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## **About Alienation of Children in Foster Care**

### **Note**

In this document, reference is made to Irish law, payments, and available statistics in 2016.

### **Introduction**

In the period November 2009 to February 2016, I attempted to find a reason why most children in care of the Child and Family Agency in Ireland are alienated from their parents(s).

In the process several published and unpublished Court judgments were studied, as well as Guardian Ad Litem, social worker and other “Expert” reports. Several foster carers, some still serving and others retired were consulted. Three ex social workers were also involved in supplying valuable information.

As far as possible, an outcome study was done amongst 202 adults that were in foster care. (Not all of them were PAS children)

The authors also studied available reports on deaths of children in care or who were in care.

### **About the findings**

I have to emphasise the fact that this was an informal study, done in technical contravention to sections 29 of the Child Care Act, 1991. Publishing any names, other than what is published by the Court Service or the Reporting Project will be a contravention of Section 31 of the same Act.

The findings are far worse than the findings of previous scientific studies done in Australia, Canada and the United States of America. The best outcome values of said studies are published by PAAA.

### **Findings in Summary**

There is clear evidence that all the children alienated while in State Care, suffer serious negative outcomes.

Studying the available material of victims of unnatural deaths (including suicide and drug related deaths), it is clear that they were all PAS Children with different gradings, rating from moderate, serious or totally alienated.

### **Alleged reasons for alienating the children**

In all the Court orders, opinions and suggestions, it has been alleged that it is in “best interest of the

child” to limit access or completely eliminate it.

- No evidence could be found that any of the persons advocating alienation had any academic qualification in family dynamics (or equivalent) or certification by any professional group on the subject.
- In none of the Court rulings seen, did the legal representation bring to the attention of the Court about existing Case Law and the known and widely published research regarding the emotional abusive effects of alienation, now known as ECAPA – Emotional Child Abuse by Parental Alienation.
- Reasons given for this drastic decision is clearly in line with known reasons used by AP's (Alienating Parties) in toxic matrimonial breakdown cases.

### **The real reasons for alienating the children**

If a child is alienated from their parent(s), the child can not be re- unified with their parent(s).

I firmly believe that the alienation of children in care is of benefit to certain individuals, such as:

- Financial or other benefit for foster carer
- Financial benefit for the Guardian ad Litem
- Financial benefit for “therapist” needing clients
- Justifying staff numbers of authority having to “supervise and manage”

### **Financial implications**

I strongly believe that most cases of alienation of children in care, is initiated for financial reasons. This belief was confirmed by two foster carers interviewed.

- Foster Carer profits: A 16 year old child will bring in €384.19, costing (at state rate) €61.99 per week to care for, a profit of €322. The profit is higher if the child is disabled and can be as much as €393 per week.
- Guardian Ad Litem profits: He/she can stay on board – until the child leaves aftercare.

### **Foster Care Parental Alienation Outcomes**

Parental alienation is the main cause of the outcomes. Eliminating PA will protect the child from a lot of hurt and make resources spent on the effects available for better use elsewhere.

#### **The different columns are:**

Outcome – **Other PA** – including working parents and other causes – Stats from other jurisdictions

Outcome – **Institutional PA Ireland (unofficial study)** - Foster care or care homes

Outcome – **Institutional PA Other jurisdictions** – Foster care or care homes / orphanages

Outcome – **Institutional Non- PA** - Foster care or homes that actively prevented PA (adhering to at least the minimum access guidelines)

<b>Outcome</b>	<b>Other PA</b>	<b>Institutional PA Ireland (unofficial study)</b>	<b>Institutional Min. Other jurisdictions</b>	<b>Ins. Non PA Max. Other jurisdictions</b>
Self harmed history (Non Fatal)	12%	29%	23%	3%
Unnatural deaths / 100,000	27.4	112.5	49.1	30.2
Girls sexually active before 16	48%	84%	75%	17%
Pregnancy before age 21 (not married)	58%	62%	70%	18%
Brush with law before age 25	19%	44%	42%	3%
Substance abuse before age 25	17%	48%	27%	8.2%

(Note: The authors will appreciate updated confirmed statistics)

### **Foster Carer -v- Parent relationship**

The relationship of the child with the foster carer is usually very good while the child is in care or with said foster carer in aftercare. Unfortunately the relationship usually break down completely when the child leaves the foster carer.

If the child does not have a relationship with his parents and family, the child is completely “left in the cold” when he reaches the age of 21. The CFA (TUSLA) does not have a responsibility any more, neither is the foster carer under any obligation.

In more than 60% of the cases where the child has no relationship with the parents, the parents also rejected attempts at reforming a relationship. The outcome for the child is obvious...

### **About Law and Case Law on Parental Alienation**

#### **Statutory Law**

Presently no enactment exist in Ireland specifically addressing Parental Alienation.

Other enactments may be used and some test cases was awaiting the decision of the DPP in March 2016 under one or more of -

1. Section 37 of the Child Care Act,1991 (access)
2. Section 176 of the Criminal Justice Act 2006 (reckless endangerment of children).
3. Section 3 of the Non-Fatal Offences against the Person Act 1997 (assault causing harm),
4. Section 4 of the Non-Fatal Offences against the Person Act 1997 (causing serious harm)
5. Section 13 of the Non-Fatal Offences against the Person Act 1997 (endangerment)
6. Section 246 of the Children Act 2001 (Cruelty to children)

I also believe that other persons, knowledgeable of the situation, known as Parental Alienation, are

guilty under section 2 of the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012

### **Case Law**

In the past 5 years, numerous court decisions in Ireland and the UK have confirmed that any form of Parental Alienation is cruelty to children and or emotional child abuse and or “detrimental to the development of the child” and more.

The authors firmly believes that the use of ECHR case law can be used to eliminate this evil.

Section 3.—(1) of the European Convention on Human Rights Act 2003 states:

*Subject to any statutory provision (other than this Act) or rule of law, every organ of the State shall perform its functions in a manner compatible with the State's obligations under the Convention provisions.*

And Section 4.—(1) of the same Act that states:

*Judicial notice shall be taken of the Convention provisions and of—*

*(a) any declaration, decision, advisory opinion or judgment of the European Court of Human Rights established under the Convention on any question in respect of which that Court has jurisdiction*

*(b) any decision or opinion of the European Commission of Human Rights so established on any question in respect of which it had jurisdiction,*

*(c) any decision of the Committee of Ministers established under the Statute of the Council of Europe on any question in respect of which it has jurisdiction, and a court shall, when interpreting and applying the Convention provisions, take due account of the principles laid down by those declarations, decisions, advisory opinions, opinions and judgments.*

### **Some very relevant case law to be taken notice of is:**

1. In the matter *Elsholz v. Germany*<sup>1</sup>, -25735/94 [2000] ECHR 371 (13 July 2000) the Court ruled that Parental alienation does affect the well-being of the child. In the same matter, para. 35, the Applicant referred to Canadian and US Research, publications and relevant case-law regarding Parental Alienation, claiming that it should be taken notice of and that the relevant authorities should receive suitable training. Although the the Chamber did not rule on said point, said point was pointed out in subsequent matters as “a valid argument”
2. American and Canadian research and case-law was directly used as motivation in legislation enacted in Mexico, Brazil and elsewhere to criminalise any form of Parental Alienation.<sup>2</sup>
3. American, Canadian, ECHR and many other research and case-law directly confirm that:
  - Parental Alienation is classified as the second worst form of child abuse after sexual

<sup>1</sup> <http://www.bailii.org/eu/cases/ECHR/2000/371.html>

<sup>2</sup> Translation of said enactments available on <http://pa.aps.ie>

abuse with incest.

- The effects and outcomes<sup>3</sup> of Parental Alienation on the child confirm the abuse with a life long effect on the child.
  - The wishes of a PAS Child<sup>4</sup> to stay alienated cannot be addressed but the wishes of the child to have a relationship with the parent must be addressed.
4. Proven statistics of PAS Children and Target Parents<sup>5</sup> losing their lives as an outcome of Parental Alienation and the resulting Legal Abuse Syndrome place this breach under Article 2 [Right to Life] of the Convention
  5. Parental Alienation is Emotional Child Abuse (also termed ECAPA) and the ECtHR ruled that child abuse is a breach of Article 3 [Torture]<sup>6</sup>.
  6. The following rulings specifically address psychological abuse and Parental Alienation, a breach of Article 8 [Right to Respect for Private and Family Life]
    - In *Bordeianu v. Moldavia*, TEDH C-5/2011, where the Court ruled “... that the litigated State is legally obliged to put an end to this breach and to eliminate the consequences of re-establishing the situation.”
    - In *Mincheva v. Bulgaria*, TEDH C-91/2010, where the Court ruled “Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.”
    - In *Piazzi v. Italy*, TEDH C-360648/2010, where a failure of the social services to ensure that court decisions were complied with, prevented an Italian citizen from seeing his son. This had produced parental alienation of the child with consequences that were difficult to make good.
    - The conjoined rulings of *Salin v Germany*, *Sommerfeld v. Germany*, *Hoffmann v Germany*, [2002] 1 FLR 119, raise key issues, including:
      - It is not in the Child's interest that the dislike of the Alienating Party towards the Target Parent, results in opposing contact and a relationship.
      - This situation is causing the child to be put in a situation of antipathy and tension which would definitely affect the well-being of the child.
      - Experts giving evidence in these type of matters should be independent, look at all the facts from both sides and be knowledgeable on the facts of Parental Alienation.

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<sup>3</sup> Summaries of the effects and outcomes of Parental Alienation is available on <http://pa.aps.ie>

<sup>4</sup> PAS Child refers to a child suffering two or more psychological outcomes of the act of Parental Alienation

<sup>5</sup> A Target Parent refer to the party deprived or prevented from having a relationship with the child.

<sup>6</sup> See: *Mubilanzila Mayeka v. Belgium*, *Maslov v. Austria*, *A v. the United Kingdom*, *Z and Others v. the United Kingdom*, *E.S. and Others v. Slovakia*, and many more.

- In *Johansen v. Norway*, [1997] 23 EHRR 33, the Court clearly ruled that “the mutual enjoyment by parent and child for each other's company constitutes a fundamental element of family life even if relationship between the parents has broken down, and domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8.”
- In *Soderback v. Sweden*, [2000] 29 EHRR 95, the Court ruled that even where the child is born out of wedlock, the relationship of the parents before and after the birth of the child, Article 8 is applicable, and that:
  - it is not only applicable if a relationship is already established;
  - must be extended to potential future relationships that may develop;
  - limited access (as in this case) will not promote a relationship.

### **About Foster care allowance**

- Foster care allowance (€300,00, €325.00 or €352.00 per week depending on the age of the child)
- Extra allowance for disabled children - Domiciliary Care Allowance of €309.50 per month.
- Child benefit of €140 per month
- Free childcare paid by the state if the foster parents go on holiday or are ill
- and much more.

### **Some calculated examples:**

(Calculated at known rates 2016)

**Example 1-** Child taken in care at birth – leaving foster carer's home on last day of “aftercare”

A disabled foster carer caring for the child full time will receive a total of €389,818 – or average €18,562 per year or average €1,546 per month over 21 years

A disabled parent caring for the same child full time will receive a total of € 57,148 – or average €3,174 per year or average € 264 per month over 18 years

**Example 2-** Child taken in care on his birth – leaving foster carer's home on last day of “aftercare” if the child is certified with a disability.

A disabled foster carer caring for the child full time will receive a total of €467,812 – or average €22,276 per year or average €1,856 per month over 21 years minimum.

A disabled parent caring for the same child full time will receive a total of € 135,142 – or average €6,435 per year or average € 536 per month over 18 years

**Example 3-** Child taken in care on 12th birthday – leaving foster carer's home on last day of “aftercare”

A disabled foster carer caring for the child full time will receive a total of €166,881 – or average €18,542 per year or average €1,545 per month over 9 years minimum.

A disabled parent caring for the same child full time will receive a total of € 37,708 – or average €2,094 per year or average € 174 per month over 6 years

**Example 4-** Child taken in care on 12th birthday – leaving foster carer's home on last day of “aftercare” if the child is certified with a disability.

A disabled foster carer caring for the child full time will receive a total of €200,307 – or average €22,256 per year or average €1,854 per month over 9 years minimum.

A disabled parent caring for the same child full time will receive a total of € 71,134 – or average €3,387 per year or average € 282 per month over 9 years

**Example 5-** In an interview with one retired foster parent, she admitted that she cared for “around 50” kids during her career of 22 years. In the period 1999 to 2014 she never had “less than 4 foster children” - that is at least €7,400 per month, while still receiving her “disability allowance” and “Rent Supplement” and later “Rental Assistance Scheme” housing.

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