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## Domestic Violence and Act 130 Guardians ad Litem Play a Crucial Role

By Jesse R. Dill, Korey Lundin, Tess Meuer, and Morgan Young

*This article is the fourth and final in a series addressing the interplay between domestic violence and 2003 Act 130. The **first** of this series offered a history of the legislation leading to 2003 Act 130 and explained concerns over why this law may not be properly implemented by family law practitioners. The **second** of this series identified and explained different typologies of violence that victims may encounter. The **third** article suggested strategies for attorneys using Act 130 in the family court process. This fourth article presents recommendations for guardians ad litem who are involved in a case where Act 130 may apply.*

While domestic violence presents unique challenges for attorneys and victims navigating the family court process, similar issues are not lost on the third parties who contribute to the outcome of a case. The guardian ad litem (hereinafter GAL) must also confront the presence of domestic violence when a parent-child relationship is considered through family court. Like attorneys, the GAL must determine if a case is one in which Act 130 may apply by engaging in the screening process. If a GAL determines that Act 130 applies, then the GAL must submit a report to the court that presents this finding and the evidence used to support it. Much like attorneys, GALs who follow these recommendations



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will need to adapt how they are used to fit a jurisdiction's local rules and procedures.

### Investigating Domestic Violence<sup>1</sup>

The process of screening for domestic violence by a GAL is much the same as it is for a family law attorney. It involves asking questions based on the power and control wheel<sup>2</sup> to ascertain answers to two questions: Does one person exhibit power and control over the other spouse? If so, is this an abusive relationship? Of course, every GAL should understand that the power and control wheel is a tool to use

while investigating relationships. A thorough investigation should ask questions to determine if there are certain circumstances that explain or justify any control exhibited by one partner over another with regard to any given subject.

It is crucial to interview both parties separately. In a typical domestic violence relationship, the abuser is skilled at painting him or herself as the victim and deflecting attention away from his or her behavior.<sup>3</sup> Beginning the interview process with the alleged victim, who is less likely to deny his or her role in the relationship, will provide the GAL with an opportunity to create a holistic picture of the nature of the relationship.

One approach, if time permits, is to gather information on the parties without their knowledge through resources like the Wisconsin Circuit Court Access website<sup>4</sup>, a copy of any restraining order petitions, or a copy of the complaint if a criminal action was initiated. The GAL can then ask questions during an initial interview to determine the honesty of the parties relative to the information learned through the above sources. When the GAL meets with the parties, the GAL will then have more information regarding whether a partner is willing to acknowledge their violence in the relationship.

If it is not possible to collect information beforehand or no information regarding domestic violence exists, a GAL may wish to start the discussion of domestic abuse by asking questions about select issues. For example, the GAL may begin with a discussion of finances. Financial arrangements can range from both parties having completely separate finances to sharing all finances and anything in between. To ascertain whether abuse is or has occurred, start by asking questions such as: Who controls the finances? Who pays the

bills? Who has a checkbook? Who writes the checks? Who determines how the money is spent? Who decides whether the finances and bills are combined or separated? Does each individual have access to finances and for what purpose(s)?

By asking these questions, the GAL is trying to ascertain whether a choice to combine all assets and allow only one person to control finances is by mutual consent or due to coercion by one person. Beyond asking who controls the finances, the GAL should ask how and why this decision was made and what would happen if one party attempts to change the arrangement. Be wary of the party who appears to control the finances but makes excuses for his or her behavior when the other party has indicated a desire for more financial control although it wasn't "allowed." This is a red flag. The GAL, like the family law attorney, determines the existence of domestic abuse by learning of red flags and determining if both parties created this situation or one party has the control.

After a discussion of finances, the next area to pursue is social interactions. Who does the spouse consider to be his or her friends? How often does each spouse see his or her friends and who determines the frequency of such interactions? Do both parties visit each others' families? Why or why not? Who made that decision? What social activities does each spouse have outside the home? Does the other spouse support those activities? How? Does each spouse support the other spouse to have outside activities by providing childcare and finances for the time away by the other spouse? How often? Did the spouse have more friends and outside activities before their marriage? Why? Does one spouse wish to have more outside friends and activities than the other spouse wishes for them? How do the

partners resolve this difference of opinion? Who makes the decisions as to how each party spends their time, with whom and for how much time? Again, the GAL is trying to ascertain red flags: does one party control the social decisions? Does one party socially isolate the other party or make it so difficult for the other party so that they become isolated? Isolation<sup>5</sup> is a common and often debilitating tactic used by abusers.

Another set of questions to ask is how each party responds to the other spouse having friendships outside the marriage. The GAL is trying to determine if the parties are free to make choices to create friendships or if the other person responds with excessive jealousy, limitations, and unreasonable demands about the friendship(s). As part of this set of questions, ask if the spouse has lost, discontinued, or greatly decreased a significant friendship as the result of the response by the other spouse? Jealousy is common in abusive relationships; the victim often responds by pulling away from friends to "keep the peace," or the friends pull away due to their frustration with how difficult it is to interact or spend time together without disapproval from the other spouse or anxiety on the part of the abused spouse.<sup>6</sup> Again, the GAL is gathering information about the full picture of the nature of this relationship.

Once the two main tactics in an abusive relationship are covered, the GAL can next move to a discussion about the children. Who is responsible for childcare? Who takes the children to and from school, recreational events, and church? Who makes this decision? Who disciplines the child(ren) and how? What happens if the other spouse disagrees with the type of discipline? How do the children respond to each parent? What does each parent do when upset with the

child(ren)? How much involvement does each parent have in the lives of each child? Why? Does each parent support the other parent's parenting? How? How do the parents decide on what is best for the child(ren)?

These same types of questions can be asked by the GAL of the child(ren). Who spends time and socializes with them? In what types of activities? Who helps with homework, takes the child(ren) to school, recreational events, church or doctor appointments? Who attends meetings at schools regarding the child? To whom does the child bring home permission slips for school events or pieces of information about schoolwork, activities or school business? Who does the child(ren) turn to when upset? When the child(ren) has a situation they wish to figure out or talk about who do they go to and why? What is the other parent's response if you had to go to that parent? Do the parents ever get upset or angry with each other? What happens when they are upset or angry? What do they say or do? Is any child afraid of one or both parents? Why? What happens if the child tries to tell the parent about being upset or afraid?

After learning about finances, social activities, and the interaction with the children, the GAL can then ascertain other common tactics on the power and control wheel. These could include questions about whether the other spouse engages in such behavior as denying or minimizing abusive or threatening behavior; threatening or crazy-making behaviors or creating and enforcing the "rules."<sup>7</sup> In nearly all abusive relationships, one spouse reports there are many rules, largely unwritten, to which the abused spouse must submit.<sup>8</sup> They might include such issues as who makes the meals, at what time, and what food is served. They might also include how the spouse dresses, appears in public, or how much time they are allowed to be in public. The GAL is listening for indications that one spouse believes he or she is entitled to set the rules, known on the Power and Control wheel as Privilege.<sup>9</sup>

By the time the GAL determines there are many red flags, either or both spouses may have revealed the existence of physical and sexual abuse. However, if the parties have not yet revealed suspected abuse,

the GAL can ask a final set of questions: How do the parties decide who gets to make the decisions? Do both parties feel able to discuss with the other party such decisions? Why or why not? What would happen if one spouse tried to discuss – or even challenge – decisions or rules made by the other spouse? Does one party seem to acquiesce or appease the other party "to keep the peace?" Is one party afraid of the other party? Why? What would happen if the spouse who is told to abide by certain rules refuses to do so?

This last set of questions provides a context to evaluate whether there is a mutual agreement for one party to have more or most of the power and control in the relationship or whether this is a relationship in which domestic abuse is occurring or has occurred. It also provides a segue for asking specific questions about physical and sexual abuse, if not yet revealed. It is important to note that every relationship involves some degree of power and control – a decision as to who will be responsible for or take the lead in select situations. In some relationships, one person makes most of the decisions; however, this does not automatically mean there is abuse in the relationship.

Questions about how the couple resolve conflicts between themselves or between the child(ren) usually provide the basis for learning about physical/sexual abuse. Ask the victim to describe the first abusive incident he or she recalls, the most recent, and the most severe. This provides both a timeframe of how long abuse occurred and a measurement of the severity of the abuse. Be sure to ask about abuse against pets and/or animals<sup>10</sup> as well as whether the person ever attempted to strangle or suffocate the victim.<sup>11</sup> In addition, ask if the abusive spouse has or is likely to stalk the victim.<sup>12</sup> An affirmative answer to any of these questions means the victim is at higher risk of physical injury.<sup>13</sup>

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While it is possible to have mutual combatants in a marriage, it is not common in a domestic violence relationship.<sup>14</sup> The very nature of a relationship in which domestic violence exists is about the use of power and control by one party over the other party. 2003 Act 130 anticipates this issue by inclusion of a provision that in cases where both parties allege abuse by the other party, the court is to sort out who is the primary aggressor.<sup>15</sup> The statute states: If the court finds both parties engaged in a pattern or serious incident of interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), the party that the court determines was the primary physical aggressor. In addition, the court must consider specified factors to determine who is the primary aggressor.

These are the same factors that are noted in Wisconsin's mandatory arrest law.<sup>16</sup> When a GAL or the court encounters allegations of mutual abuse, the law specifies that the court – usually through the GAL's recommendations – delve into the pattern of abuse by taking into account issues such as prior acts of violence; relative degree of injury in these instances; whether either party acted in self-defense and whether there is a pattern of coercive and abusive behavior.<sup>17</sup> The power and control wheel is the tool designed to ascertain whether there is a pattern of coercive and abusive behavior. Thus, while the power and control wheel is only one tool to sort out domestic violence, it is the tool which gives information about the pattern of abuse, as required by law. In general, in true domestic violence cases, as opposed to mutual combatant cases, the factors outlined in the law above lead the GAL to a conclusion as to who is the primary aggressor. This is true because the factors allow the GAL to look at the history of abuse, not just an isolated incident that may have occurred in

the marriage or may have occurred when the divorce action started. The bottom line: the GAL must consider the totality of the parties' lives.

2003 Act 130 is designed for cases in which there is documented, fairly substantial abuse. Part of the dynamic of abuse is the victim may never have disclosed the abuse to others.<sup>18</sup> Thus, a GAL may not have enough to move forward with an Act 130 case; however, the GAL and all parties have a responsibility to be certain the victim knows to engage in safety planning regardless of whether there is enough documentation to pursue an Act 130 case.

Safety planning can be done by an advocate at a local domestic violence or sexual assault program.<sup>19</sup> First, the GAL should ask the victim what she or he has done in the past to stay safe and if the efforts actually kept her or him safe. This will tell the GAL what the victim knows to do or is likely to not try again if the efforts failed. For example, the victim may have called the police when a violation of the restraining order occurred, but received no response. Consequently, the victim may be reluctant in the future to call authorities for help. Therefore, it may be necessary to remind the victim to call for help or to give alternative people and places that can provide assistance.

Safety planning needs to include both the batterer-generated and life-generated risks.<sup>20</sup> In addition, the victim needs to be made aware of the higher risk she or he faces at the time of divorce or separation from the abuser.<sup>21</sup> Because of this increased danger, the victim needs to set up a system for seeking help. Although a GAL may not feel skilled to engage in safety planning, the GAL should know who in his or her community can engage in this process.<sup>22</sup>

### **Reporting Act 130 Domestic Violence**

One of the lesser known changes Act 130 made to the statutes

was the revision Wis. Stat. § 767.407(4), which defines a GAL's responsibilities. A key sentence was added to the this statute: "The guardian ad litem shall investigate whether there is evidence that either party has engaged in interspousal battery, as described in s. 940.19 or 940.20(1m), or domestic abuse, as defined in s. 813.12(1)(am), and shall report to the court on the results of the investigation." This places two distinct duties on GALs to: 1) investigate; and 2) report.

There is no guidance from the court of appeals on what exactly the GAL's duty to report entails. Only one case has even noted this requirement, albeit in a cursory recitation of a GAL's duties.<sup>23</sup> Since this issue is one that would probably not be litigated unless a party alleges a GAL failed to report on domestic abuse, it is unlikely practitioners will have guidance from the court of appeals anytime soon.<sup>24</sup> What, then, is a GAL to do?

After a GAL investigates domestic abuse allegations, the question then becomes when and how does the GAL make his or her report to the court? And what is it that the GAL is reporting?<sup>25</sup> The first thing the GAL should report to the court is whether the case may be an Act 130 case. Since the legal standards for custody and placement determinations are different in Act 130 cases, the court (and the parties) should know sooner than later what standard the GAL intends to apply to his or her recommendations. This statement does not suggest the investigation should be hasty. Rather, it suggests that once a GAL has reason to believe the Act 130 legal standards might apply in the case, they should notify the court at the next available opportunity because this will impact the course of litigation for everyone involved. The exact form of this report may vary from county to county and as local practice dictates. Regardless of the form, the GAL's

report should be based on his or her investigation but should not draw factual conclusions that have not yet been tried to the court. In other words, the GAL should be reporting to the court they conducted an investigation. And if the facts in the investigation are proven at trial, the court will apply the Act 130 legal standard (or not if the investigation does not support it).

The reporting requirement is particularly important in cases in which the parties are not represented. If the parties have counsel, one would expect the court would hear from them about whether the case might be an Act 130 case. Often this information will be presented to the court by counsel prior to a GAL's appointment. If the parties do not have counsel, however, the GAL is likely the only attorney involved in the case other than the judge.<sup>26</sup> The GAL's duty to report is therefore of vital importance in pro se cases. If the GAL will not argue for what the legal standards could be, who will? Once the court has heard from the GAL on whether the legal standards of Act 130 may apply in the case, a major goal of the reporting requirement is completed.

### Temporary/Motion Hearings

The role of the GAL as litigator in cases involving domestic violence is particularly delicate. Standards set forth by the Wisconsin Statutes,<sup>27</sup> Wisconsin Supreme Court Rules,<sup>28</sup> and subsequent case law<sup>29</sup> show the need for a balance between the investigatory and reporting requirements of the GAL and the restrictions one must adhere to within the family law system.<sup>30</sup>

If the GAL's investigation<sup>31</sup> does not reveal evidence that the domestic violence rises to the level of an Act 130 finding, then the GAL should explain this conclusion to the parties and place his or her concern about the domestic violence on the record. By preserving the record, the GAL

is building the foundation for an appeal as it may be needed.

If the GAL's investigation of domestic violence reveals evidence to substantiate an Act 130 finding, a GAL must then decide when to raise this issue with the court. The timing will partially depend on when the GAL joins the action. A GAL is frequently not assigned to a case until after an order to show cause hearing takes place. A judge or court commissioner often determines at this hearing that the parties contest custody and placement and that the case is unable to move forward without appointing a GAL. In the rare occasion that circumstances lead to the GAL appointment before the order to show cause hearing, this hearing is likely the first opportunity to raise the issue of domestic violence.

If a GAL is appointed after a judge or court commissioner enters a temporary order and the GAL then determines the case to be an Act 130 case, then the GAL will need to file a motion to modify the temporary order. At the time of this motion hearing, the GAL should prepare to present evidence that may be new to the court regarding the abuse. The GAL should enter this motion hearing, and all evidentiary hearings, with the mindset that he or she is a litigation attorney and bound by the rules of evidence.<sup>32</sup>

Of all the responsibilities of the GAL, the duty to report and the trap of accidentally making oneself a witness or adversarial counsel are the most difficult to navigate. Under the statute,<sup>33</sup> the duty of the GAL to report to the court contains little logistical guidance, and jurisdictions follow various unwritten protocols to meet this end. While some counties favor oral reports made in status conferences or final hearings, many judges prefer or require a written recommendation to be submitted to the court. This requirement can be problematic depending on the format

the report takes. Often these reports are informal letters to the court or general recommendations based on facts that lack an evidentiary foundation before the court. Because of the weight the GAL's recommendation is given, a strong recommendation for one party's wishes often leads to a settlement without trial. In these cases, the facts set forth in the recommendation may never be adduced. To avoid any potential issues with being called as a witness, the GAL may wish to circulate the "pretrial recommendation" to the parties, but not the judge, that provides what the GAL believes the evidence will show and presents as much documentation as possible. Others may prefer to provide recommendations in the form of a trial brief. By doing so, the GAL is able to avoid many of the ethical concerns that accompany less formal documents.

However, preparing any written report can make the GAL vulnerable to potentially being called as a witness in the case, in violation of the rules of ethics.<sup>34</sup> The GAL should not investigate, question, or observe individuals without the presence of a third party who can act as a witness to support the GAL's conclusions and recommendations if necessary. Instead of becoming the sole source of the evidence contained in the written report, the GAL should team with other professionals who can serve as witnesses as needed. Those conducting custody studies, expert witnesses in the field of domestic violence, family court counselors, and social workers are all good resources for this purpose. In smaller communities that operate without many of those individuals, the GAL may wish to use an office paralegal or law clerk to conduct or witness interviews or accompany the GAL to a home if such a visit is necessary. If the case goes to trial, the impressions and testimony of

these third parties can be used in the GAL's case and his or her role as an attorney for the child's best interest is preserved.

### Final Hearing/Details of Recommendation

Throughout the process, the GAL must be aware of a party's concerns to maintain safe circumstances while completing the family court processes. Thus, the GAL should avoid scheduling back-to-back appointments with the parents if the meetings will take place in the GAL's office. Additionally, the GAL should instruct a pro se parent as necessary on how to maintain safety when attending court dates. The victim may seek to have the bailiff detain the alleged perpetrator briefly after the hearings so the victim can leave safely. Also, the victim should know to get away from the courthouse as quickly as possible and not stay in the area for an extended period of time following any appearances.

Whether the GAL finds that Act 130 provisions should apply to the final order or simply believes that domestic violence occurred between the parties without evidentiary proof, the goal of the final order should be safety provisions that best protect the child(ren). These recommendations will be particularly important if the GAL presents evidence to support an Act 130 finding, but the court disagrees that the standard has been met.

Wisconsin's family law statutes provide tools for the GAL and the court to use when structuring a custody and placement order. If the court finds that a party engaged in a pattern or serious incident of interspousal battery<sup>35</sup> or domestic abuse<sup>36</sup> and the court awards periods of physical placement to both parties, "the court shall provide for the safety and well-being of the child and for the safety of the party who was the victim of the battery or abuse."<sup>37</sup> These

provisions may include supervised placement<sup>38</sup> and/or exchanges<sup>39</sup> or a restriction on overnight placement with the abusive parent.<sup>40</sup> If these conditions are in place, the GAL and non-abusive parent will need to collaborate to determine who should provide the supervision and where reasonable exchanges should take place, particularly if no center exists in the community.<sup>41</sup> Too often, orders lack specificity and fast food restaurants become fall back locations for exchanges when a more appropriate site, including the presence of surveillance cameras and access to help in case of emergency, may exist.<sup>42</sup>

The statute also allows for restrictions to be placed specifically on the abusive parent,<sup>43</sup> such as the requirement of bond to be posted for the safe return of the child<sup>44</sup> or an order for completion of a certified batterer's treatment program.<sup>45</sup> If there is evidence offered that shows alcohol or other drug abuse is a significant problem with one parent, the court can impose restrictions on use of these substances during periods of placement.<sup>46</sup> If there are other conditions that would aid in the safety of the child, the statute includes a catch-all provision for "(i) imposing any condition ... that the court determines is necessary for the safety and well-being of the child or the safety of the party who was the victim of the battery or abuse."<sup>47</sup> Using the language of the statute to support proposed conditions provides strong incentive for the court to adopt the recommendations of the GAL.

The GAL will serve the best interests of the child by taking the time to work with the non-abusive parent to craft realistic custody and placement recommendations. Beyond the provisions of the statute enumerated above, the GAL should consider other protective measures. Does a child need access to a cell phone for emergencies? Should the

child be expressly allowed a certain number of phone calls with the non-abusive parent during placement times with the abusive parent? Should the abusive parent not be allowed to expose the child(ren) to specific locations and individuals?

To increase the likelihood the court will adopt the recommendations of the GAL and to ensure the smoothest execution of the subsequent order, specificity is crucial: the schedule for holidays and special events should be expressed in detail and contingencies should be provided for all situations. What if the other party does not show? How long must a parent wait before calling the police if the child is not returned on time? Is there a provision allowing the police to retrieve a child being held in violation of the order? The GAL should consider and address these questions in his or her recommendation.

### Conclusion

The GAL has a prevalent role to play in any Act 130 case. From the beginning, the GAL should investigate whether Act 130 applies. If so, the GAL should collect evidentiary support for that finding and make the appropriate recommendation to the court. In any event, the GAL must work towards securing an outcome that is in the best interests of the child(ren). Safety planning may become the best alternative for the GAL to consider. Following the steps outlined above will put the parties in the best position possible to assure safety and the best interests of the child(ren).

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### Endnotes

1 § 767.045(f).

2 *The Power and Control Wheel Model is*

- available through the National Center on Domestic and Sexual Violence.
- 3 [The National Center for Victims of Crime](#), *Domestic Violence*, (last visited May 24, 2011). Although some men and some women engage in intimate partner violence, women are dramatically more likely to be severely injured or killed; from 2005 to 2009, 87 percent of domestic violence homicides in Wisconsin were committed by men. Wisconsin Domestic Violence Homicide Reports, 2005-2009.
  - 4 <http://wcca.wicourts.gov/index.xml>.
  - 5 *Supra*, note 1.
  - 6 [The National Center for Victims of Crime](#), *supra*, note 2.
  - 7 Lundy Bancroft & Jay G. Silverman, *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics* 18 SAGE Publications (2002).
  - 8 [The National Center for Victims of Crime](#), *supra*, note 2.
  - 9 *Supra*, note 1.
  - 10 Michelle Lerner, *From Safety to Healing: Representing Battered Women with Companion Animals*, *Domestic Violence Rep.*, Dec.-Jan. 1999, at 17-18.
  - 11 Mindy B. Mechanic, Terri L. Weaver & Patricia A. Resick, *Risk Factors for Physical Injury Among Help-Seeking Battered Women: An Exploration of Multiple Abuse Dimensions*, 14 *Violence Against Women* 1148, 1160 (2008). Women are 7 to 14 times more likely to be beat up, choked [sic] or threatened with a gun. Patricia Tjaden & Nancy Thoennes, *Full Report of the Prevalence, Incidence and Consequences of Violence Against Women: Findings from the National Violence Against Women Survey*, U.S. Dep't of J., Nov. 2000. *Author's Note*: Wisconsin Law refers to "choking" as strangulation or suffocation. See Wis. Stat. § 940.235.
  - 12 Mechanic et al, *supra*, note 9 at 1150. Women are eight times more likely to be stalked by a current or former intimate partner, which is conduct that demonstrates a desire to control and terrorize. Tjaden et al, *supra* note 9.
  - 13 Mechanic et al, *supra*, note 9 at 1159-61. *Also see*, 2009 Wisconsin Domestic Violence Homicide Report, at 27.
  - 14 Michael Samsel, *Abuse and Relationships, The Myth of Mutual Combat* (2008-09), (last visited June 20, 2011).
  - 15 See § 767.41(2)(d)2 which notes these factors: a. Prior acts of domestic violence between the parties; b. The relative severity of the injuries, if any, inflicted upon a party by the other party in any of the prior acts of domestic violence; c. The likelihood of future injury to either of the parties resulting from acts of domestic violence; d. Whether either of the parties acted in self-defense in any of the prior acts of domestic violence; e. Whether there is or has been a pattern of coercive and abusive behavior between the parties; and f. Any other factor that the court considers relevant to the determination under this subdivision.
  - 16 See 968.075(1)(c) and (2)(ar); 968.075 now uses the term predominant aggressor, rather than primary aggressor.
  - 17 The statutes also include information about these situations: If the court finds both parties engaged in a pattern or serious incident of interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), the party who engaged in the battery or abuse for purposes of the presumption is the party that the court determines was the primary physical aggressor. The presumption does not apply if the court finds that both parties engaged in a pattern or serious incident of interspousal battery or domestic abuse but the court determines that neither party was the primary physical aggressor. See 767.41(2)(d)3 and (2)(d)4.
  - 18 [The National Center for Victims of Crime](#), *supra*, note 2.
  - 19 *Also see*, Jill M. Davies, Et al., *Safety Planning With Battered Women Complex Lives/Difficult Choices* (Sage Publications 1998).
  - 20 *Supra*, note 13.
  - 21 Barbara Hart, *Beyond the "Duty to Warn": A Therapist's "Duty to Protect" Battered Women and Children*, in *Feminist Perspectives on Wife Abuse* 234 (Kersti Yllö & Michele Bograd ed., 1988).
  - 22 See <http://www.wcadv.org>.
  - 23 *State v. Freymiller*, 2007 WI App 6, & 18; 298 Wis. 2d 333, 345; 767 N.W.2d 334, 339-340.
  - 24 A query of text-searchable briefs filed with the Court of Appeals and Supreme Court since e-filing began approximately two years ago, indicates no brief in which a GAL's duty to report has been raised as a issue.
  - 25 These questions have also been discussed in detail by others. See Gretchen Viney, *The Impact of Act 130 on Family Court Guardian ad Litem Practice*, 25 *Wisconsin Journal of Family Law* 2, 33, 36-40. As discussed above, there has not been guidance from the court of appeals on answers to any of these questions.
  - 26 There may, of course, be an attorney for the child support agency involved in the case as well. However, a child support agency attorney will not have any input on the custody and placement matters.
  - 27 Wis. Stats. §§ 767.045(4) and 880.331.
  - 28 SCR 20:3.7(a).
  - 29 See, e.g., *Allen v. Allen*, 78 Wis. 2d 263, 267-270 (1977); *Hollister v. Hollister*, 173 Wis. 2d 413 (1992).
  - 30 See Gretchen Viney, *The Impact of Act 130 on Family Court Guardian ad Litem Practice*, 25 *Wisconsin Journal of Family Law* 2 (2005).
  - 31 § 767.045(f).
  - 32 SCR 20:3.5.
  - 33 § 767.045(4).
  - 34 SCR 20:3.7(a).
  - 35 §§ 940.19 and 940.20(1m).
  - 36 § 813.12(1)(am).
  - 37 § 767.41(6)(g).
  - 38 §767.41(6)(g)2.
  - 39 §767.41(6)(g)1.
  - 40 §767.41(6)(g)6.
  - 41 With some creativity, exchanges can occur during the child(ren)'s regularly scheduled activities and minimize the need for the parties to interact. Picking up children from school, extracurriculars, and other appointments provide such opportunities while limited the disruption to the child(ren)'s day.
  - 42 If both parties will be present during an exchange, choosing a location with surveillance cameras can both act as a deterrent to bad behavior and document any problems that arise. A GAL should investigate where surveillance cameras exist in the community, including banks, police stations, libraries, and gas stations that may be proposed as the site of exchanges.
  - 43 § 767.41(2)(d)1 addresses the rebuttable presumption created when a court finds that it is detrimental to the child and contrary to the best interest of the child to award joint or sole legal custody to the abusive party. To rebut this presumption, the abusive party must prove, by a preponderance of the evidence, all of the requirements of § 767.41(2)(d)1.a and 1.b. These sections include the successful completion of treatment for batterers provided through a certified treatment program or by a certified treatment provider, no abuse of alcohol or any other drug, and a finding that it is in the best interest of the child for the party who committed the battery or abuse to be awarded joint or sole legal custody based on a consideration of the factors under § 767.41(5).
  - 44 § 767.41(6)(g)7.
  - 45 § 767.41(6)(g)4. See <http://www.wcadv.org/ourwork/wbtpa> for a list of batterer's treatment providers through the Wisconsin Batterer's Treatment Providers Association.
  - 46 § 767.41(6)(g)5.
  - 47 § 767.41(6)(g)8.