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Child Abuse and Child Custody

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On June 25, 1996, noting that “criminals have more rights than victims,” Bill Clinton called for a “Victim’s Right’s Amendment” to the U.S. Constitution. Fifteen years prior, Ronald Reagan prefaced the 1981 California DoJ Crime Victims Handbook saying, “For most of the past thirty years ... justice has been unreasonably tilted in favor of criminals and against their innocent victims ... a tragic era ... when victims were forgotten and crimes were ignored.”

This “tragic era” of U.S. justice was working overtime March 1, at 8 p.m., at the Texas Senate, where Bill 208 was on the fast track for passage. The bill, purported as a tool to further protect battered women and children, would actually permit criminal abusers — yes, violent offenders and incest abusers — to receive sole legal custody of the children they desert, batter and sexually violate. Elizabeth Richards, director of the National Alliance for Family Court Justice, believes this bill is circulating nationwide. She explains: “The divorce data show that most normal, loving, dads want to share their children, with mom the main caregiver. But, especially once the state began attaching the incomes of ‘deadbeat dads’ for child support, many such deserters, even convicted child abusers, took revenge by demanding, and getting, sole custody. The jurisdiction of irresponsible judges is now being extended into legislation.”

Jan Barstow, director of the Texas Women’s and Children’s Coalition asked that I appear as an expert witness, testifying against “Family Violence Bill No. 208,” sponsored by Sen. Mike Moncrief (D-Dallas-Ft. Worth). Reviewing the bill, it seemed impossible for children to be so brazenly harmed by the American justice system. But, you decide. Read the contested section of Bill No. 208. Then, I will discuss several words which turn a purportedly child-friendly law into a child-abusers law. The relevant portion of the bill addresses: “past or present child neglect, or physical or sexual abuse by one parent directed against the other parent, a spouse or a child.”

(c) The court shall not appoint as sole managing conservator a party who has a history of committing family violence as defined by
Section 71.004 unless the court finds by a preponderance of the evidence that:

(1) the party has successfully completed a battering intervention and prevention program as provided by Section 85.022 or, if such a program is not available, has successfully completed a course of treatment pursuant to Section 153.010;
(2) the party is not currently abusing alcohol or a controlled substance as defined by Chapter 481, Health and Safety Code; and
(3) appointing the other party as sole managing conservator would endanger the physical or emotional welfare of the child.

First, note the term “party” equalizes victim and abuser as mere parties in a controversy, rather than a parent protecting a child from one with a “history” of sexual or physical violence against the “parent, a spouse or a child” victims. “Party” annuls decades of effort by Victims’ Rights advocates to standardize terms in the family violence literature which establish “fault” in domestic crimes. For example, the seminal 128 page Attorney General’s Task Force on Family Violence, Final Report (September 1984) describes “victims” and “abusers,” not the parties in family violence crimes.

Next, look at other key words and phrases. The bill says “sole” child custody will be denied an abuser with a “history of committing family violence … unless” the “preponderance of evidence” finds an abuser “successfully completed a course of treatment,” and is not “currently abusing” drugs and alcohol (what of “joint” custody?). The “unless” disclaimer grants abusers with a history of “physical or sexual abuse” sole child custody if abusers (a) pass a violence course (b) appear “currently” to not be “abusing” alcohol and/or illicit drugs, if (c) the protecting parent “would endanger the physical or emotional welfare of the child.” The first problem: no credible data exist showing a “course of treatment” (allegedly six to twelve weeks) succeeds in permanently pacifying violent abusers, while the professional literature on child molestation confirms there is no known cure for pedophiles.

On point, Jan Barstow, testifying on the bill said, “Wording about abusers attending court-assigned classes doesn’t consider the extreme denial and need for control that is part of an abuser’s character. This
becomes a revolving door in which the offender abuses, submits to a protective order including assignment to classes, and is legally eligible for sole custody six weeks later.”

The second problem: the bill says abusers cannot be “currently abusing” alcohol and drugs, later adding they should “abstain” from consumption. However, Moncrief should know, as a practical matter, that incest commonly takes place while the offender is “under the influence” and the data also confirm that drug and alcohol abuse are commonly addictive behaviors unresponsive to cures. Alcohol use is verified too late as it is rapidly excreted in urine and it is impossible to prove the use of many addictive chemicals without court-ordered daily testing and monitoring.

Finally, if a judge decides the protective parent might “endanger the physical or emotional welfare of the child,” the bill grants sole child custody, not joint custody, to the criminal abuser. The bill does not require that the protecting parent be similarly convicted of endangering the child, “child neglect, or physical or sexual abuse,” no evidential requirements, no trial, no confessions of abuse are mandatory before wresting child from the protecting parent and awarding sole custody to the child’s abuser. At best, the bill assumes endangering children at the hands of a proven abuser is a better plan than placing such betrayed children in a carefully monitored orphanage. Protecting parents would best be tried in a court of law, since the justice system is awarding their battered and abused children to convicted child molesters.

Barstow adds “current and proposed wording enables defense attorneys to accuse parents of emotional abuse when they seek protection for an abused child. The very act of seeking a protective order or raising concerns about abuse exposes the protective parent to charges of ‘alienating the child from the father’ (emotional abuse) and ‘false allegations’ (emotional abuse), removing the child from the protective parent and placing them in the sole care of the offender. The penalty for emotional abuse in the Texas family code is losing custody or total parenting rights.”

Barstow cites judicial training as misguided, commonly “relying upon such child custody experts” as Dr. Richard Gardner, whose “Parental Alienation Syndrome” (PAS) trivializes pedophilia and incest. Gardner
writes, “If the mother has reacted to the [incestuous] abuse in a hysterical fashion, or used it as an excuse for a campaign of denigration of the father, then the therapist does well to ‘sober her up.’” Barstow asserts that under threat of PAS mothers are indeed being “sobered up.” Mothers reporting incest become “guilty” of PAS (denigrating and alienating the father). That is, “emotional abuse” of the child. Thus, women nationwide who follow the law and seek protective custody orders from the state after battery or child sexual abuse, are increasingly labeled the “emotionally” harmful “party.” One such PAS mom writes, “I am only allowed to see her 4 hours a month, I am being charged $100.00 an hour to visit my own daughter ... and I pay $600.00 a month child support [to the incest offender]. I cannot believe that this can happen in America.” Richards also claims to have fully documented the fact that such fathers have organized “fathers groups such as Children’s Rights Council, National Congress for Fathers and Children, and Fathers for Equal Rights, who carry out “covert” federal custody programs intentionally designed to give them litigation advantages against mothers, eliminating most or all visitation contact between the mother and the children.” In “the best interests of the child” a full federal inquiry is required to establish the truth of falsity of such serious charges. She and other women have testified under oath to the forced removal of their babies and children, based on the bogus PAS, suggesting few judges have read the report of the Attorney General’s Task Force on Family Violence: “Judges should treat incest and molestation as serious criminal offenses. ... Incarceration, whether in hospitals, treatment centers or prisons, is absolutely essential to the protection of the nation’s children. The only true protection for children from a pedophile is incapacitation of the offender.” Yet, this bill would grant sole custody, sole power over their vulnerable children to criminals who take a class and say they don’t use drugs. It should be mentioned that the Attorney General’s Task Force on Family Violence found pornography involved in battery as well as a common stimulant for incest and child sex abuse. While Bill 208 would
allow sole child custody to incest offenders, pornography users are not (like batterers) required to attend courses to stop them from “currently abusing” pornography. Yet, the Task Force State Legislative Recommendation 5 requires that “States should enact legislation to enable ... access to sexual assault, child molestation or pornography arrest or conviction records” in order to remove all such persons from “contact with children.”

Senate Bill No. 208 would create a kind of “no fault” battery and “no fault” child sex abuse, akin to the judicially enacted “no fault divorce” laws which have driven hundreds of thousands of full-time homemakers and their children into poverty. Indeed, the justice system has been stripping away protections for law abiding American citizens since the early 1950s, when Alfred Kinsey’s fraudulent Sexual Behavior in the Human Male (1948) changed what has been called “the stream of law.”

Although Sen. Moncreif temporarily withdrew his bill following the March 1 public testimonies, it appears it has been brushed off and is ready to sail through, looking like a national “model” for all the world. Ever since Indiana University’s zoologist, Kinsey, compromised our child protection laws by classifying children as the “partners” of their rapists in his phony sex studies, attempts at leveling abusers and victims via language has been a common ploy in shifting laws to favor criminals. The malevolent turn of events in current child custody courts and legislation is one more disgraceful consequence of a corrupted science swaying law and public policy.

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