

# *Women's eNews*

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## **Women Push to Change Family Courts' Custody Rules**

**By Jennifer Friedlin - WeNews Correspondent**

(WOMENSENEWS) – Karen Hartley-Nagle knows her chances of winning a seat in the Delaware State Senate tomorrow are slim. But the Independent Party candidate says winning is not her main objective.

Hartley-Nagle's primary goal is to use her candidacy as a platform to educate people about how she says the court system compromises the rights of abused children and their protective parents, in most cases the mother.

“When I was not getting the help I needed, I started researching child sexual abuse and I found that this issue is not being adequately addressed by the courts. That's when I decided to run for office,” said Hartley-Nagle, who has spent years battling her ex-husband for custody of their three children, two of whom she claims have been sexually abused by their father. Her ex-husband, Thomas Hartley, denies the allegations.

Hartley-Nagle is one of a number of women across the United States using a personal experience with the family court system as a springboard to advocate on behalf of children. Many women like Hartley-Nagle say they were moved to action following a judge's decision to place their children in the hands of a father who was abusive towards them or their kids. These women say they faced judges who were predisposed to siding with the father, dismissing their claims and refusing to consider evidence.

In some cases, women say they were denied due process and were not included in ex parte hearings, a legal term that refers to discussions between the professionals representing one party and the judge assigned to the case, a practice widely considered unethical.

### Preventing Custody to Batterers from Alaska to Arizona

Paige Hodson of Anchorage successfully co-authored and lobbied for passage of HB 385, a new state law passed on July 1 that seeks to prevent batterers from gaining custody of their children.

Hodson said she was moved to write the bill after her harrowing experience as an abused mother fighting for custody of her two children in family court. She said that in Alaska statutes were

written in a way that inadvertently penalized the victim. For instance, the “Friendly Parent” provision stated that the more cooperative parent was to be afforded more weight in a custody dispute. This meant that women who, like Hodson, accused their ex-husbands of abuse would be seen as less friendly than the abusive parent.

“I was appalled at the way the victims were put on trial,” said Hodson, who received custody of her two kids but is still fighting to modify the terms of the custody arrangement, which permit her ex-husband to have unsupervised visits.

Tammy Searle leveraged her experience in the Tennessee court system to convince legislators in Nashville to pass the Protective Parent Reform Act this spring.

Domestic violence survivor Searle says she lost custody of her daughter Alexis after a Tennessee judge decided in a closed hearing to give custody to the father. Searle, currently of San Diego, says she has not had contact with her daughter for nearly 15 months after a child psychologist determined that telephone conversations would adversely affect Alexis.

“If I killed someone I’d get to see her and talk to my daughter two times a week,” Searle said. “I’ve done nothing and they won’t let me speak to her.”

Tennessee Juvenile Court Judge Lonnie Hoover did not return calls for comment.

The Protective Parent Reform Act that passed in Tennessee will now require family court proceedings to become more open and transparent by making sure that ex parte contacts are prohibited. The law also seeks to institute additional safeguards – from providing timely access to mental health evaluations to requiring that all admissible evidence of abuse be considered – to ensure that children do not wind up in the hands of an abusive parent.

In other states, including Michigan, Illinois, Arizona, California and North Carolina, women are also working to get versions of the Protective Parent Reform Act passed. And child welfare advocates are simultaneously promoting legislation at the federal level. In a related decision, New York State’s highest court recently ruled that child welfare authorities are not allowed to remove children from their parents merely because they have been exposed to domestic violence at home.

### Contested Custody

Although few studies have been done to quantify the number of parents who abuse either their spouse or their children that gain full or partial custody, some groups, including California National Organization of Women, have found strong evidence that court systems tend to favor abusers in child custody cases.

A 2002 California NOW report based on surveys of more than 200 mothers who claimed to have problems in California family court found that in 76 percent of the cases the father had hurt the children. In 50 percent of those cases, police reports had been filed. Yet, in 69 percent of the

cases, the offender was given unsupervised contact or custody of the child despite evidence of the abuse.

Richard Ducote, a lawyer based in New Orleans who has tried custody cases in 40 states and authored the Protective Parent Reform Act, said the problem is pervasive.

Ducote said that over the past 20 years, the emphasis in custody cases has been on making sure that children were able to maintain contact with both parents. He said that even in cases involving domestic violence, child abuse, sexual abuse, substance abuse and mental illness judges often fail to make exceptions.

“The courts are either all or nothing,” said Ducote.

### Ingrained Sexism

Add to this ingrained sexism and the “vindictive bitch” theory – that a woman who says a child needs to be protected is really trying to stop the father from having any relationship with the child – and women often find themselves on the losing end of a judge’s ruling, Ducote said.

On the procedural side, women also face a mountain of obstacles. Ducote said he has seen numerous cases where judges hold ex parte contacts with guardians ad litem (the people appointed to act in the best interest of the child), mediators and mental health professionals involved in the case and then fail to disclose the content of these meetings to the mother or her attorney.

And, some experts say that in some cases the guardians ad litem are often not as objective as they should be.

“In one case, it turned out that the guardian ad litem was in a business relationship with the dad’s attorney and together they had donated money to the judge’s campaign,” said Robert Geffner, a psychologist and the founder and president of the Family Violence and Sexual Assault Institute, a training institute in San Diego.

Geffner said that such unethical relationships are not uncommon.

### Other Say Problems Not Pervasive

Some experts, however, say that such problems are not pervasive and that the court system is doing an effective job at protecting children.

Marjory D. Fields, a former judge of the Family Court and Supreme Court of the State of New York, said that in New York, at least, judges take domestic violence and sexual abuse allegations very seriously and seek to protect children from winding up in the hands of a potentially dangerous parent.

“There may be some problem places, but this is not a universal problem,” said Fields.

Ronald Isaacs, the founder of the Fathers Rights Foundation in Baton Rouge, La., said that 80 percent of women's allegations of abuse are later found to be false. He declined to provide studies to back up that assertion.

But others, such as Judge Sol Gothard of the 5th Circuit Court of Appeals in Louisiana, said that he was dismayed by the number of judges who continue to cling to negative stereotypes of women and who employ those stereotypes as the basis for their decisions to turn over a child to an abusive parent.

"I see an alarming number of cases in which custody is granted for the wrong reasons," he said.

Jennifer Friedlin is a writer based in New York.

For more information:

Women's eNews: New Guidelines Issued for Granting Child Custody – Run date: 12/17/02 - <http://www.womensenews.org/article.cfm/dyn/aid/1148>

Custody Preparation for Moms: <http://www.custodyprepformoms.org>

Fathers' Rights Foundation: <http://www.fathers-rights.com>

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