

## Draft Recommendations

### Draft Recommendation 1

Make the following changes in statute regarding child abuse or neglect findings in child custody cases.

Family Law § 9-101.

(a) In any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party.

(b) Unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party **AND STATES THE REASONS FOR THE FINDING**, the court shall deny custody or visitation rights to that party, except that the court may approve a supervised visitation arrangement, **WITH NEUTRAL AND PHYSICALLY PRESENT SUPERVISION**, that assures the safety and the physiological, psychological, and emotional well-being of the child.

*(This is identical to Senate Bill 594, as introduced by Senator Lee in the 2020 Session.)*

### Draft Recommendation 2

Provide, in statutory provisions regarding child custody matters, a definition of domestic violence that reflects the full spectrum of abusive behavior, including non physical acts and other methods of coercive control.

### Draft Recommendation 3

Make the following changes to statute regarding acts of domestic violence in the context of child custody cases.

Family Law § 9-101.1.

- (a) (1) In this section **the following words have the meanings indicated.**
- (2) ~~abuse” has the meaning stated in § 4-501 of this article.~~ **“Domestic violence” has the meaning stated in X (will be developed/see draft recommendation 2)**
- (3) (i) **“Intimate partner” means any former or current: (1) spouse; (2) domestic partner; (3) boyfriend or girlfriend; (4) dating partner; or (5) sexual partner.**
- (ii) **An individual may be an intimate partner whether or not the individuals share or have shared the same residence.**

(b) In a custody or visitation proceeding, the court shall consider, when deciding custody or visitation issues, evidence of ~~abuse~~ **domestic violence** by a party against:

- (1) the other parent of the party's child; or
- (2) **any other intimate partner or other parent of any child of that party.**  
~~the party's spouse; or~~
- ~~(3) any child residing within the party's household, including a child other than the child who is the subject of the custody or visitation proceeding.~~

(c) If the court finds that a party has committed **acts of domestic violence** ~~abuse~~ against the other parent of the party's child **or any other intimate partner or other parent, party's spouse, or any child residing within the party's household,** the court shall make arrangements for custody or visitation **as follows:** ~~that best protect:~~

- ~~(1) the child who is the subject of the proceeding; and~~
- ~~(2) the victim of the abuse.~~

- (1) **Notwithstanding other provisions of law, there shall be a rebuttable presumption that an award of sole or joint legal custody of the child to the perpetrator of domestic violence is not in the best interest of the child and that no perpetrator of domestic violence shall be awarded sole or joint legal custody of any child.**
- (2) **Notwithstanding other provisions of law, there shall be a rebuttable presumption that an award of sole or joint physical custody of the child to the perpetrator of domestic violence is not in the best interest of the child and that no perpetrator of domestic violence shall be awarded sole or joint physical custody of any child.**
- (3) **The presumption may be overcome only if a judicial officer finds extraordinary circumstances that warrant the rejection of the presumption and specifically articulates the reasons for the finding on the record.**
- (4) **If the court determines that more than one party has engaged in acts of domestic violence, it shall, if possible, determine which person was the primary physical aggressor. In determining which party was the primary physical aggressor, the court shall consider:**
  - (a) **all prior acts of domestic violence, including non physical coercive abuse, involving any of the parties;**
  - (b) **the relative severity of the injuries, if any, inflicted upon the persons involved in those prior acts of domestic violence;**
  - (c) **the likelihood of future domestic violence;**
  - (d) **whether, during the prior acts, one of the parties acted in self-defense; and**
  - (e) **any other factors that the court deems relevant to the determination.**

- (5) If it is not possible for the court to determine which party is the primary physical aggressor, the court shall decide custody pursuant to the best interests of the child.**
- (6) If it is possible for the court to determine which party is the primary physical aggressor, the presumption against sole or joint legal or physical custody applies only to the party determined by the court to be the primary physical aggressor.**
- (7) The court shall make arrangements for custody or visitation that best protect the victim parent from further domestic violence by the perpetrator of domestic violence, including but not limited to ordering:
  - (a) exchanges of the child in a protected setting;**
  - (b) supervised parenting time and the conditions during that parenting time;**
  - (c) that the person who committed the domestic violence attend and complete a program of intervention for perpetrators of domestic violence;**
  - (d) that the person who committed the domestic violence abstain from alcohol or controlled substances during parenting time and for 24 hours before parenting time;**
  - (e) that overnight parenting time be prohibited;**
  - (f) that the address of the child and the other parent remain confidential; or**
  - (g) any other condition that the court determines is necessary to protect the child, the other parent, or any other family or household member.****

**\*\*bold text represents recommended additions/strike-through text represents recommended deletions**

#### **Draft Recommendation 4**

Specify that the provisions of §§ 9-101 and 9-101.1 are not applicable to child in need of assistance cases (the provisions should only apply to private custody cases).

#### **Draft Recommendation 5**

Alter the current “friendly parent” statute (shown below) so that reports of child abuse or domestic violence cannot be considered unfavorably against the reporting parent.

Family Law § 9-105

In any custody or visitation proceeding, if the court determines that a party to a custody or visitation order has unjustifiably denied or interfered with visitation granted by a custody or visitation order, the court may, in addition to any other remedy available to the court and in a manner consistent with the best interests of the child, take any or all of the following actions:

- (1) order that the visitation be rescheduled;

(2) modify the custody or visitation order to require additional terms or conditions designed to ensure future compliance with the order; or

(3) assess costs or counsel fees against the party who has unjustifiably denied or interfered with visitation rights.

*Example: An addition that “any reasonable action taken by a parent to protect a child or that parent from domestic violence or child abuse may not be considered as an unjustifiable denial or interference with visitation.”*

### **Draft Recommendation 6**

Specify best interest factors in statute and provide that extra weight or priority must be given to the safety of the child. A child’s safety must be the primary priority of custody and parenting adjudications, and courts must resolve safety risks and claims of family violence before assessing other best interest factors. Furthermore, it should be expressly stated in statute that there is no presumption that joint custody is in the best interests of the child.

### **Draft Recommendation 7**

Only assign custody cases that include an allegation of child abuse (including child sexual abuse) and/or domestic violence to judges who have received relevant, specialized training (see draft recommendation 9). These specially trained judges will not be limited to only hearing these types of custody cases; however, all child custody cases with allegations of child abuse and/or domestic violence are to be heard only by these specially trained judges. Courts must implement procedures, including appropriate and uniform screenings of initial pleadings that flag domestic violence and child abuse, to ensure that these cases are assigned only to specially trained judges. If domestic violence and/or child abuse is indicated as a result of the screening, there should be required follow up to conduct a danger/lethality assessment and to establish protocols for the safety of adults and children.

### **Draft Recommendation 8**

Include an individual who has experience in domestic violence and/or child abuse on every Judicial Nominations Commission.

### **Draft Recommendation 9**

The Judiciary must, in consultation with appropriate domestic violence and child abuse advocacy organizations, develop an ongoing training program for judges who preside over child custody cases that include an allegation of domestic violence, child abuse, and/or child sexual abuse. In addition to a review of relevant statutes and case law, the program must include instruction in the following:

1. child development;
2. adverse childhood experiences and the impact of trauma on a child’s brain development and the ways that a child’s response to trauma may vary;

3. the investigation process once a law enforcement agency or a local department of social services has received a report of suspected child abuse and/or child sexual abuse, including the role of child advocacy centers, the limitations of local departments of social services in investigating reports of suspected child abuse and/or child sexual abuse, and that child abuse and/or child sexual abuse may have occurred even without an “indicated” finding and/or any physical evidence of abuse;
4. dynamics and effects of child sexual abuse, including grooming behaviors by family offenders and the disclosure of child sexual abuse based on developmental stages of the child, including delayed disclosure;
5. dynamics and effects of physical child abuse;
6. dynamics and effects of domestic violence, including coercive control, lethality assessments, litigation abuse, and that domestic violence can occur without a party seeking or obtaining a protective order and/or without other documented evidence of abuse;
7. the impacts on children who are exposed to domestic violence and the importance of considering these impacts when making child custody and visitation decisions;
8. the potential impacts of custody bias and implicit bias on child custody decisions (including a bias of presumption of “coaching” in custody cases and false allegations of abuse);
9. best practices for eliminating trauma to the child caused by the court process, including available methods to obtain relevant information without the necessity of repeated, detailed testimony from the child;
10. providing protection for families, sealing records;
11. the background on parental alienation (including a full review of Richard Gardner’s own work in defense of pedophilia), its invalidity as a syndrome, and the inappropriateness of its use in child custody cases;
12. limitations of sexual offender evaluations and risk assessments in the adjudicatory phase of child sexual abuse cases and the ethical prohibitions on the use of these assessments to determine likelihood of offending;
13. tools courts can use to help assess credibility of a child witness and information on how methods such as play therapy and art therapy are legitimate therapeutic tools;
14. correlation between child sexual abuse and child pornography;
15. appropriate standards for the knowledge, experience, and qualifications of child sexual abuse evaluators and treatment providers and legal and ethical considerations of appointing an unqualified evaluator or allowing evaluators and therapists to practice outside their field of expertise; and
16. how the inappropriate application of best interest standards can harm children suffering from abuse and the necessity of weighing the child’s safety before weighing other best interest factors.

Before a judge is assigned to preside over a child custody case that includes an allegation of domestic violence, child abuse, and/or child sexual abuse, the judge must have received at least 20 hours of training that includes all of the topics referenced above. In addition to these initial training requirements, a judge who continues to be assigned to preside over custody cases including such allegations must complete at least 10 hours of training on the above topics every two years.

At least once every four years, the Judiciary, in consultation with appropriate domestic violence and child abuse advocacy entities, must review available training materials related to the above topics and update the training program as necessary.

### **Draft Recommendation 10**

Make the following changes to mandatory training requirements for Best Interest Attorneys, Child's Advocate Attorneys, and Child's Privilege Attorneys.

Unless waived by the court, an attorney appointed as a Child's Best Interest Attorney, Child's Advocate Attorney, or Child's Privilege Attorney [should] **shall** have completed at least [six] **16** hours of training that includes all of the following topics:

- applicable representation guidelines and standards;
- children's development, needs, and abilities at different stages;
- **adverse childhood experiences and the impact of trauma on a child's brain development and the ways that a child's response to trauma may vary;**
- **dynamics and effects of physical child abuse;**
- **dynamics and effects of child sexual abuse, including grooming behaviors by family offenders and the disclosure of child sexual abuse based on developmental stages of the child, including delayed disclosure;**
- **limitations of sexual offender evaluations and risk assessments in the adjudicatory phase of child sexual abuse cases and the ethical prohibitions on the use of these assessments to determine likelihood of offending;**
- **how the inappropriate application of best interest standards can harm children suffering from abuse and the necessity of weighing the child's safety before weighing other best interest factors;**
- **the background on parental alienation (including a full review of Richard Gardner's own work in defense of pedophilia), its invalidity as a syndrome, and the inappropriateness of its use in child custody cases;**
- effectively communicating with children;
- preparing and presenting a child's viewpoint, including child testimony and alternatives to direct testimony;
- recognizing, evaluating, and understanding evidence of child abuse and neglect;
- family dynamics and dysfunction, domestic violence, and substance abuse;
- **the impacts on children who are exposed to domestic violence and the importance of considering these impacts when making related recommendations regarding custody and visitation;**
- recognizing the limitations of attorney expertise and the need for other professional expertise, which may include professionals who can provide information on evaluation, consultation, and testimony on mental health, substance abuse, education, special needs, or other issues;

- **appropriate standards for the knowledge, experience, and qualifications of child sexual abuse evaluators and treatment providers and legal and ethical considerations of appointing an unqualified evaluator or allowing evaluators and therapists to practice outside their field of expertise;**
- **the potential impacts of custody bias and implicit bias on child custody recommendations (including a bias of presumption of “coaching” in custody cases and false allegations of abuse);**
- available resources for children and families in child custody and child access disputes; and
- **duties of mandated reporters in Maryland and how to gather minimal facts to make a report.**

**Once initial training requirements have been met, individuals must complete at least eight hours of training every two years in order to remain eligible for appointment as a best interest attorney, a child’s advocate attorney, or a child’s privilege attorney.**

**\*\*Bold text represents additions to current guidelines (*Maryland Standards of Practice for Court-Appointed Lawyers Representing Children in Custody Cases*).**

#### **Draft Recommendation 11**

In any action in which child support, custody, or visitation is at issue, a court shall provide information to the parties regarding the role, availability, and cost of a custody evaluator in the jurisdiction.

*(This recommendation is identical to Senate Bill 665, as introduced by Senators Lee and Carozza during the 2020 session.)*

#### **Draft Recommendation 12**

Require custody evaluators to disclose policies, procedures, and fees prior to engagement and provide the parties with a written document to be signed by both parties.

#### **Draft Recommendation 13**

Require sufficient time to depose custody evaluators. Currently, unless permission is obtained, any deposition of a court employee or an individual who is paid by the court is limited to two hours; this should be increased to six hours.

#### **Draft Recommendation 14**

Standardize and require science-based, ongoing training for all custody evaluators in the following topics: (1) domestic violence and child abuse; (2) impact of trauma; (3) implicit bias; (4) impact of all forms of child maltreatment on the development of a child; (5) forensic interviewing; and (6) the background on parental alienation (including a full review of Richard Gardner’s own work

in defense of pedophilia), its invalidity as a syndrome, and the inappropriateness of its use in child custody cases.

*(Question for discussion: Should the workgroup elaborate on “ongoing” by specifying a minimum number of hours over a defined period?)*

### **Draft Recommendation 15**

Require all custody evaluators to have at least a master’s degree.

### **Draft Recommendation 16**

Provide enhanced funding so that custody evaluations, counsel appointed on behalf of a child, supervised visitation/monitored exchange programs, and attorneys in child custody cases are accessible to parents without financial hardship.

### **Draft Recommendation 17**

Create standardized assessment of custody evaluators (such as a credentialing) across different mental and behavioral health disciplines throughout the State or, at a minimum, provide coordinated, uniform, procedures/best practices for custody evaluators across all jurisdictions to leave less to the discretion of individual custody evaluator.

*One specific idea raised at a prior meeting: Regulations that govern the professional behavior of individuals who conduct custody evaluations, such as those regulating [psychologists](#), could be adopted across all relevant disciplines. Violators would then be subject to disciplinary action by the applicable licensing board.*

### **Draft Recommendation 18**

Enforce penalties against custody evaluators who provide legal advice.

*(Question for discussion: Could this be incorporated into idea referenced above so that regulations include a specific prohibition against providing legal advice? Violators would then be subject to disciplinary action by the applicable licensing board.)*

### **Draft Recommendation 19**

Establish uniform requirements for what is contained in a custody evaluation, including information from third-party witnesses.

*(Question for discussion: How does this recommendation interact with [Maryland Rule 9-205.3](#), which already specifies some requirements?)*



## **Draft Recommendation 20**

Establish statewide, uniform recordkeeping requirements for custody evaluators. Establish requirements and criteria for the interview of third-party witnesses by custody evaluators and require these to be disclosed to party.

*(Question for discussion: What specifically should be required?)*