

**Myth 1: Allegations of sexual abuse are common during custody disputes and the vast majority of allegations are false, unfounded or unsubstantiated.**

**Myth 2: A history of battering has nothing to do with child abuse.**

**Myth 3: Custody transfers to abusive parents are rare.**

**Myth 4: Fit mothers do not lose custody.**

**Myth 5: Parental alienation syndrome is a common, well-documented phenomenon.**

**Myth 6: Children are more likely to be abused in the care of a woman than a man.**

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*The Leadership Council is a nonprofit scientific organization concerned about the welfare of children. We have become increasingly concerned about the legal system's treatment of victims of family violence during divorce and child custody proceedings. The LC has reviewed documentation from a number of cases in which children were placed in the sole custody of a parent that the child alleges is physically or sexually abusing them. Many of these children were prohibited from any contact or provided only limited contact with the parent seeking to protect the child - despite the fact that this parent had never been found to have harmed the child. In most cases the child's allegations were quite credible.*

*Some groups have opposed exposure of this problem claiming that the information is politically motivated or constitutes "father-bashing." Our analysis indicates that the problem of abusers or batterers obtaining custody is widespread and well documented by research. Presenting this information is not an attempt to "bash" any particular group, but is offered simply to educate professionals about the extent of this serious problem affecting child safety.*

*Societal acceptance of these myths assists perpetrators of family violence by giving them custody of their victims and by encouraging public denial about the failure of the legal system to*

*protect these children. The Leadership Council prepared this analysis because we believe that society as a whole benefits when the public has access to accurate information regarding child abuse and other forms of interpersonal violence.*

Approximately one in two marriages in the United States end in divorce, affecting over a million children per year. About 10% of these divorces involve custody litigation. At the same time, child abuse is a widespread problem in our society and families with a history of violence often end in divorce. Concerns about safety of the children are behind some of the most bitterly contested child custody cases.

Unfortunately custody litigation can become a vehicle whereby batterers and child abusers attempt to extend or maintain their control and authority over their victims after the marriage dissolves. Although, research has not found a higher incidence of false allegations of child abuse and domestic violence in the context of custody/visitation disputes, officers of the court tend to be unreasonably suspicious of claims raised during time. As a result, abused parents and their children may find themselves re-victimized by the justice system after separation.

Determining which parent should have primary custody when parents cannot agree is not easy. Custody evaluators often have little training in recognizing and responding to child abuse and domestic violence. Accordingly, those familiar with current practices have found that too often custody decisions are based on myth, misinterpretation of facts, and evaluator bias. The following are an overview of some of the erroneous beliefs that contribute to the problem of children not being protected from abuse in family court.

### **Myth 1. Allegations of sexual abuse are common during custody disputes and the vast majority of allegations are false, unfounded or unsubstantiated.**

Many people believe abuse allegations are rampant in custody and divorce litigation where they are used primarily by mothers to gain a tactical advantage. When antagonistic parents are locked in legal disputes it is reasonable to be concerned about their motives when abuse allegations are raised. However, research has consistently shown that sexual abuse allegations are not common during custody litigation and when thoroughly investigated are no more likely to be false than allegations raised when at other points in time.

This matter was investigated by the Denver-based Research Unit of the Association of Family and Conciliation Courts which performed a 2-year study which explored the incidence and validity of sexual abuse allegations in custody cases. Contrary to the popular myth that sexual allegations in custody cases are relatively common, the study found that, in the 12 states participating in the study, only 6% of custody cases involved allegations of sexual abuse. The belief that these allegations are typically false was also challenged by the study findings. Half of the allegations were believed by the investigators to be true, and in another 17% determination of the validity could not be made with any degree of certainty. The remaining third of the cases were not believed to involve abuse. However, in most of the cases where abuse was not

substantiated, the allegations were believed to have been made in good faith and based on genuine suspicions.

Similar results have been found by other researchers. An Australian study (Brown et al., 1997) found the overall rate of false allegations during divorce to be about 9%, similar to the rate of false allegations at any other time. Schuman (2000) reviewed research that found a range of 1-5% for rates of deliberately false allegations, and 14-21% for mistaken allegations.

It is also important to note that when false allegations are raised, it is not always mothers accusing fathers. Nicholas Bala and John Schuman, two Queen's University law professors, reviewed Canadian judges' written decisions where allegations of either physical or sexual abuse were raised in the context of parental separation. They examined 196 family law cases that were adjudicated between 1990 and 1998. The results revealed that the judges felt that only a third of unproven cases of child abuse stemming from custody battles involved someone deliberately lying in court. In these cases, the judges found that fathers were more likely to fabricate the accusations than mothers. Of female-initiated allegations, just 1.3% were deemed intentionally false by civil courts, compared with 21% when the man in the failed relationship brought similar allegations.

In conclusion, the available evidence refutes the notion that sexual abuse allegations in the context of custody and visitation cases are epidemic, and counters the notion that these cases are commonly reported by a parent who is vindictive or seriously impaired. There is no evidence from the present research to suggest that a significant number of parents are lodging fabricated reports to win custody battles.

### **Myth 2: A history of battering has nothing to do with child abuse.**

Parents who have been abused by a spouse often fear for the safety of their children --especially after separation when they are not present to mediate for the child. Some have suggested that this fear is baseless by claiming there is no significant correlation between wife battering and various forms of child abuse. Abundant research, however, fails to support this position finding that the power dynamics that lead to domestic violence may also result in abuse of a child. As a report by the American Psychological Association pointed out, fathers who batter their children's mothers can be expected to use abusive power and control techniques to control the children too (APA, 1996).

To date, over 30 studies that have examined the co-occurrence of domestic violence and child abuse found a large overlap. Overall, both forms of violence were found in 40% of families studied with the range in the majority of studies varying from 30% to 60% of families (Appel & Holden, 1998, Edleson, 1999).

Perhaps the most convincing evidence comes from a nationally representative survey of 3,363 American parents. Marital violence was found to be a statistically significant predictor of physical child abuse; the greater the amount of violence against a spouse, the greater the probability of

physical child abuse by the physically aggressive spouse. This relationship is stronger for husbands than for wives. The probability of child abuse by a violent husband increases from 5% with one act of marital violence to nearly 100% with 50 or more acts of marital violence. The predicted probability of child abuse by a violent wife increases from 5% with one act of marital violence to 30% with 50 or more acts of marital violence.

Although less research has been done on overlap between domestic violence and child sexual abuse, the available evidence indicates reason to be concerned. Pavesa (1988) performed a careful case-controlled study of 34 families in which father-daughter incest occurred and compared these families with 68 control families. Daughters of batterers were 6.5 times more likely than other girls to be victims of father-daughter incest.

Evidence of an overlap between domestic violence and child sexual abuse has also been uncovered in surveys of children. For instance, Roy (1988) interviewed 146 children aged 11 to 17 who had been exposed to domestic violence. Almost a third of the girls (31%) either reported that they had been sexually abused by their fathers and/or had documentation of sexual abuse in their case files. A survey of 313 college women, showed a similar trend. Nine percent of the women reported having witnessed some type of physical conflict between their parents. Witnessing marital violence was associated with having experienced childhood physical and/or sexual abuse (Feerick & Haugaard, 1999).

Still, a child doesn't have to be physically or sexually abused to be harmed by domestic violence. Research on children's exposure to domestic violence has consistently identified a range of negative outcomes for these children (Kernic et al., 2003; Wolfe et al., 2003). In fact, children exposed to domestic violence may show comparable levels of emotional and behavioral problems to children who were the direct victims of physical or sexual abuse (Jaffe, Wolfe, & Wilson, 1990)

### **Myth 3: Custody transfers to abusive parents are rare.**

Some have suggested that custody transfers to abusive parents are rare events. Most of us would like to believe this. Unfortunately, empirical research examining this issue has repeatedly shown that men who ask for custody of their children often get it, whether or not they have a history of violence.

Although women are more likely to get custody of their children, this is often because they are more likely to ask for it. When men ask for custody, they often get it. According to a report by the American Psychological Association, an abusive man is more likely than a nonviolent father to seek sole physical custody of his children and may be just as likely (or even more likely) to be awarded custody as the mother (APA, 1996). A report by the American Judges Foundation, reported that 70% of the time an abuser who requests custody is able to convince the court to give it to him.

The majority of parents in "high-conflict divorces" involving child custody disputes report a

history of domestic violence and/or child abuse. For example, a review of one sample of parents referred for child custody evaluations by the court found that domestic violence was raised in 75% of the cases (Jaffe & Austin, 1995 as cited by Jaffe, Crooks, & Poisson, 2003). Another study found that between 70% and 75% of parents who were referred by the family court for counseling because of failed mediation or continuing disputes over the care of their children described marital histories that included physical aggression (Johnston & Campbell, 1988).

However, raising allegations of abuse often hurts the abused or protective parent more than the alleged abuser. An ongoing study funded by the National Institute of Justice study shows that women who inform custody mediators that they are victims of domestic violence often receive less favorable custody awards (Saccuzzo & Johnson, 2004). The investigators found that only 35% of mothers who alleged domestic abuse got primary custody, compared to 42% of mothers who did not. Father who were accused of domestic violence were given primary custody in 10% of cases, father not accused of domestic violence got primary custody 9% of the time. Thus, disclosing domestic violence hurt the women who disclosed being victimized; while alleged perpetrators suffered no ill effects - that is unless the mediator noted evidence of violence when the mother did not allege domestic violence. When this occurred, mediators recommended protected child exchanges twice as often. Thus women who were forthright with their domestic violence allegations secured less protection for themselves and their children.

A recent study by the Harborview Injury Prevention & Research Center in Seattle confirms these results (Kernic et al., 2005). The researchers analyzed documentation on more than 800 local couples with young children who filed for divorce in 1998 and 1999, including 324 cases with a history of domestic violence. They found that evidence of domestic violence did not appear to change how courts decided custody. In other words, fathers who were violent were just as likely to receive custody when they asked for it as fathers who were not violent. Only 17% of fathers with a known history of domestic violence were denied child visitation and they were no more likely than other fathers to be required by the court to have a third party supervise child visitations.

Concerns about how family courts are handling cases involving abuse were also raised by the findings of Neustein and Goetting (1999). They examined judicial responses to protective parents' complaints of child sexual abuse in 300 custody cases with extensive family court records. The investigators found that in only 10% of cases where allegations of child abuse were raised was primary custody given to the protective parent with supervised contact with alleged abuser. Conversely, 20% of these cases resulted in a predominantly negative outcome where the child was placed in the primary legal and physical custody of the allegedly sexually abusive parent ( see, p. 108). In the rest of the cases, the judges awarded joint custody with no provisions for supervised visitation with the alleged abuser.

To better understand the problems that protective parents face in the legal system, researchers at California State University , San Bernardino , are performing an on-going national survey (Stahly et al., 2004). To date, over 100 self-identified protective parents have completed the 101-item questionnaire. The results are quite shocking. Prior to divorce, 94% of the protective mothers surveyed say that they were the primary caretaker of their child and 87% had custody at the time of separation. However, as a result of reporting child abuse, only 27% were left with

custody after court proceedings. Most protective parents lost custody in emergency ex parte proceedings (where they were neither notified nor present) and where no court reporter was present.

The vast majority of these mothers (97%) reported that court personnel ignored or minimized reports of abuse. They reported feeling that they were punished for trying to protect their children and 65% said they were threatened with sanctions if the "talked publicly" about the case. In all, 45% of the mothers say they were labeled as having Parental Alienation Syndrome (PAS).

The protective parents reported that the average cost of the court proceedings was over \$80,000. Over a quarter of the protective parents say they were forced to file bankruptcy as a result of filing for custody of their children. Eighty-five percent of the protective parents surveyed believe that their children are still being abused; however, 63% say they stopped reporting the abuse for fear that contact with their children will be terminated. Eleven percent of the children were reported to have attempted suicide.

### **Myth 4: Fit mothers do not lose custody.**

Many people assume that the only way a mother would lose custody to an alleged batterer or child abuser was if she were proven to be an unfit parent. Most people have difficulty believing that that a court would take a child away from a mother who has heretofore been the child's primary caretaker if her only crime is expressing concern about her own or her child's safety. Unfortunately, this is happening; the only real question is why.

There is no single answer to this question. Instead, it appears that a number of factors are involved. First, there is a widespread belief in our society that a person who both appears and acts normal could not possibly be a violent batterer or child abuser. Offenders are well aware of our propensity for making assumptions about private behavior from one's public presentation and they tend to use this knowledge of our collective blindness to their advantage by appearing to be the perfect parent during court appearances (Salter, 2003). Mothers concerned about the safety of their children, on the other hand, often appear overly concerned and as if they are exaggerating the problem.

As a report by the American Psychological Association pointed out:

If the court ignores the history of violence as the context for the mother's behavior in a custody evaluation, she may appear hostile, uncooperative, or mentally unstable. For example, she may refuse to disclose her address, or may resist unsupervised visitation, especially if she thinks her child is in danger. Psychological evaluators who minimize the importance of violence against the mother, or pathologize her responses to it, may accuse her of alienating the children from the father and may recommend giving the father custody in spite of his history of violence. (APA, 1996)

A second reason that fit mothers lose custody to alleged abusers is that many officers of the court believe that the only reason women raise abuse allegations during custody disputes is to gain a tactical advantage. Research, however, fails to find such an advantage. In fact, women who raise abuse allegations appear to receive less favorable rulings than those who do not (see e.g., Saccuzzo & Johnson, 2004). This may be because women who allege abuse may be seen as fabricating or exaggerating incidents of violence as a way of manipulating the courts (Doyme et al., 1999). For this reason, some lawyers advise women not to tell courts or mediators about child abuse or domestic abuse because, by doing so, they risk losing custody to the alleged abuser ("Custody Litigation," 1988; Saccuzzo & Johnson, 2004).

A third factor contributing to the problem is statutory. Most state legislatures have enacted legislation requiring family courts to favor joint custody arrangements, and when this isn't possible, to favor the parent who appears most "friendly" to a joint custody arrangement. At least 31 states have statutes requiring courts to consider how "cooperative" the parent is when determining custody arrangements (Gonzalez & Reichmann, 2005).

The intent of "friendly parent" preferences is to guarantee that children go to the parent most likely to facilitate the child's relationship with the other parent. Although this goal is laudable; in practice, the result has been to penalize parents who raise concerns about child abuse or domestic violence (Dore, 2004). Friendly parent preferences tend to favor abusers who rarely object to the nonabusive parent having access to the child. Protective parents, on the other hand, frequently seek to curtail a violent parent's access to the child. Moreover, the very act of raising concerns of abuse, suggests to the court that the protective parent is inherently "unfriendly" and should therefore be denied custody (Dore, 2004). Some professionals have found that the friendly parent concept is most often employed against the custodial or primary parent, typically the mother (Zorza, 1992).

Some states have tried to rectify injustices resulting from friendly parent preferences by enacting presumptions against custody to a perpetrator of domestic violence. Unfortunately, these presumptions are not always followed, especially when "friendly parent" preferences continue to remain on the books. For instance, Morrill et al. (2005) evaluated the effectiveness of statutes mandating a presumption against custody to a perpetrator of domestic violence in 6 different states. The investigators examined 393 custody and/or visitation orders where the father perpetrated domestic violence against the mother and surveyed 60 judges who entered those orders. They found that children failed to be protected in states with a statutory presumption against custody to an abuser when the state also had a "friendly parent" provision in their statutes with a presumption for joint custody.

A fourth reason that fit mothers may lose custody to an alleged abuser is due to lax standards that allow junk science to influence custody decisions in family courts. Over the years a number of "syndromes" have been developed that pathologize the responses of parents who seek to protect their child from an abusive spouse. The most popular of these syndromes, "Parental Alienation Syndrome," is discussed in the next section.

**Myth 5: Parental alienation syndrome is a common, well-documented phenomenon.**

Those who buy into the myth that mothers frequently raise false allegations of abuse may attempt to explain this phenomenon by relying on a legal theory called Parental Alienation Syndrome (PAS). Some suggest that the theory is based on science, and that PAS is a well-documented phenomenon .

Although estrangement from one or both parents can occur in children during an acrimonious divorce, Parental Alienation Syndrome (PAS) lacks a scientific foundation and has never been shown to be a valid explanation of this process. In fact, Dr. Richard Gardner, the theory's creator, developed his theory while working as a paid consultant to men charged with sexually abusing their children. Thus, the syndrome was created as a defense theory to counter a child's allegation of sexual abuse (Dallam, 1999).

Gardner defines PAS as follows:

The parental alienation syndrome (PAS) is a disorder that arises primarily in the context of child custody disputes. Its primary manifestation is the child's campaign of denigration against a parent, a campaign that has no justification. It results from the combination of a programming (brainwashing) parent's indoctrinations and the child's own contributions to the vilification of the target parent . . .

Gardner defines PAS as a psychiatric disorder that arises in the course of child-custody disputes adjudicated in the context of adversarial proceedings. Gardner's theory portrays the child's preferred or protective parent (usually the mother under PAS) as an evil "alienator" who is virtually solely responsible for turning a vulnerable child against their estranged parent (usually the father under PAS). The child is thus viewed as mentally ill and the "alienating" protective parent (for example, a mother that raises concerns about abuse) is viewed as the sole cause of the disorder. When this parent is judged to be in the "severe" category, Dr. Gardner recommended sole custody to the other parent - the parent that the child claims is abusing them. Thus, the main cure for this alleged mental illness is for the child to be placed in greater contact with an alleged abuser while their contact with the protective parent is curtailed or halted altogether.

It should be pointed out that Gardner never submitted his theory to testing and it has never been shown to be a valid syndrome. Despite these shortcomings, PAS has gained traction in the courts as it fits well with court's friendly parent preference. Moreover, some courts have accepted PAS because it apparently appears to explain a well-recognized phenomenon within custody battles - the often acrimonious fight between parents for their child's affection.

Unfortunately, Parental Alienation Syndrome, like the friendly parent concept it is based upon, presents the court with a paradox that seems to undermine rational decision-making when considering the best interests of children. With PAS theory, the concerned custodial parent's steps to obtain professional assistance in diagnosing, treating, and protecting the child, constitute evidence of "alienation." Attorney Richard Ducote (2002) noted:

"One irony of . . . 'PAS' is that the increased existence of valid evidence of true sexual abuse leads Gardner and his devotees to more fervently diagnose 'PAS.' Thus, 'PAS' is the criminal



defense attorney's dream, since the greater the proof of the crime, the greater the proof of the defense."

In professional journals, PAS has been cited an example of bad science that has been presented to the courts as credible forensic evidence. For instance, in an article published in *Professional Psychology: Research and Practice*, Rotgers and Barrett (1996) cite PAS theory as a prime example of a nonscientific theory that engages in "reverse logic." Moreover, PAS has been widely discredited in academic circles for being biased against women and children, and flawed in its failure to take into account alternative explanations for the behavior of the parties involved.

Further, critics have noted that Gardner's methods for determining the veracity of an abuse allegation are seriously biased in favor of the alleged child molester. Lisa Amaya-Jackson, M.D., Assistant Professor of Psychiatry and Medical Director of Child and Adolescent Trauma Treatment Services at Duke University, and Mark D. Everson, Ph.D., Clinical Associate Professor in Psychiatry and Director of the Program on Childhood Trauma & Maltreatment at University of North Carolina Hospitals, Chapel Hill, reviewed Gardner's book *Protocols for the Sex-Abuse Evaluation* and found Gardner's system for detecting sexual abuse in children to be "seriously flawed." They stated: "Bias can be noted in the author's attempts to discredit a child's allegations by resorting to narrow, often oversimplified notions of how sexually abused children are supposed to behave." They further note that while he discusses the importance of evaluators being neutral and objective, Gardner conveys "a strong bias that the overwhelming majority of allegations, especially in custody-related cases, are false and that the assessment procedures the author advocates are slanted to arrive at such a conclusion." Amaya-Jackson and Everson (1996) conclude: "This book can perhaps best be described as a recipe for finding allegations of sexual abuse false, under the guise of clinical and scientific objectivity. One suspects that it will be a bestseller among defense attorneys."

A recent study (cited by Johnston & Kelly, 2004) assessed the multiple factors that could contribute to the child's rejection of a parent. They concluded that just as important as alienating behaviors on the part of a parent were the child's actual experiences of child abuse or lack of parental warmth in their interaction with the rejected parent.

This is not to imply that abuse allegations are always accurate, or that parents do not attempt to manipulate their children during adversarial custody litigation. However, family courts need to be educated with a more scientific, sophisticated approach to the complexities of determining custody. The latest research on children embroiled in custody conflicts supports looking at the multiple, interacting, and often complex factors that affect a child's feelings about his or her parents. Conversely, simplistic theories such as PAS theory are not sufficiently scientific to be able to make cause and effect determinations and can place children in danger of being revictimized in family court.

**Myth 6: Children are more likely to be abused in the care of a woman than a man.**

The myth that women are more violent toward children than men is currently being promoted by some extremist groups. This claim is based, in part, on a statistical report by the U.S. Department Health and Human Services (HHS) which breaks down the number of substantiated reports of child abuse and neglect by gender. The HHS analysis shows that of children maltreated by their parents, 40.8% of child victims were maltreated by their mothers acting alone; another 18.8% were maltreated by their fathers acting alone; and 16.9% were abused by both their mother and father. Some seek to misuse this statistic to suggest that children are more at risk in the care of mothers than fathers.

When looking at the HHS report, however, it is important to note that most of the instances of substantiated maltreatment involved neglect of children under the age of three years. Because women tend to spend many more hours in contact with small children than men in our society, it makes sense that overall a young child is more likely to be maltreated by a woman rather than by a man.[1] However, this does not suggest that a child is safer when in the care of a father than a mother.

A recent population-based case-control study reviewed 8 years of child-fatality-review data in Missouri . The investigators found that females were perpetrators for just 26% of all inflicted fatal injuries on young children (Schnitzer & Ewigman, 2005). The vast majority of perpetrators were male (71.2%). In most instances, the perpetrator was the child's father (34.9%) or a boyfriend of the mother 24.2%. The child's mother was the perpetrator in only 19.7% of fatalities (see Table 1).

Based on their research, Schnitzer and Ewigman (2005) concluded that children are safest when they live in households with both biological parents or one biological parent and no other adults. Children appear to be at are greatest risk when they live in households that include males who are not related to them.

Other recent studies reveal similar findings. For instance, Starling et al. (1995) identified perpetrators of both fatal and nonfatal abusive head trauma over a 12-year period (1982-1994) at the Children's Hospital of Denver . Male perpetrators outnumbered females over 2:1. In all, 68.5% of perpetrators were male, with fathers, step-fathers, and mothers' boyfriends committing over 60% of the crimes (fathers accounted for 37% of the abusers, followed by boyfriends at 20.5%). Males were also tended to inflict more severe injuries. Men were perpetrators in 74.2% of the cases of fatal abusive head trauma. The largest group of female perpetrators were female babysitters would were responsive for 17.3% of cases. Mothers were responsible for only 12.6% of abusive head trauma cases.

Courts should to be mindful of the ways that statistical data can be misused when assessing the safety of living situations for children. In addition, it should be remembered that group data cannot tell us what living situation is best for a child in a specific case. Currently, the best indicator that we have of a propensity toward future violence is past behavior ( Crowley , 2005). Thus custody determinations require careful examination of the evidence rather than rhetoric. Courts should pay special attention to the child's own report of abuse or neglect, observations of a parent's interactions with his or her child, and past evidence that a parent has been violent towards others in the household.

1. When we make judgments based on statistical data, we must place numbers in the context of their denominator rather than simply comparing the raw data. In other words, for these statistics to be meaningful, we must compare rates of maltreatment that have been adjusted based on hours of contact with the child . As illustration, consider the following example. If we compared the murder rate of any small town in American with the murder rate in any large city, we would get the impression that large cities are very dangerous simply because many more people die. Only when murder rates are adjusted for the number of people actually living in the community is it possible to determine which town is in fact the safest. For example, if 20 people were murdered in the large town and 2 people were murdered in the small town, some might suggest that small towns are much safer places to live. However, if we adjust the rates for the actual population, we might find that the population of the large town is 100,000, while the population of the small town is only 100. Thus, the actual murder rate for the large town would be 20 per 100,000, while the murder rate in the small town would be 2000 per 100,000! In this case, the murder rate in the small town would be 100 times higher than the larger one. For this reason, statistics of maltreatment by gender of caretaker, must take into account the amount of time actually spent with the child.

### [Source Link](#)

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**For more information:**

#### **RE: Myth 1:**

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