

New York Law Journal

Analysis

Stepchildren as Eyewitnesses of Domestic Abuse

Elisa Reiter, Daniel Pollack, and Jeffrey C. Siegel | April 25, 2024



It is not uncommon for people to remarry, to feel grateful for a second opportunity at true love. Hopefully, family and friends will welcome the new spouse, but this is not always the case. This can be particularly true with children who may feel conflicted about their parent's new partner. The term stepparent is used to describe a person who is married to a child's biological or adoptive parent of a child, while the stepparent has

no biological connection to the child nor has the stepparent adopted the child.

According to The Stepfamily Foundation, the U.S. Census Bureau has found that:

- 1,300 new stepfamilies are forming every day.
- Over 50% of US families are remarried or recoupled.
- The average marriage in America lasts only seven years.
- One out of two marriages end in divorce.
- 66% of those living together or remarried break up, when children are involved.
- 80% of remarried, or re-coupled, partners with children both have careers.
- 50% of the 60 million children under the age of 13 are currently living with one biological parent and that parent's current partner.

Domestic abuse colors every aspect of family interactions, especially during the pendency of a divorce case. Decisions regarding child support, alimony and custody are the ones that immediately come to mind.

According to a survey sponsored by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), U.S. Department of Justice, "Children's Exposure to Intimate Partner Violence and Other Family Violence", 1 in 15 children are exposed to intimate partner violence each year; 90% of them are eyewitnesses to domestic violence incidents.

From a legal perspective, are there some approaches and strategies to keep in mind when the alleged perpetrator is the “new parent” and the eyewitness is their stepchild rather than biological child? Are stepchildren less credible as witnesses? Are they biased in favor of or against their own biological parent?

Children and adolescents—among the most vulnerable members of society—are exposed to domestic and family violence whether those children are raised in a traditional nuclear family or in a blended family. Blended families are formed when at least one partner had a previous union that produced children. Blended families can make for complex relationships. Nuclear families may develop at a slower pace, allowing the relationship between the parties to the marriage to develop before children are introduced.

Perhaps readers have heard a relative opine: “The marriage may have been a little late, but the baby? The baby is always on time.”

Abuse and trauma may occur in a traditional family. Abuse and trauma may occur in a blended family. The latter may not have the benefit of relationships being formed over time. Instead, children from various prior relationships may be thrust together, and tensions and abuse may occur.

How will experiencing trauma impact children and adolescents who are part of blended families as they age?

A child who witnesses violence is “at greater risk to externalize destructive behaviors such as fighting, bullying, lying, or cheating and to internalize negative behaviors such as anxiety and depression.” Such a

child witness, traumatized by what they have witnessed between relatives, may suffer a variety of symptoms, including “an inappropriate use of violence as a means of resolving conflicts and show a greater willingness to use violence themselves,” and may further suffer physical manifestations of what they have witnessed, including “allergies, asthma, gastrointestinal problems, bed-wetting or nightmares and headaches.”

Stepparents may lack unconditional love for their stepchildren. Research indicates that family structure such as stepfamilies “may pose a greater risk of violence to children compared with intact families with both biological parents.”

One judge opined many years ago that life would be easier without fairytales, or certainly without the words “stepmother” or “stepfather”—adding if only such an individual could have the benefit of being known as a favorite aunt or best uncle, that individual’s entrance to the lives of their new spouse’s offspring or the lives of their significant other’s children would be substantially easier.

Perspectives to bear in mind when a witness is a stepchild rather than a biological child include:

- **Authority.** Stepparents may be perceived as legal guardians by their spouse, but only if a court has entered an order granting a stepparent authority to act. See the recent case of *In Re C.J.C.* The legal rights of a stepparent depend on the laws of the state in which they reside. A stepparent’s legal rights significantly increase if the stepparent legally adopts their spouse’s child(ren).

- **Reach out.** Listen to the child and assure them that what they witnessed is not their fault. Alleviate immediate safety concerns. Validate fears expressed by children.
- **Implement a family violence safety plan.** Can the victims leave the home? Do what you can to provide basics, including formula, diapers, groceries, clothing and transportation. Identify safe places in the home, and prepare emergency kits with essentials and important documents such as drivers' license, birth certificates and credit cards.
- **Encourage a connection with others.** The support of an organization that focuses on counseling for victims of abuse can be essential in moving a family out of the social isolation that often accompanies abuse.
- **Provide resources.** Help the stepchild connect with professional advocates, such as attorneys and faith leaders who can counsel, assist, and perhaps help provide safe haven.
- **Protective orders and restraining orders.** Seeking a protective order and/or restraining order may have a significant impact on the future relationship of a child and their stepparent. However, such orders may be used to protect victims of domestic violence.
- **Restrict access.** If there is proof of domestic violence, a court may implement or adjust access to and possession of a child by a stepparent. The court will consider many factors, including evidence of abuse, the ongoing threat to the child by their alleged abuser and the testimony of credible witnesses as to whether access to or possession of a child should be supervised by a neutral third party, restricted or eliminated.

- **Discipline and decision making.** Often stepparents have a limited role in making major decisions that impact a child's welfare. Should that remain the case? Stepparents must understand that they do not have legal rights to their bonus children in the ways that parents do to their biological children.

- **Modification of the existing situation.** For instance, New Jersey courts may grant legal rights to a stepparent if there is sufficient proof that the child considers them a 'psychological parent.'" See V.C. v. M.J.B., where the New Jersey Supreme Court held that:

Third parties who live in familial circumstances with a child and his or her legal parent may achieve, with the consent of the legal parent, a psychological parent status vis-a-vis a child, which may not unilaterally be terminated by the legal parent; the standard to be applied to custody and visitation issues between the legal parent and a psychological parent is the best interests of the child.

Each case must satisfy the venue and jurisdictional requirements of the state in which the case is initiated. Few state statutes enunciate specific rights for stepparents.

- **Is the parent unfit?** The parent child relationship is perceived to be worthy of constitutional protection. Sometimes though, parents choose their current spouse, lover or companion over their own child. If doing so puts a stepchild at risk, a court should err on the side of caution and take appropriate steps to protect the children within the blended family.

- **Vigilance.** A stepparent must be vigilant to assure that there are no signs of physical or psychological abuse between their own biological children and the stepparent's bonus children.
- **Disciplinarian.** Issues of discipline are complicated. The power dynamic in a blended family can be unique, such that the parent with a biological connection strives to protect their own child over the needs of their bonus children.
- **Unified Front.** The parties to the relationship should address the needs of "our" children, not "yours" and "mine," even if they have different parenting styles.
- **Empathy.** A stepparent must be sensitive to the fact that their bonus children have a sense of dislocation from their parents' prior relationship.
- **Willing suspension of disbelief.** Allegations of physical and/or sexual abuse may be made to attempt to gain advantage in a living situation or in a legal case. Domestic violence allegations involving a stepchild can have far reaching consequences. Any outcry by a child needs to be taken seriously, and validated.

The legal rights of a stepparent are intricately tied to the laws of the state in which they reside, with significant implications if the stepparent has adopted their "bonus" children. In cases of family violence, immediate action to protect children is crucial. Reaching out, listening and reassuring the child is paramount to dispelling any sense of fault that the child might harbor. Addressing safety concerns, providing essentials and preparing for emergencies are vital steps.

Navigating the complexities of protecting children, and “bonus” children, requires a thoughtful and proactive approach tailored to each unique situation.

Elisa Reiter is a senior attorney with Calabrese Budner in Dallas, Texas, and is board certified in family law and child welfare law by the Texas Board of Legal Specialization. She has served as an adjunct professor at SMU and is admitted to practice in New York, Massachusetts and Washington, D.C.

Daniel Pollack, MSW, JD is a professor at Yeshiva University’s School of Social Work in New York City. He was also a Commissioner of Game Over: Commission to Protect Youth Athletes, an independent blue-ribbon commission created to examine the institutional responses to sexual grooming and abuse by former USA Gymnastics physician Larry Nassar.

Jeffrey C. Siegel, Ph.D., ABPP is a forensic and clinical psychologist in Dallas, Texas. He has conducted child custody evaluations for over 40 years in multiple states and provided court testimony over 300 times. He is board certified in clinical psychology and family psychology through the American Board of Professional Psychology and is a fellow of the American College of Forensic Psychology.

Original link:

<https://www.law.com/newyorklawjournal/2024/04/25/stepchildren-as-eyewitnesses-of-domestic-abuse/>