

# Protective Mothers, Endangered Children: Tracing System Failure for Children of Divorce and Separation

by Geraldine Butts Stahly, Connie Valentine, and Veronica York

*Data from original research on responses of 399 non-offending mothers from 39 states are presented regarding custody outcomes for children of divorce and separation when family violence was reported to law enforcement, child welfare services, attorneys for children, mediators, evaluators and judicial officers in United States family courts. Responses from 163 California mothers were compared with responses from 236 mothers from 38 other states. The principal finding is that, when mothers asked for protection for their children from abuse by fathers, their children were frequently placed at further risk. California mothers lost primary custody to alleged abusing fathers more often than mothers in other states (85.3% versus 74.6%). The significance of the findings is discussed, along with recommendations for system improvement and areas for further study.*

## INTRODUCTION

Most custody and visitation matters are settled by parents without outside assistance. Cases in this study represent situations in which custody and visitation cannot be resolved amicably and often involve various forms of

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California State University at San Bernardino professor **Geraldine Butts Stahly, Ph.D.**, with her interns, California Protective Parents Association and Child Abuse Solutions, Inc., developed, distributed, collected, and analyzed 101 survey questions on the experience of mothers attempting to protect their children from abuse, and presented the original national data upon which this article is based in part at multiple workshops and poster sessions.

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domestic abuse.<sup>1</sup> When law enforcement, social services and court-connected non-judicial officers fail to act on reports of violence or sexual abuse despite credible disclosures or a preponderance of evidence of such abuse, children may be left or placed in danger by courts. When children are not protected from abusive parents by the entities designed to protect them, the system has failed and institutions have betrayed them.

Leading authorities on child abuse conservatively estimated in 2008 that at least 58,500 children<sup>2</sup> of divorcing and separating parents were being court-ordered every year into the custody of parents identified as violent or sexually abusive. Government data is not available for an exact number. With 11.91%<sup>3</sup> of the national population, California is estimated to have at least 7,000 such cases annually. An ongoing study by Center for Judicial Excellence finds that California has the nation's highest number of preventable child homicides<sup>4</sup> committed by a divorcing or separating parent.

The subject of mothers losing custody and children being placed at risk by family courts has long been a subject of study. A literature review in Google Scholar yielded over 225,000 results on various aspects of the problem, dating back to the early 1980's.<sup>5,6</sup> Articles have been written and research has been conducted by government agencies such as the United States Department of Justice and the National Institute of Health, along with courts, universities and private professionals. A small sample of studies are cited which demonstrate that for many years gender bias<sup>7,8,9</sup> against women by family courts has been widespread; responses by law enforcement<sup>10,11</sup> and child

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<sup>1</sup> *Domestic Violence in Court-Based Child Custody Mediation Cases in California*. Judicial Council of California (November 2002).

<sup>2</sup> Silberg, Joyanna (2008). *How many children are court-ordered into unsupervised contact with an abusive parent after divorce?* Leadership Council on Child Abuse and Interpersonal Violence.

<sup>3</sup> State Population by Rank. Infoplease.

<sup>4</sup> Child Murder Data, Center for Judicial Excellence.

<sup>5</sup> Polikoff, N. D. (1981) *Why are mothers losing: A brief analysis of criteria used in child custody determinations*. Women's Rts. L. Rep.

<sup>6</sup> Chesler, Phyllis (1986). *Mothers on Trial: The Battle for Children and Custody*, Updated 2011, Barnes and Noble.

<sup>7</sup> *Gender Bias Study of the Court System in Massachusetts*. (1990). Massachusetts Supreme Judicial Court 24 New Eng. L. Rev. 745, 748, 825.

<sup>8</sup> *Achieving Equal Justice for Women and Men in the California Courts, Final Report*. Judicial Council of California, Advisory Committee on Gender Bias in the Courts (July 1996).

<sup>9</sup> Berg, Rita, *Parental Alienation Analysis, Domestic Violence and Gender Bias in Minnesota Courts*. Law & Ineq (Winter 2011) at 5, 25–26.

<sup>10</sup> Townsend, M., Hunt, D., Kuck, S., & Baxter, C. (2006) *Law enforcement response to domestic violence calls for service: Final report*. US Department of Justice, Office of Justice Programs, NCJ 215915.

<sup>11</sup> Klein, Andrew, *Practical Implications of Domestic Violence Research: For Law Enforcement, Prosecutors and Judges*, U. S. Department of Justice, Office of Justice Programs, NIJ Special Report (June 2009).

welfare services<sup>12,13</sup> to domestic violence and child abuse have been inadequate; mediators<sup>14,15</sup> and evaluators<sup>16,17</sup> frequently miss or overlook domestic violence and family abuse; alienation<sup>18,19</sup> has been used to discredit reports of child abuse; and violence has often been ignored by judicial officers in making custody and visitation decisions.<sup>20,21,22</sup>

This article focuses on systemic failures that lead to a lack of safety for children of divorce and separation and compares case outcomes in California with those in other states.

## METHODOLOGY

The purpose of the study was to examine cases in which non-offending mothers asked for protection for their children after the child disclosed abuse or the mother was a victim of violence. A hard-copy questionnaire with 101 items was distributed at national and international conferences dealing with domestic violence and child abuse, and through the internet from 2002 to 2011. Questionnaire data included demographics, legal history of the custody case,

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<sup>12</sup> Schechter, S. & Edleson, J. L., *In the Best Interest of Women and Children: A Call for Collaboration Between Child Welfare and Domestic Violence Constituencies*. U. S. Department of Justice, Office of Justice Programs, NCJ Number 164401, Journal Mississippi Voices for Children & Youth Vol. 11 Issue: 2 (March-April 1996) Pages: 11–13.

<sup>13</sup> 2010 Mandel, David (2010) *Child Welfare and Domestic Violence: Tackling the Themes and Thorny Questions that Stand in the Way of Collaboration and Improvement of Child Welfare Practices*. Violence Against Women 16(5) 530–536.

<sup>14</sup> Johnson, Nancy E., et. al., *Mandatory Custody Mediation: Empirical Evidence of Increased Risk for Domestic Violence Victims and Their Children*. National Institute of Justice Award No. 1999-WT-VX-0015, 2 (April 2003).

<sup>15</sup> Saccuzzo, D. P., & Johnson, N. E. (2004). *Child Custody Mediation's Failure to Protect: Why Should the Criminal Justice System Care?* National Institute of Justice (NIJ) Journal, 25.

<sup>16</sup> Davis, Michael S., O'Sullivan, Chris S., Susser, Kim, & Fields, Marjory D., *Custody Evaluations When There Are Allegations of Domestic Violence: Practices, Beliefs and Recommendations of Professional Evaluators*. Final Report submitted to the U. S. Department of Justice, Office of Justice Programs, National Institute of Justice (May 2011) NCJ 234465.

<sup>17</sup> Saunders, D., Faller, K., & Toman, R., *Child custody evaluators' beliefs about domestic abuse allegations: Their relationship to evaluator demographics, background, domestic violence knowledge and custody-visitation recommendations*. Final Report submitted to the National Institutes of Justice (October 2011) NCJ 238891.

<sup>18</sup> Bruch, Carol S. (2002). *Parental Alienation Syndrome and Alienated Children - getting it wrong in child custody cases*. 14 Child & Fam. L.Q. 381.

<sup>19</sup> Meier, Joan S. (2020). *U. S. Child Custody Outcomes in Cases Involving Parental Alienation and Abuse Allegations: What Do the Data Show?* Journal of Social Welfare and Family Law, Volume 42, Issue 1.

<sup>20</sup> Meier, Joan S. (2002). *Domestic violence, child custody, and child protection: Understanding judicial resistance and imagining the solutions*, Am. UJ Gender Soc. Pol'y & L.

<sup>21</sup> Cuthbert, C. (2002). *Battered Mothers Speak Out: A Human Rights Report on Domestic Violence and Child Custody in the Massachusetts Family Courts*. Wellesley Centers for Women, Battered Mothers' Testimony Project.

<sup>22</sup> Silberg, Joyanna & Dallam, Stephanie (2019). *Abusers gaining custody in family courts: A case series of overturned decisions*. Journal of Child Custody, Vol. 16, No. 2, 140–169. The Leadership Council on Child Abuse & Interpersonal Violence, Baltimore, MD, USA.

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.

A total of 399 completed questionnaires were collected from mothers from 39 states and data was entered into Statistical Package for the Social Sciences (SPSS) software. 163 (40.9%) of the surveys came from California. 236 (59.1%) of the surveys came from 38 other states. 100% of the sample in this study were female, mothers of a total of 673 children. National data from this study was presented in poster format in 2011<sup>23</sup> and 2014<sup>24</sup> and a subset of the data on child sexual abuse was presented in thesis format in 2011.<sup>25</sup>

This current analysis is a comparison of responses from non-offending California mothers with mothers in other states regarding the treatment of their cases by law enforcement, child welfare services, court-connected professionals and judicial officers to determine if children of divorcing and separating parents in California are less protected than children in other states.

## RESULTS

The data from the study are displayed in two sets: mothers residing in California at the time of their case and mothers residing in other states. The findings demonstrate that, in general, children of divorce and separation across the nation were frequently not protected. This lack of safety was more pronounced in California, as California mothers lost custody of their children to identified abusers more often than mothers in other states (85.3% versus 74.6%). Although the children continued to disclose abuse (73% versus 60.7%), they continued to be unprotected. The following descriptions and figures compare responses from California mothers and non-California mothers and trace the failures of systems and professionals tasked with ensuring their children's safety.

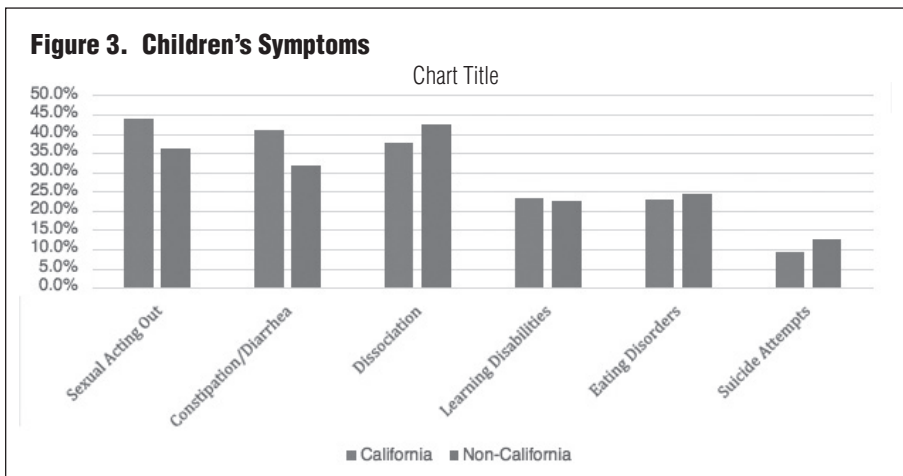
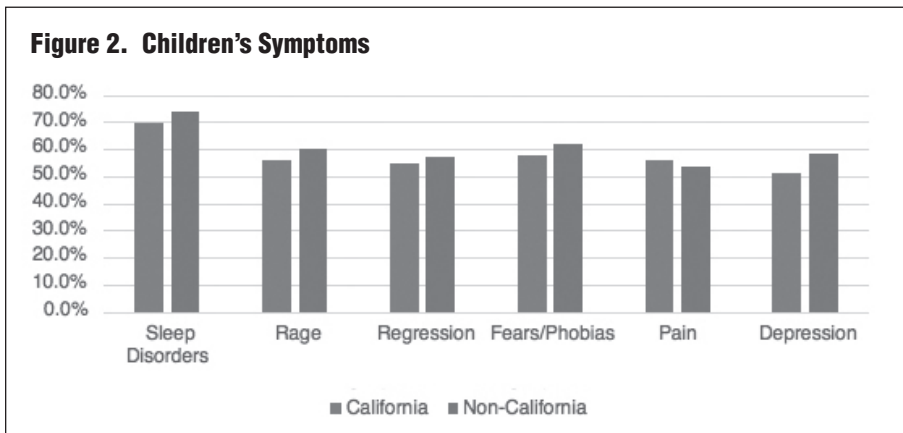
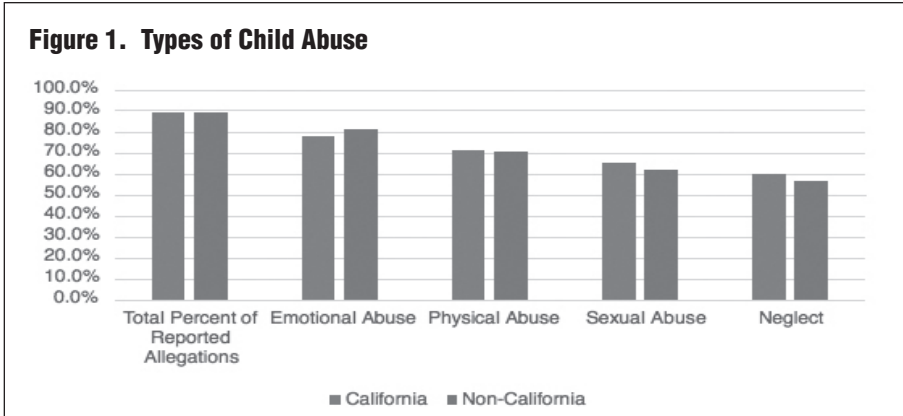
Figure 1 shows that California and non-California mothers who came to family court alleged that the fathers of their children had perpetrated child abuse and neglect at nearly identical high rates (89.2% versus 89.6%). There was very little difference in the rates of types of child abuse allegations by both groups of mothers, which included emotional abuse (78.2% versus 81.1%); physical abuse (71.3% versus 70.4%); sexual abuse (65.4% versus 62.2%); and neglect (59.9% versus 56.6%).

Figures 2 and 3 describe symptoms exhibited by the children. Over half of California and non-California mothers reported similar rates of children's symptoms of distress and trauma, including sleep disorders (70.1% versus 73.9%); rage (56.1% versus 60.4%); regression (54.8% versus 57.1%); fears/

<sup>23</sup> Stahly, G. B., Farris, W., Krajewski, L., Villalobos, J., Stuebner, N., & Thomas, M. (2011). *Abuse Allegations in Custody Disputes: The Experience of Protective Mothers*. Presented at Western Psychological Conference in Los Angeles, California.

<sup>24</sup> Stuebner, N., Krajewski, L., & Stahly, G. B. (2014). *Family Courts' Failure to Protect Abused Children in Custody Disputes*. Presented at Institute of Violence, Abuse, and Trauma.

<sup>25</sup> Stuebner, Nancy, *Custody Outcomes for Protective Parents in Cases with Child Sexual Abuse*. A Thesis Presented to the Faculty of California State University, San Bernardino (September 2011).



phobias (58% versus 61.9%); pain (56.1% versus 53.9%); and depression (51.3% versus 58.8%).

Both groups of mothers also reported their children exhibited other symptoms at lower but still similar rates, including sexual acting out (44.2% versus 36.2%); constipation/diarrhea (41% versus 32%); dissociation (37.8% versus

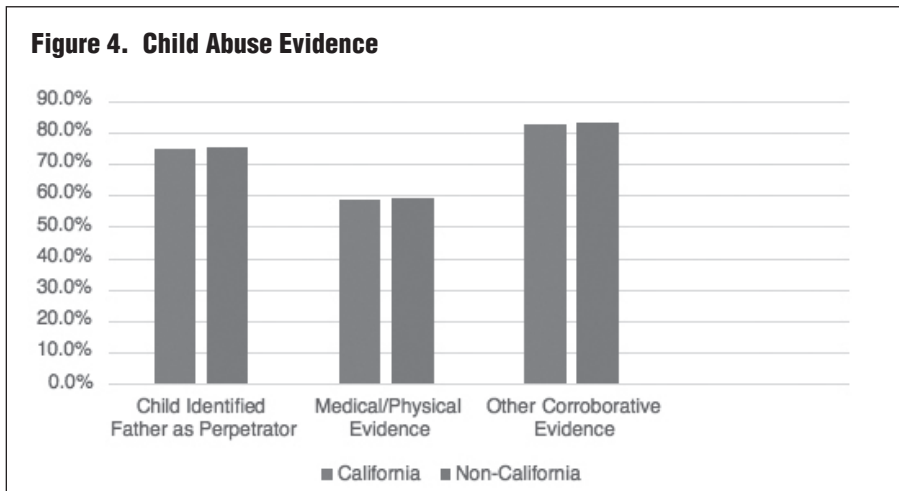
42.5%); learning disabilities (23.4% versus 22.6%); eating disorders (23.2% versus 24.5%); and suicide attempts (9.6% versus 12.7%).

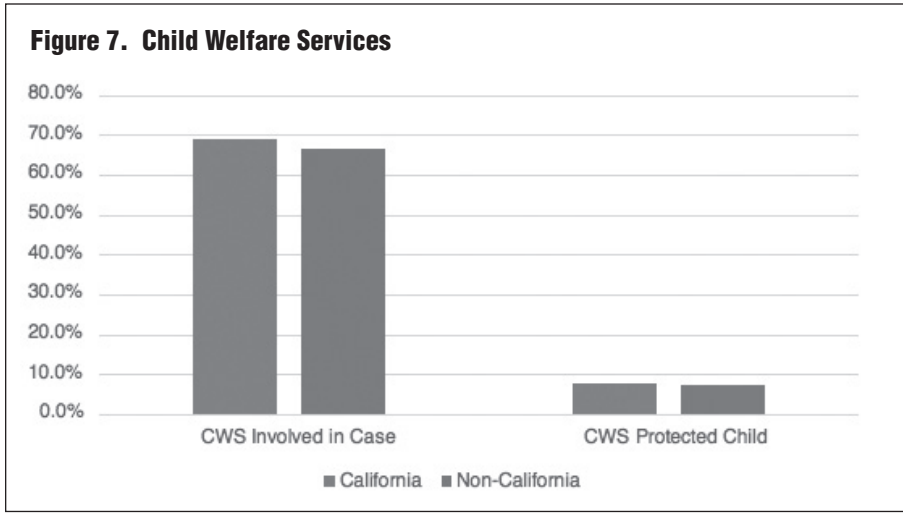
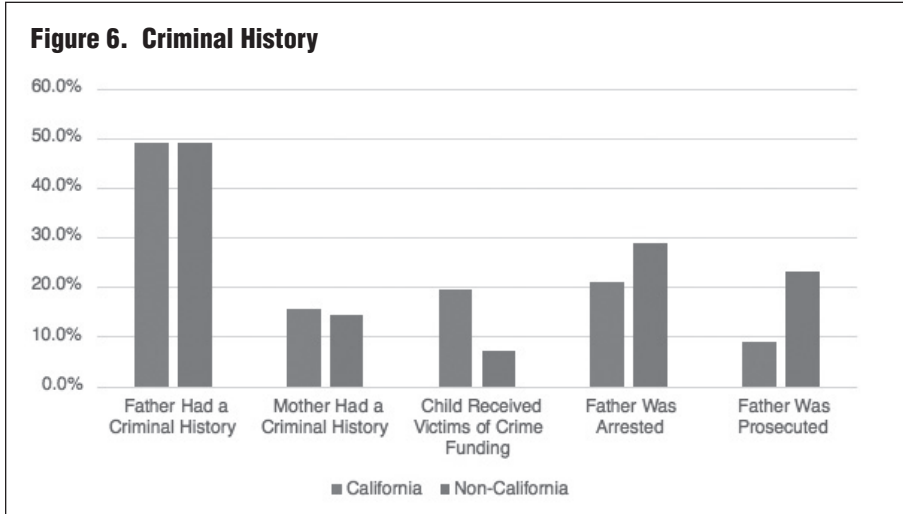
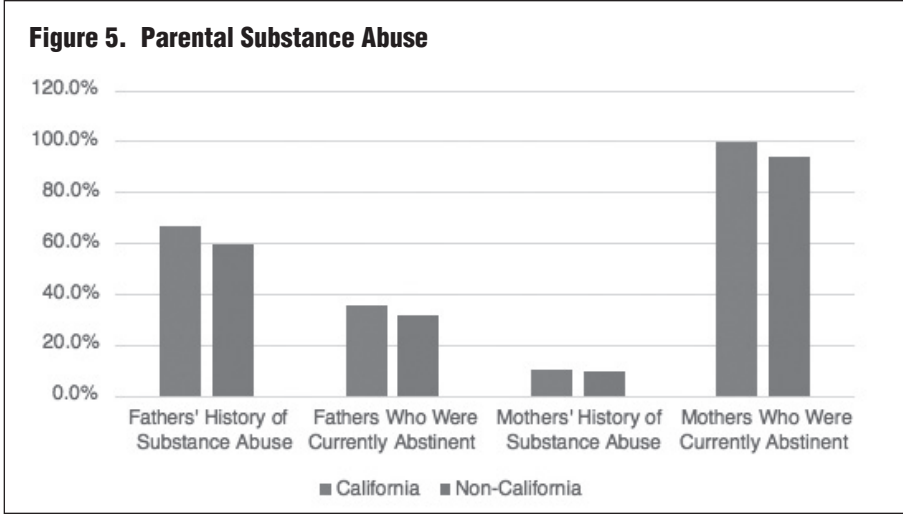
Figure 4 shows that the children not only identified their abusers, but also had physical evidence of the abuse. About three-quarters of California and non-California mothers reported their children had positively identified their fathers as perpetrators of child abuse (74.7% versus 75.6%). Over half of mothers in both groups reported having medical or physical evidence of the child abuse (58.7% versus 59.3%) and most reported other corroborating evidence (82.5% versus 83.3%).

Figure 5 provides data on the high rate of fathers' substance abuse. Over half of California and non-California mothers reported that the fathers had substance abuse problems (66.7% versus 60%) and of those, about one-third of fathers were currently abstinent (36.1% versus 31.8%). A small minority of mothers in both groups (11% versus 10.3%) reported they had experienced their own substance abuse problems and of those, 100% of California mothers and 93.9% of non-California mothers were currently abstinent.

Figure 6 relates to criminal history and the lack of effective law enforcement response to the alleged crimes. Nearly half of both groups of mothers reported that the fathers had prior criminal histories at nearly identical rates (49.3% versus 49.1%) and a minority of mothers reported that they themselves had criminal histories (15.6% versus 14.6%). Many children did not appear to have benefitted from the involvement of law enforcement. More California than non-California mothers reported that their children received Victims of Crime funding for the crimes committed against them (19.7% versus 7.3%), yet California fathers were arrested for spousal or child abuse less often (21.2% versus 29.1%) and prosecuted at less than half the rate of other states (9.2% versus 23.1%).

Figure 7 shows the lack of effective response from child welfare services. Most children did not appear to have benefitted from their involvement, as approximately two-thirds of California and non-California mothers (69.1%

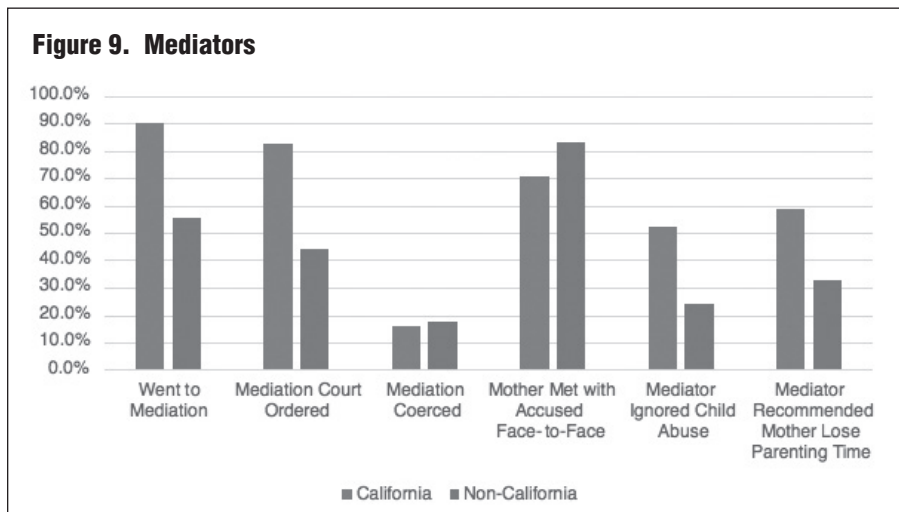
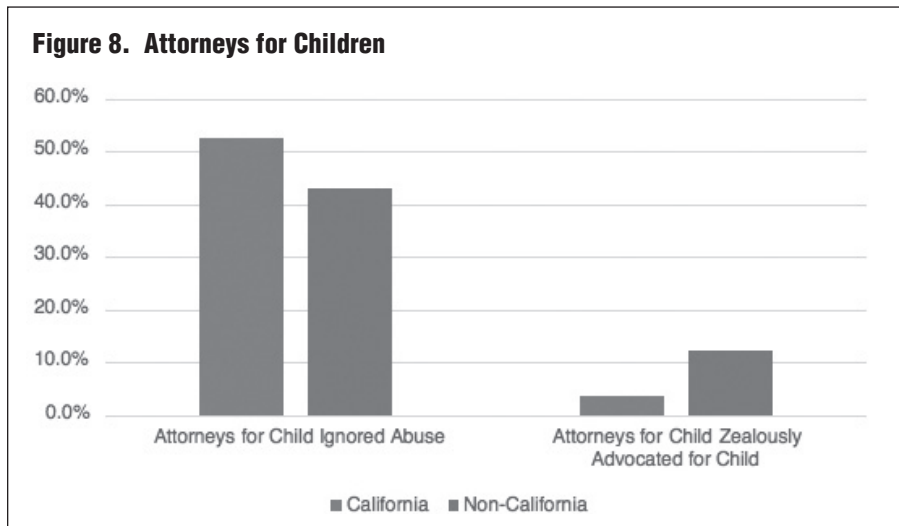




versus 66.5%) reported that child welfare services were involved in their cases, yet protected only a small minority of children (8.1% versus 7.7%).

Figure 8 shows a lack of protection by attorneys appointed to represent the children. Most children did not appear to have benefitted from their involvement. More California than non-California mothers reported that children’s attorneys ignored, minimized or refuted evidence of child abuse (52.6% versus 43.2%) and only rarely zealously advocated for their child clients (3.8% versus 12.3%).

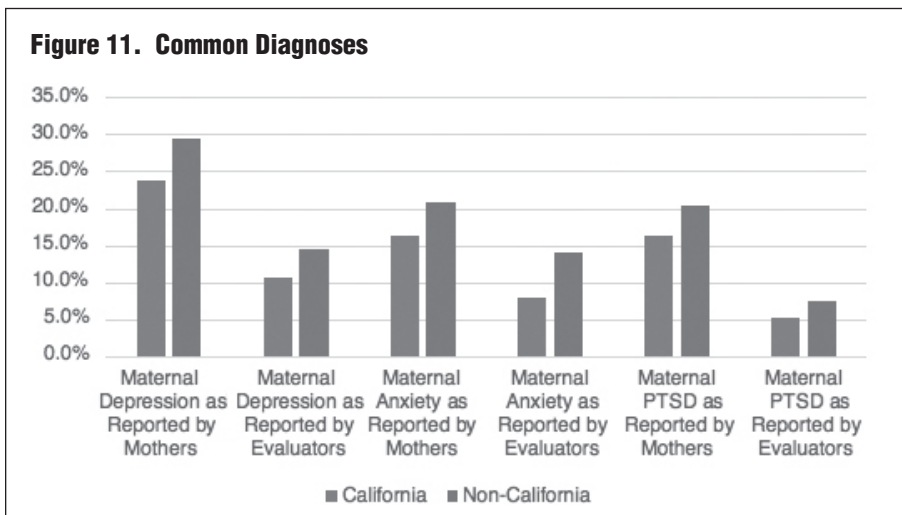
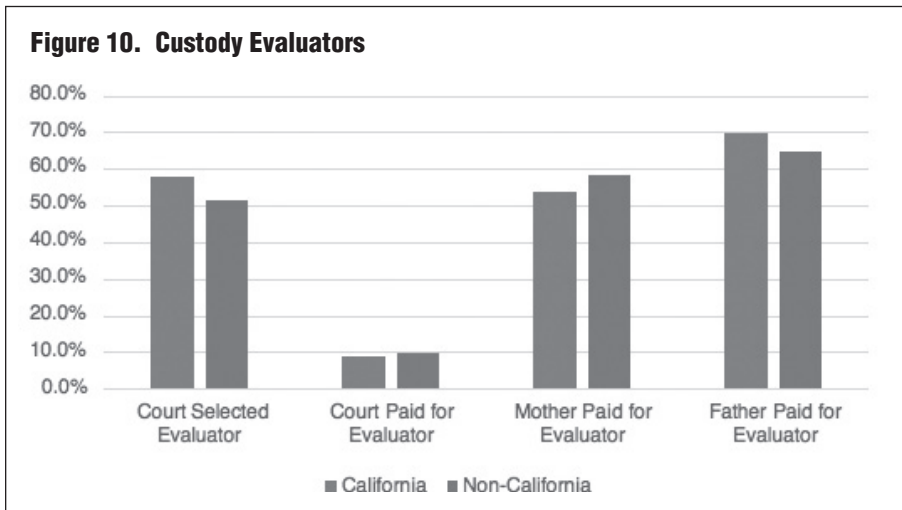
Figure 9 delineates the failure of mediators to protect children, particularly in California where mediation is required in custody disputes. California mothers reported attending mediation much more often than non-California mothers (90% versus 55.6%), which was more often court-ordered (82.8% versus 43.2%),

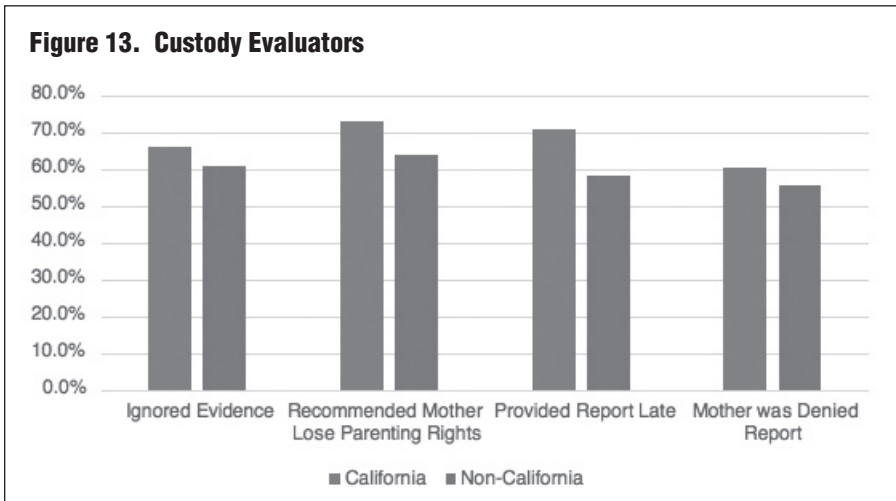
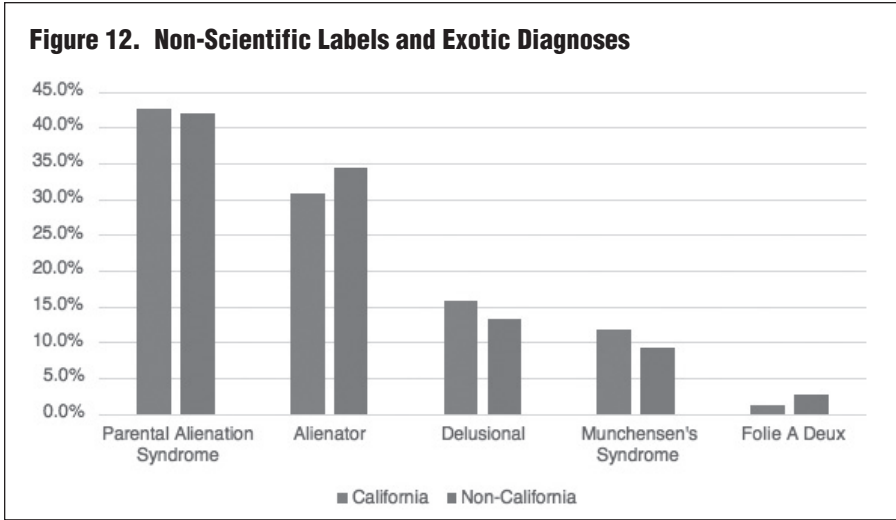




versus 44.1%). Mothers in both groups reported that they were coerced into mediation at nearly the same rate (16.1% versus 17.8%). California mothers reported having to meet face-to-face in mediation with their domestic violence abusers less often than non-California mothers, although still at a very high rate, (70.9% versus 83.3%). Many California children did not appear to have benefitted from mediator involvement, as California mothers were about twice as likely as non-California mothers to report that mediators ignored, minimized, or refuted evidence of child abuse (52.3% versus 24.2%) and recommended that mothers lose parenting time (59.1% versus 32.8%)

Figures 10 through 13 reveal that the professionals who were most likely to fail children were private appointed child custody evaluators, mental health practitioners who were appointed for the court’s needs. Payment of these





purportedly neutral professionals was an issue. Over half of California and non-California mothers reported that the court selected their child custody evaluators (58.2% versus 51.4%), yet courts rarely paid the professionals (9% versus 10%). Mothers in both groups reported that they paid for the evaluation less often (54.1% versus 58.6%) than fathers paid (69.8% versus 64.9%).

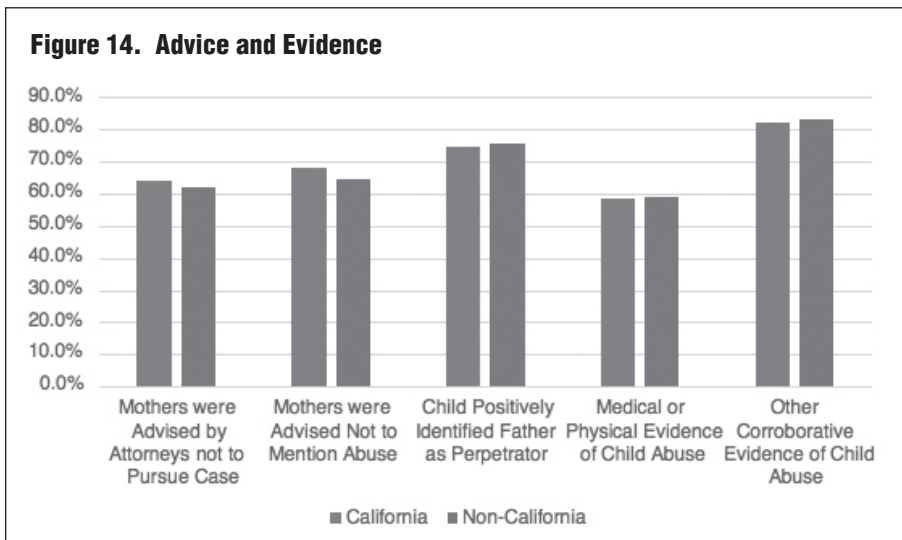
A minority of California and non-California mothers reported they had depression (23.9% versus 29.6%) but evaluators diagnosed them with depression at half that rate (10.6% versus 14.5%). Both groups of mothers also reported they had anxiety (16.4% versus 20.9%), while evaluators diagnosed them with anxiety at a much lower rate (7.9% versus 14.1%). Mothers in both groups, who were often battered women, reported they had Post-Traumatic Stress Disorder (16.3% versus 20.5%) which was again diagnosed by evaluators at a far lower rate (5.3% versus 7.5%).

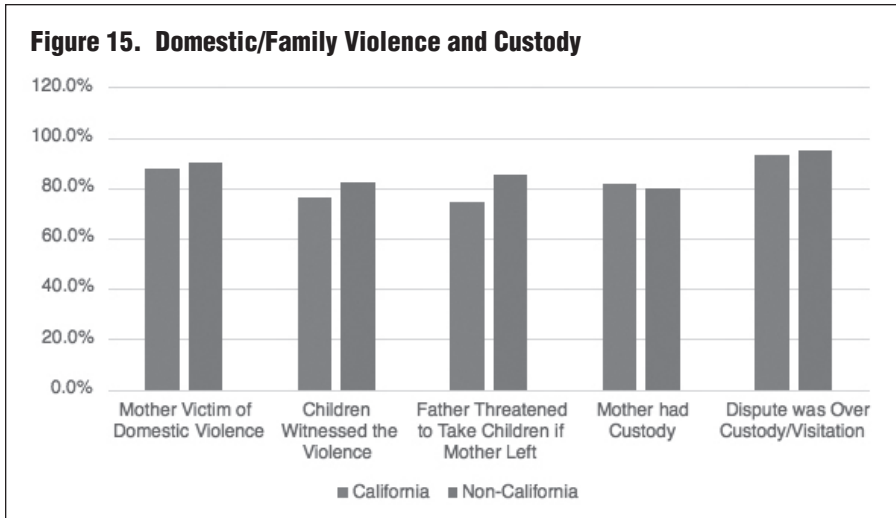
Conversely, both groups of mothers reported that evaluators had assigned non-scientific labels and exotic diagnoses to them, including “Parental Alienation Syndrome” (42.6% versus 42%), “Alienator” (30.9% versus 34.4%), “Delusional” (15.8% versus 13.3%), “Munchausen Syndrome by Proxy” (11.9% versus 9.3%) and “Folie a Deux” (1.3% versus 2.7%).

Children did not appear to have benefitted from the involvement of custody evaluators. Over half of California and non-California mothers reported that evaluators ignored evidence of abuse (66.2% versus 61.1%). More California mothers reported that evaluators recommended they should lose parenting rights (73.1% versus 64%), that the report was provided late (70.9% versus 58.2%) and the mothers were denied a copy of the report (60.4% versus 55.9%).

Figure 14 describes ethical attorneys who advised mothers that court action was risky, even at a loss of income for themselves. Over half of California and non-California mothers reported their attorneys had advised them that pursuing any type of court action against the fathers could negatively affect their child custody (64.2% versus 62.3%) and that they were advised not to disclose child abuse or domestic violence to the family court (68.4% versus 64.7%), despite the evidence of child abuse which is reiterated in this figure showing the mothers in both groups reported that their children positively identified their fathers as perpetrators (74.7% versus 75.6%), and there was medical or physical evidence (58.7 versus 59.3%) along with other corroborating evidence (82.5% versus 83.3%).

Figure 15 shows a large majority of California and non-California mothers reported that the fathers had perpetrated domestic violence against them (88.1% versus 90.5%), that the children had witnessed the violence (76.9% versus 82.5%) and that the fathers had threatened to take the children if the mothers left (74.8% versus 85.4%). At the time they asked the court to protect the





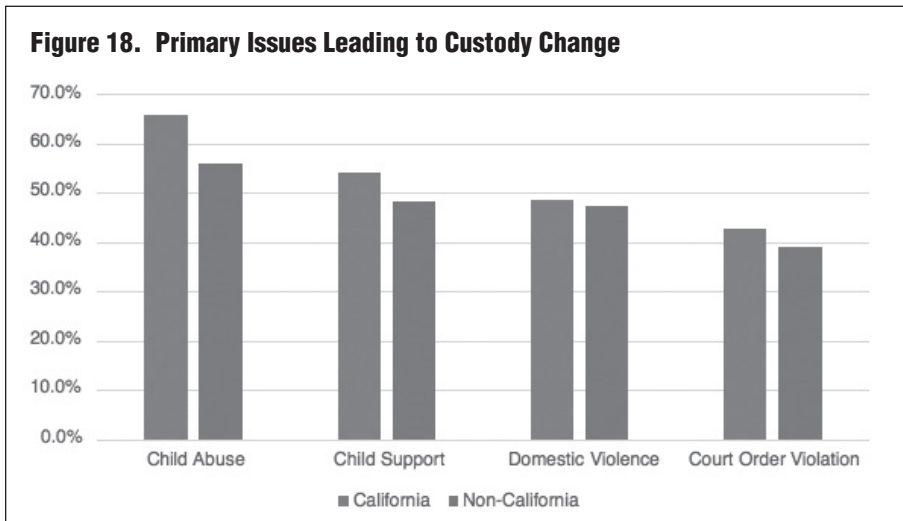
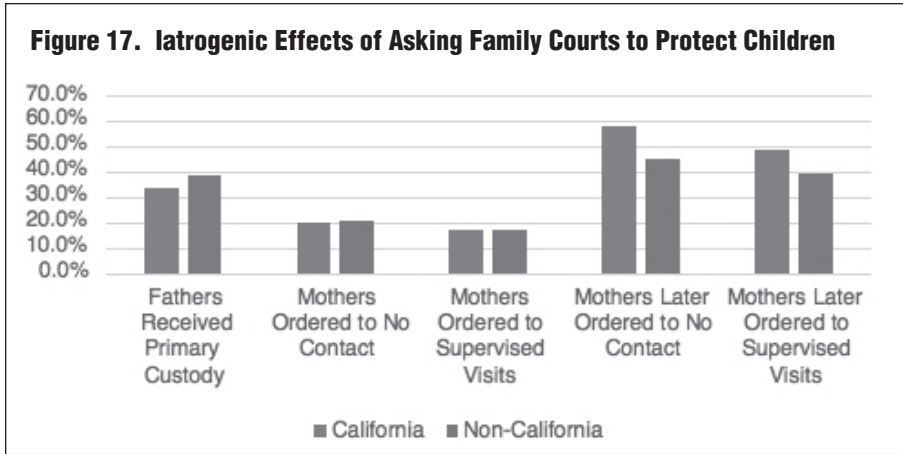
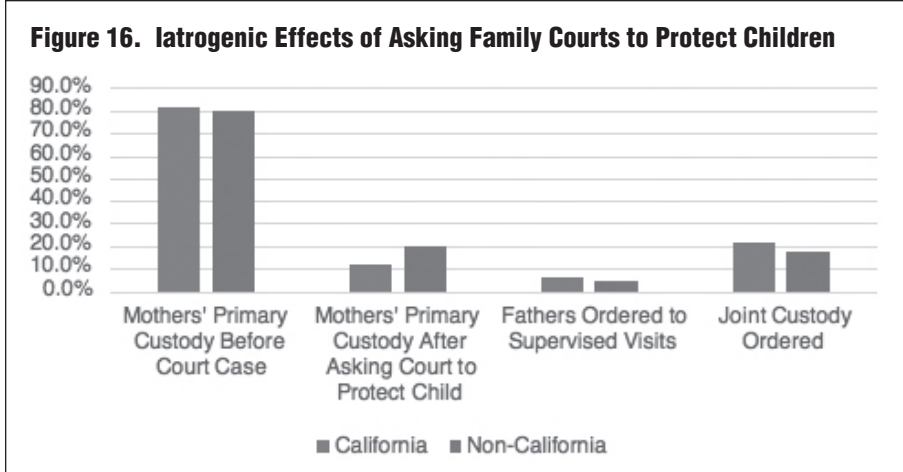
children, most mothers reported they had primary custody (82.1% versus 80.3%), meaning the children lived primarily with them and visited their fathers, and nearly all the disputes were about custody and visitation (93.2% versus 95.3%).

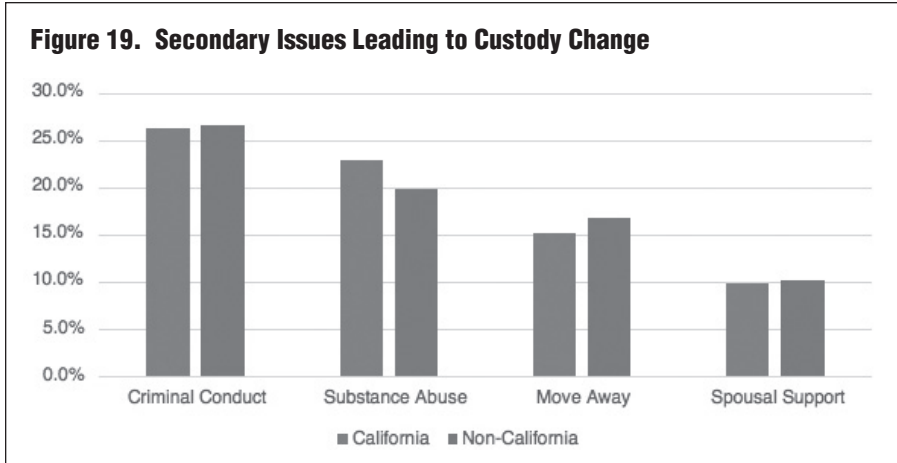
Figures 16 and 17 describe the iatrogenic effects of asking for protection for children, meaning that further harm was induced by the court itself. Children did not appear to have benefitted from the involvement of family court. Most California and non-California mothers reported they had primary custody when the custody dispute began (82.1% versus 80.3%), but at the time of this survey, few still had primary custody (12.1% versus 20.4%). **This represented a drop in custody of 85.3% for California mothers and 74.6% for non-California mothers.** Mothers in both groups reported that very few fathers were ordered to supervised visits (6.4% versus 4.8%) and instead of protecting the children, the court ordered joint custody with fathers who were identified as abusers (22.3% versus 17.8%).

About one-third of both groups of mothers reported that fathers received primary custody (33.8% versus 39.1%) and some mothers were ordered to have no contact (20.4% versus 21.3%) or only supervised visits (17.8% versus 17.4%) with the children they were trying to protect. The situation worsened for children as time went on. California mothers were more often ordered to have no contact (58.1% versus 45.2%) or supervised visits (49% versus 39.4%) than non-California mothers later in the case.

Figures 18 and 19 reveal the circumstances under which family courts removed custody from protective mothers. California mothers lost custody more often than non-California mothers after they brought child abuse to the attention of the family court (65.8% versus 56.2%), requested child support (54.2% versus 48.4%), brought up domestic violence (48.7% versus 47.6%) or reported court violations by the fathers (42.8% versus 39.1%).

A smaller number of mothers in both groups reported they lost custody at similar rates after bringing to the court's attention criminal conduct by the fathers





(26.3% versus 26.7%); substance abuse (23% versus 19.9%); a move away request (15.3% versus 16.9%) or a spousal support request (10% versus 10.2%).

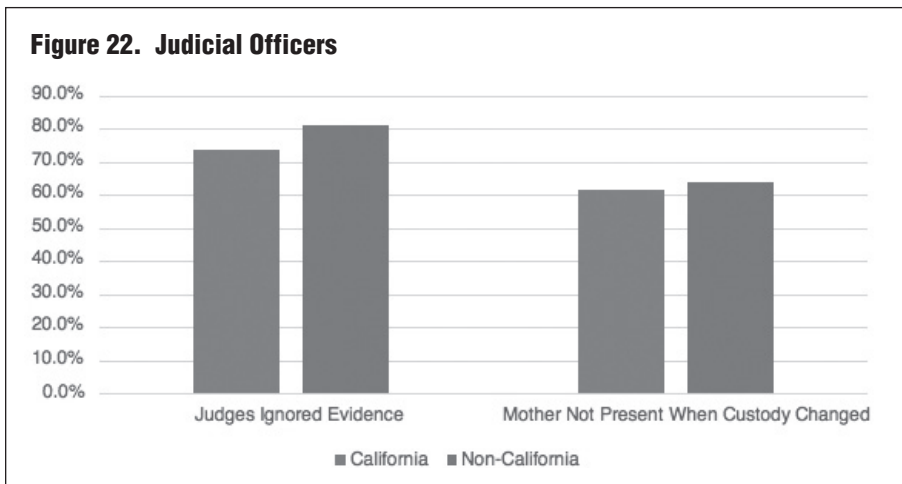
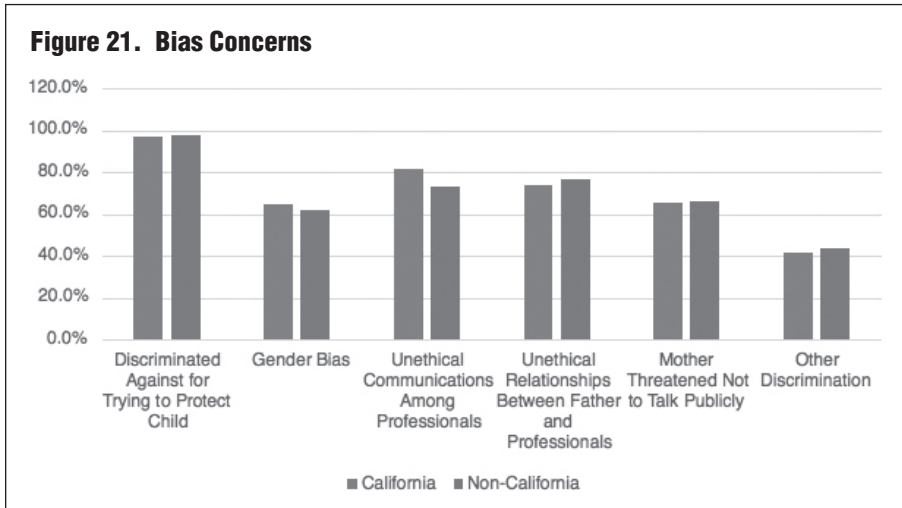
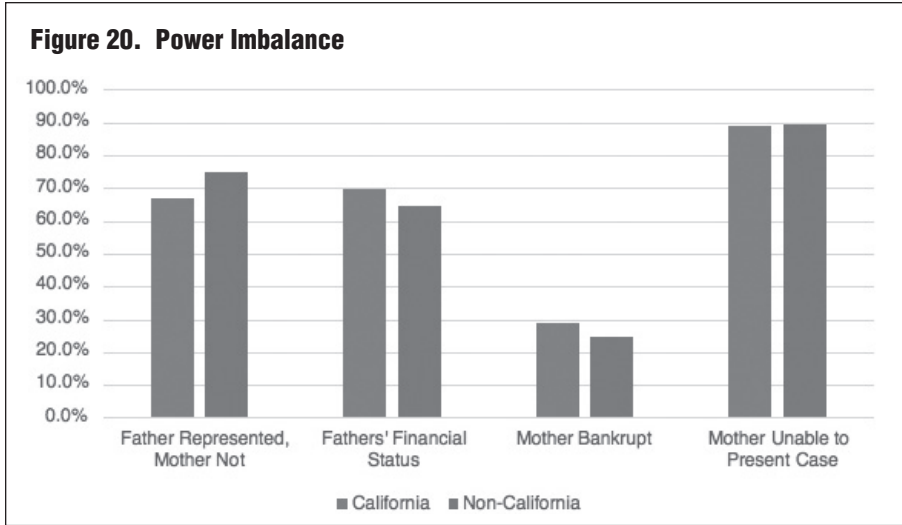
Figure 20 and 21 describe fairness and due process issues leading to the mothers' loss of custody. A majority of California and non-California mothers reported that at some point in the proceedings, the fathers had attorneys while the mothers were self-represented (67.1% versus 75%). Mothers in both groups similarly believed the fathers' financial status affected case outcomes (70% versus 64.8%); were forced to declare bankruptcy (29% versus 24.8%) and were denied the ability to adequately present their cases (89.3% versus 89.5%).

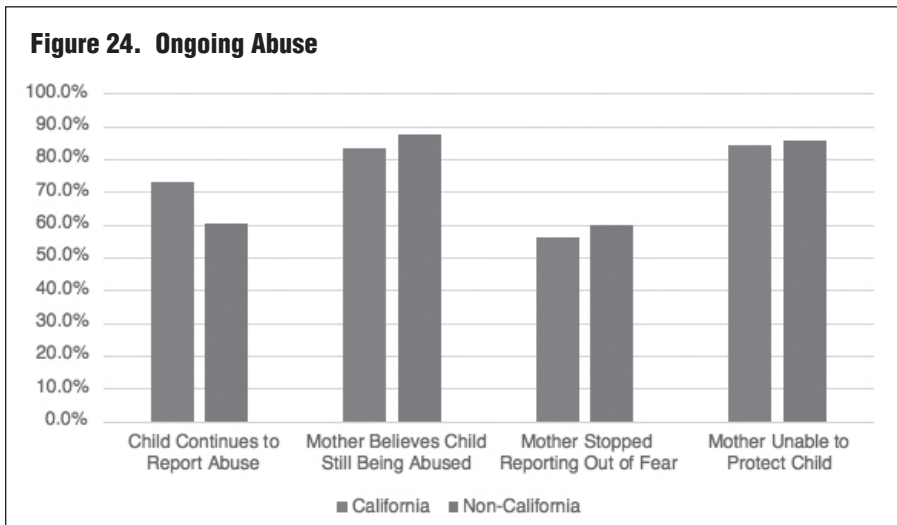
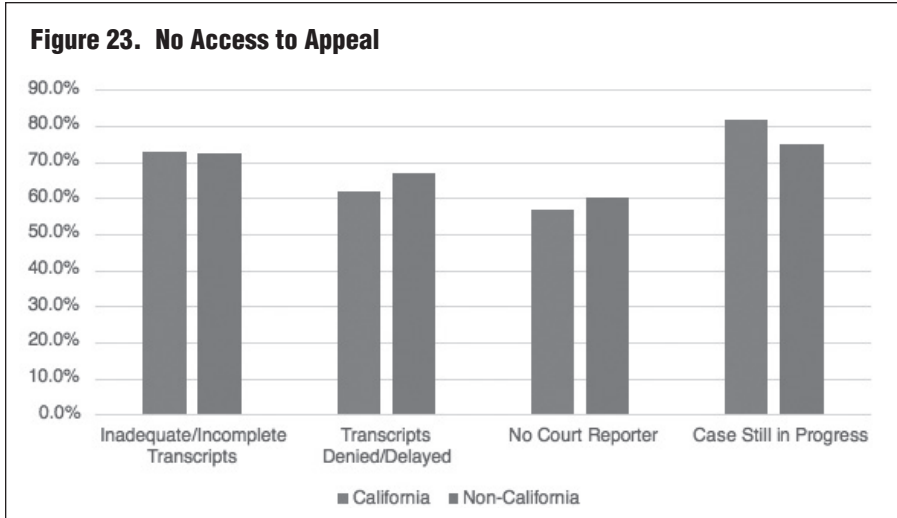
Nearly all mothers in both groups reported they believed they had been discriminated against for trying to protect their children from domestic violence and child abuse (97.4% and 98.2%). A majority of mothers similarly believed that gender bias was a problem affecting their cases (65.3% versus 62.3%), that unethical/illegal ex parte communications had occurred among court-related professionals (82.2% versus 73.7%) and that there had been unethical relationships between the fathers and the court professionals (74.3% versus 76.8%). Mothers in both groups reported having been threatened that talking publicly could result in damage to their cases (65.5% versus 66.2%) as well as other types of discrimination (41.6% versus 43.8%).

Figure 22 and 23 reveal the court process leading to and maintaining the mothers' loss of custody. A majority of California and non-California mothers reported that family court judicial officers ignored, minimized or refuted evidence of child abuse (73.5% versus 81%) and the mothers lost custody in ex parte hearings where they were not present (61.6% versus 63.9%).

A majority of both groups of mothers reported that transcripts were inadequate or incomplete (73.1% versus 72.8%), were delayed or denied to them (61.9% versus 66.9%) or hearings were held without court reporters present at all (57% versus 60.3%). A majority of California and non-California mothers reported that their cases were still in progress at the time the surveys were completed (81.7% versus 75.3%).

Figure 24 shows that children continue to disclose abuse after being placed in unsupervised contact with their identified abusers but their chance of rescue





was slim. **More California than non-California mothers reported that their children continued to disclose abuse (73% versus 60.7%).** Most mothers in both groups believed their children were still being abused (83.5% versus 87.8%), but they had stopped reporting the abuse (56.3% versus 60.2%) because they feared their contact with their children would be terminated if they continued to complain. Most mothers in both groups reported similarly that they were unable to protect their children from further abuse (84.5% versus 85.7%).

## DISCUSSION

Each of the systems designed to protect children have distinct roles. This study demonstrates that each system failed children of divorce and separation in different ways. Mothers in this study held the belief that professionals



on all levels discriminated against them for trying to protect their children. More California mothers than non-California mothers believed the professionals had unethical communication with each other, which is prohibited in California,<sup>26</sup> and with the fathers. It would be important to investigate the reasons for these beliefs to determine if professionals are indeed communicating unethically or illegally, and if so, why.

### **Law Enforcement**

Domestic violence, child physical abuse and child sexual abuse are serious crimes with long-lasting personal and societal aftereffects. Law enforcement officers are expected to thoroughly investigate all potential crimes in a family. It is unclear why so few cases were prosecuted overall, and why far fewer California fathers were prosecuted for spousal or child abuse than non-California fathers, even as more California children received Victims of Crime funding<sup>27</sup> related to the crimes committed against them.

When a case is not taken forward to prosecution, there is a tendency to assume that no crime has been committed. That is an incorrect assumption. District Attorneys need to meet a high criminal burden of proof “beyond a reasonable doubt”<sup>28</sup> for successful prosecution. One reason for lack of prosecution is that children may be unable to testify due to age and trauma. It is incumbent upon law enforcement officers to protect victims from witness tampering by providing safety so they may become stronger and more capable of testifying in the future. It would be important to investigate why such protective protocols are not standard policy.

### **Child Welfare Services**

Mothers in both groups reported that child welfare services rarely kept children of divorce safe, despite the lower burden of proof for protecting a child in civil court of a “preponderance of the evidence”.<sup>29</sup> One explanation may be that social workers refer cases to juvenile courts when there is no safe parent available, and they make a child a ward of the court when neither parent is able or willing to keep the child safe. In these cases, the mothers were more than willing to keep the child safe and were specifically trying to protect them through the available systems. Social workers’ deference to family court and possible disbelief in the allegations due to the fact that there was a custody dispute may also be possible causes for the lack of protection.

A significant factor could be related to the overall decline in the substantiation of child abuse by child welfare services during the past two decades. When a case is not substantiated, there is a tendency to believe no abuse occurred. However, this is an incorrect assumption. The sheer magnitude

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<sup>26</sup> Family Code section 216.

<sup>27</sup> Crime Victims Fund, Office for Victims of Crime.

<sup>28</sup> Beyond a Reasonable Doubt. Legal Information Institute, Cornell Law School.

<sup>29</sup> Preponderance of the evidence. Legal Information Institute, Cornell Law School.

of millions of referrals mean social workers can only investigate a small percentage.

Possibly only the very worst cases are substantiated, or only as many as social worker staff can handle. The vast majority of referrals in the United States are not substantiated, which is increasing as shown in Figures 25, along with an increased number of child fatalities.

Figure 26 demonstrates the sharp decline in substantiation rates in California. The percentage of child physical and sexual abuse are one-third lower in 2018 than in 1999, while fatalities are four times as high.

**Figure 25. Decline in Substantiation of Child Physical and Sexual Abuse in the United States**

	1999 <sup>30</sup>	2019 <sup>31</sup>
U.S. child population <sup>32</sup>	71.9 million	73.1 million
Referrals to CWS	3 million	4.4 million
Total number of children	5.1 million	7.9 million
Total substantiated as victims	826,000	656,000
Physical abuse substantiated	21.3%	17.5%
Sexual abuse substantiated	11.3%	9.3%
Fatalities	1,100	1,840

**Figure 26. Decline in Substantiated Reports of Child Physical and Sexual Abuse in California**

	1999	2018
California child population	9.2 million	9.1 million
Total reports to Child Welfare Services	440,753	486,634
Reports of physical abuse	104,208 <sup>33</sup>	92,570
Substantiated victims	20,796 <sup>34</sup> (20%)*	4,812 (5.2%)
Reports of sexual abuse	53,061	45,518
Substantiated victims	11,204 (21.1%)	3,415 (7.5%)
Fatalities	33	132

\*Percentage equals the number of substantiated victims divided by the number of reports of abuse

<sup>30</sup> *Child Maltreatment 1999*. U. S. Department of Health and Human Services, Children's Bureau.

<sup>31</sup> *Child Maltreatment 2019*. U. S. Department of Health and Human Services, Children's Bureau.

<sup>32</sup> POPI Child Population. ChildStats.

<sup>33</sup> *Reports of Child Abuse and Neglect by Type of Maltreatment*. KidsData.

<sup>34</sup> *Substantiated Cases of Child Abuse and Neglect by Type of Maltreatment*. KidsData.

Danger data is stark. The United States has a homicide rate seven times<sup>35</sup> higher than other high income nations. In 2000, 1,247 women<sup>36</sup> were killed by their intimate partners while 1,200 children<sup>37</sup> died from abuse and neglect. Studies show domestic violence and child abuse overlap at alarmingly high rates in the general population, estimated between 30% and 60%.<sup>38</sup> If violent acts by an intimate partner have occurred 50 or more times, the probability<sup>39</sup> of the children being physically abused becomes a near certainty.

The Adverse Childhood Experience study<sup>40</sup> conducted by the Centers for Disease Control and Prevention and Kaiser Permanente in 1998 of over 17,000 adults whose average age was 57, found that a percentage of adults reported they were unsafe as children many decades earlier. In this current study of mothers attempting to protect their children from abuse by fathers, mothers were treated violently and children experienced physical and sexual abuse well above the rates found in the ACE study.

As Figure 27 demonstrates, the rates of violence committed against mothers and children described in the ACE study are proportionate to the elevated rates in the current study, which focuses specifically on a subset of abused mothers and children.

Law enforcement and child welfare services are the primary government agencies designated to respond to domestic violence and child abuse. They are required to cross-report child abuse referrals to each other; however, the system designed to protect children is fragmented and sometimes works at cross-purposes.

**Figure 27. Outcomes of the Adverse Childhood Experience Study Compared to Current Study**

	<b>ACE study General population</b>	<b>Current study CA cases</b>	<b>Current study Non-CA cases</b>
Mother treated violently	12.7%	88.1%	90.5%
Childhood physical abuse	28.3%	71.3%	70.4%
Childhood sexual abuse	20.7%	65.4%	62.2%

<sup>35</sup> Grinshteyn, Erin & Hemenway, David (2015). *Violent death rates in the US compared to those of the other high-income countries*. University of San Francisco, School of Nursing and Health Professionals.

<sup>36</sup> *The Facts on Health Care and Domestic Violence*. Family Violence Prevention Fund, from Rennison, Callie Marie & Welchans, Sarah (2003). *Intimate Partner Violence 1993-2001*. U.S. Department of Justice Bureau of Justice Statistics. Washington, DC.

<sup>37</sup> *Child Maltreatment 2000*, U.S. Department of Health and Human Services.

<sup>38</sup> Edleson, Jeffrey, *The Overlap Between Child Maltreatment and Woman Abuse*. VAWNet (April 1999).

<sup>39</sup> Ross, Susan (1996). *Risk of physical abuse to children of spouse-abusing parents*. Child Abuse and Neglect, Volume 20, Issue 7, pages 589–598.

<sup>40</sup> *Adverse Childhood Experiences*. Centers for Disease Control and Prevention.

Law enforcement takes the lead when violent crimes are alleged, to gather evidence, interview witnesses, interrogate suspects and obtain search warrants, especially when there are allegations of child sexual abuse or pornography. Social workers play an important role, however, they sometimes contact crime suspects prematurely, before law enforcement has completed their inquiry, thereby alerting the accused to the pending investigation.

Another example is when social workers attempt to keep children safe from violence and abuse by insisting the non-abusive parent leave the home, to prevent juvenile court (a closed court with a referee) from putting the child in foster care due to the non-abusive parent's "failure to protect." However, social workers may fail to substantiate child abuse, which leads to a presumption that no abuse occurred, or to work closely with law enforcement. If law enforcement does not arrest and prosecute the accused in criminal court, (an open court with a jury), the accused may then allege to family court (generally an open court with a judicial officer) that the protective parent is fabricating abuse and alienating the child. Family court may order unsupervised visits or full custody to the very parent the social worker identified initially as a danger to the child.

This Catch 22 involves at least two agencies and three different courts which, by action or inaction, needlessly allow children to suffer and sometimes to die. It would be important to study why law enforcement and child welfare are not doing more to protect children of divorce and separation, and how they could work together more effectively.

### **Attorneys for Children**

The American Bar Association guidelines<sup>41</sup> are clear that children's attorneys should not be merely fact-finders, but rather, should zealously advocate a position on behalf of their child clients, just as they are expected to do under their fiduciary duty to their adult clients. Juvenile courts provide child attorneys at no cost, who carry high caseloads. Foster children are supported by Court Appointed Special Advocate (CASA)<sup>42</sup> volunteers. Family courts do not have such programs, but may appoint a private child's attorney for an open-ended appointment, paid directly by parents or one parent. California attorneys for children<sup>43</sup> are required to present the child's wishes to the court if the child so desires; however, California mothers reported that attorneys for children rarely advocated for their young clients, even less often than non-California mothers. The perverse financial incentive for the attorney is to keep the case going to generate more revenue. This can be done by ignoring child abuse, which leads to the protective parent requesting the family court protect the child and thus increasing the court's workload.

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<sup>41</sup> *American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*. Approved by the American Bar Association House of Delegates, (February 5, 1996).

<sup>42</sup> Court Appointed Special Advocates Judicial Council of California.

<sup>43</sup> California Family Code section 3151.

It would be important to investigate why attorneys for children in family courts do not zealously advocate on behalf of their child clients when they ask to be safe from physical and sexual abuse. Because one parent may have more resources to pay the child's attorney, issues of open-ended court-appointments and direct payment by parents need to be closely examined and challenged.

## Mediators

Approximately twice as many California mothers as non-California mothers reported that they were ordered into mediation. Mediation in California is required and governed by rules of court.<sup>44</sup>

A study<sup>45</sup> by the Judicial Council of California in 2000 found that in 76% of child custody mediation cases, a parent reported an indicator of partner violence; 44% of parents had received a restraining order; and 41% of children had witnessed the violence. Another Judicial Council study<sup>46</sup> in 2012 found that 42% of mediation participants did not come to an agreement, particularly when there had been violence or protective orders.

Mediators rarely have the expertise in domestic violence or child abuse needed for domestic violence custody cases. For example, despite court provisions for separate sessions when there has been domestic violence, this study showed that over 70% of California mothers reported meeting with their abusers face-to-face in mediation. This would not occur if mediators were experts in domestic violence, as they would be aware of the danger and intimidation factors of face-to-face meetings.

Mediators in California are allowed to make custody and visitation recommendations to the court if the county adopts the practice and renames mediators "Child Custody Recommending Counselors."<sup>47</sup> More mothers in California reported that mediators ignored domestic violence and child abuse and recommended that mothers attempting to protect their children lose custody rights. These outcomes mirror a 2004 study<sup>48</sup> of mediators by Saccuzzo and Johnson which found that only 35% of mothers alleging domestic abuse got primary custody, compared to 42% in the group that did not allege domestic abuse, and joint legal custody was awarded about 90% of the time, regardless of whether domestic violence was an issue.

There is a fundamental conflict of interest in having mediators make recommendations when the case is not settled. The purpose of mediation is to reach an arrangement that both parents can be convinced or pressured to

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<sup>44</sup> California Rule of Court 5.210 Court Connected Child Custody Mediation, Judicial Council of California.

<sup>45</sup> *Domestic Violence in Court-Based Child Custody Mediation Cases in California*. Judicial Council of California, page 2 (November 2002).

<sup>46</sup> Snapshot Study 2008: Agreement Rates. Judicial Council of California (December 2012).

<sup>47</sup> California Family Code section 3183(a).

<sup>48</sup> Saccuzzo, D. P., & Johnson, N. E., *Child Custody Mediation's Failure to Protect: Why Should the Criminal Justice System Care?* National Institute of Justice (NIJ) Journal (July 2004).

agree to, rather than the best arrangement for the children. Many states disallow statements made during settlement negotiations from being admitted into evidence, because courts wish to encourage settlement offers which invariably involve pressure. Parents understand, or are told by their attorneys, that judges do not look favorably on a parent who cannot come to an agreement; thus, it is not difficult to imagine the subtle or direct duress placed on victims in mediation with their abusers under any circumstances, particularly in face-to-face meetings.

If the parents do not come to an agreement, the mediation report is provided to the court prior to the hearing. Because mediator recommendations are usually adopted by the court, mediators become *de facto* decision-makers, which could be considered an impermissible delegation of power. Some professionals have referred to this process as “star chamber proceedings.”<sup>49</sup>

The process of requiring mediators to investigate and attempt to mediate violent crimes and allowing victims to meet face-to-face with abusers in mediation, as well as having mediators make recommendations for custody and visitation and present their reports to the court prior to hearings, needs to be closely reviewed and challenged.

### Private Appointed Custody Evaluators

When a family has resources, expensive private custody evaluators, usually doctorate level psychologists, may be appointed by the court and receive quasi-judicial immunity. This study shows that evaluators also generally ignored evidence of violent crimes and recommended that protective mothers lose custody rights at a high rate, particularly in California. The California Legislature created a detailed multidisciplinary protocol<sup>50</sup> for custody evaluators to follow when there are allegations of child abuse, including a provision for court payment of fees<sup>51</sup> to help ensure neutrality. This protocol is rarely used. Instead, courts appoint private evaluators under a separate expert witness code<sup>52</sup> that allows professionals to contract with parents and charge them whatever the market will bear. When one parent has more resources and pays for the evaluation, there is understandable concern about potential bias. Under the guise of concern for the child whom they recommended have unsupervised contact with the accused abuser, custody evaluators may recommend a second evaluation which generates more revenue.

The use of psychological testing on domestic violence victims is incorrect on its face because these tests are not designed for custody evaluations, cannot determine if a subject is an offender or a victim of violence, or whether they are telling the truth or a falsehood. Furthermore, assigning pejorative unscientific labels to protective mothers is fundamentally unethical.

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<sup>49</sup> *Star Chamber Proceedings*. Legal Information Institute, Cornell Law School.

<sup>50</sup> California Family Code section 3118.

<sup>51</sup> California Family Code section 3112.

<sup>52</sup> California Evidence Code section 730 and 731.

Having the court accept discriminatory theories would be unimaginable in a jury trial with normal safeguards, including each side having an attorney to ensure due process. Even though parents frequently pay court-appointed evaluators directly, over half of mothers in this study reported that they were denied a copy of the report, which limited their ability to submit a complaint. Unscrupulous evaluators are usually not held liable because they are shielded from malpractice suits by quasi-judicial immunity, and courts, oversight boards and state Attorneys General rarely discipline them.

Parents are not given an opportunity to fact-check or review the evaluator's report before it is submitted to the court. Evaluators, like mediators, customarily present their opinions, theories and recommendations for custody and visitation to the court prior to hearings. This is comparable to issuing written recommendations to a jury in criminal court prior to the beginning of the trial, which would be unthinkable. As the data in this study show, evaluators often recommend placing children at risk. Family courts usually follow the evaluators' recommendations, even placing children in unsupervised contact with dangerous, violent, incestuous parents. As with mediators, evaluators thus become *de facto* decision-makers.

In a 2012 study<sup>53</sup> funded by the U. S. Department of Justice, Daniel Saunders Ph.D. states, "High rates of domestic violence exist in families referred for child custody evaluations. These evaluations can produce potentially harmful outcomes, including the custody of children being awarded to a violent parent, unsupervised or poorly supervised visitation between violent parents and their children, and mediation sessions that increase danger to domestic violence victims." Dr. Saunders found these extreme decisions are primarily caused by evaluators' flawed beliefs and practices.

The appointment of private mental health professionals to evaluate victims of violent crimes, as well as being paid directly by parents and presenting custody and visitation recommendations to the court prior to hearing witness testimony, needs to be closely reviewed and challenged.

## Judicial Officers

When government agencies and court-connected professionals fail to identify or substantiate violence and abuse, it is somewhat more difficult for courts to assess whether or not there is a likelihood of danger to the child. However, judicial officers are responsible for receiving authentic facts and evidence, hearing witnesses, assessing the credibility of witnesses, making findings and decisions according to the law, and ensuring children and families are safe.

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<sup>53</sup> Saunders, Daniel, Faller, Kathleen C., & Tolman, Richard M., *Child Custody Evaluators Beliefs About Domestic Abuse Allegations: Their Relationships to Evaluator Demographic, Background, Domestic Violence Knowledge and Custody Visitation Recommendations*, 116–25, Office of Justice Programs, U.S. Department of Justice funded, Document No.: 238891 (June 2012) Award Number: 2007-WG-BX-0013.

The fact that most of the mothers in this study had primary custody at the time they went to court to try to protect their children, renders moot the common argument that they were making false allegations to gain custody. Most mothers in this study reported being victims of intimate partner violence. Battering men can continue to create distress for their former partners through court hearings by asking for custody. The linkage of child support with parenting time creates a perverse financial incentive for them to obtain and maintain custody to avoid child support payments. Alarming, men accused of sexually abusing their children may receive access to victims legally when system failure occurs in sex abuse cases.

The high overlap of intimate partner violence and child maltreatment is a well-known fact in the general public, yet judicial officers appeared to ignore and minimize adult violence as well as the damage to children who witness or directly receive violence. Decisions removing custody from protective mothers and providing unsupervised or full custody to fathers who are accused of violence and abuse are invariably wrong because the harm of endangering children and/or denying them a normal relationship with their primary attachment figure is greater than whatever benefit it might provide. When courts remove children from their primary attachment figure, the safe parent who performs the majority of their care, there is a substantial risk of possibly lifelong secondary consequences<sup>54</sup> such as behavioral difficulties, poor stress regulation and lack of empathy in children. If judicial officers were aware of these facts, perhaps there would be fewer risky decisions. In California, gaps in judicial education could be explained by a lack of uniformity in domestic violence training.<sup>55</sup> Standardized training and use of trainers who are recognized experts in domestic violence, child abuse and substance abuse could remedy some of the issues.

More non-California mothers than non-California mothers reported that at some point in the family court proceedings, they were self-represented while fathers, who were also their batterers, had attorneys. The due process implications and outcomes of such disparity and inequality are grave. Although California family courts are required by law to ensure that each party has access to legal representation,<sup>56</sup> California judicial officers also allowed this imbalance of power to occur without ensuring both parents had attorneys when one parent was represented. Likewise, more California mothers than mothers in other states reported that they believed unethical and ex parte communications had occurred in their cases, which creates a lack of confidence in the integrity of the court system.

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<sup>54</sup> Rees, Corinne (2007). *Childhood Attachment*. *British Journal of General Practice*, 57(544): 920–922.

<sup>55</sup> California Rule of Court 10.464 Education requirements and expectations for judges and subordinate judicial officers on domestic violence issues.

<sup>56</sup> California Family Code section 2030(a).



California mothers not only lost primary custody more often, as recommended by court mediators and court-appointed evaluators, they were also ordered into supervised visits or no contact at some point in the case more often than non-California mothers. In cases with child disclosure, corroborative evidence, and clear perpetrator identification, judicial officers may be allowing crimes to continue when they order children into unsupervised contact with, or custody of, the accused.

Appeals were rarely an option due to lack of court transcripts and high costs of appealing a case. Appellate courts only address mistakes of law rather than re-litigate facts to ensure child safety, and family law appeals differ from other civil appeals.<sup>57</sup> Without an attorney to help prepare for and guide the appellate process, mothers found existing oversight mechanisms ineffective or non-existent.

It is recommended that the reasons for such due process failures and questionable judicial decisions that lead to child endangerment and sometimes death be thoroughly investigated, along with the lack of effectiveness of oversight and appeals.

## Overview

This study found that the system worked poorly for mothers and their children, particularly in California. Mothers' reports and evidence of crimes against themselves and their children were mostly ignored or minimized. A nearly ubiquitous denial of the epidemic of family violence in general and the evidence of violence in particular cases took place across the United States. Conversely, the system worked quite smoothly for accused perpetrators, who were rarely prosecuted or given supervised visits and instead often received unrestricted parenting time or full custody of their alleged victims.

The custodial outcomes for children as demonstrated in this study replicate other research. A 2017 study<sup>58</sup> by George Washington University Law School professors Joan S. Meier and Sean Dickson found that abuse reports by mothers and children were successfully negated by fathers' allegations of "alienation" in 72% of appellate cases studied. When mothers reported child sexual abuse, fathers won custody 95% of the time. This is an even more extreme outcome than found in 1999 research by Amy Neustein, Ph.D. and Ann Goetting Ph.D.<sup>59</sup> involving a sample of 300 protective mothers. That study showed that mothers who reported child sexual abuse to family courts

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<sup>57</sup> Fuller, Victoria, *Understanding the Difference Between Family Law and Civil Appeals*. Daily Journal.

<sup>58</sup> Meier, Joan S. & Dickson, Sean (2017). *Mapping Gender: Shedding Empirical Light on Family Courts' Treatment of Cases Involving Abuse and Alienation*. 35 Minnesota Journal of Law & Inequality. 311, GWU Law School Public Law Research Paper No. 2017-43, GWU Legal Studies Research Paper No. 2017-43.

<sup>59</sup> Neustein, Amy & Goetting, Ann (1999). *Judicial Responses to the Protective Parent's Complaint of Child Sexual Abuse*. Journal of Child Sexual Abuse, v8 n4 p103–22.

were unable to fully protect their children in 90% of cases. This striking lack of protection for children reporting sexual abuse is, ironically, almost the exact inverse of the rate of fabrication<sup>60</sup> of child sexual abuse by children.

The problem of lack of protection for children in divorce and separation has become so pronounced that, in the case of *Jessica Lenahan (Gonzales) v. United States*,<sup>61</sup> the Inter-American Commission on Human Rights recommended in 2011 that the United State implement reforms to federal and state laws and policies that proactively address and prevent such gender-based violence, including domestic violence. In 2018, the U. S. Congress passed House Concurrent Resolution 72<sup>62</sup> and the California Assembly passed House Resolution 113 (Rubio)<sup>63</sup> to urge family courts to prioritize child safety in custody and visitation decisions.

The California Constitution Article 1<sup>64</sup> states, in part, that all people have the inalienable right to pursue and obtain safety. Children are defined as persons<sup>65</sup> under California law. The California Legislature places a duty on the family courts to prioritize as its primary concern the health, safety and welfare of children<sup>66</sup> when making custody placement decisions. However, this study found the problem of placing children of divorce and separation in danger with violent or incestuous fathers is particularly egregious in California.

Victim safety and offender accountability can be greatly improved at the local level through a coordinated community response.<sup>67</sup> This would include developing family justice centers<sup>68</sup> with “one stop shops” for family violence

<sup>60</sup> Trocme, N. & Bala, N. (2005). *False allegations of abuse and neglect when parents separate*, Child Abuse & Neglect, 29(12), pp. 1333–1345.

<sup>61</sup> *Jessica Lenahan (Gonzales) v. United States*. IACHR recommendations include: “Adopt and/or reform legislation at the federal and state levels that will 1) “mak[e] mandatory the enforcement of protection orders and other precautionary measures to protect women from imminent acts of violence, and to create effective implementation mechanisms,” include “protection measures for children in the context of domestic violence.” “These measures should be accompanied by adequate resources destined to foster their implementation; regulations to ensure their enforcement; training programs for the law enforcement and justice system officials who will participate in their execution; and the design of model protocols and directives that can be followed by police departments throughout the country.” “Continue adopting public policies and institutional programs aimed at restructuring the stereotypes of domestic violence victims, and to promote the eradication of discriminatory socio-cultural patterns that impede women and children’s full protection from domestic violence acts, including programs to train public officials in all branches of the administration of justice and police, and comprehensive prevention programs.”

<sup>62</sup> United States House Concurrent Resolution 72 “Expressing the sense of Congress that child safety is the first priority of custody and visitation adjudications, and that State courts should improve adjudications of custody where family violence is alleged.”

<sup>63</sup> California House Resolution 113 (Rubio) “Relative to Piqui’s Resolution” “Resolved, That when a child witnesses domestic violence or is injured or abused, family courts should ensure that the safety of the child has priority over all other considerations in any custody or visitation decision.”

<sup>64</sup> California Constitution Article 1, Declaration of Rights Section 1.

<sup>65</sup> California Penal Code section 261.5

<sup>66</sup> California Family Code section 3020(a).

<sup>67</sup> United Nations Women, United Nations.

<sup>68</sup> Family Justice Center Alliance.

victims and using standardized multidisciplinary training and information-sharing; a comprehensive multi-agency standard report form; risk and lethality assessments<sup>69</sup> for all family violence cases; close coordination with domestic violence agencies for victim support; multidisciplinary children's advocacy center<sup>70</sup> interview teams using videotaped forensic interview protocol to reduce multiple child interviews; police reports<sup>71</sup> that list multiple crimes when domestic violence and child abuse co-occur; specialized investigation, prosecution and probation units;<sup>72</sup> domestic/family violence courts;<sup>73</sup> and batterer accountability programs that include substance abuse treatment<sup>74</sup> with random drug testing.

All training would need to take particular care not to discriminate against victims involved in divorce or separation by insinuating they are fabricating abuse. The use of mediators and private evaluators would be reserved only for cases in which there are no allegations of family violence or abuse. Every effort possible should be put into developing a seamless process to protect children of divorce and separation.

## CONCLUSION

Based on this study, nearly all current systems in place are failing to protect children of divorce and separation. The vast majority of interventions by law enforcement, child welfare services, children's attorneys, mediators, evaluators and judicial officers led ultimately to risky outcomes. Rather than work in a collaborative manner to protect this group of children, professionals appeared to work in concert to endanger them. California mothers lost primary custody at a higher rate (85.3%) than non-California mothers (74.6%) and a majority of children in both groups reported further injury (73% versus 60.7%) after being placed in unsupervised or full custody of their accused perpetrators. It is of great concern that state actors are placing children in danger.

Although this preliminary research was based on a sample of convenience, it provides important information for future research and policy. The next wave of research has already begun. Further study is recommended, utilizing a random sample and control group, along with obtaining documents to verify responses. These data furnish a road map for improvements, which can be developed and implemented by state task forces with recognized domestic violence and child abuse experts and advocates.

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<sup>69</sup> Tools and Strategies for Assessing Danger or Risk of Lethality. VAWNet.

<sup>70</sup> National Children's Advocacy Center.

<sup>71</sup> Nelson, Eric, *If You Want to Convict a Domestic Violence Batterer, List Multiple Charges in the Police Report*. Sage Publications (January - March 2014).

<sup>72</sup> 2008 Klein, A., *Practical Implications of Domestic Violence Research for Probation Officers*, N.Y.S. Division of Probation and Correctional Alternatives (October 29, 2008).

<sup>73</sup> *Domestic Violence Courts*, National Institute of Justice.

<sup>74</sup> *Batterers and Substance Abuse*, Addiction Intervention.

Investigation into the quality and quantity of training on domestic violence and child abuse that produces such systemic negative responses to domestic violence and child abuse allegations in custody disputes, and maintains a culture of denial, is warranted. The development of a national standardized training and certification program and process for all agency and court professionals is essential to help address these issues. Finally, a citizen review “second look” commission is needed at the state and federal level to review cases in which children are currently at risk, with the power to intervene to protect. Immediate and effective changes must be made to law, policy and procedure to provide safety for children of divorce and separation.

Even one child who is needlessly re-injured or killed is too many.



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