

Beware Child Protective Services: What Victims, Advocates, and Mandated Reporters Need to Know

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By Women's Justice Center

Note: Throughout this text the terms Child Protective Services (CPS) and Child Welfare Agencies are used interchangeably.

Introduction

Probably no other public agency leaves victims and advocates more perplexed than Child Protective Services. On the one hand, people think of CPS with appreciation as they envision a selfless agency rescuing innocent children from horrific conditions. Indeed, CPS workers across the country do this routinely. The gratitude is deserved.



At the same time, the agency seems to be perpetually marred by a steady drumbeat of nightmare stories about CPS emanating from the very families CPS is supposed to serve. This text deals with just one of these problems; the CPS practice of removing or threatening to remove children from the nonviolent, non-offending parent in cases of family violence. This guide explains why this happens with such frequency, how to help prevent it from happening in your case, and what to do about it if you're already caught in its grip. (Since the non-offending, nonviolent parent in these cases is usually the mother, we often refer to this parent as 'the mother', though there are certainly cases where the non-offending parent is the father.)

The Situation as it Usually Unfolds

In brief, the particular problem we cover usually unfolds like this. A mother herself seeks help from CPS or becomes involved with CPS through someone else's report of suspected child abuse. Her child has been physically or sexually abused by a family member, usually by a male family member, or there are concerns the child is living in a home where there is domestic violence. At first, the mother naturally anticipates that CPS will try to help her and her child, and try to punish and stop the perpetrator. So these mothers are stunned when suddenly the CPS/juvenile court system turns its sights on her, even though everyone agrees she didn't perpetrate the abuse or violence.

Suddenly she is the one under investigation, and the perpetrator is seeming to be all but ignored. And worse, CPS is threatening to take her child from her, or has already done so without warning or notice, and is threatening to keep the child, right at the time that mother and child need each other most. She feels the system turn hostile toward her. Did she, the

non-offending parent, protect the child from the violent parent? Did she protect the child from molestation? Did she protect the child from being exposed to domestic violence in the home? Well, no, obviously she did not, or could not, or, in the case of molestation, often didn't know about it.

Instead of being treated more as a co-victim of a violent perpetrator, with help and guidance provided according to the mother's expressed needs, she is treated more as a co-perpetrator, with CPS establishing mandated controls over virtually any which aspect of her life CPS chooses, all under threat of losing her child. In addition to court dates at which it is her behavior that's in question, CPS gives her a mandated, often overwhelming set of programs and goals she must comply with to the satisfaction of the CPS/juvenile court system, in order to – maybe – get the child back – and maybe not. She is also held accountable for maintaining a cooperative attitude throughout, even though she is, in fact, in a profoundly adversarial relationship with CPS (which is why she's given an attorney at court time). At the same time, she begins to realize that the CPS/juvenile court system isn't pushing to hold the perpetrator accountable for his violence, nor is CPS even invested with the power to do so.

Most mothers say they would rather be threatened with jail than to be threatened with the loss of her child. Yet as invasive, terrifying, and awesome as this governmental threat is, virtually all the decisions as to her fitness, compliance, and fate are being decided at the lowest judicial standard of evidence, 51% of the evidence, the 'preponderance of the evidence' standard. This is a far cry from the 'beyond a reasonable doubt' standard the government must reach before sentencing someone to jail for even the briefest time.

The level of proof against her that CPS is required to put forth is so minimal that it provides the mother little protection against any abusive, prejudiced, or discriminatory exercise of power by CPS. The low evidence burden on CPS also makes it nearly impossible for the mother to defend herself, especially against such vague accusations as 'failure to protect', or that 'she knew or should have known', things which don't even constitute a crime in the criminal system. And to top off the injustices, an all too common requirement on her must-do list is that she and/or the child must partake in family conferencing or a family reunification plan in which one or both must meet, mediate, or co-counsel with the perpetrator – the very same perpetrator from whom the mother has been accused of 'failure to protect' the child.

The Dawn of Recognition

Unfortunately, such stories are not the result of occasional human errors that are bound to occur in any public agency. They are, instead, inevitable and frequent outcomes stemming from the flawed founding premises and the weak legal underpinnings of the CPS/juvenile court system. The structure of the system drives toward these injustices no matter how well intentioned individual CPS workers may be. Nor is this to say that children should never be removed from the non-offending parent. There are circumstances in which they should. The problem is that the system is so arbitrary, sexist, secret, and outdated, that it tends toward abusive or mistaken results.

In the last decade, there has been growing recognition and discussion of the CPS problem as it pertains to the non-offending parent. In 1999, the National Council of Juvenile and Family Court Judges put together the Greenbook Initiative, a set of 67 recommendations aimed at

remediating precisely this set of problems. But though the Greenbook gives long overdue recognition to the issue, the recommendations don't call for installing any firm checks on the system, as will be discussed in more detail in a later section.

And in 2004, in New York state, there was a landmark settlement in a class action lawsuit against that state's child welfare agencies. The lawsuit, *Nicholson v. Scopetta*, had been brought by mothers who had their children removed for no other reason than that the mothers, victims of domestic violence, had failed to protect their children from 'exposure' to the domestic violence. The 2004 lawsuit agreement and an earlier injunction prohibited child welfare agencies from using this reason alone to remove children from non-offending parents.

Though the lawsuit put CPS agencies around the country on notice of their wrongdoing and harm done in these cases, to date it has brought only modest change in practice. The vague laws and weak evidence standards governing CPS means that CPS workers need only adjust the language used in their justification for removing a child, offer the usual scant proof, and many juvenile courts continue removing children in these situations as before.

Perhaps the brightest spot on the horizon is the year 2005 resolution passed by the National Council of Juvenile and Family Court Judges in support of presumptively open hearings with discretion of courts to close. Since their founding, most CPS/juvenile court proceedings have been operating in secret, completely off the public record. This secrecy has mushroomed the system's tendency toward abuse. The judges' 2005 resolution in support of open hearings is not yet law, but it's a promising step. It's highly unlikely any of the system's abuses will be corrected until this essential public airing and public scrutiny of the system's proceedings is firmly set into law and practice.

The Oppressive Swath of Danger and Damage

The harm of the widespread CPS practice of removing or threatening to remove children from non-offending parents extends far beyond the dangers and injustices to individual mothers and children. The harm extends to nearly every poor, immigrant, or minority race mother who is trying to deal with family violence. Most have heard first hand stories of CPS removing children from other mothers in their neighborhoods. As a result, they become reluctant to seek help for their own situations for fear that the same thing might happen to them.

Though we include a fair amount of information about the structure and history of CPS, the purpose of this guide isn't to do policy analysis nor to make recommendations for change. The purpose of this guide is to give family violence victims, advocates, and mandated reporters information and tips that can help you, as best as possible, to understand and avoid the pitfalls and abuses of the CPS/Juvenile Court system as they pertain to the non-offending parent.

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