

Family Courts' Failure to Protect Abused Children in Custody Disputes

Nancy Stuebner (CSU San Bernardino), Linda Krajewski (Norco College)

Geraldine B. Stahly (CSU San Bernardino)



Abstract

A national survey examined the experiences of 399 self-identified protective mothers who completed a 101-item questionnaire describing aspects of their custody dispute. Data includes demographic factors, economic impact, allegations of abuse, the role of court personnel, family court response, and custody outcomes. Findings suggest a number of issues of concern.

Introduction

The family court system, both in and out of the actual courtroom, is failing to protect abused children caught in the crossfire of acrimonious custody disputes. Judges, attorneys, mediators, child custody evaluators and other court professionals are ignoring, discounting and refuting the existence of child abuse in too many cases. Ironically, it is when protective parents advocate most vigorously for their imperiled children that the risk of custody being awarded to the abusing parent increases due, in part, to the protective parents being labeled with parental alienation syndrome (PAS) or, more generally, as alienators. Our research examines the protective parent phenomenon in custody disputes in general and then explores specific risk variables in association with custody loss.

Method

A 101-item self-report questionnaire was distributed to a sample of convenience at national and regional conferences regarding child abuse and domestic violence held from 2002 through 2011. Questionnaires were also completed through websites (e.g., California Protective Parents Association and California NOW). Questionnaire data included demographics, legal history of the custody case, allegations of abuse, criminal conduct, substance abuse, and results of psychological evaluations, including the role of the allegation of parental alienation in custody case outcomes. Completed surveys ($N = 399$) were collected and entered into SPSS. Descriptive statistics were run on the data from a sample that included 39 states.

Results

Protective Mothers' Experience

- 89.5% of mothers reported being a victim of domestic violence.
- In 81.2% of cases, the father threatened to take the children away if mother left the relationship.
- Child abuse was reported in 89.4% of cases with multiple forms of abuse present in many cases.
- A majority of mothers (69.9%) participated in mediation which was court-ordered in 60.5% of cases.
 - 44.5% of mothers lost parenting rights as a result of mediators' recommendations.
- A majority of mothers (84.4%) also participated in custody evaluations.
 - 67.7% lost parenting rights as a result of evaluators' recommendations.
- The total cost for litigation is over 36 million dollars with mothers spending an annual average of \$100,000.
 - 26.5% of mothers have filed bankruptcy due to litigation costs.

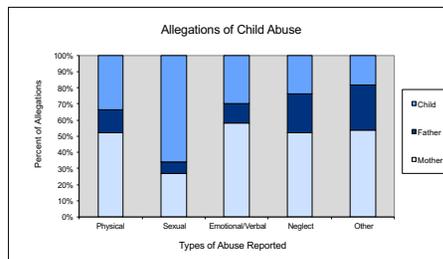
Due process violations

- 89.4% of mothers were denied ability to adequately present their case (unable to present/examine witnesses, etc).
- 68.7% lost custody in emergency court orders.
- 59% of mothers reported hearings were held with no court reporter present.
- 68.7% lost custody in ex parte proceedings.
- 57.7% of mothers were prevented from seeing evaluations/reports.
- 65.9% were threatened that "talking publicly" would damage their case.
- 66.2% of protective mothers were advised not to report abuse.
- 71.8% of mothers, at some point, were not represented by an attorney when their ex-spouse or partner was.

Custody Outcomes

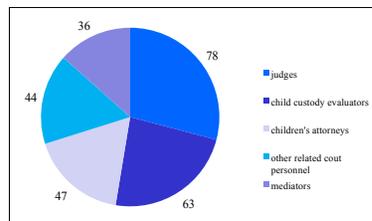
- 81% of protective mothers had primary custody at the time of separation.
- Only 17.1% had primary custody after court proceedings.

Figure 1. Child Abuse Allegations



- Children positively identified the perpetrator in 75.2% of cases
- 59.1% of cases had medical/physical evidence of abuse and 83% had other corroborating evidence

Figure 2. Failure of court response



*Graph indicates percentage of cases where court-related personnel ignored, minimized, or refuted evidence of abuse.

Predictor Variables for Custody Outcomes in subsample

Sequential logistic regression analysis on a subset of data ($N=159$) examined the relationship between eleven predictor variables and custody outcomes. The subset includes only cases where father was perpetrator of abuse, child positively identified father as abuser, and mother reported supporting evidence of the abuse.

Predictor variables reliably predicting father custody over mother custody

- Domestic violence*
- Bankruptcy*
- Substance/Alcohol Abuse*
- Criminal history†
- Evaluator participation†

*Mothers reporting domestic violence, bankruptcy, a criminal history or participating in court evaluations were less likely than fathers to receive custody. Surprisingly, mothers reporting a history of substance/alcohol abuse were more likely to receive custody. However, all mothers reported being clean/sober for at least one year.

Predictor variables reliably predicting father custody over joint custody

- Domestic violence*
- Criminal history*
- Evaluator participation*
- Child sexual abuse †

*Mothers reporting domestic violence, a criminal history, or participating in custody evaluations were less likely to be awarded joint custody. Mothers reporting the presence of child sexual abuse were also less likely to receive joint custody.

* Note: * $p < .05$
† $p < .10$

Labeling of Protective Mothers in subsample

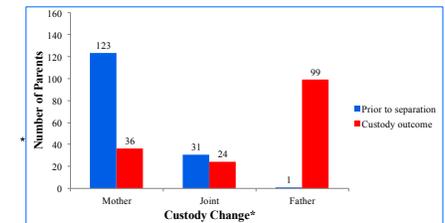
Although labeling mothers with PAS, Alienator, or mental health labels did not significantly predict custody outcomes, patterns of concern did arise.

Labeling of Mothers	Prior to Separation	Court Labeling
PAS	-	84
Alienator	-	63
Mental Health Label		
Severe		
Schizophrenia	0	4
Bipolar	5	10
Borderline	2	11
Total	7	25*
Moderate		
Depression	53	22
Anxiety	28	20
PTSD	34	10
Total	115	52*

Note. PAS represents Parental Alienation Syndrome. $N = 159$.
* $p < .05$

*McNemar analysis revealed a significant change in the number of mothers labeled prior to and after court proceedings.

Custody Outcomes for subsample



*Figure 3. McNemar analysis revealed a significant change in custody prior to separation and after court proceedings. $N = 155$ for prior separation cases because 4 cases were missing this information.
* $p < .05$

- Mother custody outcome includes father supervised and unsupervised visitation.
- Father custody outcome includes father full custody, mother supervised, and mother no contact.

Discussion

- Results of this study indicate that mothers attempting to protect their children from abuse by their fathers may face loss of custody to the father.
- Protective mothers reported a range of court abuses including ex parte proceedings, being denied access to psychological evaluations, hearings conducted without a court reporter present limiting the opportunity for appeal, loss of custody by emergency order, and denial of the opportunity to present evidence and witnesses in support of their cases.
- Court practices, such as those cited above, would be considered due process violations in other civil or criminal proceedings. The informal structure of family courts, designed to protect children, appear in our data to be endangering abused children.
- A majority of mothers in the study reported that court-related professionals ignored, minimized or refuted evidence of child abuse, often in spite of being mandated reporters.
- For the subsample, findings suggest concern in the labeling of mothers by court-related professionals. Labeling mothers as having PAS or as alienators appears especially inappropriate in cases with child abuse and domestic violence, as most of our sample reported. In addition, symptoms related to being a victim of domestic violence appear to be minimized during the court process, while more serious mental health labels may be used inappropriately.
- It appears that the court and child welfare systems, which are intended to protect children have not only let them down, but may be penalizing mothers who advocate for their children's safety.
- In this data, mothers who sought to protect their children were most likely to lose their primary custody in the process. This outcome appears to be in large measure the result of court practices that fail to recognize and intervene in child abuse when it is reported in conjunction with a custody dispute between parents.
- A limitation of the study includes a self-selection bias, which may have resulted in more extreme abuse or more negative outcomes reported than might be represented in a more general sample of contentious custody.

Acknowledgements

This presentation includes the most current analyses of the study and is an expansion and amplification of data presented earlier.

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