

Evidence submitted by Refuge

FAMILY JUSTICE: THE FAMILY COURTS

GENERAL STATEMENT

1. It is well understood that separation and divorce can have a negative affect on children, particularly where conflict characterises the break up and in general Refuge believes it is valuable for children to maintain contact with both parents where it is safe to do so. The negative impact of harsh and punitive parenting is also well understood as is the harm that can be caused by witnessing domestic violence. It is vital therefore that there is a balance between the child's right to maintain contact with both parents following separation and the duty of society to protect children from harm; a parents' right to maintain contact with their child should not overshadow either of these central aims.

2. The contentious issue of contact and residence presents particular problems for legislators and policy makers yet the importance of "getting it right" cannot be more strongly emphasised, for to get it wrong can and indeed does lead to fatal consequences. Legislative change in other jurisdictions has led some to create a legal presumption of "safe contact" together with mandatory risk assessment in an effort to protect children from harm Yet even with these safeguards in place, protecting children (and the non-abusing parent) during contact visits with a father who has perpetrated domestic violence remains difficult, though it is not impossible if stringent screening, effective assessment and monitoring systems are in place.

3. The role of the family courts in ensuring the protection of children (and the non-abusing parent) cannot be overstated. All those working in the system should have a firm grounding in domestic violence and its impact on victims. There must be a clear understanding and acceptance that domestic violence, whether experienced or witnessed, represents a serious risk both now and in the future for any child and where this risk exists, there must be a resolve to say "no" to contact, at least in the short-term.

THE RISKS

— Domestic violence has overtaken gestational diabetes and pre-eclampsia as a cause of foetal death.

— Attempts to leave a violent partner, with children, is one of the most significant factors associated with severe domestic violence and death.

— Research has shown that the emotional and behavioural problems of children exposed to domestic violence are associated with their relationship their father. The more fear and anxiety, the greater the problems; the longer children are away from a violent father, the greater the improvement in adjustment.

THE REALITY

— Less than 1% of contact applications were denied in 2002.

— In 35% of contact applications there were concerns about the safety of a child or the residential parent.

— 10 children were killed during contact visits in the past two years.

— Around 75% of children on the child protection register live in homes where there is domestic violence.

4. In view of these concerns, Refuge's response has focused upon the fourth of the select committees questions, that is "whether people using family courts are getting the service they deserve" and how the system, in its broadest sense could be improved to better meet the needs of domestic violence victims. And with this in mind, Refuge recommends.

SUMMARY OF RECOMMENDATIONS

1. A centrally driven and appropriately funded national strategy on domestic violence. This would ensure that domestic violence victims across the country received the same high quality service both within and outside the court system. It would also ensure a consistent and appropriate response to perpetrators.

2. A legal definition of domestic violence.

3. Appropriate domestic violence training for all professionals and mandatory training for professionals working in and for the courts.

4. Legislation in favour of a presumption of safe contact at the earliest opportunity.

5. Appropriate policies and procedures that prioritise and ensure safety for children and non-abusing parents with regard to contact and residence including:

— thorough and on-going screening for domestic violence prior to and during the process of contact;

— that family courts always accept evidence "on the balance of probabilities" when investigating allegations of domestic violence or abuse to a child;

— a mandatory risk assessment in cases where domestic violence is a known or suspected factor;

— prior attendance at a group/individual therapy for perpetrators of domestic violence (focusing on the effects of domestic violence/abuse on children) should be a precondition of contact agreements in all high-risk cases;

— the wishes and feelings of children should be ascertained in relation to decisions which concern them;

— an effective, comprehensive assessment of the impacts of abuse where a child has been exposed to domestic violence;

— the development of effective assessment protocols for infants and pre-schoolers exposed to domestic violence;

— a balance between minimising delay in resolving matters concerning children and allowing sufficient time to ensure that effective assessment and investigations are undertaken;

- automatic separate representation for children exposed to domestic violence in private law proceedings and the use of domestic violence experts and other specialists to assist the court;
- assessment of and protection for the non-abusing parent;
- clear protocols to ensure contact is safe;
- the development of protocols to ensure consistency between orders and appropriate communication across jurisdictions, placing safety for victims at the centre of decision making;
- the premise that orders for protection should over-ride orders permitting unsafe contact;
- clear policies regarding confidentiality and disclosure of information about domestic violence victims; and
- routine exemptions from mediation, in-court conciliation, family resolution projects and enforcement of orders in circumstances where domestic violence or child abuse is a risk.

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