

Recommendations and Draft Recommendations

Draft Recommendation 1

Amend Senate Bill 594 of 2020 (text shown below) so that permissible supervised visitation arrangements take into account whether the case involves neglect or child abuse (including separate considerations depending on type of abuse).

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.

(Senate Bill 594 was sponsored by Senator Lee in the 2020 Session.)

Recommendation 2

In statutory provisions regarding child custody matters, provide a definition of domestic violence that reflects the full spectrum of abusive behavior, including nonphysical acts and other methods of coercive control.

Draft Recommendation 2A

In statutory provisions regarding child custody matters, provide definitions of child abuse (physical abuse, sexual abuse, emotional abuse), and neglect.

Example:

- Physical abuse is the use of physical force, such as hitting, kicking, shaking, choking, burning, or other demonstrations of force against a child that result in actual or potential harm to the child's physical or emotional health, survival, or physical or emotional development;
- Sexual abuse is the inducement or coercion of a child to engage in sexual acts. Sexual abuse includes behaviors such as fondling, penetration, and exposing a child to other sexual activities.
- Emotional abuse is a pattern of behaviors that harm a child's self-worth or emotional well-being. Emotional abuse includes name calling, shaming, rejection, withholding love, and threats.

- Neglect is the failure to meet a child’s basic physical and emotional needs, including housing, food, clothing, education, access to medical care, and physical and psychological safety.

(Text shown above is for example only and not intended to reflect final language of legislation to implement recommendation.)

Draft Recommendation 3

Amend statutory law (Family Law § 9–101.1) regarding acts of domestic violence in the context of child custody cases to (1) incorporate new definitions; (2) establish a rebuttable presumption that custody – physical or legal – to a perpetrator of domestic violence is not in the best interest of the child; (3) specify how such a presumption could be overcome; (4) establish what determinations and actions are required when acts of domestic violence have been committed by both parties; and (5) specify examples of permissible custody arrangements to protect victims of domestic violence.

Recommendation 4

Specify that the provisions of §§ 9-101 and 9-101.1 of the Family Law Article are not applicable to child in need of assistance (CINA) cases (these Family Law provisions should only apply to private custody cases, the provisions of Title 3, Subtitle 8 of the Courts and Judicial Proceedings Article apply to CINA cases).

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.

Recommendation 6

Specify best interest factors in statute and provide that extra weight or priority must be given to the physical and psychological safety of the child. The safety of a child must be the primary priority

of custody and parenting adjudications, and courts must assess safety risks and claims of child abuse and domestic 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.

Recommendation 7

Only assign custody cases that include an allegation of child abuse and/or domestic violence to judges who have received relevant, specialized training (see Recommendation 9). These specially trained judges will be 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, require follow up to conduct a danger/lethality assessment and to establish protocols for the safety of adults and children.

Recommendation 8

Require that Judicial Nominations Commissions include an individual who has expertise in domestic violence and/or child abuse or otherwise receive input from such an individual regarding nominees.

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 and/or child abuse. In addition to a review of relevant statutes and case law, the program must include instruction in the following:

1. neurotypical infant and child development;
2. the impact of adverse childhood experiences, trauma, complex trauma, and chronic toxic stress on a child's neurodevelopment and the ways that a child's response to trauma varies;
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 and definition of a forensic interview, 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 and even if a child did not verbally disclose in a forensic interview;
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 and emotional 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 impact on children who are exposed to domestic violence and the importance of considering this impact when making child custody and visitation decisions;
8. the potential impacts of custody bias and implicit bias on child custody decisions (including the core problem of a bias of presumption of “coaching” in custody cases and false allegations of abuse) and information on credibility (based on Dr. Deborah Epstein’s presentation to the workgroup);
9. best practices to ensure reasonable and feasible protective measures are taken to reduce risk of traumatization or retraumatization of the court process on the child, 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. background and current, research-informed literature regarding 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 child therapy and expressive arts are legitimate therapeutic tools to measure both degree of traumatic impact and effectiveness of therapeutic and system intervention;
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 and/or child 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. The workgroup’s recommendation reflects a *minimum* number of hours for training. Training in excess of the minimum hours recommended may be necessary in order to adequately address all of the recommended required topics.

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.

(Note: Text shown above represents working examples of general topics for training requirements and is not intended to reflect final language of legislation to implement recommendation.)

Recommendation 10

Alter existing training requirements for Best Interest Attorneys, Child’s Advocate Attorneys, and Child’s Privilege Attorneys so that these attorneys must complete *at least* 20 hours of initial training that includes specified topics (see Recommendation 9 for a general list of topics, which should be adapted as necessary to reflect the specific roles of attorneys). Once initial training requirements have been met, individuals must complete *at least* 10 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. The workgroup’s recommendation reflects a *minimum* number of hours for training. Training in excess of the minimum hours recommended may be necessary in order to adequately address all of the recommended required topics.

Eliminate the provision under existing guidelines that allows training requirements to be waived by the court.

Recommendation 11

Require, in any action in which child support, custody, or visitation is at issue, a court to provide information to the parties regarding the role, availability, and cost of a custody evaluator in the jurisdiction. Courts should be afforded flexibility in determining the best methods to provide this information to the parties.

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

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.

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.

Recommendation 14

Alter existing training requirements for child custody evaluators so that evaluators must complete *at least* 20 hours of initial training that includes specified topics (see Recommendation 9 for general list of topics, which should be adapted as necessary to reflect the specific roles of child custody evaluators). Once initial training requirements have been met, individuals must complete *at least* 10 hours of training every two years in order to remain eligible to conduct a child custody

evaluation. The workgroup's recommendation reflects a *minimum* number of hours for training. Training in excess of the minimum hours recommended may be necessary in order to adequately address all of the recommended required topics.

Recommendation 15

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

Draft Recommendation 15A

Require custody evaluators conducting an evaluation that includes an allegation of domestic violence and/or child abuse to have experience (obtained either by observation under clinical supervision or performance of custody evaluations) and current, research-informed knowledge that demonstrates competence in specified areas.

Examples of specified areas:

- (a) family systems, partner conflict, and conflict resolution styles;
- (b) normative child, adolescent, and adult development;
- (c) impact of interpersonal loss and chronic stress (*i.e.*, financial, court-involvement, job loss or job insecurity, food insecurity, substance use, problematic extended family dynamics, ill-health of a family member) on a family system;
- (d) mental health diagnoses, including current substance abuse, relevant to current capacity to provide healthy, protective, or restorative parenting ;
- (e) culturally competent clinical interviewing, including cultural and spiritual considerations when assessing parenting styles and practices;
- (f) immediate- and long-term neurodevelopmental impact of physical and emotional neglect, and child abuse (all types);
- (g) research-informed reasons a child's verbal and nonverbal expressions of traumatic stress may be delayed (unless/until period of safety and security experienced by child);
- (h) immediate- and long-term neurodevelopmental impact of child's exposure to domestic violence;
- (i) types of domestic violence, to include physical violence, sexual violence, stalking, and psychological aggression;
- (j) immediate- and long-term impact of parent separation;
- (k) protective factors that promotes a child's healthy resolution of parent separation; and
- (l) protective factors and parent practices that promote trauma recovery in cases of child abuse.

(Note: Examples in Draft Recommendation 15A represent working examples only and are not intended to reflect final language of legislation and/or regulations; further requirements specific to different types of abuse can be added.)

Recommendation 16

Emphasize the need for additional 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. Mandate the implementation of an income-based fee structure for child custody evaluations that includes a cap on fees.

Draft Recommendation 17

To ensure that the requirements of Draft Recommendation 15A are met, create a standardized credentialing/certification across mental and behavioral health disciplines that are authorized to conduct child custody evaluations by requiring the adoption of uniform regulations by the applicable State licensing boards. The regulations will specify how the boards will verify that an individual who wants to obtain a credential/certification to conduct child custody evaluations has met the requisite experience, knowledge, and competency criteria (*e.g.*, a certificate/certification in forensic interviewing). Courts must ensure that an individual has the requisite credential/certificate before appointing an individual as a child custody evaluator.

An individual who violates requirements relating to child custody evaluations (such as those established in Recommendation 18 and Draft Recommendations 19 and 20) would be subject to disciplinary action by the applicable State licensing board.

Recommendation 18

Enforce penalties against custody evaluators who provide legal advice.

Draft Recommendation 19

Establish more specific, uniform requirements for what custody evaluators are required to do and what information is contained in a custody evaluation in cases alleging domestic violence and/or child abuse; where applicable, the specific criteria should account for different types of abuse. Require a mandatory template or form to be developed by the courts and completed by custody evaluators; written reports must be prepared by custody evaluators in cases alleging domestic violence and/or child abuse.

Among other items, additional elements should include:

1. clarification that a determination of whether an interview with the child is required must take into account the mental health status of the child and whether the child may be emotionally harmed or psychologically compromised by an interview at the time of the request;
2. a requirement for a custody evaluator to consult with all relevant sources of information, specifically caregivers who have had access to and the opportunity to observe a child pre- and post-separation and at the time of the custody evaluation and to note any disruptions in development or emergence of mental health concerns or behavioral challenges;

3. a requirement for custody evaluations to include comparisons of parent-reported and school personnel-reported measures of current mental health and socioemotional and academic functioning of the child, as applicable;
4. if any applicable privilege has been waived, a requirement for a custody evaluator to consult with any behavioral health professional treating the child to ascertain and report impressions of family dynamics that may or may not impact the child, impression of the impact of stress on the child, and current impressions regarding symptoms or signs of traumatic and/or chronic stress;
5. a requirement for a custody evaluator to obtain from law enforcement and report on criminal background checks of the parents, and any suspected perpetrator who is not a parent, including any information regarding child abuse, domestic violence, or substance abuse, regardless of the outcome of any case;
6. a requirement for a custody evaluator to request a forensic interview and, when appropriate, a medical examination of the child, or include in the report a written statement explaining why the examination is not needed;
7. a requirement for a custody evaluator to review and summarize for the court any child welfare agency and/or law enforcement investigations and reports related to the child or a party;
8. a requirement for the custody evaluator to conduct an expert assessment as part of the report using commonly accepted interpretative frameworks and tools for assessing domestic violence and/or child abuse; and
9. a requirement for the custody evaluator's report to specifically address (among other items) (1) trauma-informed physical and psychological safety recommendations for the child currently and if custody or visitation is awarded to the person who has perpetuated the abuse; (2) each best interest factor; (3) the impact of the domestic violence and/or child abuse on the child and the victim parent; (4) any steps taken by a parent to protect the child and minimize the risk of further abuse; (5) whether the perpetrator of the abuse has acknowledged the abuse, accepted responsibility, demonstrated an understanding of the impact of his or her behavior, and/or has participated or is participating in treatment or another program to address the behavior; (6) whether there is a need for the child or other parent/caregiver to receive counseling or another form of treatment; and (7) whether there are any indications that a person who has behaved violently or abusively and who is seeking to spend time with the child can reliably sustain a visitation arrangement and how it will occur so the child feels safe.

(Note: Examples in Draft Recommendation 19 represent working examples only and are not intended to reflect final language of legislation)

Draft Recommendation 20

Establish statewide, uniform recordkeeping requirements for custody evaluators, such as establishing timelines for maintaining records, requirements for the secure storage of records, and standards for confidentiality and access to the records. Specifically prohibit an evaluator from disclosing any information regarding the identity of any person making a report of suspected child abuse, pursuant to current law.

Draft Recommendation 21

If the court orders an evaluation in a child custody matter based on an allegation of child abuse and/or domestic violence, require the court to consider whether the best interest of the child requires that a temporary order be issued to (1) limit visitation with the parent against whom the allegation has been made to visitations in which a third party designated by the court is present or (2) suspended or deny visitation.