Aug 1, 2021

To the United Nations Commission on the Status of Women (UNCSW), advocacy groups One Mom's Battle and Custody Peace (a California nonprofit currently with 501-c3 status pending) lodge the following Claim regarding human rights violations and abuses against women in the family court system in California and throughout the United States of America.

It is the mission of One Mom's Battle and Custody Peace to work towards reform of the family courts throughout the United States to ensure that child safety is a top priority in all custody cases and that victims of domestic violence are properly and adequately protected during family court proceedings.

Over one hundred women across the United States hereby join in this Claim. Each of these women has provided a letter describing her experience and attesting to the injustice and human rights violations she suffered as a woman navigating the family court system of her respective state within this country. These letters are attached hereto as **Exhibit A.**

These women tell a common story, and their experiences reveal systemic problems in the family courts across the states of the United States. Upon review of these women's submissions hereto you will hear time and again accounts of:

- Abusive fathers seeking joint or full custody as a means of revenge, punishment and continued control over domestic violence victims after previously sharing no parenting responsibilities and demonstrating no interest in doing so;
- Courts' reckless dismissal and doubt of child physical and sexual abuse claims brought by protective mothers;

- Systemic discouragement of protective mothers from bringing legitimate child abuse or domestic violence reports to the courts' attention including from judges, evaluators, family law practitioners and others;
- Protective mothers and domestic violence victims being told that bringing domestic violence and/or child abuse concerns to the attention of the judge will hurt their case and being expressly discouraged from doing so by their attorneys;
- Abusive fathers' use of excessive filings and vexatious litigation to harass and control domestic violence victims, to financially strangle them and to gain leverage to avoid child support;
- Cross-claims of parental alienation being lodged against protective mothers asserting child abuse claims as a weapon to cast doubt on their credibility;
- An abuser's history of domestic violence being discounted and not considered for child custody considerations;
- Battered and abused women being forced to cooperate and regularly interact with their abusers and courts' punishment of any women who appears resistant to cooperating in "shared parenting" ideals with her and/or her child's abuser;
- Women's abuse allegations being summarily dismissed and women being unduly presumed to be fabricating false abuse allegations and influencing children to make false abuse allegations;
- Children being placed in custody and/or unsupervised visitation settings with fathers with documented incidents of domestic violence against the mother or child abuse against the child;

- Escalation of abuse by abusers against victims post-separation and through the vehicle of the family court system;
- Courts' dismissal of domestic violence that is not physical violence or assault;
- Rushed, inadequate and superficial investigation by custody evaluators and guardians ad litem including outright refusal to interview certain witnesses;
- Custody being taken away from protective mothers who bring abuse allegations to the court;
- Failure of judges and court personnel to understand the underlying dynamics of domestic violence and child abuse including the reasons why a domestic violence victim may not have filed a police report or otherwise thoroughly documented the incident; and
- Harmful and traumatizing reunification programs being ordered by the court in response to allegations of parental alienation.

This is happening across the United States, and in fact globally. The family courts throughout the United States are enabling, facilitating and perpetuating these injustices and human rights violations. The dire and systemic problems plaguing women who navigate family court require the attention of the United Nations and global community.

These women's stories are corroborated by a body of evidence compiled by scholars, family law experts and investigative journalists over recent years of systemic injustice and human rights violations perpetrated against women at the hands of the family court system. Women are suffering human rights violations at the hands of family courts with such violations including gender bias, discrimination on the basis of sex, failure to adequately protect women and their children from violence and abuse, and court implemented and facilitated psychological, emotional and financial abuse of women.

TRAGIC LOSS OF CHILDREN'S LIVES DUE TO FAILURE TO RESPOND TO MOTHERS' PLEAS OF SAFETY CONCERNS

Data gathered by the Center for Judicial Excellence shows that since 2008 at least *803* children have been murdered in the United States by a divorcing or separating parent.[1]

A few of those children's stories are mentioned here:

In 2019 in New York, Cherone Coleman's ex-fiancé Martin Pereira murdered their 3-year-old daughter Autumn Coleman by setting a car on fire while Autumn was trapped in the back seat. Weeks prior to the murder, Coleman had notified the family court in Queens of her concern for her child's safety in light of Pereira's mental health condition in an attempt to stop Pereira from having visitation with Autumn. The court declined to intervene.[2]

In 2018 in Pennsylvania, Kathy Sherlock's ex-boyfriend Jeffrey Mancuso murdered their 7-year-old daughter Kayden Mancuso. Mancuso then killed himself. At the time of the murder, Sherlock had filed for a restraining order against Mancuso and was seeking sole custody in family court. Mancuso had a documented history of violence and mental health issues.[3]

In 2017 in California, Ana Estevez's husband Aramazd Andressian smothered their 5-year-old son Piqui Andressian to death with a sweater. At the time of the murder, Estevez and Andressian were in the middle of a contentious divorce and custody fight. Just months before Piqui's murder, Estevez had filed for a restraining order on the basis of Andressian's abusive conduct towards her which included telling her she was not a woman because she couldn't get pregnant, hacking her social media and phone account and threatening Piqui. The judge denied the restraining order request and gave Andressian the right to extended visits with Piqui.[4]

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[1] https://centerforjudicialexcellence.org/cje-projects-initiatives/child-murder-data/

[2] https://www.nytimes.com/2019/07/22/nyregion/queens-car-fire-toddler-death.html

[3] https://abcnews.go.com/US/mother-stepdad-year-slain-murder-suicide-hope-death/story?id=57613909; https://www.miamiherald.com/news/nation-world/national/article216222410.html

[4] https://www.nbclosangeles.com/news/local/new-domestic-violence-law-proposed-after-5-year-old-boys-death-at-ha

In 2016 in New York, Jacqueline Franchetti's ex-boyfriend Roy Rumsey murdered their 2-year-old daughter Kyra Franchetti during an unsupervised court mandated visit. Rumsey shot Kyra and himself and then set his house on fire. Prior to Kyra's murder, Franchetti had been warning the Long Island family court that her ex was unstable and violent and should not be given unsupervised visitation with their daughter.[5]

COURTS' TENDENCIES TO DISCREDIT AND DOUBT MOTHERS' ALLEGATIONS OF CHILD ABUSE AND/OR DOMESTIC VIOLENCE

What is happening across the United States is an epidemic whereby courts are dismissing mothers' claims of domestic violence and child abuse and thereby jeopardizing the safety and well-being of children. Joan S. Meier, Professor of Clinical Law at George Washington University Law School, conducted a nationwide study of child custody outcomes in the United States in cases involving abuse and alienation claims. The study reviewed published court opinions from January 1, 2005, through December 31, 2014. The data reviewed indicates a high level of skepticism from family court judges towards mothers' claims of domestic violence and child abuse and a frequency of custody reversals to fathers accused of abuse.[6] From the 2,189 case opinions containing fact patterns where mothers accused fathers of abuse, courts credited mothers' abuse allegations only 36% of the time. The findings revealed that judges are particularly skeptical of a protective mother bringing child abuse claims against the father as the courts believed mothers' claims of physical child abuse only 21% of the time and claims of child

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nds-of-father/2419303/;
https://www.abc10.com/article/news/local/a-bittersweet-victory-in-the-fight-for-family-court-reform/103-587411779 ; https://www.cbsnews.com/news/calif-boys-cause-of-death-revealed-as-father-sentenced-in-his-slaying/;
https://losangeles.cbslocal.com/2018/06/12/mother-5-year-old-boy-seeks-change-in-law/

[5] https://www.nbcnews.com/news/us-news/jacqueline-says-she-did-everything-she-was-supposed-do-so-n1266982

[6] Joan S. Meir, Denial of Family Violence in Court: An Empirical Analysis and Path Forward For Family Law, GW Law Faculty Publications & Other Works 1536 at 15 (2021), https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2792&context=faculty_publications

sexual abuse only 19% of the time.[7] The results also showed custody reversals against a mother bringing an abuse claim occurred in 28% of the cases reviewed in the study. And in particular, mothers alleging both a father's physical and sexual child abuse were found to lose custody *56%* of the time.[8]

Meir's study also found powerful evidence that parental alienation is successfully being weaponized against women who bring domestic violence or child abuse claims in family court. Parental alienation is a theory that derives from its predecessor "Parental Alienation Syndrome." "Parental Alienation Syndrome" (PAS) was invented by psychiatrist Richard Gardner. Central to Gardner's PAS theory was that vengeful women fabricate child abuse allegations to punish an ex and secure custody of the child and do so by brainwashing the children into believing untrue things.[9] While PAS has been rejected from the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V) and discredited as lacking scientific validity, the theory has taken on a new form in "parental alienation," minus the "syndrome." *Parental alienation is widely utilized and relied upon in the family court systems throughout the United States to label why a child is resistant to contact with one of the parents*.[10]

In family courts where the parental alienation theory is adopted to explain a child's rejection of a parent, the result is usually the court's focus on the preferred allegedly alienating parent, rather than the rejected parent's behavior, the child's legitimate reasons for resisting contact with the rejected parent, or the child's subjective feelings which should be respected

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7 *Id*. at 16.
8 *Id*. at 20.
9 *Id*. at 55.
10 Meir, *supra*, at 57-58, 65; Kimberley J. Joyce, *Under the Microscope: The Admissibility of Parental Alienation Syndrome,* 32 Journal of the American Academy of Matrimonial Lawyers 63-65 (2019), https://cdn.ymaws.com/aaml.org/resource/collection/52E2F025-4275-4FEC-ACDD-6AADA46E6951/UndertheMicroscopetheadmissiblityofparentalalianation.pdf

from a mental health standpoint.[11] In following "parental alienation" experts' guidance, family courts in the United States are ordering children to be removed from the preferred parent without any contact to undergo "reunification therapy" to build a positive relationship with the rejected parent.[12] Experts on the matter have reported that such recommended treatments are likely to cause children psychological harm.[13]

The Meir study confirmed that parental alienation is a powerful tool weaponized against mothers alleging domestic violence and abuse in the family courts in the United States.[14] The data from Meir's study showed that in cases dealing with allegations of abuse against the father but no cross-complaint of alienation against the mother, courts credited the mother's abuse claims 40% of the time. In cases where a mother's abuse allegations were countered with a claim of alienation from the father, the court credited the mother's abuse claim only 23% of the time. Specific to cases with child abuse allegations, the mother's child abuse allegations were believed 27% of the time when there was no countering alienation claim, but only 18% of the time when the mother faced a countering alienation claim from the father.

The results showed four times greater odds of a court discrediting a mother's child abuse claim when a counterclaim of alienation is brought by the father as compared to when there is no cross-claim of alienation.[15] Most startling is the rate at which mothers were found to lose custody when facing counter allegations of alienation. Where mothers alleged abuse and there was no cross-alienation claim, mothers lost custody around 26% of the time. When fathers cross-claimed

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[11] Meir, *supra,* at 59; RE: Inclusion of "Parental Alienations" as a "Caregiver-child relationship problem" Code QE52.0 in the *International Classification of Diseases* 11th Revision (ICD-11), Collective Memo of Concern to: World Health Organization, http://www.learningtoendabuse.ca/docs/WHO-September-24-2019.pdf

[12] https://revealnews.org/podcast/bitter-custody/; https://www.nbcnewyork.com/news/local/divorce-camp-new-jersey-investigation/1585403/

[13] Stephanie Dallam & Joyanna Silberg, *Recommended treatments for 'parental alienation syndrome' (PAS) may cause children foreseeable and lasting psychological harm*, 2-3 Journal of Child Custody 134 (2016).

[14] Meir, *supra*, at 53.

[15] Meir, *supra*, at 61.

for alienation against a mother's abuse allegations, mothers lost custody around 50% of the time.[16] For those cases where mothers alleged child physical or sexual abuse, when there was no counter alienation claim by the father, the mothers lost custody around 29% of the time, whereas when there was a cross-claim of alienation, the mother lost custody 58% of the time.[17] The study also found that a mother was twice as likely to lose custody when accused of alienation compared to a father accused of alienation.[18]

Throughout family courts in the United States, there is an emphasis on the value of "shared parenting" even where there are instances of abuse and without considering the quality of the relationship with the parent.[19] At least 12 states have statutes with a presumption for joint custody and other states promote shared parenting through other ways including statutory provisions with a "friendly parent preference" given to the parent most amenable to sharing custody.[20] Protective mothers who bring abuse claims to the court's attention and are resistant to the shared parenting ideal are looked upon unfavorably by courts.[21] And in fact, women are often discouraged by family law practitioners from bringing valid abuse allegations to the court's attention.

A well-known 2011 study by University of Michigan Professor Daniel G. Saunders, which was based upon surveys with custody evaluators, judges, lawyers and domestic violence program workers, as well as on interviews with domestic abuse survivors, found that child custody evaluators in family courts did not fully understand domestic violence and the evaluators' belief that mothers in domestic abuse cases falsely allege abuse was directly

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16 *Id*. at 61.
17 *Id*. at 61.
18 *Id*. at 62.
19 *Id*. at 31.
20 *Id*. at 32.
21 *Id* .at 35.

correlated with custody and visitation recommendations.[22] The interviews with survivors of domestic violence showed common themes throughout in which survivors felt domestic violence was ignored or minimized during evaluations, the survivor was reprimanded for reporting child abuse, and evaluations were one-sided and rushed.[23]

HIGH CONFLICT CASES AND THE MENTAL HEALTH ISSUES AND DOMESTIC VIOLENCE THAT OFTEN COME WITH SUCH CASES

Michelle Oberman, Professor of Law at Santa Clara University School of Law, in the Family Law Quarterly 2019, discussed the phenomenon of what she and other experts in the family law field term as "high conflict" family court cases which are driven by "high conflict personalities." Professor Oberman and her colleagues draw upon a series of interviews with family law attorneys, judges and other experts in the field.[24] These so called "high conflict cases" are cases within the family court system that are protracted, highly litigated and emotionally fraught.[25] Oberman and her colleagues note that these "high conflict cases" all have a "high conflict personality" involved who thrives and is fueled by conflict. Many of the family law experts interviewed in the study explained that even when no formal diagnosis was on record with the court in their estimation the high conflict personality seemed to be driven by mental health issues rather than any rational objective. And the literature on the phenomenon of "high conflict cases" notes that the cases are often associated with a litigant suffering from narcissistic personality disorder, a disorder characterized by exaggerated feelings of self-importance, excessive need for admiration and lack of empathy.[26] Oberman proposes as a necessary measure

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[22] Daniel Saunders, Kathleen Faller and Richard Tolman, Child Custody Evaluators' Beliefs about Domestic Abuse Allegations; Their Relationship to Evaluator Demographics, Background, Domestic Violence Knowledge and Custody-Visitation Recommendations at 5, 20 130, 135 (2011), https://www.ojp.gov/pdffiles1/nij/grants/238891.pdf

[23] *Id*. at 12.

[24] Esther Rosenfield, Michelle Oberman, Jordan Bernard and Erika Lee, Confronting the Challenge of the High-Conflict Personality in the Family Court, 53 Family Law Quarterly (2019)

[25] *Id*. at 91.

[26] *Id*. at 91.

to combat these high conflict personalities in the family court system that the family court judges receive more training on the types of mental health issues and personality disorders they encounter on the family law bench to better understand the dynamics at play and de-escalate the situation.[27]

High conflict cases where custody is contentiously litigated are more likely than not to involve domestic abuse between the parties.[28] Many abused women report increased and more severe violence from their abuser after they have left the relationship, a phenomenon that has been referred to as "separation assault." When a victim leaves the relationship she exercises autonomy leaving the abuser angry and in need to exercise his control over her.[29] It is common for an abuser to use the family court system as a means to continue to abuse the other parent, as litigation becomes the last resort to remain in control over the victim. Evan Stark, the leading researcher on coercive control, has explained the term "coercive control" to mean when abused women have been subjected to "a pattern of domination that includes tactics to isolate, degrade, exploit and control them as well as to frighten them or hurt them physically" and he explains the pattern "may include but is not limited to physical violence."[30] Frequent motion practice, hauling the other parent into court repeatedly, and running up legal costs, or requests for continuances to postpone any resolution or final judgment are tactics of coercive control utilized by abusers

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27 *Id*. at 111.

28 Joan S. Meir, Denial of Family Violence in Court: An Empirical Analysis and Path Forward For Family Law, GW Law Faculty Publications & Other Works 1536 at 40 (2021), https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2792&context=faculty_publications

29 Jennifer Hardesty, Separation Assault in the Context of Postdivorce Parenting, 8 Violence Against Women 597, 600 (2002).

30 Evan Stark, Ph.D, MSW, "Re-presenting Battered Women: Coercive Control and the Defense of Liberty", In conference Violence Against Women: Complex Realities and New Issues in a Changing World, Les Presses de l'Université du Québec at 3 (2012), https://www.stopvaw.org/uploads/evan_stark_article_final_100812.pdf

within the family court system.[31] In such instances, custody proceedings often become a way for abusers to continue their control and abuse of the victim.

RECENT LEGISLATION IN CERTAIN STATES AIMED AT REFORMING THE FAMILY COURT SYSTEM TO REMEDY SYSTEMIC ISSUES

In 2018, the California legislature passed A.B. No. 2044 which amended Family Code section 3044 to create a rebuttable presumption that sole or joint physical custody to a person who has committed domestic violence against another person with whom they have a specified relationship is detrimental to the best interests of the child. The bill expanded the previously existing rebuttable presumption which only applied when the person had committed domestic violence against *the other party seeking custody of the child, the child, or the child's siblings*.[32] This legislation is significant in that it widens the net for the type of underlying violent and abusive conduct of the abuser that can be used to trigger a presumption that sole or joint custody is improper.

Further, legislation has recently been passed in both California and Connecticut broadening the definition of domestic violence to include coercive control, an important step in reforming family courts to better protect battered women and their children. California Senate Bill 1141 which passed in September 2020 includes coercive control as a basis for the family court issuing a restraining order. S.B 1141 defines "disturbing the peace of the other party" under Family Code section 6320 to include coercive control and defines "coercive control" as "a pattern of behavior that unreasonably interferes with a person's free will and personal liberty and

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[31] Jerry J. Bowels et al., Nat'l Council of Juvenile and Fam. Ct. Judges, A Judicial Guide to Child Safety in Custody Cases at 22 (2008), https://www.ncjfcj.org/wp-content/uploads/2012/02/judicial-guide_0_0.pdf

[32] CA A.B. 2044 (2018) (amending CA Fam. Code § 3044), ,https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2044

includes among other things, unreasonably isolating a victim from friends, relatives or other sources of support."[33]

Connecticut Senate Bill 1091 which recently passed in June 2021 has also amended the statutory definition of domestic violence for all family law proceedings to include coercive control and defines "coercive control" as "a pattern of behavior that in purpose or effect unreasonably interfered with a person's free will and personal liberty." S.B. 1091 goes on to list a number of non-exhaustive examples of "coercive control" such as isolating the family or household member from friends, relatives or other sources of support; depriving the family member of basic necessitates; controlling, regulating or monitoring the family or household member's movements, communications, daily behavior, finances, economic resources or access to services; and forced sex acts or threats of a sexual nature including threatened acts of sexual conduct, threats based on a person's sexuality or threats to release sexual images.[34]

Currently, however, California, Connecticut and Hawaii are the only U.S. states with legislation recognizing coercive control within the definition of statutory domestic violence in the family law code. This type of legislation is an important safeguard against violence upon women as it recognizes coercive control as a dangerous means of abuse and a significant indicator of future potential violence allowing women to seek judicial intervention before it is too late.

Pennsylvania Senate Bill 78 known as "Kayden's Law" named after Kayden Mancuso (*see* text, *supra*, at 3-4) recently passed through the state senate and is awaiting a vote in the house. S.B. 78 requires that "if a court finds by a preponderance of the evidence that a party has abused the child or any household member" there is a rebuttable presumption that the court shall

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[33] CA S.B. 1141 (2020) (amending CA Fam. Code § 6320), , https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB1141

[34] CT SB 1091 (2021), https://legiscan.com/CT/text/SB01091/2021

only allow for supervised custody between the child and the abuser.[35] S.B. 78 also requires a rebuttable presumption that the court shall only allow professional supervised physical custody between the child and party if the court finds that there is ongoing risk of abuse of the child.[36]

PA S.B 78 also adds additional factors to be considered in determining the best interest of the child for custody purposes including violent or assaultive behavior committed by a party and the existence of a protection from abuse order entered on consent of the parties if the court finds that abuse occurred. Under S.B. 78, a party's reasonable concerns for a child's health and welfare and efforts to protect the child shall not be considered attempts to turn the child against the other party and a child's negative relationship with a party shall not be presumed to be caused by the other party.[37] Significantly, S.B. 78 also adds simple assault, recklessly endangering another person, cruelty to an animal and animal fighting as additional convictions the court shall consider in a custody determination.[38] The bill further requires that if a court appoints a guardian *ad litem* the court shall make reasonable efforts to appoint a guardian *ad litem* who received evidence based education and training relating to child abuse, including child sexual abuse, domestic abuse education and the effect of child sexual abuse and domestic abuse on children.[39]

New York Assembly Bill 5398, also known as "Kyra's Law" named after Kyra Franchetti (*see* text, *supra*, at 4), recently passed in the New York Assembly and is awaiting approval form the Senate. A.B. 5398 aims to make child safety the top priority in divorce and custody cases. A.B. 5398 requires that where a party to a custody or visitation proceeding alleges in a sworn pleading that the other party has committed an act of child abuse or domestic violence the court must have a hearing to determine the abuse allegations before any of the other best interest

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35 PA S. B. 78 (2021) (amending 23 Pa.C.S. § 5323 (e.1)), https://legiscan.com/PA/text/SB78/2021
36 PA S. B. 78 (2021) (amending 23 Pa.C.S. § 5323 (e.2))
37 PA S. B. 78 (2021) (amending 23 Pa.C.S. § 5328 (a))
38 PA S. B. 78 (2021) (amending 23 Pa.C.S. § 5329 (a))
39 PA S. B. 78 (2021) (amending 23 Pa.C.S. § 5334 (f))

factors assessed in custody proceedings are reviewed.[40] If at the evidentiary hearing the court finds a pattern of domestic violence or child abuse by a parent, the court shall award sole custody of the child to the non-offending parent or party and shall suspend visitation or only award professionally supervised visitation to the parent engaged in abusive behavior. If the court does not finding a pattern of domestic violence or child abuse, the court cannot refuse to consider additional evidence of domestic violence or child abuse later in the case.[41]

A.B. 5398 also makes amendments to the factors to be considered in determining the best interests of the child for custody purposes.[42] A.B. 5398 states that the child's health and safety is the top priority when making a determination about the best interest of the child.[43] Under A.B. 5398, when prioritizing the health and safety of the child, the court is to consider among other things any present or past abuse committed by a parent regardless of whether there is continued risk of harm to the child and whether either parent has committed an act of domestic violence against the party making the allegation or a household member.[44]

Further, A.B. 5398 expressly states that the court shall not presume a child's negative relationship with a parent was caused by the other parent, a child shall not be separated from a parent found to be the primary attachment figure for the purpose of improving a deficient relationship with the other parent, concerns regarding parental alienation shall not be admissible in proceedings for custody or visitation, no reunification treatment shall be ordered by a court without scientifically valid and generally accepted proof of the effectiveness and therapeutic value of such treatment, and any order attempting to remedy a child's resistance to contact or visitation with a parent shall address parental behaviors or contributions the court determines to

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40 NY A.B. 5398 (2021) (amending NY Dom. Rel. L § 240 (a)(1)), https://legislation.nysenate.gov/pdf/bills/2021/a5398

41 *Id*.

42 NY A.B. 5398 (2021) (amending NY Dom. Rel. L § **§** 240-d. 2-3)

43 *Id*.

44 NY A.B. 5398 (2021) (amending NY Dom. Rel. L § **§** 240-d. 3)

be the cause in part or whole of such resistance. Further, in cases where the court has found a parent to be a victim of domestic violence the court shall not apply any friendly parent preference and where a parent has been found to be a victim of domestic violence the court shall not base its custody decision on a legal presumption of shared parenting. There is also an attorney's fees provision where the parent found to be the abuser is responsible for the fees and costs of the other party unless the abusing party has insufficient funds.[45]

Lastly, AB 5398 mandates that court professionals handling a child custody proceeding in which one or more parties have alleged domestic violence or child abuse complete mandatory initial training on the handling of such cases. The mandatory training includes topics such as the dynamics and effects of domestic violence, understanding the barrier and fears associated with reporting domestic violence and child abuse, tactics commonly used by a party to induce fear in the other party, demands for custody or joint custody as a means to pressure the other parent to return or punish the parent, sexual abuse trauma, appropriate experience and qualifications of child custody evaluators, and potential harm of relying on parental alienation syndrome or the friendly parent concept in child custody cases where domestic violence or child abuse is present.[46]

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PROPOSED SOLUTIONS AND REFORMS

The types of progressive legislation discussed herein as having been enacted or working their way through the legislatures in certain states are positive reforms that are a step in the right direction and should be enacted throughout the various states in America. For instance, the California presumption that sole or joint custody to a parent who has committed domestic

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[45] NY A.B. 5398 (2021) (amending NY Dom. Rel. L § § 240-d. 4-5)

[46] NY A.B. 5398 (2021) (amending NY Dom. Rel. L § § 240-d 6)

violence is against the best interest of the child and improper as enacted in Family Code section 3044 does not exist uniformly in all other states' statutory law.[47] Some states, rather than having a rebuttable presumption that custody to an abuser is improper, merely enumerate a history of domestic violence and abuse as a factor to be considered amongst all other factors when assessing the best interest of a child and when countering a general presumption of joint custody.[48]

Additionally, states should be following in the footsteps of California, Hawaii and Connecticut and must recognize coercive control as a form of domestic violence for which redress must be available in the court system. Allowing for restraining orders to be issues based on a showing of abuse by means of coercive control can save women from their abusers' eventual deadly acts of physical violence and protect them from the harmful and damaging psychological effects of the mental and emotional abuse of coercive control.

The reforms set forth in New York Assembly Bill 5398, not yet enacted by the New York state legislature, is a successful model that other states should adopt in enacting legislation to combat the issues of weaponization of parental alienation, mistrust and doubt of women's abuse and domestic violence allegations, and disfavor towards protective mothers who resist the shared parenting model when engaged in family court proceedings with her or her child's abuser. Specifically, states should adopt similar provisions as those in N.Y. A.B. 5398 which:

- Require abuse allegations be determined at an evidentiary hearing as a threshold matter before other factors ordinarily assessed for custody determinations are addressed;

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[47] Yet California could and should go further by, *e.g.*, including coercive control within the statutory definition of "domestic violence" under California Civil Code section 1708.6, which provides a statutory right of action for civil damages by the victim against the abuser.

[48] Meir, *supra*, at 33 FN 98.

- Require that if there is a finding of a pattern of domestic violence or child abuse sole custody shall be given to the non-offending party and the abuser shall have suspended visitation or supervised visitation;
- Require consideration of any past act of domestic violence or abuse when assessing factors for determination of the best interest of the child for custody purposes;
- Prohibit any presumption that a child's negative relationship is due to the other parent;
- Prohibit separating any child from a "preferred" parent or attachment figure for purposes of improving a relationship with a rejected or "alienated" parent;
- Prohibit admissibility of evidence of parental alienation in any custody or visitation proceeding;
- Strictly require that reunification programs only be ordered by the court should scientifically valid and accepted proof of the effectiveness of the treatment be provided;
- Require that any order seeking to remedy a child's resistance to a rejected parent address an allegedly alienated parents' contributing parental behaviors when trying to remedy the relationship;
- Prohibit any application of a friendly parent preference or a shared parenting presumption in cases where the court has found a parent to be a domestic violence victim;

- Provide for an attorney's fee provision requiring a party found to be guilty of domestic violence or child abuse to pay fees and costs of the non-offending party; and
- Mandate training for family court professionals handling cases involving domestic violence or abuse on topics specific to the dynamics at play with domestic violence and child abuse.

Additional potential reforms include an approach of a "middle path" where safety measures and precautions are still balanced with the relationship between a child and parent when an allegation of child abuse by the other parent was found to be indeterminate. This would be in contrast to taking a zero sum, black-and-white approach, of finding guilt or innocence which may be appropriate in criminal courts but arguably is not in family court. When handling child safety and in circumstances where an abuse allegation was not proven true by the requisite standard, but was not proven false either, a more measured approach that still puts in place some safeguards may be appropriate.[49] Additionally, the court should only hear opinions regarding abuse allegations from experts with requisite background in domestic violence and/or abuse.[50] Further, in addition to any legislation reforming states' statutory law governing family courts, it is paramount that judges and court personnel are adequately trained to properly implement and follow any such laws.

With the passing of House Concurrent Resolution 72, the United States Congress expressed its sentiment that child safety must be the first priority in custody determinations in family courts and urged states to adopt certain measures including evidentiary admissibility standards for all evidence in custody proceedings and the use of appointed professionals who

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[49] Meir, *supra*, at 67.
[50] *Id*. at 69.

have requisite expertise and experience in domestic abuse and child abuse.[51] While the family courts in each state are administered by the state court system, the issues of human rights violations, child welfare and abuse, and discrimination against and abuse of women as implicated here, should be of immediate concern to the United States federal government, and global community. The United States Congress should schedule hearings on family court practices with regards to child safety and civil rights to better understand the problem and help states address the problems they face.

The United Nations' Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) defines discrimination against women as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."[52] The convention asks its members to among other things "establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination" and "to embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle."[53]

The United Nations' Convention on the Rights of the Child (CRC) requires of its parties that "in all actions concerning children, whether undertaken by public or private social welfare

[51] H. R. Con. Res. 72 (2018), https://www.congress.gov/bill/115th-congress/house-concurrent-resolution/72

[52] Convention on the Elimination of All Forms of Discrimination against Women art. 1, 18 December 1979, 1249 UNTS [CEDAW], https://treaties.un.org/doc/Treaties/1981/09/19810903%2005-18%20AM/Ch_IV_8p.pdf

[53] CEDAW art. 2.

institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration";[54] that its parties "shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child";[55] and that its parties "shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."[56]

The systemic human rights violations and abuses taking place in the family courts in the United States are in direct contravention of these ideals set forth in CEDAW and the CRC.

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[54] Convention on the Rights of the Child art. 3, 20 November 1989, 1577 UNTS [CRC], https://treaties.un.org/doc/Treaties/1990/09/19900902%2003-14%20AM/Ch_IV_11p.pdf

[55] CRC art. 12

[56] CRC art. 19