Family Courts’ Failure to Protect Abused Children in Custody Disputes
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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 impressionable children that the risk of custody being awarded to the abusing parent increases due, in part, to the pervasive labeling with parental alienation syndrome (PAS) or, more generally, 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 complemented 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
- 89.9% 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 (63.9%) participated in mediation which was court-ordered in 60.9% 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 modal of $10,000.
- 26.5% of mothers have filed bankruptcy due to litigation costs.

Due process violations
- 89.9% of mothers were denied ability to adequately present their case (unable to present 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 its party 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.
- 71.9% of mothers, at some point, were not represented by an attorney when their 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.

Predictor Variables for Custody Outcomes in subsample
Sequential logistic regression analysis on a subset of data (N = 191) 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.

Custody Outcomes for subsample
- Figure 2. Percentile analyses revealed a significant change in custody prior to separation and after court proceedings. N = 191 for prior separation cases because 4 cases were missing this information.
- * 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.

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: no prior 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, appears in our data to be endangering abused children.
- A majority of mothers in the study report 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.
- This data, mothers who sought to protect their children were most likely to lose their primary custody in this 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.
- 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.

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