maintain custody of their children.



Ensuring services are voluntary, and trauma-informed.

Shift Focus from Punishment to Accountability

Current approaches often criminalize the survivor and ignore the role of the person causing harm. This backwards focus not only harms survivors, but also fails to hold those responsible for violence accountable. Child welfare systems and the courts must stop punishing survivors for the actions of another person and instead:



Shift the legal burden and consequences to the individual committing the violence;



Acknowledge that survivors often take significant steps to protect themselves and their children, even when those steps are invisible to outsiders;



Provide interventions that reduce risk from the person using violence instead of creating more risk for the survivor through punitive responses.

Strengthen Economic and Support Systems

Many survivors face impossible choices because of a lack of access to safe, stable housing, economic support, and legal protections. Systems must address these root causes of vulnerability to truly protect families. This means:



Investing in permanent, safe, and affordable housing for survivors and their children;



Providing economic supports such as childcare, transportation, job training, and emergency financial assistance;



Expanding access to legal aid and advocacy services that help survivors navigate complex child welfare and court systems.

Long-term Systemic Transformation

Child welfare reform must go beyond individual laws and policies. It must address the deeply rooted inequities and systemic barriers that disproportionately impact survivors. To achieve true transformation, systems must:



Shift from a surveillance and punishment model to one grounded in healing, safety, and community.



Center the voices and leadership of survivors.



Train child welfare workers, attorneys, judges, and other decision-makers to understand the intersections of domestic violence, poverty, and systemic trauma.



Prioritize long-term well-being and relational safety, rather than short-term compliance or control.

Conclusion

Every parent deserves safety, and so does every child. But our current legal and child welfare frameworks too often fail both, punishing survivors for the violence they experience rather than offering support and solutions. The misuse of failure to protect laws strips survivors of their rights, separates families, and retraumatizes the very people these systems claim to protect.

It doesn't have to be this way. Across the country, communities and advocates are calling for change, reimagining laws, practices, and systems that center survivor safety, agency, and dignity. By reforming statutory language, holding people who use violence accountable, expanding economic supports, and investing in survivor-centered care, we can build systems that protect children without punishing their protective parents.

We can choose justice. We can choose healing. We can choose to protect, and not prosecute survivors.





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The National Center to Advance Peace for Children, Youth, and Families (NCAP) is a coalition led by Caminar Latino and includes Ujima: National Center on Violence Against Women in the Black Community, the Alaska Native Women's Resource Center, the National Indigenous Women's Resource Center, and Futures Without Violence.



Contact



@caminarlatino

www.centertoadvancepeace.org

info@centertoadvancepeace.org

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