

Kids resisting contact with a parent and parental alienation



This fact sheet summarises the Ask LOIS webinar on this topic, presented by Louisa Stewart, Solicitor, Women's Legal Services NSW on 15 July 2014. This webinar can be viewed for free at www.asklois.org.au/webinars/past-webinars.

This fact sheet covers:

- What if her child is resisting contact with the other parent?
- What if my client fears for her child's safety?
- What is parental alienation?
- Referrals & Resources

Case Study

Sally and Sam are separated. They have two children Billy, aged 4, and Jane, aged 6. After a family dispute resolution session they made a parenting order by consent and had it stamped by the court. The orders say that Billy and Jane are to live with Sally during the week and spend time with Sam every other weekend and half the school holidays. Lately the children have been acting out when they have to go to Sam's place. Sally suspects it is because their dad has a new girlfriend, Tiffany. Jane told her mum that she doesn't like Tiffany because "she is a meanie". Billy screams and kicks and won't get in his car seat when he knows its time to go to meet dad for changeover. Sally comes to you (her social worker) distressed and wants to know what to do - she doesn't want to force the kids to go. Sam just blames Sally and says she must be telling them negative things about him and Tiffany. **Should Sally send her kids when they don't want to go?**

Generally, yes. In this situation there are **court orders** in place rather than a **parenting agreement** or **parenting plan**. Where there are only minor complaints from the children or issues stemming from anxiety around new situations or new partners, a parent must follow the court orders.

There are some exemptions to this. * For example:

- Where there is a '**reasonable excuse**' for not sending the children (and therefore the parent is contravening the orders); or
- Sending the children would put them at **unacceptable risk of harm** – this risk needs to be significant enough to warrant applying to **vary the orders** at the same time / before the orders are contravened

* *Parents should always seek legal advice before breaching court orders!*

Reasonable excuse

Contravention of family law orders can have serious consequences. A reasonable excuse may be:

- You needed to protect someone's health or safety, or
- You believed that you had not contravened the order at the time (for example, because the orders are poorly worded)

Unacceptable risk of harm

In Family Law, **unacceptable risk** is a term used in the two pronged test for **Best Interests of the Child**: s 60 CC(2)(a) and s 60 CC (2)(b) **Family Law Act 1975 (Cth)**

- In deciding what orders are in the best interests of the child the court must use the primary considerations:
 - 1) The benefit to the child of a meaningful relationship with both parents; and
 - 2) The need to protect the child from physical or psychological harm, from being subjected to or exposed to abuse, neglect, or family violence

© Women's Legal Services NSW 2014 www.asklois.org.au

This factsheet is not intended to take the place of legal advice given by a qualified legal practitioner familiar with the individual case or subject matter. No responsibility is taken for any loss suffered as a result of the information presented.



- Unacceptable risk under s 60CG is where the court considers the risk of family violence and needs to make orders to ‘protect the child from harm’.
- Some case law suggests that this includes even the “possibility” not just the “probability” of harm is sufficient – particularly where harm being discussed is sexual abuse: *Partington v Cade No 2 (2009) FamCAFC 230*

Parental alienation

Parental alienation refers to a child that is:

- Resisting contact with other parent; and/or
- Rejecting the other parent

Some court decisions do not name this as “parental alienation” and instead use terms like “when a child does not want to see the other parent” or refer to parents being unwilling to facilitate contact.

Parental alienation and family violence

- If there is a history of family violence, it is important to help a client to obtain good evidence or reports to substantiate their claims
- However, there can be risks involved in ‘over-reporting’ which is when a parent takes the child to multiple services, doctors and specialists seeking to get help or document suspected abuse
- Under-reporting of family violence is also of high concern, so in all cases you need to help clients strike a balance that will satisfy their responsibilities and be in the best interests of the child and still address any serious concerns they have

Protective parenting

- There is often a tension between Care and Protection Law (involving Family and Community Services – FaCS) and Family law
- For example, parents must act ‘protectively’ or risk intervention by FaCS and having their children removed. However, if there are family law court orders in place, there is also the need to facilitate contact with the other parent as ordered
- If your client is facing these sorts of issues, always refer them for legal advice!

Resources/Referrals

- Ask LOIS www.asklois.org.au past webinar recordings & factsheets, for example, *Family Law: Contravention of Parenting Orders*
- Law Access: **1300 888 529**
- DV Legal Advice Line: **8745 6999**
- Women’s Legal Contact Line: **8745 6988**
- Indigenous Women’s Legal Contact Line: **8745 6977**
- Child abuse prevention Services: **1800 688 009**

Further reading:

- Altobelli T (2011) ‘When a Child Rejects a Parent’, 25 *Aust Journal Family Law*, Nov 2011, 185
- Meier J (2009) ‘A Historical Perspective on PAS and Parental Alienation’, 6 *Journal of Child Custody* 3-4, 232
- Meier J (2010) ‘Getting real About Abuse and Alienation’ 7 *Journal Child Custody* 4, 219
- Hoult J (2006) ‘The Evidentiary Admissibility of PAS: Science Law and Policy’, 26 *Children’s Legal Rights Journal* (HeinOnline)
- Bancroft Silverman & Ritchie (2012) ‘The Mismeasure of Batterers as Parents: A Critique of Prevailing Theories of Assessment’, Ch6, *The Batterer As Parent*, Sage