

Workgroup to Study Child Custody Proceedings Involving Domestic Violence or Child Abuse Allegations

Meeting Minutes – August 20, 2019

The Workgroup to Study Child Custody Proceedings Involving Domestic Violence or Child Abuse Allegations held its fifth meeting of the 2019 interim on Tuesday, August 20, 2019, in Room 218 of the House Office Building in Annapolis, Maryland. The following members were present:

Secretary of State John C. Wobensmith, Chair
Senator Susan Lee
Delegate Vanessa Atterbeary
Ms. Camille Cooper
Ms. Sonia Hinds
Ms. Anne Hoyer
Ms. Inga James
Ms. Laure Ruth
Dr. Jennifer Shaw
Ms. Nenutzka Villamar
The protective parent member was also present.

Welcome and Introductions

The chairman of the workgroup, Secretary of State John C. Wobensmith, commenced the meeting at 11:10 am by welcoming everyone in attendance and inviting the audience to participate in the workgroup's activities. He asked the members of the workgroup for their introductions.

Interim Report Planning

The chairman announced that the workgroup intends to make recommendations with the goal of having relevant legislation introduced during the 2021 session. He asked committee staff from the Department of Legislative Services (DLS) to discuss the reporting requirements as set forth in the legislation that created the workgroup. DLS advised that the workgroup is required to submit two reports: an interim report, due December 1, 2019, and a final report, due June 1, 2020. DLS staff reviewed the potential structure for these two reports and advised that because the due dates are so close together, the interim report should generally be brief in nature and primarily serve as a mechanism to advise the Governor and the General Assembly of the workgroup's progress. The final report will be much more comprehensive, as it should ideally be a standalone document that includes all of the research, background, and findings necessary to support the final recommendations of the workgroup. DLS noted that structuring the reports this way also has the benefit of avoiding unnecessary repetition. DLS staff advised that the final report is not required to include draft legislation.

Ms. Anne Hoyer clarified that it was the workgroup's intent to prepare a final report with solid recommendations for what proposed legislation should include and then work to draft the legislation after the final report. Delegate Vanessa Atterbeary confirmed that proposed legislation may be developed after the final report's submission, and noted that in order to prepare for the final report, the workgroup would need to consider how to best utilize the time available once its work resumed after the 2020 session. Ms. Hoyer recommended that the workgroup members meet in January to get their thoughts down before the beginning of session and advised that the workgroup will likely form subcommittees soon to focus on specific topics and tasks. In response to a question, staff from DLS advised that it is generally not feasible to meet during session. DLS reminded everyone that the workgroup sunsets November 30, 2020. In response to a proposal from Ms. Hoyer, Delegate Atterbeary agreed with the suggestion for the Senate Judicial Proceedings and House Judiciary committees to receive a briefing on the workgroup's findings and recommendations before the 2021 Session.

DLS staff advised that if any information is desired from the Judiciary, the requests should be made soon in order to provide enough time to collect the information for the final report.

Round Table Discussion

Ms. Hoyer stressed the importance of collecting data on allegations of abuse reported to local departments of social services. DLS staff shared some of the statistics it had with the group and offered to obtain updated data for fiscal 2019 from the Department of Human Services (DHS) once that information is available. DLS staff asked workgroup members to provide in writing any specific data that the members are requesting so that DLS staff can forward the request to the relevant department. DLS staff also asked that requests for research be submitted to DLS staff in writing to avoid confusion.

Ms. Hoyer said it was important for the workgroup to look at the juvenile justice system. She spoke of the importance of looking at all of the ongoing costs associated with child abuse and the economic impact of not supporting early intervention efforts. DLS staff advised that it was not feasible for DLS to conduct a comprehensive State-specific cost benefit analysis. In order to provide appropriate context within the final report of the importance of appropriately addressing child abuse, DLS staff instead proposed reviewing and summarizing published reports that analyze the economic costs of child abuse. Ms. Hoyer agreed that the approach proposed by DLS staff was appropriate. Numerous members of the audience shared their experiences of reporting child abuse.

DLS staff requested clarification about a request sent by email to look at family court programs within other states. The chairman expressed an interest in knowing how other states, particularly New York, have dealt with the issues that the workgroup is analyzing. DLS staff stated that New York has an Integrated Domestic Violence Court and provided a brief overview of the

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court structure as compared to Maryland's court structure. DLS staff advised that if the workgroup is seeking to adopt a large structural change to the court system, input from the Judiciary is critical. DLS staff also referenced the Commission on Child Custody Decision Making reports from 2013 and 2014. Ms. Laure Ruth noted current organization practices in courts and emphasized that any structural reorganization of the court system would need to take into account geographic accessibility, particularly for low-income and rural families.

Ms. Hoyer stressed the importance of making changes in the court system and creating a specialized court. Ms. Hoyer stated that a specialized court does not necessarily mean a "one family, one judge" approach. Instead, Ms. Hoyer emphasized the importance of obtaining dedicated judges who are focused exclusively on family cases and who will apply scientifically backed evidence. In response to a question from Ms. Nenutzka Villamar, Ms. Hoyer stated that the workgroup is exclusively looking at family law custody cases. Ms. Villamar noted that child custody cases involving allegations of child abuse may involve DHS and that the workgroup should be aware of the cross-involvement of other court processes. Ms. Ruth also discussed how government participation in some cases involving allegations of child abuse may affect a court's jurisdiction. Ms. Ruth stated that the workgroup needed to discuss further the issue of whether a specialized court was going to be a recommendation by the workgroup. The chairman reiterated that the workgroup has not adopted any recommendations and is still open to discussing all options at this point. In response to a question, Ms. Hoyer stated that the proposed specialized court she envisioned was exclusively for child custody cases involving an allegation of abuse.

Ms. Camille Cooper also emphasized the importance of having judges who will apply scientifically backed evidence in child custody cases and the necessity of specialized training for judges. In response to a question, Delegate Atterbeary discussed some of the issues relating to judges that the Judiciary Committee has considered, including salaries, elections for circuit court judges, and retirement ages. Delegate Atterbeary stressed the importance of having family law judges who are passionate about their cases. She also noted that due to limitations and the demographics of some counties, there may only be one family law judge.

In response to a question from Ms. Sonia Hinds, Ms. Ruth briefly discussed the continuing education requirements for judges. Ms. Ruth stated that judges have a mandatory number of hours they must complete and that the judges self-select the topics; however there is some mandatory family law training that circuit court judges must take. Ms. Hinds stated that the workgroup may want to consider recommending additional training requirements for judges. A member of the audience also stated that the workgroup needed to consider the quality and the content of the training judges and attorneys receive and noted that some of the training promotes the idea that parental alienation is a valid syndrome. Ms. Ruth suggested that the workgroup look at the judge's bench book for family law and consider making a recommendation to include certain research in the bench book; Ms. Cooper expressed an interest in looking further into this idea.

After Ms. Villamar stated the necessity of having strong laws and statutes in place that are consistently applied in the appropriate types of cases, the workgroup discussed the importance of

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this uniformity, with Ms. Hoyer advising that a subcommittee may be formed to concentrate on this issue. Ms. Villamar noted that because some reports in custody cases are introduced without the author, the author is not subject to cross-examination; this is due to a failure to follow the rules of evidence. Ms. Ruth agreed that there is an issue in family law cases where the rules of evidence are not uniformly applied, and questioned whether this was due to the fact that most family law litigants are self-represented.

Ms. Cooper discussed the emphasis on psychological evaluations in certain child custody cases. In her experience, there is a heavy reliance on psychological evaluations because there is a lack of physical evidence. She stated that the lack of physical evidence is in part due to a bifurcated system. If a child is sexually abused and the alleged defendant is a relative of the child, the case is “decriminalized” and sent to social services. In these cases, social workers take the place of first responders, yet they lack the authority to collect evidence. Additionally, due to resource limitations, law enforcement does not further investigate these cases. Thus, there is a lack of available evidence, leading judges to rely on psychological evaluations to fill the evidentiary void. Ms. Cooper stated that the workgroup should look at this issue further. Ms. Villamar offered a different perspective by noting that there is a statute that governs requirements once a report of suspected child abuse or neglect is made; the statute requires specified entities to implement joint investigation procedures. Ms. Cooper expressed her opinion that the quality of a concurrent investigation in an abuse case is insufficient. She stated that the law enforcement investigation is limited to the forensic investigation of the child and does not include a separate evidence collection component. Workgroup members and audience members further discussed how child abuse allegations are also treated differently depending on who reported the alleged abuse.

DLS staff reminded the workgroup of the workgroup’s duties under Chapter 52 of 2019. The workgroup is tasked with developing recommendations about how State courts can incorporate into court proceedings the latest science regarding the safety and well-being of children and other victims of domestic violence. DLS staff noted that if the workgroup is looking at other issues, such as law enforcement investigations, the workgroup should consider how to tie these recommendations back to the workgroup’s statutory charge. Ms. Hoyer agreed and again noted the importance of establishing protocols and providing judges with accurate and verified scientific information.

Several members of the audience suggested the need for the workgroup to examine the rules governing the appointment of various types of attorneys for children, such as best interest attorneys. Another audience member said that forensic evaluators also needed to be better trained and examined; she also noted that there are numerous fees associated with forensic evaluators that parents feel pressured to pay for fear of losing their children.

Various members discussed the need for the workgroup to look at the rules of evidence for the qualification of expert witnesses and what may be being presented to the court as “scientific evidence.” Dr. Jennifer Shaw advised that psychological evaluations can be very informative to

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courts, but judges need to know who conducted the evaluations and the basis for the evaluations. Ms. Ruth advised the workgroup that they need to keep in mind the financial limitations of parents to cover the fees associated with psychological evaluations. Ms. Hinds stated that the workgroup should also look into how allegations of child abuse are sometimes found unsubstantiated because the child is unable to disclose abuse if the child has not been given time to build a trusting relationship with the evaluator. Several members discussed developing studies and recommendations pertaining to best practices for interviewing child victims of trauma.

DLS staff agreed to email members of the workgroup sections from the Family Law Article and the Maryland Rules that are pertinent to the workgroup's activities. In response to an inquiry, DLS staff informed the workgroup that it has received the Maryland cases that were included in Professor Joan Meier's study. Because only 13 cases from Maryland were included in Professor Meier's study, DLS (at the suggestion of Professor Meier) is in the process of preparing its own summary of each of the cases to provide to the workgroup.

Closing Remarks and Adjournment

Chair Wobensmith made brief closing remarks and the meeting was adjourned shortly after 1:00 p.m.