

Custody and Visitation Decisions in Cases of Intimate Partner Violence: Evidence of Major Problems and Promising Solution

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Testimony before the State of Maryland
Workgroup to Study Child Custody Court Proceedings
Involving Child Abuse or Domestic Violence Allegations**

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Features of Post-Separation Domestic Violence

(Jaffe, P.G. Lemon, N. & Poisson, S.E. , 2002)

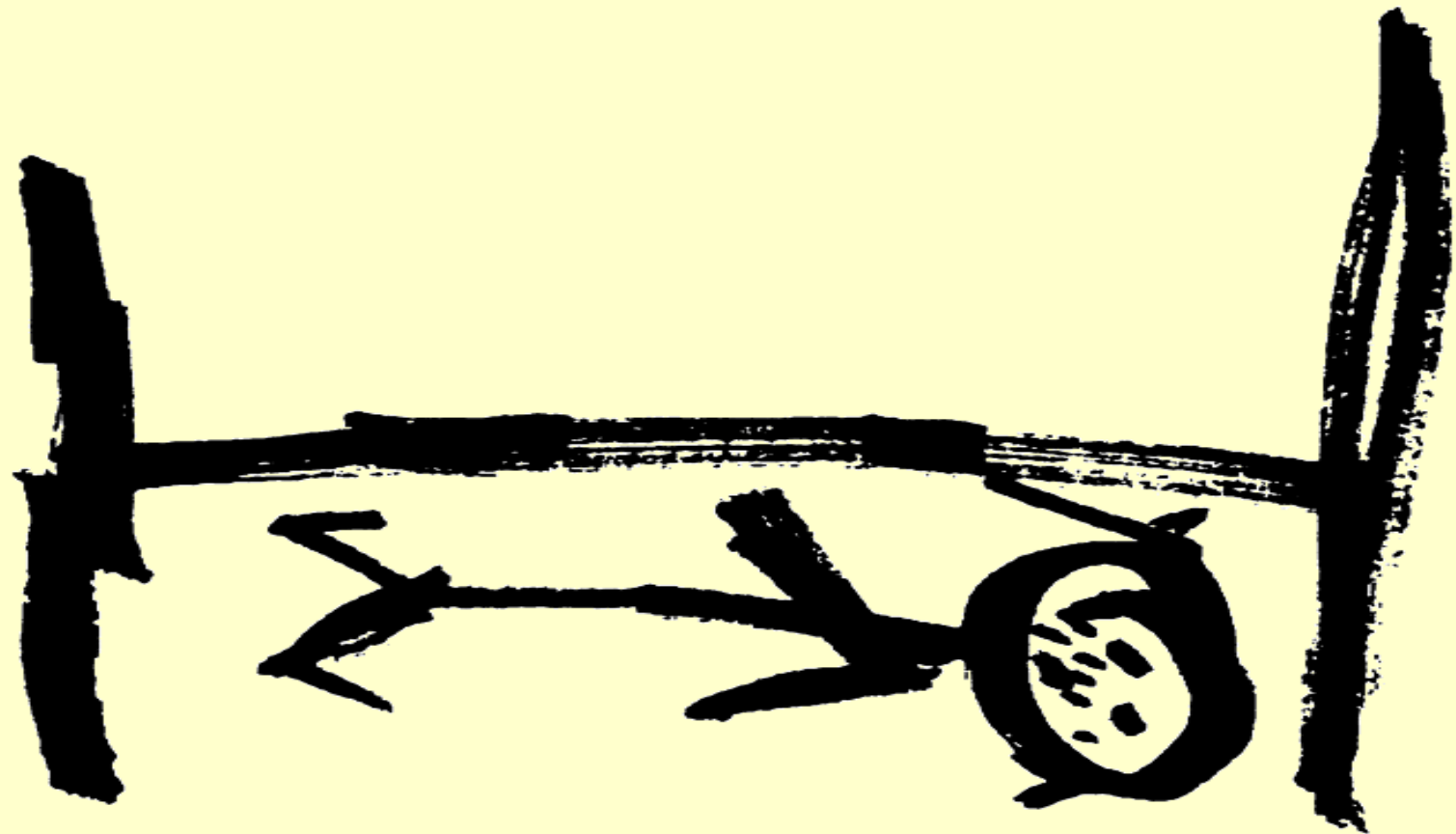
- Abuse Does Not End With Separation
- Half of Abusers Likely to be Child Abusers
- Children Exposed to Abuse & Poor Role Model
- Undermining of Non-Abusive Parent
- New Relationships Likely to be Violent
- Lengthy Litigation as Form of On-Going Control & Harassment
- Higher Risk of Stalking & Homicides

Short-Term Impact of Domestic Violence on Children

- Exposure to violence means SEEING or HEARING verbal or physical abuse or its AFTERMATH
- Emotional & behavioral problems from exposure often include:
 - Nightmares, flashbacks, depression
 - Aggressive behavior
 - Academic problems
 - Teen substance abuse & truancy
- Preschoolers at higher risk than older children
- Impact similar to being directly abused

(Edleson, 1999; Graham-Bermann & Edleson, 2002; Kitzmann, Gaylord, Holt, & Kenny, 2003; Wolfe, Crooks, McIntyre-Smith, & Jaffe, 2004).

I hide under my bed when daddy hits mommy. I am scared.
- “Jonathan”, age 5



Family Values

Dad

Kids

Mom



Problem: Professionals often fail to screen for domestic violence in child custody-visitation cases

- Research shows high rates of non-detection of IPV by mediators & custody evaluators
- Many cases are inaccurately labelled as “high conflict”, which masks the abuse and implies mutual responsibility
- Universal screening needed since many cases will be missed if investigations only focus on allegations

History of DV Often Has Little Impact on Decisions/Recommendations

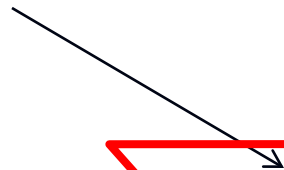
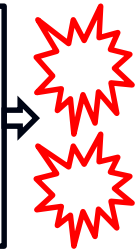
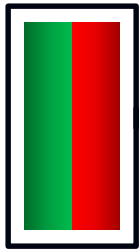
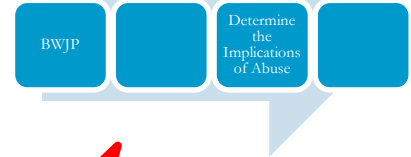
- Evaluator custody recommendations same for DV & Non-DV cases (Logan et al., 2002)
- Supervised visits ordered at same rates for offenders & non-offenders (Kernic, Monary-Ernsdorff, Koepsell, & Holt, 2005; Johnston et al., 2005; Silverman, Mesh, Cuthbert, Slote, & Bancroft, 2004).
- Mediators equally likely to recommend joint legal & physical custody for DV & non-DV cases (Johnston et al., 2005)

Possible Solutions:

Mandatory Intake Screening for Domestic Violence by All Professionals in All Settings

- Questions on intake forms increased detection rates beyond the interview questioning of an intake worker or information from court documents (Keilitz et al., 1997)
- Family court staff in California and Wisconsin required by law to have IPV questions in intake forms
- Comprehensive screening tools available from the Battered Women's Justice Project, the Wisconsin Coalition to End Domestic Violence and others
- Professionals need to be trained in interview methods that increase the trust and comfort level of survivors

Victim as Parent – Battered Women's Justice Project



- Heightened Responsibility for **Protection** of the Child
 - Heightened Responsibility for the **Care** of the Child
- **Loss of Control** over own Parenting

Torn in Two Directions Over Child Safety: To leave or stay?

- Major reason for leaving - concerns over impact of violence on children AND
- Major reasons for staying – concern for children:
 - Fear financial loss
 - Believe the children need their father
 - Fear she will lose custody to likely child abuser
 - Fear she & her children will be stalked, abused and/or killed
 - Family pressures (Hardesty & Chung, 2006; Hardesty & Ganong, 2006).

Problem: Focus of evaluations is sometimes on irrelevant factors

■ Possible Solution: Mandatory Template or Form for Custody Evaluators to Follow When Preparing Reports.

- As an example, California recently enacted a law that specifies what custody evaluators must assess

Structuring Evaluations

- Establish clear guidelines for form & content of reports & methods of evaluation, e.g. template from Child Abuse Solutions <http://www.childabusesolutions.com/> ;
AUSTRALIAN STANDARDS OF PRACTICE FOR FAMILY ASSESSMENTS AND REPORTING
- List specific information needed (NCJFCJ):
 - Exposure of children to DV
 - Impact of abusive behaviors on each parent, each child, and each parent/child relationship
 - Short- and long-term safety concerns for children and/or a parent
 - Do NOT allow Parent Alienation Syndrome
 - Psychological testing – follow professional guidelines

Problem: Assumption that joint custody/ parenting time is best option for the safety & welfare of children

- This assumption can outweigh evidence of harm to children from child and domestic abuse

■ Possible Solution:

Presumptions regarding joint custody/parenting time should be avoided. Reviewers of research conclude the safest outcomes are achieved through individualized assessments of the best interests of the children

Problem: Domestic abuse often not taken seriously in custody/visitation decisions. When considering the best interests of the child, child maltreatment and IPV are often given equal or less weight than other factors

■ Possible Solution: a) Create Presumption that Abusers Should Not Have Custody.

- Scientific reviews clearly show the negative impact on children of being exposed to IPV & the high risk the domestic abuser will abuse them.

Presumption abuser not have custody (cont.)

- The 1994 Model Policy of the National Council of Juvenile and Family Court Judges includes this presumption
- About 20 states have not adopted this presumption
- Evidentiary standards vary across states
- Some states are reluctant to adopt this presumption because the evidentiary standard to establish IPV occurred seems too high.

■ b) Possible Solution:

- Enact best interest factors that give extra weight or priority to child maltreatment and IPV - 8 states give extra weight to IPV as a factor
- Louisiana makes the potential for child maltreatment the primary factor
- Enact best interest factor law as recommended by Maryland General Assembly Commission on Child Custody Decision-making (2014) - inform the public & professionals about evidence they will need in a court proceeding. Also, allows exemptions for IPV to be clearly stated in best interest factors & ability to view all factors through lens of IPV

Problem: Assumption made that survivor-parents must always facilitate a good relationship between the children and their ex-partners

- Parents who raise concerns about children's contact with an abusive ex-partner may be labelled as "uncooperative" or "parental alienators", which is then used against them in the custody determination
- Two studies show that states with "friendly parent" standards have higher rates of recommendations for custody to domestic abuser. This was the case even when there is a presumption that abusers should not have custody.

“Parental Alienation” Claimed

“I naively thought that, you know, if someone molests their kid, I thought they’d just go to jail. That was my impression. So I was so taken off guard by what was going on. It was like being in the twilight zone. ... The court appointed psychologist who testified to this parent alienation syndrome had never read the medical reports, he never read the police reports, he never even interviewed my children about abuse. ... It seems to me that the whole [court] system couldn’t have cared less about my kids.” (Lasseur & Tatge, 2005, p. 14–21)

NIJ Study of State Custody Laws (Saunders, 2017)

	Evaluators n= 465	Judges n = 200
Women	60%	43%
Over 50 years old	75%	85%

State Laws Analyzed

- Mandated IPV training for judges & evaluators
- IPV given extra weight in best interest factors
- Presumption abuser should not have custody
- No custody for parent who kills other parent
- Protective conditions for mediation sessions
- Cooperative/friendly parent provision with exemptions for IPV
- Cooperative/friendly parent provision [no ex.]
- Presumption of joint custody in general

Measures

- Vignette of DV Case (modified C. Dalton et al.): serious, coercive-controlling abuse by father; mother with depression, anxiety, & paranoia

(Scale of 0% to 100% likelihood of various recommendations for custody/visitation)

- History of recommendations for various recommendations (evaluators only)
- Core Beliefs:
 - Patriarchal Norms (Modern Sexism Scale)
 - Social Dominance Orientation (social inequality is good)
 - Belief in Just World (world is basically just)
- DV knowledge acquired: areas & methods

Results for Laws: Judges

- Exemption to friendly parent provision → higher likelihood of custody recommended to the abused mother in the vignette (72% average likelihood vs. 49%) AND
- → lower likelihood of joint custody (9% average likelihood vs. 21%)
- Friendly parent provision → greater likelihood of joint custody (22% average likelihood vs. 8%)
- Above findings hold with controls for demographics, DV/custody beliefs, knowledge of DV

Results: Evaluators

No significant
relationships between the
laws and the custody
outcomes for evaluators

Possible Solutions

- **Legislation stating that parental reports of child or spousal abuse cannot be used against a parent in custody/visitation determinations.** Michigan law: “A court may not consider negatively for the purposes of this [“friendly parent”] factor any reasonable action taken by a parent to protect a child or that parent from sexual assault or domestic violence by the child's other parent.”
- **Enact exemptions for the “friendly parent” standard in IPV cases** (At least 8 states so far)
- **Mandate training on the reasons survivors are reluctant to have children in unsupervised contact with abusive ex-partner.**

Problem: Assumption that co-parenting is always possible and is preferable in IPV cases

- **Co-parenting and even the simplest communication between ex-partners may be impossible**
- **Possible Solution: Training on assessment methods to determine what is feasible: co-parenting, parallel parenting, or no contact between parents?**

Pressure to Co-Parent

“[The guardian ad litem] said it over and over, ... “until mother gets over her fear of the father, there will be no progress here.” She – she told my attorney that I need to get over my – she called it “my victim status.” ... Everyone’s just telling you like you have to co-parent.”

(Saunders et al., 2011, supplementary material deposited with the National Archive of Criminal Justice Data, p. 14)

Problem: Coercive behavior is often ignored when making custody and visitation decisions.

- Coercive/controlling behaviors negatively impact survivors & children to the same extent as physical abuse.
- In one study, only 23% of evaluators paid attention to coercive behavior in a vignette depiction of abuse (Saunders, Faller & Tolman, 2011)
- Those attending to coercion recommend safer parenting plans & are more likely to recommend custody for survivor-mothers. Such responses are related to the extent of IPV training.

Possible Solutions

- Expand the definition of abuse in policies and training material to include coercive behavior
- Use assessment tools that measure coercion
- Use assessment of coercion to tailor recommendations – for example guidebook for evaluators from the State of Wisconsin includes steps to consider when there is coercion and no physical abuse. Also see Association of Family and Conciliation Courts' Guidelines for Examining Intimate Partner Violence (2016)

Complexities of Assessment

- Trauma can lead to memory problems that make victims appear non-credible
- Victims may recant from fear, family pressure, protecting someone they feel close to, protect career of partner, etc.
- Some proponents of parental alienation believe it is easy to discern real and fake child abuse, e.g. claim that all child abuse victims stay attached to the abuser & thus do not show signs of alienation.

Association of Family & Conciliation Courts: Guidelines for Evaluators Examining Effects of IPV (2016)

- Traumatized party may react or respond unexpectedly to evaluator inquiry.
- Coercive controlling behaviors may exist in the absence of past or recent physical violence.
- Child may deny or minimize violence
- Protective parenting may only be understood in context of IPV

Problem: Professionals may not be aware of heightened lethality risks to parents and children after separation

- **Possible Solution: Mandate training for all professionals on lethality assessment methods. Mandate lethality assessments in all settings by all professionals.**
- Training and valid measures are available, including online training.

Problem: Gender Bias Against Mother-Survivors

- **Related to myths about custody-visitation in domestic abuse cases**
- **Related to recommendations that abuser have joint/sole custody, unsupervised visits, and mediation**

Beliefs & Recommendations of Judges and Evaluators

(Based on Saunders, D., Faller, K., & Tolman, R., 2011, Child Custody Evaluators' Beliefs About Domestic Abuse Allegations)



Possible Solutions

- **Mandate gender bias reduction training** – efforts need to be sustained. Breaking prejudice habit is like breaking any habit
- **Screen out evaluators who show bias.** Kleilitz and her colleagues (1997) suggest specific questions to ask of potential evaluators to assess whether the evaluator has potential misconceptions or biases about IPV.

Strategies to Reduce Implicit Bias (National Center for State Courts)

- Raise awareness of implicit bias – take online tests:
<https://implicit.harvard.edu/implicit/takeatest.html>
- Identify & consciously acknowledge real group and individual differences
- Routinely check thought processes & decisions for possible bias

Biases to Resist/Avoid: (AFCC Guide for child custody evaluators)

- False assumptions about IPV & co-parenting
- Misapplication of dominant cultural norms about IPV
- Gender stereotypes & role expectations that normalize abuse & discrimination
- Hypotheses not informed by existing research

Limit Bias Through: (AFCC, 2016)

- Self-assessment
- Continued collection of information
- Updating central hypotheses
- Seeking professional consultation

Problem:

Mental health symptoms of survivors may not be adequately assessed as being caused by traumatic events

- **Can mistakenly be interpreted as chronic traits affecting parental fitness**

Possible Solutions:

a) Mandate training for all professionals on the traumatic effects of IPV, including the trauma of possibly losing child custody or of having unsafe visitation arrangements.

b) Enact legislation, such as that in Louisiana, stating that evidence that an abused parent suffers from the effects of past abuse by the other parent shall not be grounds for denying that parent custody.

Use of Psychological Tests

- Psychological testing was given moderate amount of weight in one survey of evaluators —less than interviews with family members, observing parent-child interactions, reviewing police and medical records and contacting therapists (Bow & Boxer, 2003)
- Instruments for DV assessment: 16% listed only a measure of mental health functioning (e.g., MMPI). They were less likely to have training in screening for DV and assessing dangerousness (Saunders et al., 2011)

Practice dilemma – interpretation of mental health symptoms

- Psychological symptoms are best viewed as traits that are chronic and probably indicate the person has serious shortcomings as a parent

VS

- Psychological symptoms are best viewed as stemming from traumatic conditions such as physical, emotional and sexual abuse over a period of time. Parenting ability might be affected, but can return after a period of safety

Problem: Children and Survivors Can be Endangered in Connection with Child Visits

- Children can be harmed if the visits are unsupervised or poorly supervised. Survivors can be endangered during the process of exchange.
- **Possible Solution: Place Conditions on Visitation with the Child**
 - transfer of the child for visitation must occur in a protected setting
 - visitation shall be supervised by another person or agency
 - perpetrator shall complete perpetrator program

Promising Developments

- Increased domestic violence training for judges, attorneys, evaluators and other professionals
- Expansion of supervised visitation programs: conditions can be ordered for abuser prior to or concurrent with visitation
- “Fathering after violence” programs: Opportunities to engage offenders, heal effects of abuse & decrease abuse of ex-partner.
- Men’s engagement programs for prevention, e.g. MenCare

**THANK YOU FOR YOUR
ATTENTION!**

**QUESTIONS AND
COMMENTS ARE
WELCOME!**

Additional Resources

- Battered Women's Justice Project
<http://www.bwjp.org/our-work/projects/national-child-custody-project.html>
- Praxis International: <http://www.praxisinternational.org/>
- Family Violence Department, Nat'l Council of Juvenile & Family Court Judges:
<http://www.ncjfcj.org/dept/fvd/>
- Leadership Council on Child Abuse & Interpersonal Violence:
<http://www.leadershipcouncil.org>
- Futures Without Violence <http://www.futureswithoutviolence.org/>