

**CALIFORNIA
PROTECTIVE
PARENTS
ASSOCIATION**

www.protectiveparents.com

Karen Anderson, Executive Director

Certified Mediator in accordance with the California Dispute Resolution Programs Act

Certified Domestic Violence/Sexual Assault Counselor by Office of Criminal Justice Planning Standards

Date: December 11, 2002

Attention: Honorable Ronald M. George, representing the California Supreme Court
Diane Nunn, representing the Judicial Council of California
Victoria Henley, representing the Commission on Judicial Performance

Re: Failure of family courts to protect victims of domestic violence and child abuse

STATEMENT OF ISSUE

We, the directors representing the boards and membership of: California Alliance Against Domestic Violence, California National Organization for Women, California Protective Parents Association, Domestic Violence Center of Santa Clarita Valley, and Child Abuse Solutions, Inc., state the problematic issue we bring to your attention as: the failure of family courts to protect victims of family violence and further, to misapply law to punish the victims for attempting to protect themselves and/or their children. Specifically, custodial parents who complain of abuse by the other parent are routinely losing custody of their children to the abusive parent *without a finding made under due process protections, that the custodial parent is unfit.*

This problem is particularly pervasive for custodial mothers who attempt to protect their children from an abusive father. Scenarios as described in the enclosed Abbreviated Case Study are commonplace. In 1996, the Judicial Council of California documented this problem in its report on gender bias in the courts. While the state legislature subsequently created new laws to help restore justice to victims of family violence in divorce litigation, the legislative progress is not being reflected in judicial decisions made in the trenches of family courtrooms.

California Penal Code and Welfare and Institutions Code law requires parents to report suspected abuse of their children and to take action to protect them, under the threat of criminal prosecution for "failure to protect." Likewise, parents are required to protect their children from domestic violence. Yet when the victims seek protection from the family courts, their reports of abuse are often met with hostility, and they are punished with loss of custody for lawfully bringing their complaints to the court. We find it intolerable that parents who seek protection from family violence through the courts should lose custody of their children, even though the complaining parent has not been found to be unfit by applicable legal standards.

REQUEST FOR ACTION

In the interest of justice, as victim advocates, we request the following:

I. To be given the opportunity to present the scope of this problem to the Chief Justice, the Judicial Council, and the Commission on Judicial Performance in a public hearing.

II. That a formal Policy Statement be issued to all family courts in clear and concise language, as to:

- A. How allegations of family abuse are to be handled by the court, including but not limited to:
- 1) a clear statement prohibiting the use of “alienation” theories and/or any other alleged psychological disorders that do not meet Frye-Daubert standards of evidence, and/or are not generally accepted in the professional community, and/or are not listed in the DSM
 - 2) a clear statement that a child who is identified by the State Victims Compensation Board as a victim of the crime of physical or sexual abuse, has met a civil burden of proof that child abuse occurred and may not be placed in the sole or joint legal or physical custody of a parent who the child has identified as the offender of the crime for which the child is authorized to receive benefits.
- B. The legislative intent of supervised visitation as a temporary safeguard limited to instances in which a child may be at risk of imminent danger resulting from physical abuse, sexual abuse, parental alcohol or drug abuse, or other *criminal* conduct which poses a threat to the child’s physical safety
- C. The appropriate implementation of new laws and rules of court for evaluations through the use of a checklist template

III. Support for legislative resolution in the form of:

- A. Enactment of a Crimes Against Children Citizen Review Panel with the legislative power to:
- 1) Review any family court, juvenile, or probate case in which a child has been placed in the sole or partial custody of a parent who the child has identified as a perpetrator of physical or sexual abuse corroborated by a law enforcement report, medical report, or a report made by a mandated reporter of child abuse
- and*
- 2) Having the power to act on behalf of the child as a guardian ad litem to file for a trial de novo wherein all findings by the Panel regarding a need for protection of the child must be given presumptive weight
- B. Simplification and standards of timeliness for the filing of complaints against judges, lawyers, and mental health providers in any case involving allegations of domestic violence and/or child abuse
- C. Laws to insure appropriate and ethical conduct of court appointees in any case involving allegations of domestic violence and/or child abuse through:

Videotaping of all contacts between a child and anyone appointed by the court to provide a service to the child, which can be subpoenaed by any party to a case for the purpose of challenging reports, sworn testimony, and/or in court statements made by the service provider

We believe that there is no more urgent issue in the administration of justice in California's courts than to provide protection for victims of abuse. We appreciate your time and consideration of our requests and look forward to working together to bridge the gap between the administration of justice and the reality of justice for victims of family violence.

Sincerely,

(Signatures on Original)

Karen Anderson, California Protective Parents Association

Ellyne Bell, California Alliance Against Domestic Violence

Helen Grieco, California National Organization for Women

Kathie Mathis, Domestic Violence Center of Santa Clarita Valley

Meera Fox, Child Abuse Solutions, Inc.