Introduction

Probably no other public agency leaves victims and advocates more perplexed than Child Protective Services. On the one hand, people think of CPS with appreciation as they envision a selfless agency rescuing innocent children from horrific conditions. Indeed, CPS workers across the country do this routinely. The gratitude is deserved.

At the same time, the agency seems to be perpetually marred by a steady drumbeat of nightmare stories about CPS emanating from the very families CPS is supposed to serve. This text deals with just one of these problems; the CPS practice of removing or threatening to remove children from the nonviolent, non-offending parent in cases of family violence. This guide explains why this happens with such frequency, how to help prevent it from happening in your case, and what to do about it if you're already caught in its grip. (Since the non-offending, nonviolent parent in these cases is usually the mother, we often refer to this parent as 'the mother', though there are certainly cases where the non-offending parent is the father.)

The Situation as it Usually Unfolds

In brief, the particular problem we cover usually unfolds like this. A mother herself seeks help from CPS or becomes involved with CPS through someone else's report of suspected child abuse. Her child has been physically or sexually abused by a family member, usually by a male family member, or there are concerns the child is living in a home where there is domestic violence. At first, the mother naturally anticipates that CPS will try to help her and her child, and try to punish and stop the perpetrator. So these mothers are stunned when suddenly the CPS/juvenile court system turns its sights on her, even though everyone agrees she didn't perpetrate the abuse or violence.

Suddenly she is the one under investigation, and the perpetrator is seeming to be all but ignored. And worse, CPS is threatening to take her child from her, or has already done so without warning or notice, and is threatening to keep the child, right at the time that mother and child need each other most. She feels the system turn hostile toward her. Did she, the non-offending parent, protect the child from the violent parent? Did she protect the child from molestation? Did she protect the child from being exposed to domestic violence in the home? Well, no, obviously she did not, or could not, or, in the case of molestation, often didn't know about it.

Instead of being treated more as a co-victim of a violent perpetrator, with help and guidance provided according to the mother's expressed needs, she is treated more as a co-perpetrator, with CPS establishing mandated controls over virtually any which aspect of her life CPS chooses, all under threat of losing her child. In addition to court dates at which it is her behavior that's in question, CPS gives her a mandated, often overwhelming set of programs and goals she must comply with to the satisfaction of the CPS/juvenile court system, in order to - maybe - get the child back - and maybe not. She is also held accountable for maintaining a cooperative attitude throughout, even though she is, in fact, in a profoundly adversarial relationship with CPS (which is why

she's given an attorney at court time). At the same time, she begins to realize that the CPS/juvenile court system isn't pushing to hold the perpetrator accountable for his violence, nor is CPS even invested with the power to do so.

Most mothers say they would rather be threatened with jail than to be threatened with the loss of her child. Yet as invasive, terrifying, and awesome as this governmental threat is, virtually all the decisions as to her fitness, compliance, and fate are being decided at the lowest judicial standard of evidence, 51% of the evidence, the 'preponderance of the evidence' standard. This is a far cry from the 'beyond a reasonable doubt' standard the government must reach before sentencing someone to jail for even the briefest time.

The level of proof against her that CPS is required to put forth is so minimal that it provides the mother little protection against any abusive, prejudiced, or discriminatory exercise of power by CPS. The low evidence burden on CPS also makes it nearly impossible for the mother to defend herself, especially against such vague accusations as 'failure to protect', or that 'she knew or should have known', things which don't even constitute a crime in the criminal system. And to top off the injustices, an all too common requirement on her must-do list is that she and/or the child must partake in family conferencing or a family reunification plan in which one or both must meet, mediate, or co-counsel with the perpetrator - the very same perpetrator from whom the mother has been accused of 'failure to protect' the child.

The Dawn of Recognition

Unfortunately, such stories are not the result of occasional human errors that are bound to occur in any public agency. They are, instead, inevitable and frequent outcomes stemming from the flawed founding premises and the weak legal underpinnings of the CPS/juvenile court system. The structure of the system drives toward these injustices no matter how well intentioned individual CPS workers may be. Nor is this to say that children should never be removed from the non-offending parent. There are circumstances in which they should. The problem is that the system is so arbitrary, sexist, secret, and outdated, that it tends toward abusive or mistaken results.

In the last decade, there has been growing recognition and discussion of the CPS problem as it pertains to the non-offending parent. In 1999, the National Council of Juvenile and Family Court Judges put together the Greenbook Initiative, a set of 67 recommendations aimed at remedying precisely this set of problems. But though the Greenbook gives long overdue recognition to the issue, the recommendations don't call for installing any firm checks on the system, as will be discussed in more detail in a later section.

And in 2004, in New York state, there was a landmark settlement in a class action lawsuit against that state's child welfare agencies. The lawsuit, Nicholson v. Scoppetta, had been brought by mothers who had their children removed for no other reason than that the mothers, victims of domestic violence, had failed to protect their children from

'exposure' to the domestic violence. The 2004 lawsuit agreement and an earlier injunction prohibited child welfare agencies from using this reason alone to remove children from non-offending parents.

Though the lawsuit put CPS agencies around the country on notice of their wrongdoing and harm done in these cases, to date it has brought only modest change in practice. The vague laws and weak evidence standards governing CPS means that CPS workers need only adjust the language used in their justification for removing a child, offer the usual scant proof, and many juvenile courts continue removing children in these situations as before.

Perhaps the brightest spot on the horizon is the year 2005 resolution passed by the National Council of Juvenile and Family Court Judges in support of presumptively open hearings with discretion of courts to close. Since their founding, most CPS/juvenile court proceedings have been operating in secret, completely off the public record. This secrecy has mushroomed the system's tendency toward abuse. The judges' 2005 resolution in support of open hearings is not yet law, but it's a promising step. It's highly unlikely any of the system's abuses will be corrected until this essential public airing and public scrutiny of the system's proceedings is firmly set into law and practice.

The Oppressive Swath of Danger and Damage

The harm of the widespread CPS practice of removing or threatening to remove children from non-offending parents extends far beyond the dangers and injustices to individual mothers and children. The harm extends to nearly every poor, immigrant, or minority race mother who is trying to deal with family violence. Most have heard first hand stories of CPS removing children from other mothers in their neighborhoods. As a result, they become reluctant to seek help for their own situations for fear that the same thing might happen to them.

Though we include a fair amount of information about the structure and history of CPS, the purpose of this guide isn't to do policy analysis nor to make recommendations for change. The purpose of this guide is to give family violence victims, advocates, and mandated reporters information and tips that can help you, as best as possible, to understand and avoid the pitfalls and abuses of the CPS/Juvenile Court system as they pertain to the non-offending parent.

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Part 1 - Key Facts About Child Protective Services and Child Welfare Agencies

Though most of the information in this section is meant to explain why so many non-offending parents get victimized by the CPS system, we start by correcting a very common misconception about mandated reporting.

1. In California, and Many Other States, Mandated Reporters Do NOT Have to Report to Child Protective Services.

We start here because so many counselors, teachers, doctors, and other mandated reporters, many of whom are already sympathetic to the problems mothers experience with CPS, say there's nothing they can do about it. They believe their state laws require that whenever they suspect child abuse, they must make a report to CPS. But that's not, in fact, what the law in California and many other states says at all.

As you can see clearly in the California law printed here, the law gives mandated reporters a choice of institutions to which they can report. You can make your report to police, sheriffs, probation departments, or child welfare agencies. In fact, in California and many other states we're familiar with, the mandated reporting laws put child welfare agencies last on the list of options.

Here is the section of the California State Mandated Reporter Law that pertains to whom one should report.

California Penal Code Section 11165.9

11165.9. Reports of suspected child abuse or neglect shall be made by mandated reporters, or in the case of reports pursuant to Section 11166.05, may be made, to any police department or sheriff's department, not including a school district police or security department, county probation department, if designated by the county to receive mandated reports, or the county welfare department. Any of those agencies shall accept a report of suspected child abuse or neglect whether offered by a mandated reporter or another person, or referred by another agency, even if the agency to whom the report is being made lacks subject matter or geographical jurisdiction to investigate the reported case, unless the agency can immediately electronically transfer the call to an agency with proper jurisdiction. When an agency takes a report about a case of suspected child abuse or neglect in which that agency lacks jurisdiction, the agency shall immediately refer the case by telephone, fax, or electronic transmission to an agency with proper jurisdiction. Agencies that are required to receive reports of suspected child abuse or neglect may not refuse to accept a report of suspected child abuse or neglect from a mandated reporter or another person unless otherwise authorized pursuant to this section, and shall maintain a record of all reports received.

One obvious question after reading this law is why are so many mandated reporters taught incorrectly that they must report to CPS when the law in many states so clearly gives mandated reporters a choice. The reasons will become clearer in the section on the history of child protection. But in brief, CPS agencies were established back in the late 1960's and 1970's at a time when a strong national consensus had developed that children shouldn't suffer abuse in the home. However, it was also a time when family violence was not yet viewed as criminal, and perpetrators were not held accountable. CPS powers and functions were shaped to reflect that ambivalent constellation of beliefs. And today, despite advances, there is still strong societal resistance to holding family violence perpetrators accountable. And there's a corresponding tendency to channel intrafamilial child abuse cases into CPS where policies and powers are set to detain the child and not the perpetrator.

But the main point we want to underscore here is that mandated reporters in many states can choose not to report to CPS. You have other options, and often those other options will be much more beneficial for both the mother and the child.

NOTE 1: Finding the Text of Your State's Mandated Reporting Law - Most states have their full legal codes on the Internet in searchable form. Go to your state's legal codes page. In most states, the mandated reporting laws will be in your state's Penal Code. Search 'child abuse mandated reporter' or similar term.

NOTE 2: Cross Reporting - In California and in many other states the child abuse mandated reporting laws require 'cross-reporting' between agencies. This means that the agency which receives the initial report must immediately send copies of the report to other designated agencies. So if CPS receives the initial report, CPS must immediately send a copy of the report to the relevant police agency and to the District Attorney's office, and visa versa. This cross-reporting requirement has little effect on the problems we're trying to outline here because in general practice the agency that first receives the report is the agency which takes primary responsibility for handling the case.

2. CPS Does Not Have the Power to Open a Criminal Case Against the Perpetrator, Nor Do They Have the Power of Arrest. CPS agencies are not law enforcement agencies. They are social service agencies. This explains why CPS does not take action against the perpetrators of the violence.

Child Protective Services do not have the power to open a criminal case against perpetrators of child abuse. They do not have the power to do criminal investigations of child abuse, nor the power of arrest. Nor does the juvenile court system that corresponds to CPS cases seek to prosecute the perpetrators, nor are these courts invested with the power to do so.

CPS workers are not law enforcement officers, they are social service workers. Child Protective Services are a branch of your state social services department. They are not part of your justice department nor of your local law enforcement agencies.

Understanding this is key to understanding why the CPS/juvenile court system does not hold perpetrators accountable for violent acts against a child, nor does it seek to gather evidence for prosecution, nor to punish the perpetrators for what they've done. The CPS/juvenile court system was never intended nor empowered to do so.

So, if your daughter was raped by her stepfather, for example, CPS will not investigate his crime, will not seek to punish him, nor in any way hold him accountable. Likewise, if your husband is violent with you and CPS is looking into the status of the children, CPS has no power to hold the perpetrator accountable for his violence.

NOTE 1: The CPS 'Investigation' - One of the things that creates confusion on this issue is that CPS and others use the word investigation to describe the CPS process of

looking into the child abuse matter. But these are not criminal investigations where evidence is gathered to determine 'beyond a reasonable doubt' who committed a particular crime, and how, so that the perpetrator can be brought to justice.

A CPS 'investigation' can be better understood as a social narrative report on the status of a child and the child's family. To be sure, the CPS report centers around the issue of the suspected abuse. But once CPS determines it's 'more likely than not' that the abuse occurred, that satisfies CPS inquiry into the incidents themselves.

Different from a criminal investigation, the main purpose of the CPS report is to determine whether or not the child needs to be protected from future abuse, and if so, what needs to be done to protect the child from future abuse. As such, CPS reports focus in on detailing the family histories of the parents, the psychosocial and economic conditions of the home, the relationships between the family members, the school and educational status of family members, as well as covering the alleged abuse. All of these things, except for the abuse, would be completely irrelevant in a criminal investigation.

NOTE 2: Juvenile Court Powers in CPS cases - In many states, juvenile courts do now have the power to order perpetrators into counseling, and in some states have the power to order the abuser out of the home. These decisions, however, are rendered with the purpose of protecting a child from future abuse, and not with the purpose of holding the perpetrator accountable.

3. The CPS/juvenile court System Has Only One Significant Power, the Power to Remove Children from their Parents.

Although CPS does not have law enforcement powers, unlike most other social service agencies, CPS does have one awesome power, the power to take custody and remove children from the home. The stated purpose of this power is to protect the child from future abuse. The stated purpose is not to punish anyone, though obviously for parents and children who love each other this forced removal can be the worst punishment of all.

The lack of law enforcement powers explains why CPS does not take action against perpetrators. The power to remove children explains why CPS so quickly turns its sights on the non-offending parent.

Once CPS decides that abuse of a child or violence in the home has probably taken place, the CPS worker must then decide how best to protect the child from future abuse. Since it's usually obvious that the child should not be immediately returned to the perpetrator of the violence, CPS quickly turns to the question of whether or not the child should stay with the non-offending parent. That's how and why CPS becomes so fixated on 'investigating' the nonviolent parent. Did the mother protect the child from the abuse? Did she know, or should she have known, that the child was being molested? Did the

mother protect the child from living in a home with domestic violence? Will she protect the child in the future?

No matter how you look at it, the circumstances of these situations can almost always be construed to indicate that the mother didn't protect, and that she knew or should have known. After all, goes the thinking, she's the mother and she's living in the same home.

NOTE 1: CPS does have other options than to remove the child. In fact, federal and state law governing CPS requires that CPS pursue family preservation as well as child safety, and that CPS first make "reasonable efforts" to establish a service plan for the family to follow so the child can stay in the home, or return to the home.

But even if CPS is making a good faith effort to abide by these policies, it doesn't alter the adversarial (oppositional) nature of the relationship with CPS in which the mother finds herself. Even if CPS has not taken the child and lays out a program for the mother to follow so the child can stay in the home, the mother knows full well what this means. 'You do this program or we take your child'. The mother knows this doesn't feel like help. It feels terrifying, hostile, and punitive. Especially so as her must-do-list is often hugely overwhelming since so many of the mothers are poor and acutely stressed. And even more hostile as the mother begins to see how prone the CPS exercise of power is to be arbitrary, prejudiced, and with shifting input and goals, the frequency of which is partly explained by the following.

4. At best, CPS/juvenile court Decisions are Made on the Lowest Judicial Standard of Evidence, the 'Preponderance of the Evidence' Standard, i.e. 51% of the Evidence. The void of evidence and rigor in the CPS/juvenile court system leaves the decision making process wide open to the virtually unchecked influence of mistakes, bias, discrimination, prejudice, vengeance, hearsay, junk science, nonsense, and arbitrariness of all kinds. (The one exception to this is that a final termination of parental rights usually requires a 'clear and convincing' standard of evidence, which is still a much lower standard than the 'beyond a reasonable doubt' standard of the criminal system.)

When CPS seeks to establish the abuse, remove a child for up to 18 months, establish mandated service plans, determine visitation, etc., CPS must go into juvenile court to get these decisions authorized by the court. At first this may seem to provide the kind of oversight on CPS decisions that would make the process just, equitable, and safe from abuses. But read on.

First, the body of law governing the CPS/juvenile court system is so vague and open ended that virtually any and all decisions made by these bodies falls within the scope of the laws.

Second, at best, CPS and juvenile courts makes these decisions based on the 'preponderance of evidence' standard. This is the lowest judicial standard of evidence.

The preponderance of the evidence standard is 51% of the evidence. It's sometimes called the 'more likely than not' standard. What this means is that all CPS needs to support a decision is evidence on their side, the CPS side, which is just a sliver more than the evidence on your side. This is a far cry from the 'beyond a reasonable doubt' standard criminal officials must establish before they can convict someone of a crime, even a misdemeanor.

Example of Preponderance of the Evidence: The mother tells CPS she didn't know that the stepfather was sexually molesting the daughter because the stepfather always did it while she (the mother) was watching television in another room. The CPS worker tells the court that the fact the mother was in the same house watching television while the stepfather molested the child is a good indication that the mother should have known what the stepfather was doing. Given the sloppiness of the 'preponderance of the evidence' standard, all the judge has to do is lean ever so slightly to the social worker's argument, and the judge can issue a finding that the mother 'knew or should have known', and then based on this finding grant the CPS petition to detain the child. Which is exactly what happened in this case.

Many lawyers themselves are so scornful of the flimsy evidence standard of the CPS system they call it "a crap shoot", or the "anything goes" standard. The problem for the mother goes beyond the fact that CPS doesn't need much evidence against her. It also means that whatever opinion a CPS worker may have of you, the worker can usually support that opinion in court simply by fishing through the extensive family details the worker has gathered and then selecting out the one or two tidbits that favor the opinion.

Add to this the huge initial mistake many women make of thinking of CPS as their advocate or friend or counselor. They pour their hearts out to the worker, giving the worker a whole ocean of intimate information in which to fish for evidence against them.

Yes, it's true that with all this latitude, the CPS system can actually do things right and put its full resources into helping the mother and child to get safely on their feet together. And indeed, there are plenty of cases where this is exactly what happens. But there are a number of things that makes the system tend toward abusive responses. One of these is the cardinal truth of any power. Unchecked power always tends towards abuses of that power. And the power of CPS is hugely unchecked. And worse yet, as is discussed later, it is exercised in secret.

A second thing that tends the system toward abusive and prejudicial responses is the class of the mothers themselves, and the heaping social prejudices that already prevail against them. The mothers who come to the attention of CPS are most often poor, or immigrant, or minority race, and themselves are the direct or secondary victims of family violence. The harsh realities of their lives are chaotic, frantic, and generally incomprehensible to people who don't live them. There is so much prejudice, stereotypes, ignorance, and blame against these women floating in society that the middle class social service system is primed from the start to blame these mothers, or at the very least, to believe it's the mothers that need to be fixed.

NOTE 1: Lessons from the Native American Community. Prior to the passage of the federal **Indian Child Welfare Act of 1978,** child welfare/juvenile court systems were removing up to 25% of the children from many Indian tribes, then terminating Indian parental rights, and adopting the children out to non-Indian families. Non-Indian social workers and judges were using rampant prejudicial and racist notions to justify these removals. In particular, CPS/juvenile courts were judging many traditional Indian child rearing practices to be abusive, in and of themselves. Native American peoples' were losing so many of their children to this process, many tribes labeled these child welfare policies as genocidal.

The Indian tribes crafted the Indian Child Welfare Act with the aim of stopping this systematic removal of their children. In so doing, the Indians keenly understood how the use of the 'preponderance of evidence' standard gave free reign to the prejudices, racism, and arbitrary factors that were being used to justify taking their children. They understood that the more oppressed a person is the more they need a high standard of evidence to protect them from governmental abuse. So, among other things, the Indian Child Welfare Act requires that CPS/juvenile courts must use the stricter 'clear and convincing' standard of evidence before the state can put an Indian child in temporary foster care, and must use the even stricter 'beyond a reasonable doubt' standard of evidence before the court can order termination of Indian parental rights. The act also requires that at any termination hearing, there must be expert witness testimony on Indian culture and child rearing.

We feel strongly that these same protections should be extended to all who come before CPS, since most all of these families are members of historically oppressed groups.

5. The Flimsy 'Preponderance of the Evidence' Standard is Bad Enough, But Things are Actually Much Worse. Increasingly, the CPS/juvenile court systems are handing off their fact finding and decision making responsibilities to mediators, evaluators, and even to CASA volunteers, all of whom operate on NO standard of evidence at all.

There's no doubt that the juvenile courts have become increasingly stressed over the last few decades as victims of family violence have emerged to seek help for their plights. But instead of adding resources to properly meet the need, the CPS/juvenile court system, like the family court system, has handed off more and more of its fact finding and decision making responsibilities to a whole phalanx of psychologists, mediators, evaluators, and even to volunteers.

These are court janitors, really, brought aboard to mop up the judicial mess made by women and children who have found a way to make their needs and outrage heard. When a case becomes complicated or contentious, or is just more work than the judge wants to handle, the judge simply turns the case over to one of these evaluators to look into the case and come back to the judge with a set of recommendations. In nearly all

cases, juvenile court judges blindly rubber stamp these recommendations with no further ado.

What is absolutely critical to understand is that once handed off to these evaluators, you have been ushered out the court's back door, outside the rule of court law, and completely unprotected by rules of evidence. These evaluators operate under NO standard of evidence. NO rules of admissibility. NO legal protections at all. Hearsay, psychobabble, prejudice, lies, gossip, it all comes in. And it's often all against you because the perpetrators are usually expert manipulators and liars, and, in addition, they have likely already poisoned the social relationships around you. This is why it's the non-offending parent who most needs strict rules of evidence for protection, and is most hurt by their absence.

NOTE 1 - CASA Volunteers - But it gets even worse. Many juvenile courts across the country are now handing off official fact finding and decision making responsibilities in these cases to CASA volunteers, people who are only required to have 30 hours training. And the juvenile courts are usually assigning these volunteers to the most egregious and complex cases of child abuse.

The public has been thoroughly wooed to the feel good idea of having CASA volunteers to 'protect the interests of the child' in these cases. Indeed, there is great benefit for the child to be assigned a special person to talk to and even to advocate for the child through this process.

The whole CASA program would be just fine if it ended there. But juvenile courts routinely swear these volunteers in as official court fact finders (investigators), as representatives of the child's stated interests, as representatives of the child's best interests, and, as formulators of recommendations to the court as to the best disposition of the child. A recent national study, the Packard Foundation funded Caliber Study, finds that juvenile court judges adopt ALL the recommendations of the CASA volunteers in over 60% of cases.

This is a complete mockery and travesty of any and all notions of justice, and is particularly contemptful of mother's and children's rights. For so many reasons. But just for one, imagine if your surgeon sought out and took the recommendation of whether to amputate your leg from a volunteer with 30 hours training. You would be outraged! And you would never deal with this surgeon again. Yet this is exactly what juvenile court judges across the country are doing on the question of whether or not to remove the child from the mother, in the most complex and egregious of cases. They are turning over their fact finding, evaluation, and decision making responsibilities by swearing in persons with 30 hours training to act in any or all these official capacities.

The courts say they are doing this because they want to be sure to hear the children's voices. But you only have to think for a moment to realize what the courts are really doing is avoiding the costs of a professional investigator, expert, or professional

representation that is minimally needed to guarantee even minimal judicial standards for children.

And these courts have the nerve to accuse the mothers of failure to protect!

6. Both the Federal and State Welfare Law Governing the CPS/Juvenile court System are Full of Vague, Non-mandatory Language, a Fact Which Further Promotes the 'Anything Goes' Atmosphere of CPS Proceedings. In addition, these laws almost always refer to the parents as an undifferentiated single unit, "the parents', a fact which puts a legal lock on viewing the non-offending parent with as much culpability as the abusive parent. Only recently has the legal language begun to recognize the existence of the 'non-offending parent' as separate or unique from the offending parent.

As you read through the federal and state law governing child protective services you can see features of the law that further help explain the frequent arbitrary and biased actions of these agencies. Here are just two.

Federal and state welfare law governing child protective services are vague, nonspecific, and use mostly non-mandatory language. For example, federal law 'encourages' child welfare agencies to provide their materials in languages other than English. It does not mandate that they do so. As such, many, if not most, non-English speaking mothers receive their CPS reports, their service plans, and notices in English only. Another example is that welfare law states a 'preference' for family reunification, and says social workers shall make 'reasonable efforts' to provide services that allow the family to stay together.

This kind of language in the law leaves so much wiggle room that virtually anything the system decides will fall within the law, a fact which further magnifies the difficulties for a non-offending parent trying to defend herself or appeal these decisions.

A second feature that runs throughout child welfare law is that it constantly refers to 'the parents' as an undifferentiated entity. There's very infrequent distinction in child welfare law between the offending and non-offending parent. In fact, if you were an alien from outer space reading this law, it would be a while before it even dawned on you that "the parents" are two separate human beings. This dubious framework stems from the archaic patriarchal view of marriage of not very long ago that the two become one and the one is the man.

Naturally, this constant reference to "the parents" helps cement the system's huge blind spot to a woman's predicament when her partner is abusive. Clearly, the law can't see her more as a victim of the abuser, if the legal language lumps her in with the abuser. If the father is a domestic violence perpetrator, the mother, too, is automatically "engaging in domestic violence", which is precisely the language the system has used to justify taking the children from mothers who are victims of domestic violence. Legal recognition

and distinctions between the offending and non-offending parent are coming at a snail's pace.

7. The CPS/Juvenile Court System Operates in Secrecy Off the Public Record. This secrecy fans the flames of the system's other tendencies to abuse.

The reason that CPS/Juvenile Court findings, proceedings, mandates, and actions take place off the public record is ostensibly to protect the privacy of the child and family in what is viewed as a private family matter. But one certainly must ask, who really has been more protected by this secrecy, the CPS system or the families it serves?

Nothing fans the flames of governmental abuse like governmental secrecy. Secret files, secret evidence, secret accusations, secret proceedings are a sure fire formula for allowing abuses to thrive and expand throughout the system. Since its inception, CPS/juvenile court activities have been off the public record with the exception of only a few states. The involved parents are informed. But, to date, neither the public nor any public watchdog has been allowed scrutiny or oversight of the handling of these cases.

Fortunately, it looks like there is the possibility this may change. In 2005, The National Council of Juvenile and Family Court Judges voted approval of presumptively open hearings with discretion of courts to close. This isn't yet law, but it's a big step in that direction. As part of the resolution the judges wrote the following,

"Open court proceedings will increase public awareness of the critical problems faced by juvenile and family courts and by child welfare agencies in matters involving child protection, may enhance accountability in the conduct of these proceedings by lifting the veil of secrecy which surrounds them, and may ultimately increase public confidence in the work of the judges of the nation's juvenile and family courts."

We would probably word this a little differently, 'Open court proceedings will increase public awareness of the critical problems faced by children and non-offending parents in matters involving child protection,.....'

8. Most all CPS/juvenile court Systems deal ONLY with Intra familial Child Abuse. This schism between the way society deals with child abuse perpetrated by a family member versus child abuse perpetrated by an 'outsider' points out a staggering hypocrisy in the rhetoric about treating child abuse seriously. Behind the rhetoric is a child welfare and police system that in reality works hand in hand to let most child abusers walk free.

Many people are very surprised when they call CPS to report a child abuse case perpetrated by a neighbor, a priest, a stranger, or by any one outside the family. CPS tells the caller they don't handle these cases. They only respond to cases in which the perpetrator is a family member. So in most cases in which the perpetrator is not a family member, CPS tells the caller they'll need to report to police.

Another thing that may surprise you is that if you call police to report a case of child abuse perpetrated by a family member, police will often tell you should report the case to CPS. Granted police could take the report if they wanted to, and they should take the report. But police themselves are all too often on the same philosophical page as CPS. They too often believe that when fathers 'grow their own victim', the fathers shouldn't be held accountable like other offenders.

And another thing. Even if police do take a report of sexual abuse perpetrated by a family member, chances are very good that the perpetrator, even if convicted, will get off lightly compared to an outside-the-family perpetrator. California law, like the law in many states, maintains gaping legal loopholes where, prosecutors can, and frequently do, charge intra familial child sex abuse under different codes which allow the family offenders much lighter sentences. In addition, the law allows convicted intra familial child sex offenders to be given probation, different from outsider child sex offenders who must go to prison. And the law allows convicted intra familial child sex offenders to stay off the state's public registered sex offenders lists, also unlike 'outside'. (For a good discussion of the legal loopholes for fathers and other family members who sexually molest their children see Child Sexual Abuse and the State by Ruby Andrew at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=904100)

There isn't a civic leader out there that doesn't publicly rage to the heavens about what monsters child molesters are, and how these 'animals' should be strung up at the crack of dawn. But, remember, the overwhelming majority of all child sex abuse is perpetrated by family members. What this means is that, in reality, we have a system that publicly beats its chest over the small percentage of child molesters who attack someone else's child, while by legal slight of hand that same system lets the vast majority of child molesters go free. Not by accident, but by legal and institutional design. What's perhaps most telling is that, at least in California, these legal loopholes for intra familial perpetrators have been widened over recent years, rather than tightened.

Or to put it another way, the more women and children have made demands on the system to stop family violence, the more the system has created ways to look good while paving the perpetrator's escape. The patriarchy with all its bluff and bluster to the contrary, still supports the notion that a man's home is his castle, and that his children are his to do with as he pleases. Unfortunately, CPS, with its hold-no-perpetrators-accountable system, is a vital part of the machinery for perpetuating these archaic and oppressive beliefs.

continued:

Part 2: Tips for Avoiding the Abuses of Child Protective Services for non-offending parents, advocates, and mandated reporters

https://www.justicewomen.com/tips_bewarechildprotectiveservices_2.html