



HERRING LAW GROUP

Certified Specialist, Family Law, The California Board
of Legal Specialization of the State Bar of
California

Fellow of the American Academy of Matrimonial Lawyers
Fellow of the International Academy of Matrimonial Lawyers

Writer's direct email: gherring@theherringlawgroup.com

There Ought to be a Law... or Not (The Legislative Process and “Parental Alienation Syndrome”)

by Gregory W. Herring

At the beginning of each year, the California Legislature loads new meat into the grinder and starts making sausage. Since the 1970's, many of the links have been family law-flavored.

This is because Legislators, like the rest of the population, began having more divorces and, thus, more opinions about family law. In the 1990's, District Attorneys and women's groups started pushing domestic violence to the fore, resulting in contests to see who could most harshly punish DV perpetrators. The legislation of lesbian/bisexual/gay/transgender issues has been a more recent trend.

Especially causing a ruckus this year has been Assembly Bill 612. It, as originally introduced, would have imposed the so-called *Kelly/Frye* Standard on scientific methods and theories used in child custody evaluations. AB 612 also particularly targeted the infamous “Parental Alienation Syndrome” (“PAS”) in barring its consideration by courts and court-connected mental health professionals in determining custody and parental timeshare issues.

PAS is a highly controversial creation of the late 1990's that is sometimes wielded by a parent in a custody dispute. The essential allegations are that, (1) through verbal and non-verbal thoughts, actions and mannerisms, the other parent is emotionally abusing (brainwashing) the child into thinking that he is the enemy, and (2) such behavior is an actual psychological “syndrome.”

One of AB 612's problems was that the *Kelly/Frye* Standard does not even apply to psychological opinion evidence. If all psychological testimony in child custody evaluations were subjected to the Standard, perhaps *all* expert opinion testimony by child custody evaluators would be barred.



Further, the psychological community has already generally rejected PAS. Rather, instead of assuming that an “alienated child” has been programmed by a parent to be hostile to the other parent, the generally accepted approach is to begin “with a primary, neutral, and objective focus on the child, his or her observable behaviors, and parent-child relationships.” (Johnston, 2001.)

More fundamentally, the question arises as to why family law court judicial officers, themselves, might not be competent to decide issues under *Kelly/Frye*? Why should special legislation be needed to target PAS, as opposed to other forms of “junk sciences” that are regularly handled in the civil courts? Especially when the California Supreme Court and others are trying to establish the equality of family law *vis-à-vis* civil law (especially through the recent *Elkins* case), why should family law courts uniquely be targeted by legislation that takes discretion from their hands?

Due to an uproar from a variety of family law groups and lawyers, AB 612 was recently modified to state, “. . . a child’s expression of significant hostility toward a parent can in the discretion of the court be admitted as possible corroborating evidence that the parent has abused the child. The court cannot decide that an accusation of child physical or sexual abuse against a parent is false based solely on the child’s expression of significant hostility toward that parent.”

Whether one accepts or rejects PAS, AB 612 is a good example of the Legislature’s interest in family law and the ability of groups and lawyers to affect family law legislation. Participation is important, and a good way to do it is through the various Standing Committees of the State Bar’s Family Law Section (see, e.g., calbar.ca.gov/famlaw; this website leads to, among other things, the *capitoltrack* matrix of bills and status).

Otherwise, one would have little standing to complain about the sausage being produced—in this case it’s being made in full view.