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Child Sexual Abuse Allegations in Custody Cases

A Bibliography

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Bala, N., Mitnick, M. Trocme, N., & Houston, C. (2007). Sexual abuse allegations and parental separation: smokescreen or fire? (Report). *Journal of Family Studies*, 13(1), 26-56.

If allegations of sexual abuse of a child are made after parents separate, the challenges of resolving custody and visitation issues are greatly increased, with the abuse allegations overshadowing other considerations. These are high conflict cases, anti settlement may be very difficult (or inappropriate) to arrange. The involvement of a number of agencies and professionals, with overlapping responsibilities and potentially conflicting opinions, may complicate the resolution of these cases. A significant proportion of allegations of child abuse made in the context of parental separation are true, but this is a context with a relatively high rate of unfounded allegations. While some cases of untrue allegations are due to fabrication, more commonly unfounded allegations are made in good faith. Preexisting distrust or hostility may result in misunderstandings and unfounded allegations, especially in cases where the children involved are young and the allegations are reported through a parent. Some cases of unfounded allegations may be the product of the emotional disturbance of the accusing parent. This paper discusses how parental separation affects the making of child sexual abuse allegations, with particular emphasis on how separation may contribute to unfounded allegations. Recent research is reviewed, and national data from Canada on allegations of abuse and neglect when parents have separated is presented. Legal issues that arise in these cases are discussed in the context of American and Canadian case law. The authors discuss factors that can help distinguish founded from unfounded cases. The paper concludes by offering some practical advice about the handling of this type of case by mental health professional, judges, and lawyers.

Behnke, D. K. & Connell, M. (2005). Child custody evaluations in cases involving sexual abuse: A view from the bench. *Journal of Child Custody*, 2(3), 121-36.

Psychological evaluation and testimony play a critical role in child sexual abuse cases, especially in custody and visitation cases. While the evaluation generally cannot determine whether sexual abuse has occurred, it can provide useful information to assist the court in deciding matters of custody and access in the face of the allegations.

Judges need to know the standard of practice for the development of expert opinion in order to be able to evaluate testimony offered by custody evaluators. The informed judge can develop useful input by outlining expectations within the order for evaluation and actively regulating the gate for admission of expert testimony. Elements of a model order for custody evaluations addressing allegations of sexual abuse are proposed.

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

The 1998 Canadian Incidence Study of Reported Child Abuse and Neglect (CIS-98) is the first national study to document the rate of intentionally false allegations of abuse and neglect investigated by child welfare services in Canada. This paper provides a detailed summary of the characteristics associated with intentionally false reports of child abuse and neglect within the context of parental separation. A multistage sampling design was used, first to select a representative sample of 51 child welfare service areas across Canada. Child maltreatment investigations conducted in the selected sites during the months of October–December 1998 were tracked, yielding a final sample of 7,672 child maltreatment investigations reported to child welfare authorities because of suspected child abuse or neglect. Consistent with other national studies of reported child maltreatment, CIS-98 data indicate that more than one-third of maltreatment investigations are unsubstantiated, but only 4% of all cases are considered to be intentionally fabricated. Within the subsample of cases wherein a custody or access dispute has occurred, the rate of intentionally false allegations is higher: 12%. Results of this analysis show that neglect is the most common form of intentionally fabricated maltreatment, while anonymous reporters and noncustodial parents (usually fathers) most frequently make intentionally false reports. Of the intentionally false allegations of maltreatment tracked by the CIS-98, custodial parents (usually mothers) and children were least likely to fabricate reports of abuse or neglect. While the CIS-98 documents that the rate of intentionally false allegations is relatively low, these results raise important clinical and legal issues, which require further consideration.

Johnson, T. C. (2005). Young children's problematic sexual behaviors, unsubstantiated allegations of child abuse, and family boundaries in child custody disputes. *Journal of Child Custody*, 2(4), 111-26.

Allegations of child sexual abuse are sometimes alleged based on a child's problematic sexual behaviors. When the allegations are unsubstantiated, child custody evaluators are asked to make recommendations regarding custody. Historically, it has been believed that if a child engages in problematic sexual behaviors it is strong evidence of child sexual abuse. Recent research finds that there are many reasons, other than overt sexual abuse, for children to engage in problematic sexual behaviors. This article outlines these reasons and provides a methodology for the evaluation of the boundaries in both parents' homes to assist in determining the possible etiology of the problematic sexual behaviors of the child. Suggestions are made regarding visitation and reunification if boundary concerns are found.

Bow, J. N., Quinnell, F. A., Zaroff, M. & Assemany, A. (2002). Assessment of sexual abuse allegations in child custody cases. *Professional Psychology: Research and Practice*, 33(6), 566-75.

Family courts frequently rely on the expertise of mental health professionals to assess allegations of sexual abuse within the context of child custody evaluations. Such evaluations are complex and require knowledge of techniques used in sexual abuse and sexual offender evaluations, as well as knowledge of child custody practices. Preliminary findings from a national survey of 84 psychologists indicated that respondents tend to adhere to the child custody guidelines of the American Psychological Association. However, few practitioners followed formal models, protocols, or guidelines when evaluating alleged victims or alleged perpetrators of sexual abuse in conjunction with child custody disputes. Implications for professional practice are discussed, along with a proposed comprehensive model for assessing sexual abuse allegations in child custody cases.

Brown, T., Frederico, M., Hewitt, L. & Sheehan, R. (2001). The child abuse and divorce myth. *Child Abuse Review*, 10(2), 113-124.

When the authors of this article undertook a study into the way the Australian legal process managed child abuse allegations in custody and access disputes following partnership breakdown in de facto and legal marriages, they encountered what they came to think of as 'the child abuse and divorce myth'. The myth centered around a belief that child abuse allegations made during or after partnership breakdown were weapons fashioned to gain advantage in the marital war. Therefore, they were not real; therefore, they should not be taken seriously. Despite little previous research, these views were strongly held by both families and professionals. The article examines the myth, believed to be an international phenomenon, and shows, in detail, how the study's findings do not support it. In fact, the findings from this unique study contradict the myth in its totality and in its specific aspects. Thus, it is argued that the myth should be abandoned and a new knowledge base for professional intervention that recognizes the reality of this problem be adopted instead. As a result of the study, a new specialized intervention program for children involved in residence and contact disputes where child abuse was alleged is being trialed in the Family Court of Australia. Hopefully, the introduction of further intervention programmes based on the reality of child abuse in these circumstances rather than on the myth will follow.

Brown, T., Frederico, M, Hewitt, L., & Sheehan, R. (2000). Revealing the existence of child abuse in the context of marital breakdown and custody and access disputes. *Child Abuse & Neglect*, 24(6), 849-859.

Objective: Child abuse in the context of legal and de facto marital breakdown has received little attention internationally. Many believe it does not exist in this context and regard it as just a “gambit in the divorce wars.” Recently, however, family courts in a number of countries have become concerned over the management of child abuse allegations in custody and access cases, known more commonly now as residence and contact cases. This article presents a unique research study, which investigated how the Family Court of Australia dealt with such cases. The study, covering all forms of child abuse, sought to discover who were the families bringing these problems to family courts, what precisely the abuse was and how the courts dealt with it. The study reviewed court records of some 200 families where child abuse allegations had been made in custody and access disputes in jurisdictions in two states, observed court proceedings and interviewed court and related services’ staff. The findings showed that these cases had become a core component of the court’s workload without any public or professional awareness of this change, that the abuse was real, that it was severe and serious, and that the courts and child protection services did not provide appropriate services to the families. A new specialized intervention system was developed based on the research and it is now being trialed and evaluated. The new intervention system contains features derived from the research findings that may be suitable internationally for implementation.

Cross, T. P., Martell, D., McDonald, E., & Ahl, M. (1999). The criminal justice system and child placement in child sexual abuse cases. *Child Maltreatment*. 4(1), 32-44.

This study examined the relationship between declining to prosecute child sexual abuse and child placement. All cases involving child sexual abuse charges referred to prosecutors in four jurisdictions across the country were tracked. A sample (N = 289) of the child victims and families from these cases were interviewed at the time of referral for prosecution and 8 to 9 months later, and data on life events (including child placement), maternal support, and child and family adjustment were gathered. In cases declined for prosecution, 41% of children were placed outside the home since the first interview, as compared to 19% of children in accepted cases ($p < .001$). A multivariate analysis demonstrated that children were significantly more likely to be placed outside the home when alleged abuse lasted more than 1 month, families were more disturbed, maternal support was less, and cases were declined for prosecution. Possible explanations for the relationship between prosecution and child placement are discussed as well as recommendations for practice and further research.

Kuehnle, K. (1998). Ethics and the forensic expert: A case study of child custody involving allegations of child sexual abuse. *Ethics and Behavior*, 8(1), 1-18.

Examines the involvement of allegations of child sexual abuse in a child custody case. Types of problems faced by psychologists; need for psychologists to possess advanced assessment skills; role of psychologists as independent evaluators.

Faller, K. C. & DeVoe, E. (1996). Allegations of sexual abuse in divorce. *Journal of Child Sexual Abuse*, 4(4), 1-25.

This study examines a clinical sample of 215 cases of allegations of sexual abuse in families also involved in divorce. Cases are categorized into situations in which: (1) disclosure of sexual abuse is followed by divorce (N = 31), (2) divorce is followed by disclosure of pre-existing sexual abuse (N = 54), (3) divorce is followed by sexual abuse (N = 58), (4) false allegations by adults (N = 31), (5) possible false allegations by adults (N = 14), (6) dynamics of sexual abuse not directly related to divorce (N = 27), and false allegations by children (N = 9). In addition, clinical substantiation (found in 72.6% of cases) and lack thereof are examined in terms of their relation to case characteristics assumed to be indicative of a true allegation: offender confession, offender conviction, medical/police evidence, other victims and witnesses, information from significant others, information from other professionals, and child interview data. Legal outcomes, including protection of the child, court substantiation, and any sanctions against the complaint, and their relationships to case characteristics, are described. The court substantiation rate is about half the clinic substantiation rate. Close to a fifth of parents raising concerns about sexual abuse experienced some form of sanction.

McIntosh, J. A. & Prinz, R. J. (1993). The incidence of alleged sexual abuse in 603 family court cases. *Law and Human Behavior*, 17(1), 95-101.

The conflict and animosity that sometimes accompanies child custody disputes can give rise to the propagation of allegations of child sexual abuse. To characterize the magnitude of the problem, the present study attempted to determine whether and to what extent child sexual abuse allegations predominate in family court litigation. The entire one-year caseload of a county family court docket was systematically reviewed and coded.

Methodical evaluation of 603 family court files yielded base rates of pertinent allegations and other information profiling the cases. The findings did not support the contention that sexual abuse allegations are commonplace in child custody disputes. Sexual abuse allegations were made in 2% of cases in which custody or access was contested and in only 0.8% of the cases overall. Implications of the findings for future research were discussed.

McGraw, J. M. & Smith, H. (1992). Child sexual abuse allegations amidst divorce and custody proceedings: Refining the validation process. *Journal of Child Sexual Abuse*. 1(1), 49-62.

This study describes 18 cases of child sexual abuse allegations investigated by the Boulder County (Colorado) Sexual Abuse Team which revolved around divorce and custody disputes. Determining whether such allegations are reliable or fictitious presents a challenge to caseworkers who are apt to find themselves caught up in the highly charged atmosphere of divorce and custody proceedings. Initially, only 5.6% of the cases investigated were believed to be founded by the sexual abuse evaluation team. After applying the clinical process of validation used at the Kerpe Center in Denver, Colorado, the cases were subject to further review and categorized as follows: reliable accounts; recantations; unsubstantiated suspicions; insufficient information; fictitious reports by adults; and fictitious reports by children. Subsequent to applying this clinical process of validation, the number of cases categorized as founded increased to 44.4%. Application of a systematic process of validation by clinicians is suggested in the determination of whether reports are likely to be valid or fictitious. Tentative conclusions are drawn which acknowledge that the atmosphere surrounding divorce/custody proceedings can affect objectivity by clinicians and which suggest adherence to a systematic clinical process of validation.

Faller, K. C. (1991). Possible explanations for child sexual abuse allegations in divorce. *American Journal of Orthopsychiatry*, 61(1), 86-91. For personal use only – not for distribution.

Based on a clinical sample of 136 cases, four classes of child sexual abuse cases in divorce are proposed: divorce precipitated by discovery of sexual abuse; long-standing sexual victimization revealed after marital breakup; sexual abuse precipitated by marital dissolution; and false allegations made during or after divorce. Implications for clinical practice are discussed.

Thoennes, N. and Tjaden, P. G. (1990). The extent, nature, and validity of sexual abuse allegations in custody/visitation disputes. *Child Abuse & Neglect*, 14(2), 151-63.

Using information from mail and telephone surveys and personal interviews with legal and mental health professionals who deal with child abuse cases, and empirical data from 12 domestic relations courts throughout the United States, the study concludes that only a small proportion of contested custody and visitation cases involve sexual abuse allegations. Records maintained by family court workers place the figure at less than 2%. A sample of 169 cases for which data were gathered from court counselors, family court, and CPS agency files also found that accusations were brought by mothers (67%) and fathers (28%) and third parties (11%). Fathers were accused in 51% of all cases, but allegations were also made against mothers, mothers' new partners, and extended family members. In the 129 cases for which a determination of the validity of the allegation was available, 50% were found to involve abuse, 33% were found to involve no abuse, and 17% resulted in an indeterminate ruling. Four factors were significantly associated with the perceived validity of the abuse report: age of the victim, frequency of the alleged abuse, prior abuse/neglect reports, and the amount of time elapsing between filing for divorce and the emergence of the allegation.

Corwin, D. L., Berlinger, L., Goodman, G., Goodwin, J., & White, Sue. (1987). Child sexual abuse and custody disputes: No easy answers. *Journal of Interpersonal Violence*, 2, 91-105.

This article alerts professionals to the emergence of oversimplified approaches to the complex problem of alleged child sexual abuse in the context of custody disputes. We argue that reliance on such methods is likely to result in misdiagnosis and failure to protect children who are both sexually abused and caught in custody battles. We specifically take issue with Green's (1986) recent formulation for distinguishing between true and false accusations of incest in child custody disputes because that formulation is based on an inadequate data base, biased sample, and unsupported conclusions. In addition, we discuss the limits of clinical impression, the difference between unfounded or unsubstantiated and false accusations of abuse, and the high prevalence of actual child sexual abuse in the setting of marital dissolution.

Dillon, K. M. (1987). False sexual abuse allegation: causes and concerns. *Social Work*, 32(6), 540-41.

The article examines a number of generalizations about child sexual abuse. Because of the zeal to protect children from sexual abuse and because a number of generalizations have evolved about sexual abuse, society has paid less attention to the rights of those accused of sexual abuse. Certain physical and behavioral signs generally associated with sexual abuse serve as guideposts in making clinical decisions about the likelihood that sexual abuse has occurred. A problem arises, however, when guideposts become generalizations that are presumed to indicate sexual abuse in all cases in which they appear. Those who examine children for sexual abuse should be aware of the systematic nature of their conclusions. Not only is the examiner making a statement about a child and the child's welfare, the examiner also is making a judgment about the guilt or innocence of another human being regarding an action considered a serious criminal and moral offense. Given that weighty responsibility, examiners must be well qualified and exercise extreme caution in making allegations of sexual abuse, especially in cases in which the child is younger than 5 years old; the evidence is strictly behavioral or the parents of the child are in a custody battle.