



INTIMATE PARTNER VIOLENCE AND CO-OCCURRING CHILD ABUSE

A STATEMENT SUPPORTING ASSESSMENT OF THE NATURE, CONTEXT
AND EFFECTS OF ABUSE IN FAMILY COURT SETTINGS

- THE NATIONAL CUSTODY STRATEGY NETWORK

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The National Custody Strategy Network (NCSN) is a professional network of multidisciplinary practitioners and advocates for survivors of intimate partner violence (IPV) from state and national organizations striving to achieve better, safer outcomes for children and their families in family court cases. The NCSN is concerned with the growing epidemic of cases in which “parental alienation” is alleged and found, children’s fears and experiences are disregarded, and parents’ attempts to protect their children thwarted even though IPV and child abuse are present. NCSN members understand that children’s experiences of abuse are inadequately addressed in divorce and custody cases, which often leads to unsafe and unworkable outcomes for survivor parents and their children.¹ The NCSN hopes that this statement encourages family court practitioners and their professional associations to listen and attend to the concerns of children and parents who are both currently experiencing IPV and those who have experienced IPV in the past.

¹ The members of the NCSN know this anecdotally through their work with survivors and their children. While this is also an emerging area of research in the field, it has been shown in recent empirical research. See generally Joan Meier, U.S. child custody outcomes in cases involving parental alienation and abuse allegations: What do the data show? 42:1 J. Soc. WELFARE & FAM. 92 (2020); Linda C. Neilson, Parental Alienation Empirical Analysis: Child Best Interests or Parental Rights?, FREDERICTON: MURIEL MCQUEEN FERGUSON CENTRE FOR FAM. VIOLENCE RESEARCH & VANCOUVER: THE FREDA CENTRE FOR RESEARCH ON VIOLENCE AGAINST WOMEN & CHILDREN (2018).

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Quantitative and qualitative studies have examined children's lived experiences of domestic violence (DV) and found that between 3.3 million children and 10 million children in the U.S. are exposed to domestic violence each year.² Nearly every child is aware of the domestic violence even if their parents believe it goes unnoticed.³ Just as domestic violence takes many forms beyond physical abuse, children's experiences of the abuse can vary widely.⁴

Child abuse, including child sexual abuse, and exposure to domestic violence are often co-occurring.⁵ The effects of domestic violence on children who are exposed to the violence and those who are the object of the violence can be similar.⁶ Children can exhibit behavioral and emotional problems, as well as cognitive functioning and attitude problems due to being direct targets of abuse and from exposure to DV.⁷ Children who live with domestic violence over time can sustain lasting effects on their development, behavior, and overall wellbeing, including: depression, anxiety, poor coping mechanisms, suicidal ideations, self-harm, substance abuse, and chronic pain.⁸

Children may resist or reject one or both parents in response to the experience of, and exposure to, domestic violence.⁹ Furthermore, safe parents often seek to restrict an abusive parent's access to a child to mitigate harm to the child. These responses may be labeled "parental alienating behaviors"; however, the causes for a child's resistance to a parent can be many, including parental disengagement with the family, the prospect of missing friends, parties or sports, or resentment of a parent for breaking up the family. Additionally, courts continue to question a survivor's credibility pertaining to the abuse¹⁰ even when there are unquestionably high national rates of domestic violence and child abuse.¹¹

1 This statement is supported through research, practical knowledge, and community realities. See Jason M. Satterfield et. al., *Toward a Transdisciplinary Model of Evidence-Based Practice*, 87 MILBANK QUARTERLY: A MULTIDISCIPLINARY J. POPULATION HEALTH AND HEALTH POL'Y 368 (2009). See also Julie A. Jacobs, et al, *Tools for implementing an Evidenced-Based Approach in Public Health Practice*, PREVENTING CHRONIC DISEASE (2012), available at https://www.cdc.gov/pcd/issues/2012/11_0324.htm.

2 RESOURCE CENTER ON DOMESTIC VIOLENCE: CHILD PROTECTION AND CUSTODY, Rates of Child Abuse and Child Exposure to Domestic Violence, available at <https://www.rcdvcpc.org/rates-of-child-abuse-and-child-exposure-to-domestic-violence.html> [hereinafter Rates of Child Abuse]. See also CENTERS FOR DISEASE CONTROL AND PREVENTION, Preventing Child Abuse and Neglect (2021), available at <https://www.cdc.gov/violenceprevention/childabuseandneglect/fastfact.html> (citing at least one in seven children have experienced child abuse and/or neglect within the past year).

3 JANE E. M CALLAGHAN & JOANNE H. ALEXANDER, UNDERSTANDING AGENCY AND RESISTANCE STRATEGIES (UNARS): CHILDREN'S EXPERIENCES OF DOMESTIC VIOLENCE 62 (2015).

4 See generally *Id.* (reporting varied experiences from interviewing children exposed to domestic violence).

5 Todd I. Herrenkohl, Intersection of Child Abuse and Children's Exposure to Domestic Violence, 9 TRAUMA, VIOLENCE, & ABUSE 84, 88-89 (2008).

6 *Id.* (emphasis added).

7 MONICA CAMPO, CHILDREN'S EXPOSURE TO DOMESTIC AND FAMILY VIOLENCE 6-8 (2015). This research has been consistent over time. See Jeffrey L. Edleson, *Children's Witnessing of Adult Domestic Violence*, 14 J. OF INTERPERSONAL VIOLENCE 839, 846 (1999).

8 PETER G. JAFFE, ET. AL., RISK FACTORS FOR CHILDREN IN SITUATIONS OF FAMILY VIOLENCE IN THE CONTEXT OF SEPARATION AND DIVORCE 12-13 (2014), available at <https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/rfcsfv-freevf/rfcsfv-freevf.pdf> (emphasis added).

9 Joan B. Kelly & Janet R. Johnston, The Alienated Child: A Reformulation of Parental Alienation Syndrome, 39 FAM. CT. REV. 249, 253-254 (2001).

10 Even though there is credible research illustrating the prevalence of domestic violence and child abuse, recent study data shows that courts are still rejecting mothers' credibility of abuse allegations brought up in family court. See, e.g., Joan Meier, Denial of Family Violence in Court: An Empirical Analysis and Path Forward for Family Law, 110 GEO. L.J., - - - (2021) (in press).

11 Rates of Child Abuse, *supra* note 3

Despite the fact that the true cases of unreasonable or nefarious rejection of a parent are few, the NCSN recognizes an alarming trend to increase claims of “alienation” by abusive partners toward the other partner. This is primarily seen from fathers who are alleged or found to have abused their partners or children. The resulting custody arrangements are causing short and long-term harm to children and abused parents. Front and center in custody determinations should be the safety and well-being of children involved and other family members. The parenting rights for individuals who commit domestic abuse and its subsequent harm to children should never be prioritized over these safety considerations.

Research indicates measurable evidence of these problems mentioned above. Allegations and findings of parental alienation are being used to negate claims of domestic violence and child abuse.¹² Some family court practitioners are not only failing to attend to the nature, context, and effects of domestic violence in these cases, but are also being influenced by gender bias against women in the handling of parental alienation claims.¹³ The net result is that mothers and children who are experiencing DV, or have experienced DV in the past, are experiencing additional harm caused when custody is granted to the abusive parent.

The ability of abused parents to protect their children is further diminished by systems’ conflicting expectations of them. These parents are often trapped between two forces: (1) the child welfare system that treats the exposure of children to domestic violence as a form of child maltreatment/neglect by the survivor mother and (2) the family court system that may view parents who seek to protect their children as “unfriendly” or “alienating” parents. This confluence of abuser behavior and system biases undermines the ability of the abused parent to support and help heal their children, and can lead to longstanding conflict, entrapment, instability, and even litigation.¹⁴

In family court cases where abuse is alleged, a case-by-case analysis must be done to assess the nature and context of IPV, focus on the effects of IPV, and provide tailored responses to the lived experience of survivors and their families.¹⁵

12 Joan S. Meier, *supra* note 2 (finding that alienation approximately doubles the rate at which courts reject mothers’ abuse allegations and order custody reversed to the father).

13 *Id.* (reporting that court gender bias as evidenced by fathers who alleged alienation were more than twice as likely to receive a favorable custody outcome as mothers who alleged alienation, as well as finding fathers benefit far more than mothers when alleging alienation as a crossclaim to an abuse allegation).

14 The NCSN acknowledges that the criminal justice system places women into a similar situation by punishing mothers who fail to protect their children from an abusive parent, while also punishing them for interfering with the other parent’s custodial rights if they are trying to take protective actions. This is often compounded for communities of color and other marginalized communities who are overrepresented in punitive systems and under resourced in protective systems.

15 GABRIELLE DAVIS ET AL., BATTERED WOMEN’S JUSTICE PROJECT, PRACTICE GUIDES FOR FAMILY COURT DECISION-MAKING IN DOMESTIC ABUSE-RELATED CHILD CUSTODY MATTERS (2018), available at <https://www.bwjp.org/assets/compiled-practice-guides-may-2018.pdf>.

