

WHEN BATTERED WOMEN LOSE CUSTODY:

Dangerous Parents or Systems Failure?

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When a mother enters a visitation/exchange program as the visiting parent, workers may be quick to assume she failed as a parent or, worse, that she's dangerous. After all, her referral to the center probably came at the end of a lengthy process of expert evaluation and court hearings. However, in all too many domestic violence cases, community systems have failed her. There is growing evidence that gender bias and myths about battered women stack the cards against them in child custody disputes. Ironically, their very attempts to protect their children may make it more likely they will lose custody to an abusive ex-partner.

Slowly, battered mothers have received increased legal protections. For example, some states in the U.S. exempt them from mandatory mediation or make it easier for them to move a safer distance from an abuser. Approximately half of all states have a legal presumption that an abuser should not have sole or joint physical custody. In the remaining states, the judge must consider domestic violence in custody and visitation decisions, but as just one of many factors for consideration. Canada has no presumption in its federal law against granting custody to abusers and the law states that maximum contact should be given to the noncustodial parent. However, protections are increasing in some provinces through consideration of domestic violence as a factor in decision-making. Some provinces also apply conditions to temporary protection orders and order abusers into treatment as a condition of visitation. With new legal protections have come more domestic violence training and resource manuals for judges, custody evaluators, and others involved in custody decisions.

Despite this progress, misconceptions and faulty practice continue. One common misconception is that allegations of domestic violence are common in disputed custody cases. There is also no evidence, despite claims from fathers' rights groups, that false allegations of domestic abuse or child abuse are common, especially from mothers. On the contrary, evidence shows that false allegations are rare. In addition, a recent comparison of mothers' and fathers' abuse allegations showed that mothers' allegations were substantiated more often. Another misconception is that cases labeled as "high conflict" do not involve domestic violence. It is now clear that domestic violence is a current or past reality in the majority of these "high conflict" relationships. Domestic violence simply goes undetected in many cases, an oversight that increases danger to children and their mothers.

More alarming are findings that, even when detected, domestic violence is often not considered or taken seriously in court decisions and mediators' and evaluators' recommendations. A 1990s study found that custody evaluators did not consider domestic violence to be a major factor in their recommendations, yet they often considered parental alienation to be crucial. In a more recent study, evaluators reported that domestic violence weighed heavily in their recommendations, but only a third of them attempted to systematically detect the violence. The impact of the violence must also be considered. Psychological and custody evaluations can be misleading when a survivor's trauma history is ignored. Her traumatic stress symptoms can mimic severe mental illness or personality disorders. Survivors are usually at a disadvantage due to the effects of overwhelming stress, not only from domestic violence, but from the intense fear of losing a child to an abuser.

Several studies show that knowing the history of domestic violence appears to have little influence on judges' decisions and mediators' recommendations. A likely explanation for courtroom outcomes is gender bias. Gender bias commissions over the last decade report frequent, negative stereotyping of women, especially about their credibility. When domestic violence is not adequately understood, victim-blaming, accusations of lying, and trivializing the abuse are more common. Judges may hold images of the "good" or "typical" victim -- terrified and submissive - and lack understanding of those who are angry or with a history of substance abuse. A study of cases brought to appeal showed reversals in the mothers' favor when domestic violence was considered. Not surprisingly, there is some evidence that female judges show more support for victim protection. Training also seems to matter. In one study, judges with domestic violence education and more knowledge of domestic violence were more likely to grant sole custody to abused mothers.

A further barrier for battered women is that some laws and psychiatric theories often put them in a "Catch-22." As a result of the "friendly parent" legal standard and the nonscientific "parent alienation syndrome," actions to protect themselves and their children often work against them. In many cases, battered women are reasonably reluctant to co-parent out of fear that their ex-partner will harm them or their children. These women may sense that separation increases the risk of homicide, which in reality it does. In addition, physical abuse, harassment, and stalking of women continue at fairly high rates or escalate after separation, affecting as many as 35% of survivors. Up to a fourth of battered women report that their ex-partner threatened to hurt the children or kidnap them. Women may be reluctant to reveal their address or allow unsupervised visits. Yet such reluctance means they are more likely to be seen as "unfriendly" or "uncooperative," which counts against them in the custody criteria of most states and the Canadian Divorce Act. Claims of "parent alienation syndrome" (PAS) similarly place women in a Catch-22. If mothers report child abuse or even raise concerns about danger to their children, some evaluators and courts immediately label them as "alienators." In the original formulation of PAS, no investigation of her allegations has to occur and she is labeled as pathological simply for exercising a legal right. The syndrome assumes that programming has occurred if an allegation is made and thus has a circular definition. PAS does not have legal standing, yet the general concept or label may influence decision makers.

What are the implications of these findings for supervised visitation/exchange programs? First, providers would be wise to check for their own potential biases about visiting mothers who are survivors. Second, comprehensive provider training is essential. Topics need to include methods for detecting abuse and assessing danger, the impact of domestic violence on children, the ways that abusers often manipulate court and social systems, and, in particular, the impact of violence on survivors. Visiting mothers are often depressed and have post-traumatic stress symptoms as a result of being battered and losing their children. Providers need to realize that depression and post-

traumatic stress symptoms often manifest as anger or apathy. Without such understanding, providers may be quick to label these mothers as “hostile,” “uncooperative,” or “disinterested.”

Third, although supervised visitation/exchange programs cannot act as advocates for individual women who lose custody disputes, they can raise concerns about apparent systems failures with their community’s domestic violence coordinating councils. Building a close collaborative tie with your local coordinating body can place visitation/exchange programs in a position to help make changes in local policies and practices. (For more information on advocacy roles for supervised visitation programs, see “Guiding Principles: Safe Havens Supervised Visitation and Safe Exchange Grant Program” at www.praxisinternational.org/pages/visitation/materials.asp.)

In addition, providers may need new skills for protecting mothers and their children. Supervised Visitation Network (SVN) standards require that programs “refer any victim of domestic violence to a resource expert that can assist and help the victim in developing a personal safety plan.” This assumes that program staff have the skills and screening tools to detect domestic violence among their clients. In addition, a referral for safety planning may not go far enough. A referral for legal advocacy, such as help with stalking, threats, and restraining order violations, may be necessary to protect a mother and her children. Recent evidence shows surprisingly high rates of stalking and threats occur between visits and exchanges. Close working relationships with domestic violence programs will help make the most meaningful and effective referrals - through first hand knowledge of these programs and the ability to learn detection and referral skills from them. By failing to take steps to help, supervised visitation centers risk being one of a long line of so-called “helping systems” that fail survivors, adding another blow to their psyches. (For more information on domestic violence practice in supervised visitation see “Beyond Observation: Considerations for Advancing Domestic Violence Practice in Supervised Visitation” at <http://endabuse.org/programs/children/>).

Providers may be reluctant to make referrals or give other help for fear of violating a standard of “neutrality.” However, SVN Standards are clear: “Neutral/neutrality means maintaining an unbiased, objective, and balanced environment. . . . Being neutral does not mean providers disregard behaviors such as abuse or violence of any kind.” Centers can create a neutral “environment” for parents to visit with their children, but they should never be neutral toward violence against either children or adults. Specialized help can also be given to abusers without violating the standard of neutrality. Supervised visitation programs are in a unique position to encourage men to become responsible fathers, which in turn can increase their motivation to participate in abuser intervention and fathering-after-violence programs. (For more information on fathering-after-violence programs, see “Fathering After Violence: Working with Abusive Fathers in Supervised Visitation” at <http://endabuse.org/programs/children/>)

On a broader level, programs can work with other agencies and professional organizations to ensure that judges, mediators, custody evaluators and other professionals have adequate domestic violence training. Systems advocacy can mean working to remove “friendly parent” standards for cases of domestic violence. In this way, programs can help those who have suffered doubly - from the personal injustice of intimate partner abuse and from the social injustice of “helping systems” that fail to help. A likely result will be greater long-term safety for the children and parents who are your clients.