

A personal experience

The fact that a child is disclosing and alleging sexual abuse will not be disputed. What the child wants will be considered inconsequential. A mother's attempt to protect her child from being sexually abused (alleging abuse, seeking to reduce the father's contact, carefully documenting the child's complaints, going to the police etc) will be viewed by the court and court workers as prima facie evidence of alienation by the mother against the father. A positive finding of abuse by State authorities will not alter the outcome.

The children's representative, instead of advocating for the wishes of the child (to have no contact with the father) will dismiss the child's views as a product of "brainwashing" and alienation by the mother.

The child's disclosures of abuse will be similarly discounted. The representative, believing in the universal benefits of contact for children, will decide that contact with the father is in the child's best interests and will offer the mother a choice between two options: allow the abuse to continue or lose the children permanently. If (usually when) the mother rejects this option and chooses instead to protect her child from ongoing contact with the perpetrator, the representative will recommend a change of primary residency.

Any attempt to utilise the Family Court to protect her child from sexual abuse will prove not just futile, but disastrous, with primary residency often being reversed, unless the mother accepts ongoing abuse without further complaint. She will go from primary caregiver, to being allowed only supervised contact with her child. Parents seeking to utilise the Family Court to protect their children from sexual abuse will be confronted by a pro-contact family law culture where child-safety is a low priority.

The few cases where courts have denied "convicted abusers" contact with their children, are being overturned on appeal. The appeals are centred on the standard of proof required in sexual abuse cases and the balance between the risk of detriment to a child from sexual abuse and the possibility of benefit to the child from contact with a parent. For case examples and more information see "Allegations of child sexual abuse in Family Court cases". Law Society Journal v. 43 no. 7 August 2005: 66-67.

Until such time as the Federal Inquiry's critical recommendations as to how children should be given greater protection from abuse and family violence have been adopted (i.e., the Family Court system be altered to allow greater scope for the investigation of claims of abuse, and the suggested presumption against parenting in cases of family violence), this is the only advice I can give to mothers trying to protect children from abuse.

This was my experience. This has been the experience of many mothers in the many cases I have worked since. I have yet to see a mother protect her child by utilising the Family Court.