

## In many ways, victims of family policing are California's invisible families.



**California Families Rise (CFR)** is a parents' rights organization with a large membership of system-involved families, that is exclusively led and operated by system-involved volunteers. CFR's all-volunteer membership and leadership brings boundless energy, passion, excitement, and sincerity to the legislative reform process. CFR is committed to systems change led by and to the benefit of those impacted by family policing. We invite you to take a chance and come on this journey with us.

The purpose of this report is to support CFR's proposed bill to codify the California Supreme Court ruling, *In Re Caden C.*, that set precedent establishing that the beneficial parental relationship supersedes the termination of parental rights.

# **Codifying In Re Caden C.**

The Parental Benefit Exception to TPR

## **WIC 366.26, In Re Caden C., and the Parental Benefit Exception**

If the court finds that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. (§ 366.26, subd. (c).)

If a parent is unable to reunify with a dependent child within statutory time limits, a hearing must be set under WIC section 366.26 where a finding of a permanent plan is made. The court determines whether to terminate parental rights, making way for adoption, or to maintain parental rights and select another permanent plan. If the child is adjudged to be “adoptable”, the court must terminate parental rights unless the parent can show compelling evidence that they fit the criteria for one of six exceptions.

The parental benefit exception (§ 366.26, subd. (c)(1)(B)(i)) is the first of those exceptions and the focus of our proposed legislation.

### **In Re Caden C. Ca Supreme Court decision, Hon. Cuellar, J.:**

The dependency statutes were enacted to prevent harm to children. They prevent harm at the outset of the dependency process by removing children from situations where they are likely to suffer abuse or neglect. But they also prevent harm in the process of selecting permanent placement through the parental-benefit exception, by allowing certain children to preserve emotionally important parental relationships. This exception allows a child a legal basis for maintaining a relationship with the child's parent if severing that relationship would, on balance, harm the child. The exception preserves the child's right to the relationship even when the child cannot safely live with that parent. What it does not allow is a judgment about the parent's problems to deprive a child of the chance to continue a substantial, positive relationship with the parent. Accordingly, we reverse the judgment of the Court of Appeal and remand with directions to dismiss the appeal as moot.

In Re Caden C. is a juvenile dependency case out of the San Francisco Superior Court that set precedent when the California Supreme Court reversed the Court of Appeals reversal of Judge Monica Wiley's trial court decision. It has overturned hundreds of terminations of parental rights in appeal since the opinion was published in 2021. It established that:

The **parental benefit exception** supersedes the termination of parental rights; a parent's failure to make progress on the issues leading to dependency is not a categorical bar to apply the parental benefit exception; the court's decision on whether to apply the exception is not relevant to parent's housing stability, nor should the parents' home and personal attributes be compared to that of the custodial caregiver.

In essence, what the Supreme Court recognized is no parent is perfect.



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The **parental benefit exception** established, by a preponderance of evidence, that: (a) the parent visited regularly with the child, (b) the child would benefit from continuing the relationship, (c) and that terminating the relationship would be detrimental to the child.

In his published opinion, Hon. Judge Cuellar references the legislative intent of the parental benefit exception, which was to mitigate harm to the child in cases where permanent severance would be detrimental to the child due to the strength of the parent-child bond. As such, this opinion strives to clarify the application of the parental benefit exception, so that “detriment” to the child is interpreted as harm that would result from severing parental ties. The opinion explicitly states what is not “detriment”, in the context of the clause.

“Detriment” is not a parent’s failure to make progress on the issues leading to dependency. In addition to case progress being an entirely separate issue from whether or not the dependent child will be devastated by the permanent severance of parental ties, but “making a parent's continued struggles with the issues leading to dependency, standing alone, a bar to the exception would effectively write the exception out of the statute.” (Cuellar, 18-19 ish?)

## Unconditional Love, Unbreakable Bonds, and Attachment Theory

*We love our children as ourselves, we love them as a part of ourselves...*

-Aristotle

In the above quotation, Aristotle described mother and child as a dyad.

It is universally accepted that parental love is a fundamental facet of our society and part of the social and moral order that we rely on. And, if it is possible for love to ever truly be unconditional, that love will most commonly be found in a love between parent and child. Where else but in the love between parent and child could love exist in any terms, through any circumstance, and endure any amalgamation of the catastrophic, the bizarre, the brilliant, in life, in sickness, and with each and every breath...?



Most critical of all bonds formed are formed between parents and children. When the bond is healthy and secure, it is referred to as attachment. John Bowlby is the founder of attachment theory. Inspired by the extreme feelings he felt as a young child of loss and separation and by the resultant grief that lingered, Bowlby focused a significant amount of his impressive body of work to researching the impacts of family separation on child development (Bowlby, 1982). In healthy and secure parent-child attachments, in young children that attachment becomes imprinted within the neural circuitry of the young brain, it becomes something the young brain needs as much as it needs survival, as human nature (Bowlby, 1988). And, if a child is severed from a secure attachment bond at a young age, there is a direct causal effect contributing to long-term psychological and physiological illness. Bowlby referred to this traumatic occurrence as maternal deprivation syndrome (Bowlby, 1982).

Bowlby studied the effects of moderate-length (a few weeks or months at a time) family separation on young children and deduced that family separation and was “deeply impressed by the intensity of the distress and misery he witnessed whilst the children were away from home” (Bowlby, 1982). Meanwhile Junewicz, et. al interprets a child’s strong and secure attachment as purely and deeply biological, even though she stresses the point of expanding definitions of parenthood, such as an LGBTQ parent who did not birth their child but parented that child since birth.

Attachment theory has earned mainstream credibility since its development, and is increasingly applied in child custody cases to guide decision-making. It can be admissible as framework evidence in custody proceedings if it is relevant, meets qualification standards, has scientific validity, and adds value (Forslund, et. al 2017).

**The permanent severance of parental ties when the unconditional love of a parent has imprinted on a child is cruel and unjust.** We should consider such a love and such a bond as a being in itself and view the destruction of such a bond as akin to murder. Courts must do more to deliberate if such a bond exists, and, if it does, the statute must allow discretion for this bond to be maintained.

## **Special Interest Groups Before Children's Best Interest**

The prevailing perspective that parents' rights are in direct and unequivocal opposition and mutually incompatible to children's rights is a false narrative. This false narrative was created as pro-system propaganda and used as a tool to protect the interests of predatory individuals and certain groups (Roberts, 1999). These false narratives are an intentional ploy to manipulate courts and public opinion. System-involved parents are so tainted by societal stigma and institutional bias (Vern-David, 2016), that the mere utterance of phrases such as “child abuse” or “child trauma” is evidence enough of the worst imaginable crimes.

Supporting Face-to-Face Birth Family Contact after Adoption from Care: Learning for Trauma Sensitive Practice (MacDonald, 2021), is a peer-reviewed research paper that gathers and interprets qualitative data from adoptive parents in North Ireland regarding their continued contact with birth parents after adoption.

MacDonald's paper was published with the express intent of improperly biasing the public against parents and devaluing credible research that supports family preservation and ongoing contact after adoption. This paper and papers just like it can be weaponized against parents in custody proceedings.

Best-practice guidelines call for empirically based methods, but many instruments used to assess custody-relevant constructs lack sufficient validity (Emery et al., 2005). Interpretation is also complicated; professionals often make scientifically unjustified claims and judges regularly admit evidence with poor scientific validity (Neal et al., 2019; Scott & Emery, 2014).



MacDonald's research method did not provide valid framework evidence and group-based research did not yield general principles suitable as a frame of reference. In particular, adoptees and birth parents should have been surveyed in MacDonald's research because the purpose of the research was to better support their face-to-face visits with one another. In contrast, self-reported data and questionnaires gathered exclusively from the adoptive parent perspective falls short of providing valid diagnostic evidence; as the data collection should have adoptees and birth parents in order to be a "true" instance of a general group-level principle. In particular, the assessments did not yield valid information about what social work supports were needed to better facilitate face-to-face contact.

For this reason, we are including in the recommendations of this paper statutory requirements for the admissibility of framework research and scientific evidence/testimony. Admissible framework science and evidence/testimony shall meet the following criteria:

1. It needs to be relevant
2. It should have qualifications
3. It should have scientific validity
4. It should provide added value; and (e) courts should exclude evidence that may cause unfair prejudice or be misleading relative to its probative value

# Parent Stories

## **Michelle D. Chan:**

Michelle is the author of this paper and an impacted parent who narrowly escaped TPR. Michelle had a difficult life growing up in Chinatown, New York City. It was the 1980s and 1990s. Life was fast. Life was hard. Street gangs ruled the Chinatown of Michelle's youth. An invisible child of immigrants, during a time when universal child care didn't exist and attachment parenting was not practiced. When Michelle turned eight, adult supervision and human companionship became a thing of the past. Low self-esteem. A heart that throbbed with a soft, dull, constant hurt. It was the hurt of loneliness.

She was 14 and chasing companionship, chasing love, chasing something to make her feel worthwhile. That's why she followed him into that abandoned house, a complete stranger.

It wasn't until after the door shut behind her that she realized what was about to happen. It was fun and games until she saw the urine soaked mattress, smelled the stench of mold and sweat and rancid rodent feces. For the rest of her life she will never forget how disgusting she felt, how he laughed when she cried, how she fell into a deep sickness afterwards marked with a fever the same temperature as hell on a hot day. As it turned out the fever was Hepatitis B. But she wouldn't find that out for many years.

In the aftermath, nothing was ever the same. Whereas before she was insecure and desperately craving love, after the rape she exploded into each day in a fit of rage. It felt to her like a shadow followed her everywhere, draining all light and hope and purpose.

Michelle fell into a pattern of drug use and parties and risky behavior that would define her teens and early adulthood.

Michelle was 34 when her son was removed from her custody. She was charged with failure to protect for exposing him to domestic violence, regardless of the fact that she was the victim. Michelle's case was contentious and by the end of the case she had become uncooperative. The one thing that kept Michelle from being TPRed was the incredible, indelible bond between her and her son.

There is no doubt in anyone's mind, now that Michelle and her son have reunified, that he is in the right place. He is a healthy, happy, socially and emotionally well-adjusted child that excels in school. His hobbies and interests include playing competitive soccer, text-based computer coding under the guidance of a tutor, and block based computer coding as a form of play, speedcubing, teaching himself how to make videos, hiking, and helping his mother cook. Last year, he made a video about his college aspirations and entered it into a contest. He won first place (see <https://youtu.be/QAja2PbAJro>).

For many, many months after he came home, he woke up in the nights screaming. He had recurring nightmares that he had woken up and the home was crumbling all around him into a ruinous hell. All Michelle could do was hold him until he stopped shaking, the mucus pouring out of him a yellow lava of hurt. Six years have passed since the day her case was dismissed. From time to time she talks to him about what happened. When he turned ten, she confessed about her past struggles with drugs. He needed to know the truth. She didn't want him to make the same mistakes.

“But I still don’t understand why they would take me away from you,” he said. “You’re the best mommy in the world.”

When asked what he remembers about the system, he says: “They....they didn’t love me. And no one ever asked me what I wanted. If they had, I would have told them I wanted to go home.”

On most nights, his mind fights sleep, afflicting him along a spectrum that ranges from mild anxiety to frightening panic attacks. Michelle has grown accustomed to soothing her son at night, ever since those dreadful nights when his screams pierced her heart like a searing hot sword.

John Bowlby was right when he theorized that family separation in very young children who have a strong and healthy attachment to their caregivers causes life-long psychological issues. Michelle’s son is proof of this.



# Parent Stories

## **Benjamin & Caroline Winger:**

Ben Winger has autism and his wife Caroline is bipolar. But they manage their mental health well and as a result their disabilities have not interfered with their ability to lead normal, healthy and fulfilling lives.

Then came the pregnancy and what should have been a joyous birth. But shortly after giving birth, Carolyn started having unexplained psychiatric symptoms. Ben describes her as being “paranoid, disorganized, delusional, and overall being disconnected from reality.”

Carolyn was diagnosed with postpartum psychosis, which immediately triggered a CPS case.

Postpartum psychosis is the lesser known relative of postpartum depression.

According to Lisa Schindler, a neonatal intensive care unit nurse:

“After mothers give birth, they can suffer from postpartum depression or psychosis due to the surging hormones in their body. It’s a temporary situation in most cases and when treated, mothers can go on to be good parents.”

Ben and Caroline are loving parents who would walk to the end of the world for their daughter. They cooperated to the best of their abilities, but the trauma of being in the system was an additional stressor on Caroline. When Caroline noticed breakthrough psychiatric symptoms months later, she checked herself into a psychiatric hospital.

Unfortunately, due to the hospitalization, the department's recommendation at the permanency hearing was to TPR.

In Re Caden C. is the case law Ben's attorney cited at the hearing to advocate for the child's right to have continued contact with her biological parents. At the hearing, Ben's mother, who is the custodial caretaker of Ben's daughter, testified on Ben's behalf. Here is a snapshot of what she said:

"I can tell that Ellie is bonded with Ben because she is excited when she sees him, and will often choose to be held by Ben. He comes and does yard work for me and Ellie will "help" him pull weeds, and other tasks around. She will follow him around the yard and ask for his help to put her shoes on. Just last week, in preparation to go camping, Ben was cleaning out my car. Ellie saw him and then wanted to help Daddy. Ellie will also talk about Daddy and say things such I am Daddy's favorite daughter, which is cute because she is his only daughter."



After weighing the grandmother's testimony along with other supportive evidence, the court ruled in favor of the parental benefit exception and guardianship was chosen as a permanent plan.

"I am so thankful to In Re Caden C." said Carolyn. "Even though I had my difficulties, I love my daughter and I try my best to nurture and love her."

Carolyn continues to work on her mental health and the outlook is bright for her family and her daughter.

"I love taking her to the park and watching her learn new things and slowly grow up. At the park she loves going on the biggest slide even though she's still a little girl. And we're jewish so I get to teach her about our heritage and read jewish baby books with her," she said

# Parent Stories

## **Michelle Peterson:**

This story speaks to a chemically addicted mother whom got sober and wanted a divorce. This was the onset of several retaliatory actions from the children father.

The father's first course of retaliatory action was filling a child abuse case against the mother. When that attempt failed, the father filed a fast track evaluation with the Los Angeles Child Custody Court for the oldest daughter leaving her two younger siblings out of the proceedings.

The court removed the oldest daughter based on the bias's of her mothers drug addiction . Giving sole custody to the father whom in turn took the oldest daughter out of state. All the while the father was molesting his daughter whom the courts granted custody.

Mother was granted via the divorce decree visitation upon father getting custody there was no legal contact with mother and daughter. Upon the oldest daughter returning from out of state with her father, daughter told mom her father was molesting her and the fight began for mother.

Mother eventually had to return to court to fight the same system that granted father custody of her daughter. After having to retain a restraining order while enduring harassment/stalking from the father.

Conclusion: Predatory fathers are using the court system as a tool to help remove the children they have groomed/grooming to give the fathers full access to push their predatory agenda towards the children. Despite the strong mother and child bond.



# Conclusion

Is there a want that is not a need?

Should a child's yearning for mother or father or brother or sister go unheeded?

The sun don't shine here no more, and the world is not itself.

And yet, the vaguest memories of family still linger...

The stab of loneliness is unbearable..

There is no way out because to run away would be to abandon the children, to abandon all hope...

And so we stay, here in the darkness we fight.

And we will keep fighting, even long after our own children come home.

We, the INVISIBLE FAMILIES, will, fight. For all the children.

We will fight until the light returns and all the children are where they belong.

Rise up and fight with us.

~Michelle D. Chan

Codifying In re Caden C. allows children a lifeline to their birth families, to their culture, and to their identity- in cases where the absence of such a lifeline would be detrimental.



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