

FALSE ALLEGATIONS OF ABUSE - OR NOT? UNDERSTANDING THE REALITY OF DOMESTIC VIOLENCE & SEXUAL ASSAULT

Despite significant progress towards ending domestic violence and sexual assault, myths persist about victims of these crimes making false claims of abuse and abusing legal protections. This fact sheet addresses those myths.

FALSE REPORTING OF ABUSE DURING DIVORCE AND CHILD CUSTODY CASES IS RARE

Critics allege that victims make up claims of abuse against themselves and their children just to gain advantage in contested custody cases.

- In fact, research shows that false allegations of abuse are **no more common in divorce or custody disputes than at any other time**¹.
- Research also shows that child sexual abuse allegations in custody cases are rare (about 6%), and the majority of allegations are substantiated (2/3)².
 - Generally, abuse is vastly under-reported: child sexual abuse happens to about 1 in 4 girls and 1 in 6 boys, yet only about 1.8 cases per 1,000 children are reported each year³.

DISCLOSING ABUSE FOR THE FIRST TIME DURING DIVORCE OR CHILD CUSTODY PROCEEDINGS DOES NOT MEAN THE ABUSE WAS MADE-UP TO GAIN ADVANTAGE IN THE CASE

- It is common and understandable for victims to reveal abuse for the first time during a divorce *because abuse leads to divorce*⁴. Many victims have told no one about the abuse prior to separation because of their shame, fear, and desire to help the abuser.
 - One national expert with a decade of direct experience working in batterers' intervention programs reports that about 30% of relationships ended after a violent assault, demonstrating how **frequently an escalation in violence leads immediately to a break-up**⁵.

LEGAL TRENDS DON'T FAVOR MOTHERS IN CUSTODY BATTLES; THE CLAIM THAT MOTHERS WHO LOSE CUSTODY ARE NOT FIT AS A PARENT IS BASELESS

- Abusive parents are more likely to seek sole custody than nonviolent ones according to a report by the American Psychological Association⁶. And, the American Judges Foundation indicates they are successful about 70% of the time⁷.
- Family courts are gender biased, generally prejudiced against women, discount the seriousness of abuse, and often punish abused women who dare to raise concerns about their children's safety⁸.

MISCONCEPTIONS ABOUT SEXUAL VIOLENCE AND REPORT CLASSIFICATIONS HAVE CONTRIBUTED TO INACCURATE PERCEPTIONS

- Unfortunately, the majority of sexual assaults are never reported to the police⁹. However, victims who do report may give inconsistent information, due to the significant amount of psychological trauma experienced. Inconsistent information does not mean that the crimes did not occur. Victims may struggle to remember precise details of the assault, due to the neurobiological effects of trauma¹⁰.
- In addition to trauma, there are many reasons a victim may delay a report or give incomplete information, including, but not limited to: fear of retaliation by the offender, fear that s/he will be blamed or not believed, or the need to protect the offender due to financial dependence.
- An "unfounded report" is often confused with a false allegation. Unfounded cases include those that law enforcement believes do not meet the legal criteria for rape. An "unsubstantiated report" is also often confused with a false allegation. To be unsubstantiated, a report must provide insufficient evidence to determine whether or not a crime occurred. Neither circumstance means that a crime did not occur¹¹.
- The prevalence of actual false reporting cases of sexual violence is low. For example, a study of sexual assault cases in Boston from 1998-2007 found a 5.9 percent rate of false reports¹².

ATTACKS ON VICTIMS' CREDIBILITY ARE COMMON TACTICS USED BY ABUSERS TO DENY OR MINIMIZE THE ABUSE, EVADE RESPONSIBILITY FOR THE ABUSE, AND/OR BLAME THE VICTIM FOR ITS OCCURRENCE

- Abusers commonly characterize their relationship as mutually abusive, if they acknowledge any behavior problems of their own at all. Under close investigation, however, **most domestic abusers, even those who use relatively low levels of physical violence, are revealed to involve extensive patterns of verbal degradation, psychological abuse, and other types of cruelty**¹³.
- Minimizing the abuse, claiming that the victim is lying and otherwise undermining responsibility for their behavior are typical strategies used by abusers, and have been documented across tens of thousands of cases by domestic violence treatment providers and supported by research, scholarly literature, and victim's experiences.

IMPOSING PUNITIVE MEASURES FOR DISCLOSING ABUSE DETERS VICTIMS OF ABUSE FROM REPORTING, TRAPS THEM IN DANGEROUS SITUATIONS, AND STRENGTHENS ABUSERS' POWER, CONTROL, AND LICENSE TO ABUSE

- Victims of domestic violence are not infallible. Rather, they are battered and bruised; they have lived in fear and fled in terror; they are desperately in search of safety, justice, and peace of mind for themselves and their children.
- The decisions victims make in the context of abuse may not be the decisions others think they would make when they look at the situation without knowing the full circumstances.
- It is imperative that victims are not blamed or judged because blame and judgment deter them from reporting abuse and taking steps to break free from abuse.

RECOMMENDATIONS

- **Continue utilizing current law**, which adequately addresses remedies for false allegations regarding criminal and civil matters. Under current law, false reporting is a Class 3 misdemeanor under Colorado Revised Statute § 18-8-111 (2) and § 19-3-304 (4) (a).
- **Reinforce judicial decision-making**. Courts were established to uncover the truth and to reveal false allegations on the rare occasion they are made in the legal system. That is why we have judges—to make decisions based on facts, evidence, and the law.
- **Support victims in their attempts to break free of abuse** and to secure safety and justice.

¹ Brown, Federico, Hewitt, & Sheehan, "Revealing the Existence of Child Abuse in the Context of Marital Breakdown and Custody and Access Disputes," 24(6) *Child Abuse & Neglect* 849-85 (2000).

² Thoennes & Tjaden, "The Extent, Nature, and Validity of Sexual Abuse Allegations in Custody and Visitation Disputes" 14(2) *Child Sexual Abuse & Neglect* 151-63 (1990).

³ U.S. Dep't of Health & Social Services, "Child Maltreatment 1996, Reports from the States to the National Child Abuse and Neglect Data System," as reported in *Nat'l Child Abuse and Neglect Statistical Fact Sheet* (1998).

⁴ Colborn Faller, "Possible Explanations for Child Abuse in Divorce," 61 *Amer. Journal of Orthopsychiatry* 86, 87 (1991).

⁵ Bancroft, "Understanding the Batterer in Custody and Visitation Disputes" (1998), online article available at http://www.lundybancroft.com/pages/articles_sub/CUSTODY.htm (precursor to chapter five, L. Bancroft & J. Silverman, *The Batterer As Parent: Addressing the Impact of Domestic Violence on Family Dynamics* (2002)).

⁶ American Psychological Association, "Violence And The Family: Report of the American Psychological Association Presidential Task Force on Violence And The Family", (1996), available at <http://www.apa.org/pi/viol&fam.html>

⁷ American Judges Foundation, "Domestic Violence and the Court House: Understanding the Problem...Knowing the Victim", available at <http://aja.ncsc.dni.us/domviol/page5.html>

⁸ Guest Editor's Note. Custody Laws. *Journal of Violence Against Women*, August, 2005.

⁹ Rennison, C.A. (2002). *Rape and sexual assault: Reporting to police and medical attention, 1992-2000* [NCJ 194530]. Retrieved from the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics: <http://bis.ojp.usdoj.gov/content/pub/pdf/rsarp00.pdf>.

¹⁰ D'Anniballe, J. (2009). Understanding the Neurobiology of Trauma: Implications for Treatment with Adults and Adolescents. Retrieved at <http://www.ccvs.state.vt.us/sites/default/files/resources/Vermont%20Neurobiology%20of%20trauma.pdf>.

¹¹ Archambault, J. (n.d.). *Unfounded cases and false reports: A complex problem* [PowerPoint slides]. Retrieved from the Iowa Coalition Against Sexual Assault: http://www.iowacasa.org/UserDocs/A3_A4_Archambault_FALSE_REPORTS.pdf.

¹² Lisak, D., Gardinier, L., Nicksa, S. C., & Cote, A. M. (2010). False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases. *Violence Against Women*, 1335.

¹³ Bancroft, supra note 5.