

## **SPECIAL REPORT**

# **How False Allegations Harm Families and Children**



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Families are the cornerstone of an orderly, prosperous, and free society. Families provide the environment in which children are nurtured and protected. In all countries and cultures, families constitute an essential, and sometimes the only social welfare net for its members.<sup>1</sup>

Over the last 30 years, the American family has grown progressively weaker. Now, persons are far less likely to wed. From 1970 to 2002, the annual number of marriages dropped by 40%.<sup>2</sup> When persons do marry, their risk of divorce is almost 50%.

Non-marital births represent a growing concern. In 2004, a record 1.5 million babies were born to single mothers, representing 35.7% of the total. Among Blacks, the number reached 69.2%.<sup>3</sup>

Father absence is another worrisome indicator. Now, 34% of American children live away from their biological father, placing these children at higher risk for a broad range of social pathologies, including academic difficulties, conduct issues, and involvement with the criminal justice system.<sup>4</sup>

The Violence Against Women Act (VAWA), Family Violence Prevention and Services Act, Victims of Crime Act, and other federal domestic violence programs allocate about \$1 billion a year to enhance law enforcement efforts and provide services for victims of abuse.<sup>5</sup> Additionally, the Violence Against Women Act has spawned the passage of about 1,500 state-level laws.<sup>6</sup>

This Special Report analyzes how federal and state domestic violence laws establish the framework that gives rise to false claims of abuse, which in turn escalate partner conflict and discourage partner reconciliation. The end result is family break-up and the separation of children from one of their parents.

## **Five Steps to Family Break-Up**

The nation's domestic violence laws create a legal structure that facilitates and incentivizes allegations of abuse. The framework has five components:

### *1. Broad Definitions of Domestic Violence*

The Violence Against Women Act defines domestic violence this way:

“The term ‘domestic violence’ *includes* felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse...”<sup>\*</sup> [italics added]

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<sup>\*</sup> 2005 Violence Against Women Act, Section 3(A)(6)

Sound laws rely on definitive and unambiguous definitions. But VAWA employs the open-ended term “includes,” a word that swings wide the door to broad interpretations.

Most states have used this definitional loophole to enact domestic abuse statutes that allow persons to claim they are “afraid” or “fearful” as the basis for a domestic restraining order. Now, 63% of all states’ definitions of domestic abuse include psychological distress and 33% incorporate the ill-defined allegation “harassment.”<sup>7</sup>

The result is that in most states, a broad range of actions, violent or not, can be construed as domestic “violence.”

## 2. *Monetary and Property Incentives*

State domestic violence laws provide for a variety of “remedies” to persons who claim to be abuse victims. These remedies, awarded as part of a restraining order,<sup>8</sup> typically include use and possession of the family residence. Most states also allow for a broad range of other benefits, such as reimbursement for medical expenses, counseling costs, and attorney’s fees.<sup>9</sup>

These remedies are granted following a brief *ex parte* hearing. In most cases the defendant is not invited to present his or her side of the case, and indeed may not be aware that the hearing is taking place.

The allure of financial and other benefits, with minimal attention to due process and no penalties for perjury, serves as a powerful incentive to make spurious allegations.

## 3. *Child Custody Laws*

States have enacted laws that govern how allegations or findings of domestic violence should be considered in reaching judicial determinations of child custody. Twenty-six states require the divorce court to regard domestic violence as a “best interest of the child” consideration, 23 jurisdictions have a rebuttable presumption against shared parenting, and four states have an outright prohibition on shared parenting in such cases.<sup>10</sup>

At first these may appear to be reasonable provisions, until one begins to consider the previously discussed problems of open-ended definitions and financial incentives. For example, the Kentucky statute defines domestic violence as:

“physical injury, serious physical injury, sexual abuse, assault, or the infliction of *fear* of imminent physical injury ... between family members or members of an unmarried couple.”<sup>11</sup> [*italics added*]

The law may also govern the impact of domestic violence allegations on visitation arrangements:

“If domestic violence and abuse, as defined in KRS 403.720, has been *alleged*, the court shall, after a hearing, determine the visitation arrangement, if any, which would not endanger seriously the child’s or the custodial parent’s physical, mental, or emotional health.”<sup>12</sup> [italics added]

In Kentucky, simply claiming to be fearful is sufficient to remove the other parent’s visitation rights.

#### 4. Imposed Separation

Misunderstandings and communication break-downs are inherent in human relationships. In years past, police officers encouraged the parties to temporarily separate and make amends. But now, any marital tiff can be considered domestic “abuse.”<sup>13</sup> Many states have instituted mandatory-arrest laws, even when short-term separation of the parties would be the more appropriate measure.<sup>14</sup>

One California assistant public defender complained that “the district attorney pushes a particular point of view: separation.”<sup>15</sup> Likewise, abuse shelters often discourage clients from reuniting with their partners, even when the abuse is minor.<sup>16</sup>

This case illustrates how separation was inappropriately imposed on a couple, and the subsequent effects on the children and husband:

*Following several heated arguments with her husband, Susan went to her local shelter for get counseling for herself. She emphasized to the shelter worker there had been no physical violence.*

*Nonetheless, the shelter called the police. The police report stated—falsely—that Susan’s husband had threatened to rape her and to kill the children. As a result, the husband was ordered out of his house.*

*Two days later, the Child and Protective Services worker came to the house and detained the children, claiming the mother had not adequately protected her children. The children were placed in foster care for 38 days.*

*Then Susan’s husband was arrested and bail was set at \$350,000. Because he worked as a truck driver, he couldn’t afford an attorney. So he agreed to a plea bargain with 3 years probation—even though no physical violence had ever occurred.*<sup>17</sup>

#### 5. Reconciliation Thwarted

Domestic violence treatment programs likewise stymie reconciliation. One analysis of 30 states that have implemented standards for offender treatment programs found that 42% of the states prohibit couples counseling.<sup>18</sup>

A study by the National Institute for Justice observed, “Restrictions on couples therapy and individual psychotherapy for battering are a point of contention between feminist-

oriented batterer intervention providers and mental health providers in many communities.”<sup>19</sup>

### *The End Result*

As a result of aggressive law-enforcement and prosecution efforts, our nation’s domestic violence system amounts to “state-imposed *de facto* divorce,” according to Harvard Law School professor Jeannie Suk.<sup>20</sup> The government “initiates and dictates the end of the intimate relationship as a solution to DV.”

Such policies and practices may foster the perception among men that marriage represents a risky proposition. According to a Rutgers University survey, 22% of single heterosexual American men 25–34 years old indicate that they do not plan to ever marry. And 53% of men say that they are “not interested in getting married anytime soon.”<sup>21</sup>

### **Effects on Children**

More than one million American children experience divorce each year.<sup>22</sup> How often is a false allegation of domestic violence made during the course of the divorce proceeding?

One study of divorcing couples with custody disputes found that DV allegations were made in 55% of the cases, 59% of which could not be substantiated as true.<sup>23</sup> Other studies have reported similar percentages of divorces that involve accusations of abuse.<sup>24,25,26</sup>

This case involved a well-known baseball player and his celebrity wife:

*Major League pitching ace Chuck Finley was married to actress Tawny Kitaen, whose prescription drug addiction and erratic behavior placed the lives of their two daughters at risk. One night Kitaen turned on the gas in the fireplace without lighting it and then called the girls to come to bed to go to sleep. On another occasion, she was charged with vandalizing a car in a parking lot.*

*On April 1, 2002, Kitaen attacked Finley while he was driving the car, kicking him with her high-heeled boots, which left abrasions and scrapes on his body. Kitaen was arrested by the Newport Beach, California police. Three days later, Finley filed for divorce and was granted temporary custody of their children.*

*But in a move to gain custody of the two girls, Kitaen retaliated, accusing Finley of domestic “violence” because he had allegedly started the argument. Finley had no prior record of physical violence.*

Thus, each year, many thousands of children experience divorces in which false allegations of partner violence are made, allegations that often serve as the basis to deprive children of contact from one of their parents.

The all-too-common result of these laws is to weaken or sever the child-parent bond. These non-custodial parents experience a range of emotional and psychological problems, ranging from a sense of displacement and loss, depression, and even suicide.<sup>27</sup>

Four decades ago, Daniel Patrick Moynihan foresaw the impact of fatherless families:

From the wild Irish slums of the 19<sup>th</sup> century eastern seaboard to the riot-torn suburbs of Los Angeles, there is one unmistakable lesson in American history: A community that allows a large number of young men to grow up in broken families, dominated by women, never acquiring any stable relationship to male authority, never acquiring any rational expectations about the future—that community asks for and gets chaos.

Moynihan's prediction is now confirmed by dozens of studies that gauge the effects of separating children from their fathers.<sup>28</sup> These are some highlights:

### *Child Abuse*

Research shows that when a couple separates, the risk of physical and sexual child abuse increases dramatically. For example, one national survey found that 7.4% of children who lived with one parent had ever been sexually abused, compared to only 4.2% of children living with both parents.<sup>29</sup> The perpetrators of child mistreatment and homicide are more likely to be mothers than fathers—not because women are inherently more abusive, but because single parents, who are usually mothers, lack the social supports that intact families enjoy.<sup>30</sup> One Gallup Survey found that mothers were twice as likely as fathers to report ever physically abusing a child.<sup>31</sup>

The National Incidence Study (NIS) of Child Abuse and Neglect found that, compared to children living with both parents, children living with a single parent were placed at substantially higher risk of abuse.<sup>32</sup> These children had a:

- 64% greater risk of experiencing emotional neglect
- 165% greater risk of experiencing physical neglect
- 77% greater risk of being harmed by physical abuse
- Approximately 80% greater risk of suffering *serious* injury or harm from abuse or neglect

But these statistics actually understate the risk, because the NIS combines co-habiting and married parents into one group—and child abuse is substantially higher among co-habiting parents.

A better gauge of the risk that single parenthood places on children comes from a large British study. The research found that, compared to married biological parents, children with single mothers have a 14-fold higher risk of experiencing serious child abuse, and a 7-fold higher risk of suffering fatal child abuse.<sup>33</sup>

*Other Indicators of Child Welfare*

Children who live apart from their fathers are at risk for a broad range of social pathologies, including educational, behavioral, and health problems:

*School performance:*

- Academic performance: A study of Black children ages 6–9 showed that children living with both parents scored significantly higher on tests of intellectual ability than children in mother-only households.<sup>34</sup>
- School drop-out rates: Fatherless children are twice as likely to drop out of school.<sup>35</sup>
- School disciplinary problems: Only 13% of 6<sup>th</sup> to 12<sup>th</sup> graders living with both parents have had behavior problems that resulted in suspension or expulsion, compared to 27% who lived in mother-only families.<sup>36</sup>

*Behavioral issues:*

- Among young adolescents, only 10% living with both parents had had sexual relations, compared to 23% who lived with a single mother.<sup>37</sup>
- Suicide: Only 9% of high school students from intact families reported suicidal behavior, compared to 20% of teens from single-parent homes.<sup>38</sup>

*Health:*

- Injuries: A study of 17,110 children showed that children who lived with their divorced mothers had risks of injury that were 20–30% higher than children who lived with both biological parents.<sup>39</sup>
- Longevity: Children who experienced parental divorce had a lifespan 4 years shorter than children who did not experience divorce.<sup>40</sup>

*Poverty:*

- In 1999, the poverty rate for children living in single-mother families was 50%, compared to only 9% of children in married-couple families.<sup>41</sup>
- During the first 4 months of a father's absence, the chances that the child's family would fall below the poverty line increased from 18.5% to 37.6%<sup>42</sup>
- Of all children in TANF (Temporary Assistance to Needy Families) families, 71.8% lived with a single parent in 1998.<sup>43</sup>

*Crime:*

- Juvenile delinquency: The chances that a young male will engage in criminal activity doubles if he is raised without a father.<sup>44</sup>
- Violent crime: Low percentages of father-absent households were associated with lower rates of homicide among black and white men.<sup>45</sup>

## **Our Children, Our Future**

An allegation of domestic violence is often the first step in an inexorable cascade of legal actions and judicial decisions that each year results in hundreds of thousands of children losing daily contact with one of their parents, usually their father. Father-absence is linked to social and economic well-being. One report noted that only 8% of children in married-couple families were living in poverty, compared to 42% of children in female-headed families.<sup>46</sup>

Several years ago Tim Russert, former moderator of NBC's Meet the Press, wrote a sleeper best-seller, *Wisdom of Our Fathers*, which consists of dozens of poignant letters from children to their fathers.<sup>47</sup> Most letters are edifying, some are amusing, a few are sad. All of them drive home the same essential message: children need and want both parents.

The separation of children from one of their parents is linked to higher child abuse rates and the worsening of a broad range of indicators of child well-being. Any society that aspires to survive and prosper must be sure to place our children first.

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