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

Final Report

Annapolis, Maryland
September 2020

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

September 15, 2020

The Honorable Lawrence J. Hogan, Jr.
Governor of Maryland
The State House, 100 State Circle
Annapolis, Maryland 21401

The Honorable Bill Ferguson
President, Senate of Maryland
The State House, 100 State Circle
Annapolis, Maryland 21401

The Honorable Adrienne A. Jones
Speaker, Maryland House of Delegates
The State House, 100 State Circle
Annapolis, Maryland 21401

Dear Governor Hogan, Senate President Ferguson, and House Speaker Jones:

Please accept this final report on behalf of the Workgroup to Study Child Custody Court Proceedings Involving Child Abuse or Domestic Violence Allegations, created by Chapter 52 of 2019. Chapter 52 tasked the workgroup with:

- studying State child custody court processes for when child abuse or domestic violence allegations are made during court proceedings;

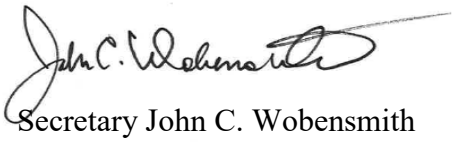
- studying available science and best practices pertaining to children in traumatic situations, including trauma-informed decision making; and

- making recommendations about how State courts could incorporate in court proceedings the latest science regarding the safety and well-being of children and other victims of domestic violence.

This final report reflects the expert testimony and presentations that the workgroup received and the thorough and thoughtful deliberation in which the workgroup engaged. Although the submission of this report was delayed due to the need for pertinent resources, including those of workgroup members and staff, to focus on needs related to the State's response to COVID, the work we have done over the past year remains vital, and we are pleased to present you with our recommendations.

A special thanks to Ms. Anne H. Hoyer for initiating the need for this workgroup, to Ms. Jennifer K. Botts for her stellar work in distilling and articulating the recommendations, to Ms. Heather M. Marchione and Ms. Jennifer L. Young for all of the great staff support of the workgroup, to Ms. Brittany Lore for organizing me for each of the meetings, and to every one of the participants for sharing their expertise and personal experiences.

Sincerely,



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Secretary of State

General Assembly of Maryland
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Executive Summary

For some time, advocates and protective parents have argued that the family court system is not properly accounting for child abuse and domestic violence in child custody cases. Parents, particularly mothers, who advocate for restrictions on custody and visitation because of domestic violence or child abuse are too frequently being labeled as "alienators" or "high conflict" when raising legitimate safety concerns. Without proper protections in place, children are subject to ongoing trauma because of continued exposure to abusive parents and parent victims of domestic violence continue to face risks of further abuse. Chapter 52 of 2019 established the Workgroup to Study Child Custody Court Proceedings Involving Child Abuse or Domestic Violence Allegations to further explore these issues. During the past two interims, the workgroup has met extensively to hear presentations from experts and protective parents and engage in discussions regarding potential recommendations to ensure that child abuse and domestic violence are appropriately recognized in child custody determinations. After substantial deliberations throughout its tenure, the workgroup ultimately adopted over 20 recommendations. This Executive Summary provides only a brief synopsis of the recommendations. A full overview and critical details that also accompany many of the recommendations are contained in the report. The workgroup is confident that the implementation of these recommendations will help ensure the safety and well-being of children and protective parents involved in State custody proceedings.

Recommendation 1

Specify best interest of the child factors in statute. The factors must give extra weight to the physical and psychological safety of the child; the safety of a child must be the primary priority of custody and parenting determinations. Furthermore, it should be expressly stated in statute that there is no presumption that joint custody is in the best interest of the child.

Recommendation 2

Amend statutory law regarding child abuse or neglect in the context of custody cases so that (1) permissible supervised visitation arrangements take into account whether the case involves neglect or child abuse (including separate considerations depending on the type of abuse) and (2) the judge is required to articulate specified findings on the record.

Recommendation 3

Provide specific definitions of child abuse (physical abuse, sexual abuse, and emotional abuse) and neglect in statutory provisions regarding child custody matters.

Recommendation 4

Amend statutory law regarding acts of domestic violence in the context of child custody cases to (1) establish a rebuttable presumption that custody – physical or legal – to a perpetrator of domestic violence is not in the best interest of the child; (2) specify how such a presumption can be overcome; (3) establish what determinations and actions are required when acts of domestic violence have been committed by both parties; and

(4) specify examples of permissible custody or visitation arrangements to protect victims of domestic violence.

Recommendation 5

Provide a definition of domestic violence that reflects the full spectrum of abusive behavior, including nonphysical acts, in statutory provisions regarding child custody matters.

Recommendation 6

Specify in statute that the provisions of §§ 9-101 and 9-101.1 of the Family Law Article do not apply to child in need of assistance cases (these Family Law provisions should only apply to private custody cases).

Recommendation 7

Alter the current "friendly parent" statute so that reports of child abuse or domestic violence cannot be considered unfavorably against the reporting parent.

Recommendation 8

Require the Judiciary, in consultation with appropriate domestic violence and child abuse advocacy organizations, to develop and sustain an ongoing training program on a variety of topics identified as critical by the workgroup. Judges presiding over child custody cases that include a disclosure/ discovery of child abuse or domestic violence must have received at least 60 hours of initial training on these identified topics. Additionally, these judges must receive at least 10 hours of ongoing training on the topics every two years.

Recommendation 9

Only assign custody cases that include disclosures/discoveries of child abuse or domestic violence to judges who have been specially trained. Courts must implement procedures, including appropriate and uniform screenings of initial pleadings that flag child abuse and domestic violence, to ensure that these cases are only assigned to specially trained judges and that necessary protocols for the safety of adults and children during the case are established.

Recommendation 10

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

Recommendation 11

Alter existing training standards for Best Interest Attorneys, Child's Advocate Attorneys, and Child's Privilege Attorneys so that these attorneys must complete at least 60 hours of initial training that includes specified topics. Additionally, these attorneys must complete at least 10 hours of ongoing training every two years.

Recommendation 12

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

Recommendation 13

Alter existing training requirements for child custody evaluators so that evaluators must complete at least 60 hours of initial training that includes specified topics. Additionally, evaluators must complete at least 10 hours of ongoing training every two years.

Recommendation 14

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

Recommendation 15

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. Courts must ensure that an individual has the requisite credential/certificate before appointing an individual as a child custody evaluator.

Recommendation 16

Enforce penalties against custody evaluators who provide legal advice.

Recommendation 17

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.

Recommendation 18

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

Recommendation 19

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

Recommendation 20

Increase, from two hours to six hours, the time allotted to depose custody evaluators who are court employees or otherwise paid by the court.

Recommendation 21

Establish more specific, uniform requirements for what custody evaluators are required to do and what information is contained in a custody evaluation in cases involving the disclosure/discovery of child abuse or domestic violence. Require a mandatory template or form to be developed by the courts.

Recommendation 22

If the court orders an evaluation in a child custody matter based on disclosure/discovery of child abuse or domestic violence, require the court to consider whether the best interest of the child mandates that a temporary order be issued to limit, suspend, or deny visitation.

Establish a process to ensure that when there is an incident of disclosure/discovery of child abuse, the abuse must be reported to the appropriate authorities prior to the initiation or continuation of the custody evaluation process.

Recommendation 23

Establish statewide, uniform recordkeeping requirements for custody evaluators.

Recommendation 24

Recognize the importance of making custody evaluations, counsel appointed on behalf of a child, supervised visitation/ monitored exchange programs, and attorneys in child custody cases accessible to parents without causing financial hardship.

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

Background

In recent years, the General Assembly has recognized the importance of protecting victims of domestic violence and child abuse by passing significant legislation aimed at increasing access to legal protections and remedies as well as ensuring the proper reporting of and response to suspected child abuse. For example, Chapters 111 and 112 of 2014 lowered, from clear and convincing evidence to a preponderance of the evidence, the burden of proof required to obtain a final protective order; Chapter 354 of 2015 extended eligibility to file for a protective order to individuals who are in additional types of interpersonal relationships. Significant legislation regarding child abuse has also been enacted, including Chapters 50 and 51 of 2019, which expanded the role of and standards for child advocacy centers. Also, pursuant to Chapters 53 and 54 of 2019, it is now a misdemeanor for a mandatory reporter[1] to knowingly fail to report suspected child abuse or neglect under certain circumstances. However, statutory language regarding child abuse and domestic violence that is specifically applicable to child custody has remained relatively unchanged in over two decades. This is despite calls for reform and evidence that the family court system has sometimes failed to adequately protect children and other victims of abuse.

According to the Center for Judicial Excellence, a nonprofit organization devoted to family court reform, over 660 children in the United States have been murdered by a parent involved in a family court-related proceeding since 2008, including 6 in Maryland. Although every case does not result in such an extreme consequence, it has also been estimated that up to 58,000 children each year in this country are ordered by a court into some form of unsupervised contact with a physically or sexually abusive parent.[2] In 2018, the U.S. House of Representatives adopted a resolution[3] declaring that allegations of domestic violence and child abuse are often discounted in child custody litigation, thereby placing children at ongoing risk when abusive parents are granted custody or unprotected parenting time by courts. It further expressed that child safety is the first priority of custody and visitation adjudications and that state courts should improve adjudications of custody where family violence is alleged.

[1] Although the term "mandatory reporter" is generally used to refer to an individual who must report suspected child abuse or neglect because of his or her professional capacity, State law requires all individuals to report, subject to applicable exemptions for privileged communications, as specified in statute.

[2] Joan S. Meier & Sean Dickson, *Mapping Gender: Shedding Empirical Light on Family Courts' Treatment of Cases Involving Abuse and Alienation*, 35 Law & Ineq. 311, 313 (2017).

[3] H. Con. Res. 72 (115th Congress, 2017-2018).

Creation of Workgroup

Maryland responded to the aforementioned resolution with Chapter 52 of 2019, which created the Workgroup to Study Child Custody Court Proceedings Involving Child Abuse or Domestic Violence Allegations. As shown in **Appendix 1**, Chapter 52 required the workgroup to (1) study State child custody court processes for when child abuse or domestic violence allegations are made during court proceedings; (2) study available science and best practices pertaining to children in traumatic situations, including trauma-informed decision making; and (3) make recommendations about how State courts could incorporate in court proceedings the latest science regarding the safety and well-being of children and other victims of domestic violence. In addition to legislative members and representatives from State agencies, workgroup members included, among others, a protective parent, a trauma recovery and education expert, an attorney specializing in family law matters, and representatives from a domestic violence victim advocacy group, a rape crisis coalition, and child advocacy nonprofit organizations. The workgroup was chaired by Secretary of State John C. Wobensmith. As the Secretary of the agency with oversight of the State's Address Confidentiality (Safe at Home) Program, the chair and his staff have frequent contact with protective parents[4] using program services, thereby affording the office with unique insight on issues encountered in the family court system.

Overview of Workgroup Meetings

The full workgroup met 14 times between June 2019 and July 2020. During these meetings, the workgroup received presentations from experts and stakeholders and engaged in extensive discussions, as described below.

- ***June 11, 2019:*** Review of the workgroup's responsibilities, discussion of potential topics, and discussion of meeting agendas;

- ***June 25, 2019:*** Testimony from a protective parent who shared her experience in an out-of-state child custody case and a presentation by Professor Joan S. Meier, a clinical law professor at George Washington University School of Law and the founder and Legal Director of the Domestic Violence Legal Empowerment and Appeals Project (DV LEAP), on her empirical research on child custody outcomes in cases involving parental alienation and abuse allegations;

- ***July 9, 2019:*** Testimony from Ms. Susan Carrington on her experience in the Maryland family courts and a presentation by Mr. Richard Ducote, a child abuse and domestic violence litigator and family law reformer, on a critique of best interest and child's privilege attorneys and custody examiners;

[4] The term "protective parent," as frequently used by advocacy groups, refers to the parent who is attempting to shield his or her child(ren) from further abuse.

- ***August 6, 2019:*** Presentations from Ms. Eileen King, the founder and Executive Director of Child Justice, on the lasting effects of childhood trauma and the importance of raising public awareness of these impacts; workgroup member Dr. Jennifer Shaw on the overall effects of childhood trauma; and workgroup member Ms. Sonia Hinds on strategies to create a trauma-informed courtroom;

- ***August 20, 2019:*** Roundtable discussion on the workgroup's progress and potential issues for the workgroup to examine;

- ***August 27, 2019:*** Presentation from Professor Barbara A. Babb of the University of Baltimore School of Law, on the evolution and structure of the family court system in Maryland;

- ***September 3, 2019:*** Presentation from Ms. Hera McLeod on her experience in the Maryland family court system leading up to the murder of her 15-month-old son by his father during an unsupervised visitation;

- ***September 17, 2019:*** Presentation from Mr. Michael Lore, Chief of Staff for Senator Susan C. Lee, on potential 2020 legislation for the workgroup to consider; initial meetings of preassigned subgroups;

- ***October 1, 2019:*** Presentation from Dr. Daniel G. Saunders, Professor Emeritus of Social Work at the University of Michigan, on evidence of major problems with custody and visitation decisions in cases of intimate partner violence and suggested recommendations for the workgroup's consideration;

- ***November 12, 2019, and January 7, 2020:*** Presentations on subgroups' preliminary recommendations and the viewing of a short video, "Voices from Family Court – A Call for Reform" by Ms. Danielle Pollack;

- ***January 28, 2020:*** Presentation by Professor Deborah L. Epstein, Co-director of the Domestic Violence Clinic at Georgetown University Law Center, on her article *Discounting Women: Doubting Domestic Violence Survivors' Credibility and Dismissing Their Experiences*; and

- ***July 14 and 28, 2020:*** Discussion and adoption of proposed recommendations.

Three subgroups were also formed and tasked with proposing preliminary recommendations on specific topics. In addition to the meetings of the full workgroup noted above, each subgroup met numerous times. Minutes or summaries from all meetings of the full workgroup (excluding the final two meetings that culminated in the adoption of the recommendations discussed in this report) can be found in **Appendix 2**.

Impacts of Child Abuse and Domestic Violence

Before addressing child abuse and domestic violence specifically in the context of the family court system, it is worthwhile to briefly examine some of their known effects on children. Although a full discourse on the lifelong impacts of childhood trauma is beyond the scope of this report, the information summarized below, while far from exhaustive, is presented to underscore the importance of properly considering and responding to all incidents of child abuse and domestic violence, regardless of the forum in which they are disclosed or discovered. It is also critical to emphasize that children who have experienced severely stressful environments can realize positive effects when their living environments improve and their sense of safety returns.

Adverse Childhood Experiences

In a 2018 report, *Preventing and Mitigating the Effects of Adverse Childhood Experiences*, the National Conference of State Legislatures (NCSL) reviewed the background of "adverse childhood experiences" (ACE). ACEs are potentially traumatic events in a person's life that occur before age 18. ACEs include physical, emotional, or sexual abuse, witnessing domestic violence, parental separation or divorce, and substance abuse within a household. In the 1990s, the Centers for Disease Control and Prevention (CDC) and Kaiser Permanente surveyed more than 17,000 adults about their childhood and current health status and behaviors. The results were published as the landmark ACE Study, which validated the connection between ACEs and poorer health later in life. NCSL further states that from 2011 to 2014, nearly two-thirds of adults surveyed from 23 states reported having at least one ACE; approximately 25% reported three or more. A significant body of research continues to explore ACEs and their impacts. A brief overview of some of the basic findings most relevant to the workgroup's focus on child abuse and domestic violence is provided below.

Brain Development and Child Abuse

In a 2015 report, *Understanding the Effects of Maltreatment on Brain Development*, the Children's Bureau of the U.S. Department of Health and Human Services (HHS) notes that toxic stress, including child maltreatment (child abuse and child neglect), can have a variety of negative impacts on children's brains. Child maltreatment is associated with reduced volume and associated effects in several parts of the brain that control or contribute to various functions, including (1) the hippocampus (learning and memory); (2) corpus callosum (emotion and higher cognitive abilities); (3) cerebellum (motor behavior and executive functioning); and (4) orbitofrontal cortex (emotion and social regulation). These changes in brain structure and chemical activity can have numerous impacts on how children behave, socialize, and process emotions. For example, children may develop a persistent fear response that continues even after the abusive environment ceases. Children may lose their ability to differentiate between danger and safety and may associate the fear caused by a particular person or place with similar people or places that pose no threat. This generalized fear response may be the foundation of later anxiety disorders.

Furthermore, alterations in the brain caused by chronic stress may result in children being highly sensitive to nonverbal cues, such as eye contact or touch, and being less equipped to interpret and respond to verbal cues, even when in a nonthreatening environment. HHS notes that these children are often labeled as learning disabled, when in fact their brains have developed to be in a constant state of alert that makes the calm environment necessary for learning unattainable. The brain of a child who has experienced early emotional abuse may be permanently altered in its ability to use serotonin, which helps produce feelings of well-being and emotional stability. Even at an early age, deficits in all areas of executive functioning (working memory, inhibitory control, and cognitive or mental flexibility) are also possible with child maltreatment. Among other things, HHS notes that these executive functioning skills assist in everyday activities and help in the achievement of academic and career success.

Continuing Impacts of Child Abuse

HHS explains in a 2019 report, *Long-Term Consequences of Child Abuse and Neglect*, that while there is obviously a straightforward link between physical abuse and immediate physical health, there are also long-term physical consequences of child maltreatment in general, including some consequences specific to different types of abuse. For example, children who are physically abused are at higher risks for diabetes and malnutrition, and victims of sexual abuse are more likely to contract hepatitis C and HIV.

HHS also notes that victims of maltreatment may feel isolated, fearful, and distrustful, which can result in lifelong psychological consequences. For example, child maltreatment is a risk factor for depression, anxiety, and other psychiatric disorders, and studies have found that adults with a history of ACEs have a higher prevalence of suicide attempts than those with no history. Adults with major depression who were abused as children also have less favorable responses to antidepressant treatment, particularly if the abuse occurred at age seven or younger. Children experiencing abuse may develop posttraumatic stress disorder (PTSD), which includes symptoms such as anger, fearfulness, shame, and guilt; persistently re-experiencing the events related to the abuse; and exhibiting hypervigilance, irritability, or other mood changes. PTSD in children may lead to depression, suicidal behavior, substance use, and defiant behaviors into adulthood.

Other behavioral consequences are reviewed by HHS in its report. For example, abused children are more likely to engage in risky sexual practices, including having a higher number of sexual partners and earlier initiation of sexual activities, thereby increasing their chances of contracting a sexually transmitted disease. Adults who experienced maltreatment as children are at a much higher risk of substance abuse disorders than those who were not maltreated. Research also suggests that individuals who were abused as children are more likely to abuse their own children than parents who were not abused. Finally, HHS reports that several studies have documented a correlation between child maltreatment and future juvenile delinquency and criminal involvement. Prior to adult criminal behavior, girls who were maltreated were more likely to express internalizing behaviors, such as social withdrawal and anxiety, while boys who were maltreated were more likely to express externalizing behaviors, such as bullying and aggression.

Children Exposed to Domestic Violence

In its 2014 report, *Domestic Violence and the Child Welfare System,* HHS reviews some of the known immediate and long-term effects on children who are exposed to domestic violence. Among other impacts, HHS reports that children who have been exposed to domestic violence are more likely than their peers to (1) exhibit signs of depression and anxiety, fear and withdrawal, low self-esteem, and higher levels of anger and disobedience and (2) experience difficulties in school, concentration, and task completion and score lower on assessments of verbal, motor, and cognitive skills. Children exposed to domestic violence also have higher rates of delinquency and substance use. According to the report, research has demonstrated that frequent exposure to domestic violence teaches and normalizes violence, increasing the risks that the children will become the next generation of victims and abusers. Finally, as one of the identified ACEs, exposure to domestic violence is also a risk factor for some of the most common causes of death in the United States, including substance abuse, smoking, and obesity.

Economic Costs of Child Abuse

In addition to detrimental impacts on individual children and families, child maltreatment has a significant economic effect on society. Direct costs, such as those from medical treatment and investigating reports of child abuse or neglect, as well as indirect costs associated with the impacts discussed above have been identified. Indirect costs include those for long-term medical care, juvenile and criminal justice system costs, special education costs, and lost productivity at school or work. A 2018 report from CDC researchers, *The Economic Burden of Child Maltreatment in the United States*, used 2015 data to estimate a lifetime cost of approximately $831,000 per (nonfatal) maltreated child. In regard to fatal incidents of maltreatment, a lifetime cost of $16.6 million per child was estimated. Using *substantiated* cases as a threshold, the annual cost of nonfatal child maltreatment in the United States was estimated at $428 billion. When using the number of *investigated* incidents as a threshold, the estimated annual cost increased to $2 trillion.

Custody Proceedings Involving Child Abuse and Domestic Violence

General Challenges

Considering their lifelong impacts on both individual victims and society at large, there is a clear interest in properly addressing child abuse and domestic violence in custody decisions. It is also appropriate, however, to acknowledge the tremendous responsibility bestowed on judges who preside over these cases and not to minimize the difficulty of their role. The National Council of Juvenile and Family Court Judges (NCJFCJ) explores many of these challenges in its publication, *A Judicial Guide to Child Safety in Custody Cases.* The guide states that custody and visitation decisions are among the most difficult ones that judges make, and assessing risk to the child from an abusive parent is a complex process. Children who have been abused directly or

exposed to abuse have unique behaviors and reactions, some of which may be counterintuitive. One might expect a young child who has been abused by his father or has observed his mother behave violently toward the child's father to cower in the presence of the abusive parent or for an older child in the same situation not to want further contact with the abuser. However, children may continue to act lovingly toward or comfortable with an abusive parent or be anxious when away from that parent. Despite the multitude of research on the effects of witnessing abusive behavior, some children may show no apparent negative developmental problems, even if they have witnessed repeated abuse. One presenter to the workgroup noted that in cases of child sexual abuse, because children may perceive sexual acts in different ways, their stories can easily seem fabricated when described to untrained professionals. There is also often no corroborating physical evidence.

NCJFCJ emphasizes that there is likewise not a "normal" way for a domestic violence victim or an abusive party to act in court. Among other behaviors, a parent who has been abused may (1) be aggressive or angry when testifying; (2) appear numb, unaffected, or disinterested; (3) show signs of distress when listening to the abusive parent's testimony; or (4) have difficulty presenting evidence in a logical manner. An abused parent may also minimize or even deny the abuse they have experienced. While some abusive parents may anger easily or exhibit arrogance or patronizing behaviors in court, others will present well, particularly when viewed in contrast to the other (nonabusive) parent. Abusers can often appear charming and sincere in their dedication to their families. The abusive parent may present a case that he or she is the real victim by raising a claim of alienation, as discussed in greater detail below, or by alleging that abuse has been committed by the other parent. As with child sexual abuse cases, there is often no physical evidence to validate claims of domestic violence, particularly in relationships where much of the abuse is not physical in nature.

The workgroup, with the diverse backgrounds of its members, understands the complexities that are inherent in custody cases involving child abuse or domestic violence. While these complexities are present for judges and other professionals participating in the process, they are uniquely realized by the protective parents, and, by extension, the children. After enduring abuse themselves or discovering the abuse of their children, protective parents all too often must engage in protracted custody battles, where a custody order protecting themselves and their children from further harm is not guaranteed. Rather than being viewed as cases with legitimate safety concerns, their cases are often labeled as "high conflict," implying that if the parent would only be a little more reasonable, the case could be easily resolved. The conflicting messages the court system seemingly gives to parents were noted repeatedly throughout the workgroup's meetings. Individuals who are being abused or learn that their children are being abused by the other parent and do not leave to protect their children are labeled as "bad parents" and risk having the State remove the children from the home. Yet these same parents also risk having the family courts disbelieve the abuse and instead deem them as vindictive for trying to restrict contact with or "alienate" the children from the other (abusive) parent.

The workgroup heard from several protective parents who shared such experiences with the group. According to Ms. McLeod, the attorneys in her case anticipated that claims of parental alienation would be raised. She spoke about the juxtaposition of abiding by some of their advice,

such as expressing a desire for her son to have a healthy relationship with his father, while also communicating to the court how dangerous she knew the father to be. In sharing her experiences with the workgroup, Ms. Carrington stated that she left her marriage because she felt that not doing so sent the message to her daughters that the abuse their father was inflicting was okay. At the time of her testimony, she was still not sure that she made the right decision, as she had not seen her children in approximately nine years.

It is also important to emphasize the risks that domestic violence victims are exposed to by leaving a relationship. According to the National Coalition Against Domestic Violence, a victim is often in the most danger directly following the escape of the relationship or when help is sought; 20% of domestic violence homicide victims who had a protective order were murdered within two days of obtaining the order, and one-third were murdered within the first month. Domestic violence victims often face additional barriers when they voice fear that the abusive parent will harm the children when there has been no history of direct child abuse. Workgroup members note that courts use justifications such as "well, he's never hurt the children" when ordering joint custody or declining to put other protective measures in place. Although State criminal law allows for the imposition of an enhanced penalty based on the mere presence of children when certain crimes of violence are committed,[5] workgroup members note that the detrimental impact that exposure to domestic violence can have on children is often not recognized in custody cases.

Challenges faced by protective parents in custody cases are not limited to those directly involving safety. An abusive parent may find litigation to be an effective way of asserting control over the other parent even after separation. An abusive parent with greater financial means and legal representation can reinforce the imbalance of power for an unrepresented parent or cause the protective parent to amass high legal costs by filing excessive motions or making multiple requests for continuance. Results can be especially damaging in cases where the abuser may present more favorably than the protective parent. In such cases, rather than recognizing the coercive control being exhibited through litigation abuse, the abusive parent may be viewed by the court as a devoted parent willing to spare no expense to ensure access to his or her children.

Parental Alienation and Bias

Concerns with the family court system's handling of custody cases involving child abuse or domestic violence are not unique to Maryland and have been recognized nationwide. Parental alienation and gender bias have both frequently been identified as prevalent issues in many of these cases, particularly those in which a mother alleges that a father is abusive. This section briefly examines these topics using the research of individuals who presented to the workgroup as a framework.

[5] Under Criminal Law § 3-601.1, a person may not commit a "crime of violence" when the person knows or reasonably should know that a minor who is at least age two is present in a residence. A violator is subject to imprisonment for up to five years in addition to any other sentence imposed for the underlying crime of violence.

A historical perspective of parental alienation was provided by Professor Meier in her presentation to the workgroup and elaborated upon further in a 2019 Amicus Brief submitted by DV LEAP to the Court of Appeals in the State of New York.[6] While there is no universal definition for parental alienation, it typically refers to a belief that a child's behaviors, such as fear or hostility, toward one parent, are due to the malicious influence of the other parent. Parental alienation evolved from "parental alienation syndrome" (PAS) created by Dr. Richard A. Gardner, a child psychiatrist, in the 1980s. Dr. Gardner alleged that the vast majority of child sexual abuse claims raised in custody cases were false and intended to alienate children from their fathers. According to Dr. Garner, PAS was a "syndrome" whereby vengeful mothers used child sexual abuse allegations in custody cases as a weapon to punish fathers and secure custody for themselves. Children were allegedly brainwashed into believing untrue claims of sexual abuse and used to vilify their fathers, sometimes also fabricating their own stories of abuse. Dr. Gardner's work on PAS was primarily self-published, lacked peer review, and solely based on his own beliefs. To support his theory, he relied on notions that ranged from sexist ("hell hath no fury like a woman scorned") to the even more outrageous (women are gratified vicariously by imagining their child having sex with the father). Nonetheless, PAS quickly became prevalent as a defense in custody cases involving child sexual abuse claims. PAS has since been referred to by professionals as "junk science."

As PAS garnered more attention and criticism, its designation as a "syndrome" was dropped, and it was generally rebranded as parental alienation. Professor Meier asserts that, in practice, there is no real difference between the terms PAS and parental alienation. In fact, NCJFCJ uses the terms interchangeably when it notes that:

> [a]ny testimony that a party to a custody case suffers from the syndrome or "parental alienation" should therefore be ruled inadmissible and stricken from the evaluation report under. . . [relevant evidentiary standards]. The discredited "diagnosis" of PAS (or an allegation of "parental alienation"), quite apart from its scientific invalidity, inappropriately asks the court to assume that the child's behaviors and attitudes toward the parent who claims to be "alienated" have no grounding in reality. It also diverts attention away from the behaviors of the abusive parent, who may have directly influenced the child's responses by acting in violent, disrespectful, intimidating, humiliating, or discrediting ways toward the child or the other parent.[7]

Put simply, it is not appropriate for courts to rely on parental alienation as a conclusive reason for a child's negative attitude toward a parent. Instead, courts must realize that a child may have his or her own legitimate reasons to demonstrate fear or rejection of a parent and that this will often be the case if the parent has been abusive (either to a child or the other parent). As

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[6] Brief of Domestic Violence Legal Empowerment and Appeals Project*, et. al*., to the New York Court of Appeals in support of the Motion to Leave to Appeal by [names redacted] from an order of the Appellate Division, Second Judicial Department. (Brief submitted March 22, 2019) (Appeal denied by New York Court of Appeals.)

[7] National Council of Juvenile and Family Court Judges, A Judicial Guide to Child Safety in Custody Cases, 12-13, (2008).

NCJFCJ also states, these reasons "do not become less legitimate because the [protective] parent shares them, and seeks to advocate for the child by voicing his or her concerns."[8]

Anecdotally, workgroup members considered parental alienation's impact on custody cases to be profound. Professor Meier's presentation of the findings from her latest research[9] validated these impressions. The research was intended to provide empirical data to analyze whether and to what extent courts disbelieve abuse claims and remove custody from parents claiming abuse. Furthermore, it sought to examine if and how gender and claims of parental alienation impacted the findings. Professor Meier's research involved reviewing all electronically published court opinions in private child custody cases nationwide between 2005 and 2015. Eventually, a relevant dataset of approximately 4,300 cases was developed. Selected aspects of the research are shown and discussed below.[10]

The research first examined the courts' crediting (believing) of abuse that was claimed by a mother against a father in cases with and without an alienation claim. Among the key findings as identified by Professor Meier and shown in **Exhibit 1**, (1) courts are far less likely to credit child abuse claims, particularly child sexual abuse claims, than domestic violence; (2) overall, courts credit mothers' reports of fathers' abuse less than half the time; and (3) when a father cross-claims alienation, the rate of crediting abuse, particularly child abuse, is dramatically reduced. Professor Meier noted that although child sexual abuse claims were rarely credited (only 1 child out of 51 was believed when alienation was claimed), objective research has concluded that such claims in custody litigation are likely valid at rates closer to 50% to 72%. An alienation claim was, therefore, shown to be an effective strategy of undermining a mother's claim of abuse.

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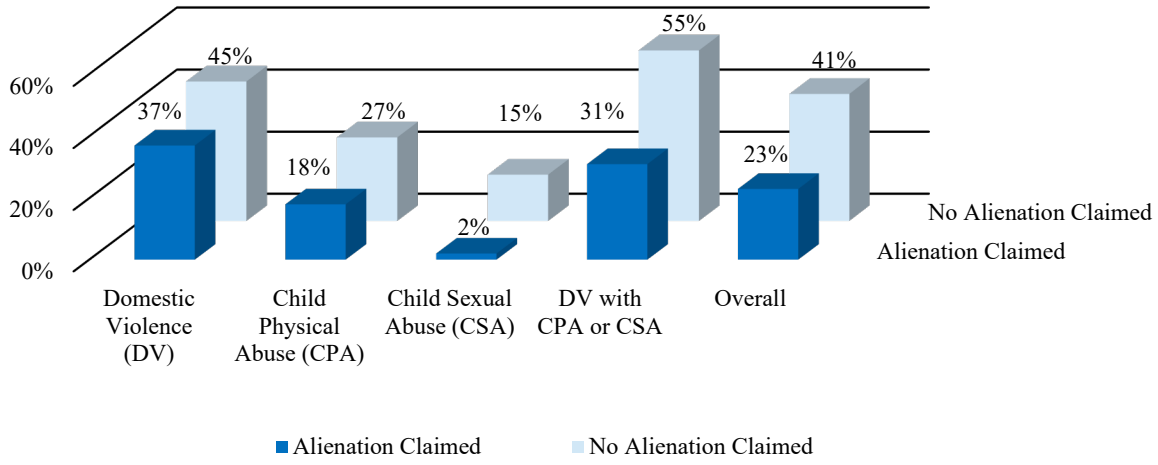
[8] Id. At 13.

[9] Meier, Joan S. and Dickson, Sean and O'Sullivan, Chris and Rosen, Leora and Hayes, Jeffrey, Child Custody Outcomes in Cases Involving Parental Alienation and Abuse Allegations (2019). GWU Law School Public Law Research Paper No. 2019-56; GWU Legal Studies Research Paper No. 2019-56. Available at SSRN: https://ssrn.com/abstract=3448062 or http://dx.doi.org/10.2139/ssrn.3448062.

[10] This report provides only a summary of selected aspects of the research. Additional context, including information regarding the project design and methodology (*e.g.*, although an *overall* dataset of 4,300 cases was developed, varying "sub" data sets were used for different sets of analyses, including those shown in this report) and important limitations of the research (*e.g.,* the study consisted mostly of cases that were appealed, which may not be fully representative of trial court decisions, the study does not demonstrate that the courts are incorrectly rejecting abuse claims, only that they are doing so frequently, *etc*.) are acknowledged and discussed in the study. Furthermore, the relevant dataset only included 13 cases from Maryland.

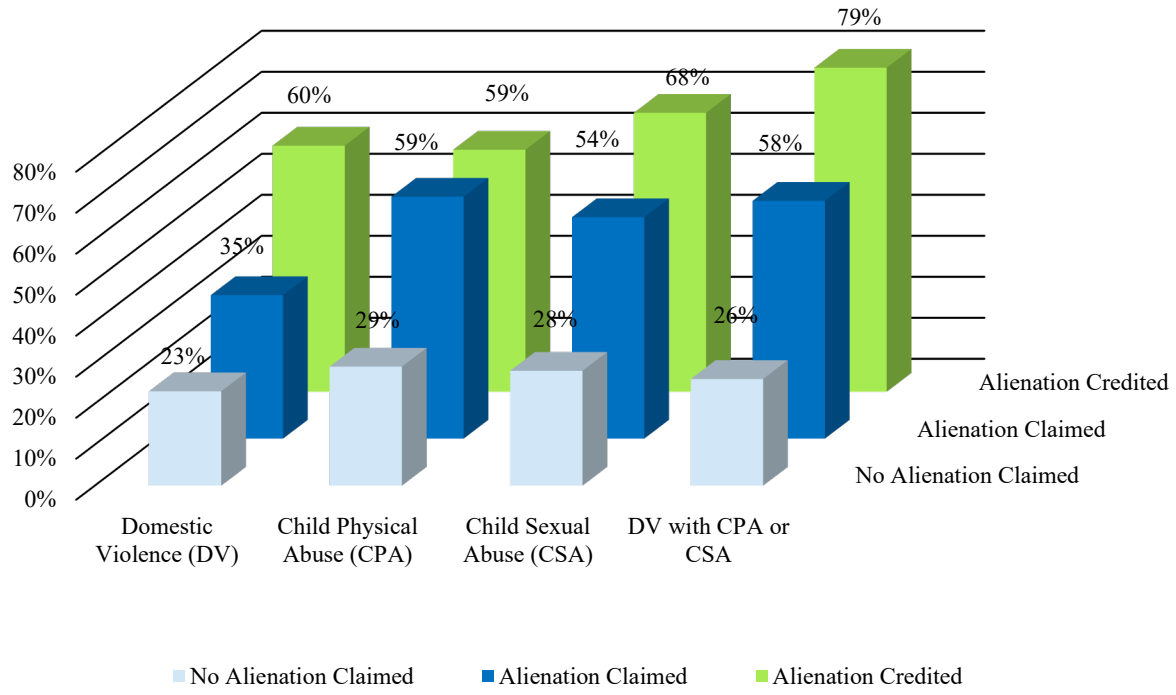
Exhibit 1
Courts' Crediting of Mothers' Abuse Claims



Source: Domestic Violence Legal Empowerment and Appeals Project

Professor Meier's research also examined cases in which it was determined that a mother originally had possession of the children, then alleged some type of abuse by the father and subsequently lost custody to the father. Once again, cases with and without alienation claims by the father were analyzed. As shown in **Exhibit 2**, women who claim abuse, particularly child abuse, still risk losing custody. By merely claiming alienation, a father significantly increases his chances of being awarded custody. Furthermore, when a court credited the alienation claim, the impact was even more dramatic.

Exhibit 2
Mothers' Custody Losses

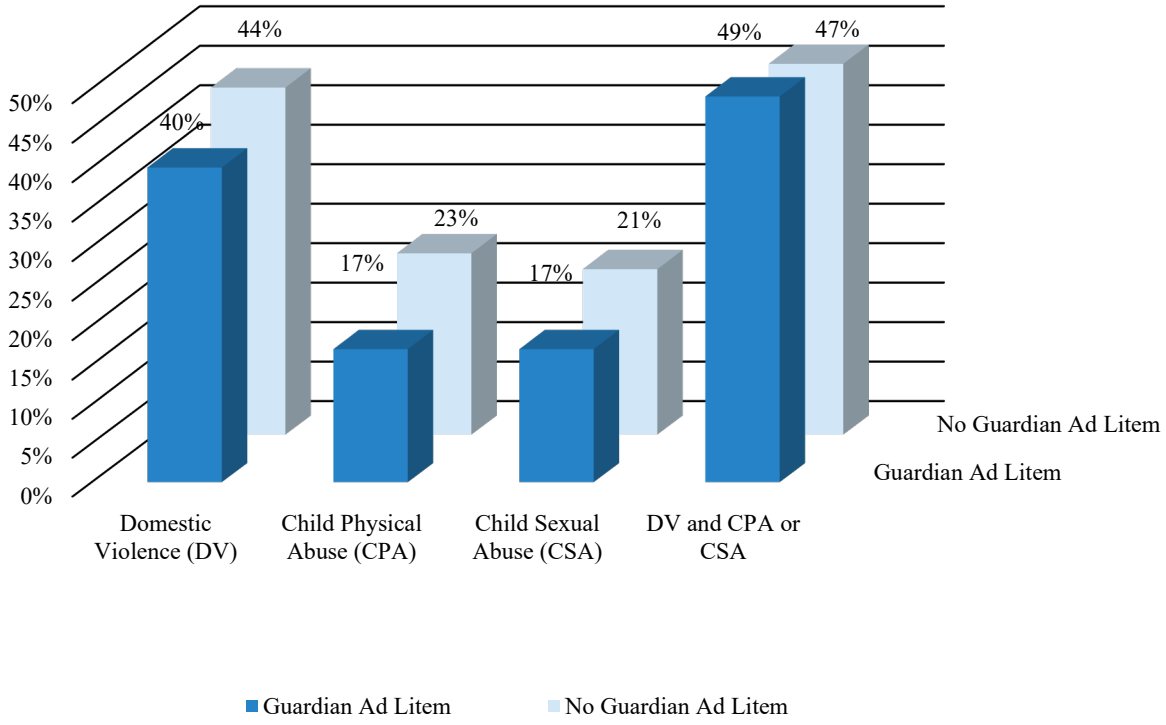


Source: Domestic Violence Legal Empowerment and Appeals Project

Although not shown above, it should also be mentioned that even without an alienation claim, 14% of mothers lost custody even if the court believed that the father had abused the mother and/or physically (but not sexually) abused the children. In a small number of cases (6 out of 14), when a court credited both a father's alienation claim and a mother's claim of domestic violence and/or child physical abuse, the mother still lost custody.

Among other items, Professor Meier's research also analyzed how the involvement of a guardian ad litem (GAL) impacts abuse claims. As shown in **Exhibit 3**, the presence of a GAL reduced the rates at which courts credited mothers' abuse claims.

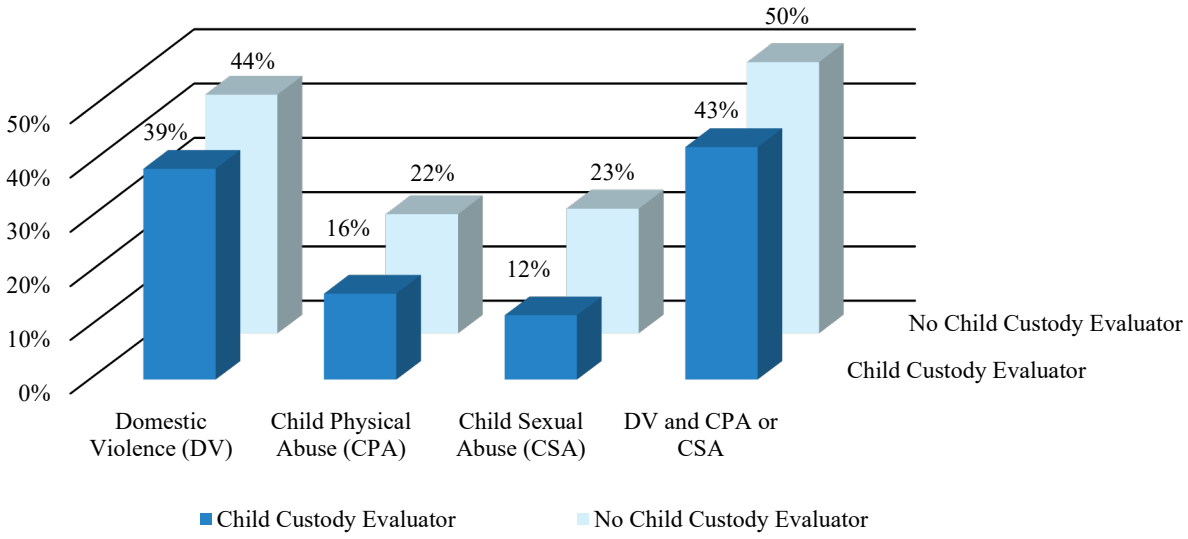
Exhibit 3
Courts' Crediting of Mothers' Abuse Claims



Source: Domestic Violence Legal Empowerment and Appeals Project

Finally, as shown in **Exhibit 4**, the presence of a custody evaluator also reduced the rate at which courts credited mothers' abuse claims, particularly in child sexual abuse cases.

Exhibit 4
Courts' Crediting of Mothers' Abuse Claims



Source: Domestic Violence Legal Empowerment and Appeals Project

Gender Bias

Professor Meier's research also had findings related to gender bias.

- In cases both with and without abuse claims, when fathers alleged that mothers were alienators, fathers took custody 44% of the time. When mothers alleged that fathers were alienators, mothers took custody 28% of the time.

- In cases in which one party alleged abuse and the other responded with an alienation claim, mothers accused of alienation lost custody to the father they accused of abuse 50% of the time; fathers accused of alienation lost custody to the mother they accused of abuse 29% of the time.

- Fathers proved to have committed child physical abuse still took custody 24% of the time; mothers proved to have committed child physical abuse never received custody.

- Mothers were generally 1.76 times more likely to lose custody when a GAL was present and the mother alleged abuse. When alleging mixed child physical and sexual abuse, mothers were 5.3 times more likely to lose custody.

- Mothers were 2.48 times more likely to lose custody when an evaluator was present and the mother alleged abuse. When alleging both child physical and sexual abuse, a mother was 6.5 times more likely to lose custody.

- GALS and custody evaluators had no statistically significant impact on protective fathers' likelihood of losing custody or on the courts' crediting of fathers' abuse claims.

The workgroup received additional presentations on gender bias in custody cases from Dr. Saunders and Professor Deborah Epstein. In his presentation to the workgroup, Dr. Saunders noted that in a national nonrepresentative survey of 465 custody evaluators and 200 judges sexist beliefs appeared to contribute to a variety of myths regarding custody and abuse, including that false allegations of domestic violence by mothers are common. He also noted that such beliefs and custody myths were linked to recommendations likely to harm protective parents and their children, such as granting sole or joint custody to perpetrators or allowing them to have unsupervised visitation. Professor Epstein's presentation was devoted to issues regarding gender and how the stories of women who share their experiences of domestic violence and/or seek legal recourse are routinely disbelieved or dismissed.[11]

Recommendations

Over the past year, the workgroup has thoughtfully considered many ideas offered by outside experts and protective parents, as well as suggestions raised by individual members of the workgroup based on their own experiences and expertise. The specific recommendations ultimately endorsed by the workgroup can be categorized broadly into four key themes: (1) statutory provisions specifically governing custody determinations must appropriately account for child abuse and domestic violence; (2) all judges who preside over custody cases that include disclosures or discoveries of domestic violence or child abuse should have enhanced, specialized training; (3) other professionals involved in child custody cases need to be appropriately qualified and subject to more stringent uniform requirements; and (4) more parties should have access to relevant resources without financial hardship.

[11] A detailed discussion of these issues can be found in the minutes for the January 28, 2020 meeting in Appendix 2.

Statutory Provisions: Child Abuse and Domestic Violence in Custody Cases

Although much of State law regarding child custody and visitation determinations is not codified and is instead found in case law, limited provisions are found in Title 9 of the Family Law Article, which governs "private" custody cases (those that do not include the State as a party). Three sections of these limited statutory provisions are of particular importance to the workgroup and discussed below along with accompanying recommendations. This portion of the report also addresses a recommendation to codify best interest factors in statute.

Recommendation 1: Best Interest Factors

When making custody decisions, Maryland, like other states, uses the "best interest of the child standard." Unlike most states, however, Maryland does not have a statute that specifies best interest factors; instead, such factors have been developed through case law. As stated in *Montgomery County v. Sanders*, 38 Md. App. 406 (1977), criteria for judicial determination include, but are not limited to (1) the fitness of the parents; (2) the character and reputation of the parents; (3) the desire of the natural parents and any agreements between them; (4) the potential for maintaining natural family relations; (5) the preference of the child when the child is of sufficient age and capacity to form a rational judgment; (6) material opportunities affecting the future life of the child; (7) the age, health, and sex of the child; (8) the residences of the parents and the opportunity for visitation; (9) the length of the separation of the parents; and (10) whether there was a prior voluntary abandonment or surrender of custody of the child.

In addition to the best interest factors set forth in the *Sanders* decision, a court considering an award of joint custody must also examine a range of factors particularly relevant to a determination of joint custody, including (1) the capacity of the parents to communicate and reach shared decisions affecting the child's welfare; (2) the willingness of the parents to share custody; (3) the fitness of the parents; (4) the relationship established between the child and each parent; (5) the preference of the child; (6) the potential disruption of the child's social and school life; (7) the geographic proximity of parental homes; (8) the demands of parental employment; (9) the age and number of children; (10) the sincerity of the parents' request; (11) the financial status of the parents; (12) any impact on State or federal assistance; (13) the benefit to the parents; and (14) any other factors the court considers appropriate. *Taylor v. Taylor,* 306 Md. 290 (1986). The *Taylor* Court emphasized that the single most important factor in the determination of whether an award of joint legal custody is appropriate is the capacity of the parents to communicate and to reach shared decisions affecting the child's welfare.

The workgroup recommends for **best interest factors to be specified in statute** and notes that this recommendation echoes that of the State's 2014 Commission on Child Custody Decision Making. As noted in the commission's final report, a comprehensive list of what a court is to consider will enable the public, particularly those who do not have access to legal representation, to better understand what evidence and testimony will be needed in a court proceeding involving

custody determinations. Although legislation to establish best interest factors in statute has been introduced in multiple years in several iterations, most recently during the 2020 legislative session, the workgroup does not endorse any particular prior initiative nor did it independently develop a list of comprehensive best interest factors. **However, it is the workgroup's recommendation that best interest factors must give extra weight to the physical and psychological safety of a child, as this must be the primary priority of any custody decision. Before evaluating *any* other best interest factor, the court must assess physical and psychological safety risks and claims of child abuse or domestic violence. It should also be explicitly stated in statute that there is no presumption that joint custody, physical or legal, is in the best interest of the child.**

Recommendation 2: Custody Proceedings Involving Child Abuse or Neglect

Pursuant to Family Law § 9-101, 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, the court must determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party. Unless the court specifically finds that there is no likelihood of further abuse or neglect, it must deny custody or visitation rights to that party. However, the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.

The workgroup recommends that if a court has specifically found that there is no likelihood of further child abuse or neglect by the party, the court must also be explicitly required to state the reasons for this finding. This recommendation will add accountability to the process by ensuring that judges articulate on the record specific findings they have made to support a determination that there is no likelihood of a child experiencing further abuse or neglect. It will also provide additional clarity for any potential appeals. This recommendation is consistent with a provision included in Senate Bill 594 of 2020, as introduced by Senator Susan C. Lee, a member of the workgroup.

As noted above, § 9-101 does permit a court to approve a *supervised* visitation arrangement that assures the safety and well-being of the child. Workgroup members expressed concerns that the supervisors of the visitations are sometimes family members of the abuser. These individuals may not be impartial parties and, in some cases, have testified to or otherwise expressed a disbelief that the abuse had actually occurred. In extreme cases noted by at least one member, sexual abuse has even reoccurred *during* supervised visitations. Many members expressed concerns that § 9-101 in its current form has not always been enough to protect children and that it is therefore necessary to include in statute additional restrictions on supervised visitation arrangements that may be approved by the court.

As introduced, Senate Bill 594 of 2020 also would have specified that the supervised visitation arrangement must include "neutral and physically present supervision." Members of the workgroup discussed how, particularly in cases where serious abuse has occurred, it may be extremely difficult to find a true "neutral" individual known to the parties who could supervise these visitations. To the extent that this language instead necessitates the use of a private or court-

sponsored visitation center, members are also aware that this may not be a viable option for all parties, as such centers may not adequately accommodate the scheduling needs of parents and/or may be unaffordable as a long-term solution for all cases. Furthermore, such a requirement may be more restrictive than necessary in some instances, such as cases involving child neglect, where visitation supervised by an agreed upon friend or family member may be suitable. However, in order to ensure the child's safety and well-being in other cases, particularly those involving child sexual abuse, additional restrictions on supervised visitation arrangements are necessary. The American Bar Association has previously noted that in cases of child sexual abuse, although the accused parent often prefers to be supervised by a relative or friend, such individuals "may not be appropriately vigilant or supportive of the child," and that the appointment of a professional or otherwise neutral third party as a supervisor may be preferable.[12]

In short, the workgroup finds that clearer guidance on what types of supervised visitation are appropriate and what factors should be considered before approving any supervised visitation arrangement is critical, particularly considering the range of cases to which § 9-101 applies. **Instead of requiring "neutral and physically present supervision" in all supervised visitation arrangements, the workgroup recommends that supervised visitation arrangements that fall under § 9-101 must take into account whether the case involves neglect or child abuse (including separate considerations, as appropriate, depending on whether the abuse was emotional, physical, or sexual).**

Recommendation 3: Definitions for Child Abuse and Child Neglect

Although Title 9 of the Family Law Article uses the terms "child abuse" and "child neglect," it does not include specific definitions of those terms. Members expressed concerns that judges instead rely on definitions found elsewhere in statute, such as (1) definitions in Family Law § 5-701, which are applicable to provisions regarding mandatory reports of child abuse or neglect and requirements for local departments of social services and law enforcement agencies once reports are received or (2) similar definitions in § 3-801 of the Courts and Judicial Proceedings (CJP) Article that specifically govern child in need of assistance (CINA) cases. However, definitions in the sections referenced above should not necessarily correlate to what is used in private custody matters under Title 9, because the former definitions are applicable to situations with direct involvement by a government entity. For example, suspected child abuse or neglect pursuant to § 5-701 of the Family Law Article or § 3-801 of the CJP Article may trigger governmental intervention ranging from an investigation by a local department of social services (LDSS) to the termination of parental rights. Presumably, these specific severe potential consequences, some implicating constitutional rights, were weighed in the development of those definitions.

Because Title 9 does not contemplate similar governmental action, definitions for use in its provisions should not uniformly have to reflect the level of severity as that found in § 3-801 of the CJP Article or § 5-701 of the Family Law Article. The definitive consideration in Title 9

[12] American Bar Association, *A Judges Guide: Making Child-Centered Cases in Custody Cases*, 135 (2008).

custody cases is what is in the best interest of the child. For example, in regard to abuse that is nonphysical and nonsexual in nature, the "mental injury" of a child as defined in § 5-701 is the "observable, identifiable, and substantial impairment of a child's mental or psychological ability to function caused by an intentional act or series of acts, regardless of whether there was an intent to harm the child." In contrast, CDC refers to "emotional abuse" as behaviors that harm a child's self-worth or emotional well-being and specifies examples of name calling, shaming, rejection, and withholding love.[13] It may be difficult to prove that behaviors such as name calling and rejection are impairing a child's ability to function, as required by the definition of "mental injury" in § 5-701. However, having a parent engage in such behaviors against a child would likely harm a child's self-worth or emotional well-being, as specified in CDC's "emotional abuse" definition. While conditions such as an *observable and substantial impairment* may be appropriate in cases that will result in involvement by the government, parental actions should not have to meet such a stringent threshold before a finding of child abuse can be made for the purposes of determining custody and visitation.

The workgroup therefore recommends that specific definitions should be added to Title 9 for child abuse (physical abuse, sexual abuse, and emotional abuse) and child neglect; these added definitions should appropriately align with the best interest of the child standard. As noted above, the workgroup also recommends that the physical and psychological safety of a child must be the *primary* best interest factor. That recommendation in conjunction with more inclusive definitions will better ensure that the courts appropriately account for all incidents of abuse or neglect by parents in evaluating the best interest of a child. The workgroup is not submitting precise definitions as part of its recommendations but does note that those shown below as derived from CDC definitions[14] can serve as a starting point for legislative consideration.

- 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.

[13] U.S. Centers for Disease Control and Prevention, http://www.cdc.gov/violenceprevention/childabuseandneglect/fastfact.html.

[14] Id.

- 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.

Of particular note is the inclusion of examples of behaviors that meet each definition; expanding upon these or similar examples in statute would be helpful to illustrate for judges the variety of behaviors that each particular definition should encompass. For example, workgroup members noted that any definition of sexual abuse must clearly include noncontact behaviors, such as filming a child in a sexual manner or exposing a child to pornography.

Recommendation 4: Child Custody Proceedings Involving Domestic Violence

Statutory language also specifically addresses how a court should weigh evidence of abuse perpetrated by a party against the other parent of the party's child or the party's spouse when making a determination on custody or visitation. Under § 9-101.1 of the Family Law Article, a court must consider such abuse and, if it finds that abuse has been committed, make arrangements for custody or visitation that best protect the child who is the subject of the proceeding and the victim of the abuse. In contrast, and as discussed above, parental abuse of a child creates a rebuttable presumption in statute that granting custody (or even authorizing unsupervised visitation) to a parent who has abused a child is not in the best interest of the child. In light of the effects that exposure to domestic violence can have on a child, statutory law must also appropriately recognize the detrimental impact of domestic violence and **establish a rebuttable presumption that granting sole or joint custody (physical or legal) to a perpetrator of domestic violence is not in the best interest of the child.** A rebuttable presumption of this nature would be in line with statutory provisions identified in 21 other states and the District of Columbia.[15]

Concerns regarding domestic violence in custody cases are not limited to behaviors that may arise from in-person contact between the abuser and a victim parent or child during visitations or exchanges; therefore, it is critical for the rebuttable presumption to apply to consideration of both physical and legal custody. NCJFCJ notes that joint legal custody often necessitates frequent and direct communication, potentially causing patterns of abuse and control to continue or escalate once the abusive parent is emboldened with a court order authorizing contact. Also, because joint legal custody when domestic violence is present frequently consists simply of the abuser dictating what will happen, "joint decision-making arrangements may present children with the opportunity to learn that abusive behavior is an effective and appropriate tool of control, which is not in their best interest."[16]

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[15] Debra Pogrund Stark, Jessica M. Choplin, & Sarah E. Wellard, *Properly Accounting for Domestic Violence in Child Custody Cases: An Evidence-Based Analysis and Reform Proposal*, 26 MICH. J. GENDER & L. 1, 6 (2019).

[16] National Council of Juvenile and Family Court Judges, *supra* note 7, at 28.

The statute establishing the rebuttable presumption discussed above must also specify what types of findings or circumstances will allow the presumption to be rebutted and explicitly require a judge to articulate for the record the reasons for any related findings. **Statutory language must also appropriately address situations in which acts of domestic violence may have been committed by both parties.** If both parties have committed domestic violence, courts must attempt to determine whether one of the parties was the primary physical aggressor. If possible to determine, the presumption against custody should only apply to that party. In attempting to make such a determination, courts should consider, among other factors, (1) the relative severity of any injuries; (2) the likelihood of future domestic violence; (3) whether any acts of domestic violence were committed in self-defense; and (4) the history of domestic violence between the parties and whether coercive control has been exhibited.

Finally, statutory law should be expanded to provide specific examples of the types of permissible custody or visitation arrangements that would best protect victims of domestic violence. For example, following a finding that a party has engaged in domestic violence, Wisconsin courts are statutorily required to impose one or more of the following conditions, as appropriate: (1) mandating that the exchange of a child take place in a protected setting or requiring supervised exchanges or visitation in the presence of an appropriate third party who agrees to assume responsibility assigned by the court and to be accountable to the court; (2) requiring the abusive parent to pay the costs of supervised visitation; (3) requiring the abusive parent to attend and complete an appropriate abuser intervention program as a condition of exercising visitation; (4) requiring the abusive parent to abstain from alcohol or other controlled substances during visitations and for a period of time prior to each visitation; (5) prohibiting an abusive parent from having overnight visitations; (6) requiring the abusive parent to post a bond for the return and safety of the child; or (7) any other condition that the court determines is necessary for the safety and well-being of the child or the safety of the victim parent.[17] NCJFCJ has also recognized the importance of such measures in domestic violence cases by noting that visitation should *only* be awarded if a judge finds that adequate provisions for the safety of the child and the abused parent can be made.

Recommendation 5: Definition for Domestic Violence

Currently, the definition for abuse applicable to § 9-101.1 is "abuse," as defined under statutory provisions (§ 4-501 of the Family Law Article) that govern eligibility for a protective order. Pursuant to those provisions, abuse is any of the following acts: (1) an act that causes serious bodily harm; (2) an act that places a person in fear of imminent serious bodily harm; (3) assault; (4) rape or sexual offenses under specified statutory provisions, or attempted rape or sexual offense in any degree; (5) false imprisonment; (6) stalking, as specified in statutory provisions; or (7) revenge porn, as specified in statutory provisions. Rather than relying on a definition that was developed primarily for use in determining eligibility for another legal remedy, the workgroup asserts that a specific definition for domestic violence is necessary for application in child custody cases under Title 9.

[17] WIS. STAT. ANN. § 767.41(6)(g).

In addition to behaviors that are perhaps more commonly associated with domestic violence, such as physical acts or stalking, it is imperative for the definition to include acts of psychological aggression. CDC notes that psychological aggression is an essential component of intimate partner violence and defines psychological aggression as the use of verbal and nonverbal communication with the intent to harm another person mentally or emotionally and/or to exert control over another person.[18] Among other acts, psychological aggression may include (1) expressive aggression, such as name calling and acting angry in a way that seems dangerous; (2) threats of physical or sexual violence; (3) control of reproductive or sexual health; (4) exploitation of a victim's vulnerability, such as one's immigration status; and (5) gaslighting/mind games (presenting false information designed to make the victim doubt his or her own memory and perception). Psychological aggression may also consist of coercive control, such as (1) limiting access to money, friends, and family; (2) excessive monitoring of a person's activities and communications; (3) making threats to harm oneself (*e.g.,* if you leave me, I will kill myself); and (4) threatening to harm loved ones or possessions. Though prevalent in abusive relationship, psychological aggression is arguably the most difficult type of abuse to understand and prove. In fact, CDC even notes that acts of psychological aggression may not be always be perceived as aggressive because they may be covert and manipulative in nature, as evidenced in the examples above. However, according to CDC, research suggests that psychological aggressions often precede physical and sexual violence in violent relationships and that the impacts of psychological aggression are just as significant as physical violence.

The workgroup therefore recommends that Title 9 should provide a definition of domestic violence that reflects the full spectrum of abusive behavior, including nonphysical acts and other methods of psychological aggression, including coercive control.

Recommendation 6: Applicability of §§ 9-101 and 9-101.1 of the Family Law Article

During discussions on potential recommendations regarding §§ 9-101 and 9-101.1 of the Family Law Article, one member noted that local departments of social services often incorrectly attempt to apply these statutes (particularly § 9-101) to CINA cases. At numerous points during the workgroup's tenure, comments were offered regarding other administrative and judicial matters that may arise from incidents of child abuse and neglect, such as investigations by local departments of social services and potential CINA proceedings. However, the workgroup's focus was limited to cases that fall under Title 9 of the Family Law Article, and final recommendations were developed solely with these private custody cases in mind. **Accordingly, the workgroup also recommends that any legislation to implement the workgroup's recommendations regarding these statutes should explicitly specify that the provisions of §§ 9-101 and 9-101.1 do not apply to CINA cases.**

[18] Centers for Disease Control and Prevention, *Intimate Partner Violence Surveillance: Uniform Definitions and Recommended Data Elements,* 15 (2015).

Recommendation 7: Friendly Parent Provisions

A "friendly parent" provision is generally one in which a parent is recognized for promoting a relationship between the child and the other parent. Many states include such provisions as a best interest factor in statute. For example, statutory language might include as a best interest factor the willingness of each parent to facilitate and encourage a close and continuing relationship between the child and the other parent. Other states, including Maryland, include "friendly parent" language in statutory provisions other than best interest factors. Pursuant to § 9-105 of the Family Law Article, if a court determines that a party has unjustifiably denied or interfered with visitation granted by a court, the court may, in a manner consistent with the best interest of the child, take any or all of the following actions: (1) order that visitation be rescheduled; (2) modify any 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.

Such provisions can be detrimental to parents who have experienced abuse or are attempting to protect their children from further abuse, particularly when coupled with issues surrounding the discredited PAS. A parent who voices concerns regarding safety or contact with an abusive parent is often labeled as uncooperative. Studies have shown that states with friendly parent standards have higher rates of custody outcomes that favor the abuser, even in states with laws that presume the abuser should not have custody.[19] These provisions are not appropriate in cases involving domestic violence or child abuse. According to information compiled by NCJFCJ[20], as of January 2019, 18 of the 40 states that included friendly parent language in statute also included an exception for domestic violence. For example, although Michigan includes a friendly parent provision as a best interest factor, it also specifies that a court may not consider negatively for purposes of the best interest factor any reasonable action taken by a parent to protect a child or that parent from sexual abuse or domestic violence by the other parent.[21] Virginia's statute includes a friendly parent provision but also specifies that the provision may be disregarded if there has been any history of family abuse that occurred no earlier than 10 years prior to the date a petition is filed.[22]

The workgroup, therefore, recommends that § 9-105 be amended to ensure that reports of child abuse or domestic violence cannot be considered unfavorably against the reporting parent and that efforts to protect a child or the reporting parent may not be deemed as unjustifiable denials or interferences. It is important to note that the provisions of § 9-105 are not strictly separate best interest factors but apply to visitation already granted by a custody or visitation order. Were Maryland to enact statutory best interest factors that include any type of

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[19] See, e.g. Saunders, Daniel G., *State Laws Related to Family Judges' and Custody Evaluators' Recommendations in Cases of Intimate Partner Violence: Final Summary Overview*. Final report to the National Institute of Justice, U.S. Department of Justice (2017).

[20] National Council of Juvenile and Family Court Judges https://rcdvcpc.org/resources/resource-library/resource/friendly-parent-provisions-and-exceptions-for-domestic-violence.html.

[21] Mich. Comp. Laws, § 722.23.

[22] VA. CODE ANN. § 20-124.3.

friendly parent provision, that provision must expressly exclude application to cases involving domestic violence or child abuse.

Specially Trained Judges

Throughout the course of its work, workgroup members heard from multiple presenters that more training was needed for individuals, including judges, who are involved in child custody cases. While the workgroup members understand that training is not a panacea, it is evident that current training requirements could be enhanced, both in terms of hours required and topics covered. Members also heard from presenters and could relay from their own experiences numerous incidents of judges openly expressing a dislike for family law cases during hearings. The need for judges with the appropriate temperament for and interest in child custody cases, particularly those involving domestic violence or child abuse, was an issue revisited by the workgroup on numerous occasions. This section of the report primarily discusses the recommendations that are intended to essentially merge these two key concepts of enhanced judicial training and specialized judges.

Judicial Training: Current Requirements

The Judicial College of Maryland serves as the primary entity through which judicial education is provided. The Education Committee of the Judicial Council coordinates, implements, and evaluates educational programs offered through the Judicial College. Although no judicial training requirements are mandated in statute, an Administrative Order from Chief Judge Mary Ellen Barbera dictates general annual judicial educational training of 12 hours. To understand current judicial training requirements regarding domestic violence and child abuse, members of one of the subgroups reviewed the aforementioned administrative order as well as information obtained from the Judiciary through specific requests.

The judicial orientation program for new judges includes best practices in presiding over court proceedings, as well as significant aspects of civil and criminal law and procedure, including domestic violence. Per the Judiciary, the domestic violence component is not limited to relevant procedures and laws but also includes other elements, such as the dynamics of intimate partner abuse and its impact on children. In addition to the orientation program, a comprehensive program on family law, including practice and procedure in the trial of family law cases, is also required for applicable judges (Family Law University (FLU)). Each judge who will be assigned to hear family law cases must attend the next FLU presented after the individual's election, appointment, or assignment as applicable. The administrative order specifies additional requirements for attending subsequent sessions of FLU. According to information obtained from the Judiciary, FLU is a three-day (approximately 20 hours) in-person training featuring a multidisciplinary faculty that includes judges, magistrates, attorneys, and mental health professionals. Among other topics, sessions are devoted to domestic violence and custody, and there is a dedicated section on attachment and child development that addresses ACEs and children's unique needs. The Judiciary also provides training to judges on the impact of trauma and other topics of relevance to the

workgroup on a recurring basis such as at the annual judicial summer conference. Administrative judges in different jurisdictions also provide additional training opportunities such as those offered through local advocacy organizations. In addition, judges have opportunities to attend national out-of-state trainings and educational resources, such as bench cards, resource manuals, and videos, that are continuously revised and made available to judges.

Recommendation 8: Judicial Training

While noting the current efforts to provide judicial training on domestic violence and child abuse, members agree with the various experts that more rigorous training should be required, and judicial training should cover a greater variety of topics. As noted in the previous section, decisions in child custody cases are among the most difficult that judges may face. In order to make sound, safety-focused decisions, judges need to be armed with the background necessary to sort through the "smoke" that has been described as pervading custody cases that include domestic violence or child abuse. **It is, therefore, recommended that the Judiciary, in consultation with appropriate domestic violence and child advocacy organizations, be required to develop and sustain an ongoing training program for judges who preside over child custody cases that involve domestic violence or child abuse. At least once every four years, the available training materials must be reviewed and updated as necessary.**

To develop training content recommendations, subgroup members first reviewed specific training requirements in a number of states and noted the level of specificity included in certain states that went beyond a broad requirement for mandatory domestic violence or child abuse training. For example, Texas statute includes not only a general requirement that judicial training be provided on family violence, sexual assault, and child abuse and neglect but also includes specific content for the training including (1) dynamics and effects of being a victim of family violence, sexual assault, or child abuse and neglect; (2) dynamics of sexual abuse of children, including grooming; (3) methods for eliminating the trauma to the child caused by the court process; and (4) medical findings regarding abuse and neglect.[23] Among other topics, Minnesota statute specifically requires education on the impacts of domestic abuse and domestic abuse allegations on children and the importance of considering these impacts when making custody and visitation decisions.[24] In California, the mandated training program is specifically required to include not only information on the detrimental impact on children who reside with a person who perpetrates domestic violence but also that "domestic violence can occur without a party seeking or obtaining a restraining order, without a substantiated child protective services finding, and without other documented evidence of abuse."[25]

Members also relied upon suggestions from workgroup presenters in further developing training recommendations. For example, several presenters noted the need for additional judicial training on gender bias and other forms of implicit biases that may impact custody decisions. Detailed training on the impacts of domestic violence, including how trauma impacts information

[23] TEX. GOV'T CODE ANN. § 22.110.
[24] MINN. STAT. ANN. § 480.30.
[25] CA. CODE § 68555.

processing and memory, is also critical. Mandated domestic violence training must cover information on lethality assessments to ensure that judges understand what circumstances indicate heightened risks to parents and children and include appropriate protections in their orders. Judges must also be aware of the potential for litigation abuse.

Members also note that it is critical for judges to have a greater understanding of the investigation process once a law enforcement agency or an LDSS receives a report of abuse. It is crucial for judges to understand the limitations of LDSSs in investigating suspected abuse; a prior "unsubstantiated" or "ruled out" finding regarding an allegation of abuse must not be dispositive. An enhanced understanding of infant and child development and the varying ways in which children respond to trauma was also identified as critical, as were numerous other topics. A full list of all of the recommended training topics (in addition to a review of relevant statutes and case law) is shown in **Exhibit 5**. **It is the workgroup's recommendation that a judge must receive at least 60 hours of training that includes all of the topics shown before presiding over a custody case that includes a disclosure or discovery of child abuse or domestic violence. In addition to the initial training hours, a judge who continues to be assigned to preside over such custody cases must complete at least 10 hours of training on the topic every two years.** It is critical for the trainers used by the Judiciary to have appropriate expertise in the relevant training topics. While understanding that the development and implementation of the training program is ultimately the responsibility of the Judiciary (with consultation from appropriate entities, as recommended above), members often noted how many of the presentations to the workgroup would also be beneficial for judges (and other professionals) to hear. Therefore, the workgroup encourages the Judiciary to explore incorporating these or similar presentations into the training program.

Exhibit 5

Recommended Training Topics

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 LDSS 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 LDSSs 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 abuse 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 of exposure to domestic violence on children 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 a bias that allegations of abuse are false) and information on credibility (based on Professor Deborah Epstein's presentation to the workgroup);

9. best practices to ensure that 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 and 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 the legal and ethical considerations of appointing an unqualified evaluator or allowing evaluators and therapists to practice outside their fields 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 physical and psychological safety before weighing other best interest factors.

Recommendation 9: Specialized Judges

As the workgroup was compiling the various trainings topics that it deemed necessary to adequately ensure that judges have the proper background and information to apply in child custody cases that include a disclosure or discovery of child abuse or domestic violence, it was evident that judges who would undergo such extensive training were essentially being asked to devote the time necessary to develop a specialty in these types of cases. Notwithstanding the importance of these cases, the workgroup is also cognizant of the amount of time and resources it would take to train all 174 circuit court judges in the State in this manner; therefore, the workgroup does not recommend that such training be mandatory for all judges. Instead, the workgroup recommends that a limited number of judges be specially trained to handle cases in which there is a disclosure or discovery of child abuse or domestic violence. Although each circuit court with multiple judges may handle judicial assignments/rotations in various ways that ultimately create *de facto* specialties for particular judges, the workgroup realizes that judges are generally appointed or elected with the expectation that they will be able to preside over any type of case. However, the concept of specialized judges is not unprecedented in Maryland and is already addressed in statute. Under § 3-806 of the CJP Article, one or more judges is required to be specially assigned in each county to handle juvenile cases, including CINA and juvenile delinquency matters. To the extent feasible, the judges assigned must also (1) desire to be assigned; (2) have the temperament necessary to deal properly with the cases and children likely to come before the court; and (3) have special experience or training in juvenile causes and the problems of children likely to come before the court.

The workgroup recommends that this general concept be replicated and enhanced for custody cases in which there is a disclosure or discovery of child abuse or domestic violence. Just as judges specially assigned to juvenile matters may preside over other cases and are not restricted to hearing only juvenile matters, these specially trained judges for custody cases may also not be similarly limited. **However, the Judiciary would be responsible for ensuring that enough judges, based on typical case volumes, have been specially trained to facilitate the workgroup's recommendation that all cases that include a disclosure or discovery of child abuse or domestic violence must be heard only by a judge who has been specially trained to handle these cases.**

To facilitate this recommendation, **courts must also implement procedures, including appropriate and uniform screenings of initial pleadings, to ensure that custody cases involving child abuse or domestic violence are appropriately identified and only assigned to these specially trained judges. Once cases are identified, there should also be required follow up in order to conduct a danger/lethality assessment and to establish any necessary protocols for the safety of adults and children during the case.**

Recommendation 10: Judicial Nominating Commissions

The workgroup also recommends that Judicial Nominating Commissions be required to include an individual who has expertise in domestic violence and/or child abuse or to otherwise receive input from such an individual regarding nominees. Although every judge appointed would not necessarily become a specially trained judge, the workgroup, nonetheless, offers this recommendation as a potential way to educate nominating commissions about the value of considering nominees with relevant experience or interest in cases that involve domestic violence or child abuse as prospective appointees to the bench.

Professionals Involved in Child Custody Cases Must Be Appropriately Qualified and Subject to Rigorous Uniform Requirements

In Mr. Richard Ducote's presentation to the workgroup, he opined that family courts have become an industry for mental health professionals and lawyers appointed as child's counsel who have realized and benefited from the lucrative nature of family litigation. Variations on this statement were echoed numerous times during the workgroup's meetings by members and other presenters. The outsized role of various professionals involved in child custody cases was particularly troubling when viewed alongside Professor Joan Meier's research, which found gender disparities when child's counsel (referred to as a guardian ad litem in her research) or custody evaluators were involved. Although several members were intrigued by the possibility of completely abolishing the use of custody evaluators and child's counsel in cases that include child abuse or domestic violence, the workgroup ultimately understood that this would be a radical shift in the State's handling of family law cases, particularly if done without first exploring other ways to improve the process. After reviewing current requirements governing child's counsel and custody evaluators/evaluations, the workgroup instead focused its attention on recommendations to build upon the existing framework by ensuring better-qualified evaluators and child's counsel and more uniformity for evaluations across jurisdictions. This section details these recommendations.

Recommendation 11: Training Requirements for Child's Counsel

In a child custody case, the court may appoint a lawyer for a child to serve in one of three different roles: (1) a Child's Best Interest Attorney (BIA), previously referred to as a "guardian ad litem"; (2) a Child's Advocate Attorney; or (3) a Child's Privilege Attorney. BIAs are lawyers appointed by a court for the purpose of protecting a child's best interest, without being bound by the child's directives or objectives. BIA makes an independent assessment of what is in the child's best interest and advocates for that before the court. A Child's Advocate Attorney is appointed by a court to provide independent legal counsel for a child, and thereby owes the child the same duties of undivided loyalty, confidentiality, and competent representation as are due to an adult client. A Child's Privilege Attorney is appointed by a court for the purpose of determining whether to assert or waive, on behalf of a minor child, any privilege that the child if an adult would

be entitled to assert or waive. The court may combine the roles of Child's Privilege Attorney with either a BIA or a Child's Advocate Attorney.

Maryland Rule 9-205.1 governs the appointment of child's counsel and states that, among other situations, appointment may be most appropriate in cases that involve past or current child abuse or neglect, actual or threatened family violence, or consideration of terminating or suspending parenting time. The *Maryland Guidelines for Practice for Court-Appointed Lawyers Representing Children in Cases Involving Child Custody or Child Access* complements Maryland Rule 9-205.1 and specifies standards for minimum training and experience. Under the guidelines, unless waived by the court, an attorney serving in one of these three roles *should* have completed at least six hours of training that includes the following topics:

- applicable representation guidelines and standards;
- children's development, needs, and abilities at different stages;
- 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;
- 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; and
- available resources for children and families in child custody and child access disputes.

Additionally, the guidelines specify that the court should require attorneys seeking appointments as child counsel to maintain their knowledge of current law and to "complete a specific amount of additional training over a defined interval." Furthermore, the guidelines state that courts should seek to appoint attorneys who have at least three years of family law experience or other relevant experience. In evaluating relevant experience, the court may consider the attorney's experience in social work, education, child development, mental health, healthcare, or other related fields.

Workgroup members, including at least one who has served as a BIA, noted that the existing training standards are woefully inadequate, particularly for cases in which child abuse or domestic violence is an issue. According to NCJFCJ, if appointing a third-party professional in a case where the safety of a child or parent is at issue, it is crucial to appoint a qualified individual who has extensive training in the dynamics of abuse and coercive control. The workgroup asserts that the minimum six hours currently specified is far from "extensive" and finds the fact that the guidelines allow the training to be waived particularly troubling. Anyone appointed as child's counsel in the State obviously must have a law degree and associated foundational skills. Many individuals serving as child's counsel perhaps even specialize in family law cases and are effective at advocating on behalf of their clients. However, these skills and experience must not be viewed as equivalent to (1) understanding child development, the dynamics and traumatic impacts of various types of child abuse and domestic violence, issues related to bias and the discredited PAS, *etc.* and (2) being able to apply such knowledge to what is in the best interest of a child. **The workgroup therefore recommends that *any* individual serving as a child's counsel, particularly in cases involving child abuse or domestic violence, must be subject to the training requirements as recommended and discussed above for judges (60 hours of initial training and 10 hours of ongoing training biennially) and specified in Exhibit 5.**

Recommendations 12 and 13: Custody Evaluators – Education and Training

Under Maryland Rule 9-205.3, on the motion of a party or a child's counsel, or of the court's own initiative, a court may appoint a custody evaluator to aid the court in evaluating the health, safety, welfare, or best interests of a child in a contested custody or visitation case. In order to serve as a custody evaluator, an individual must be (1) a licensed physician who is board certified in psychiatry or has completed an accredited psychiatry residency; (2) a Maryland licensed psychologist; (3) a Maryland licensed clinical marriage and family therapist; (4) a Maryland licensed certified social worker-clinical; (5) a Maryland licensed graduate or master social worker with at least two years of relevant experience, as specified; or (6) a Maryland licensed clinical professional counselor. An individual may also qualify if he or she is a professional in the preceding fields with an equivalent level of licensure in any other state or, in regard to licensed graduate or master social workers, the equivalent level of licensure and experience in any other state. However, the rule also permits the waiver of these requirements for a court employee who has been performing custody evaluations on a regular basis as an employee of or under contract with the court for at least five years prior to January 1, 2016. Such individuals must then participate in at least 20 hours of continuing education annually relevant to the performance of custody evaluations, as specified. **The workgroup recommends that *any* individual, regardless of any prior experience conducting custody evaluations, must have at least a master's degree.**

In addition to meeting the continuing education requirements for applicable licensure, a custody evaluator is also required under Rule 9-205.3 to have training *or* experience in observing or performing custody evaluations as well as current knowledge in domestic violence, child neglect and abuse, family conflict and dynamics, child and adult development, and the impact of divorce and separation on children and adults. While Rule 9-205.3 provides some guidance on

qualifications, it is also vague in certain ways that can profoundly impact a case where there has been a discovery or disclosure of child abuse or domestic violence. For example, it is unclear what level or duration of training or experience in observing or performing custody evaluations satisfies the rule. Both testimony from presenters and the practical experience of workgroup members revealed that one outcome of the vagueness of the rule is a lack of uniformity across jurisdictions in the State. As a result, particularly in cases where domestic violence or child abuse is involved, the workgroup recommends instituting more rigorous criteria for an individual appointed by the court to serve as a custody evaluator to ensure the health and well-being of victims.

As a preliminary step to ensure the relevancy of a custody evaluator's knowledge, custody evaluators should fulfill specific training requirements in line with those recommended for judges and child's counsel, as discussed above and shown in Exhibit 5. **The workgroup therefore recommends that custody evaluators be required to complete a minimum of 60 hours of initial training and 10 hours of additional training every two years on the designated topics.**

Recommendations 14-16: Custody Evaluators – Additional Qualifications

The workgroup also recommends expanding upon the existing requirements by specifying that a professional serving as a custody evaluator must also have experience – obtained either by observation under clinical supervision or through the performance of custody evaluations – and current, research-informed knowledge that demonstrate competency in and an understanding of key areas. Relying significantly on the expertise of the workgroup's members with clinical experience evaluating and treating child victims, the workgroup has identified the following key areas:

- family systems, partner conflict, and conflict resolution styles;
- normative child, adolescent, and adult development;
- impact of interpersonal loss and chronic stress (*e.g.*, 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;
- mental health diagnoses, including current substance abuse, relevant to current capacity to provide healthy, protective, or restorative parenting;
- culturally and spiritually sensitive clinical interviewing;
- immediate and long-term neurodevelopmental impact of child neglect and all types of child abuse;

- how children respond to traumatic stress and research-informed reasons why a child's verbal and nonverbal expression of traumatic stress may be delayed;

- immediate and long-term neurodevelopmental impact of a child's exposure to domestic violence;

- all types of domestic violence, including sexual violence, stalking, and psychological aggression;

- immediate and long-term impacts of parent separation on a child;

- protective factors that promote a child's healthy resolution of parent separation; and

- protective factors and parent practices that promote trauma recovery in cases of child abuse.

As with the educational requirements, these new training, experience, and competency requirements must be applicable regardless of an individual's tenure as a custody evaluator employed by the courts or other applicable experience. The mere fact that an individual has previously performed custody evaluations is not enough to meet the qualification thresholds envisioned and recommended by the workgroup.

The workgroup also expressed concerns that courts are not necessarily well positioned to determine whether an individual seeking to serve as a custody evaluator meets professional standards in health-centered fields (including social work). **Accordingly, the workgroup recommends that a standardized, uniform credentialing/certification be developed across the 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 should specify how the boards will verify that an individual has met the requisite experience, knowledge, and competency criteria necessary to obtain a credential to conduct child custody evaluations. The regulations will also allow each licensing board to retain the ability to initiate disciplinary action against its licensees for any violations relating to custody evaluations. The court must ensure that an individual has been credentialed by the appropriate licensing board before appointing the individual as a custody evaluator, and the court must only include credentialed individuals in any list of potential custody evaluators provided to parties. **The courts should also strictly enforce prohibitions against custody evaluators providing legal advice to parties.**

Recommendations 17-18: Notice and Disclosures

Because custody evaluators are not automatically appointed in every case, parties, especially *pro se* parties, need to be aware that custody evaluators are available. This is not an endorsement of the notion that custody evaluators are necessary and appropriate in every case,

only that parties should be alerted to potential available resources. The protective parent member explained that she was not informed of the existence of custody evaluators during her custody case. **Therefore, the workgroup also recommends the implementation of a notice requirement so that the courts automatically provide information to the parties regarding the role, availability, and cost of a custody evaluator in the jurisdiction.** The workgroup believes that courts should be afforded flexibility in determining the best methods to provide this information to the parties. This recommendation is consistent with Senate Bill 665 of 2020, as introduced by workgroup members Senator Susan C. Lee and Senator Mary Beth Carozza. In addition to this notice by the court, **a custody evaluator should also be required to disclose the evaluator's policies, procedures, and fees prior to engagement in a written document to be signed by both parties.**

Recommendation 19: Fee Structure

In response to an inquiry from the workgroup, the Judiciary advised that hourly costs for custody evaluations range from $100 to $300 per hour, with some courts setting caps of up to $3,000 on the total amount for a full custody evaluation. The Judiciary also emphasized that parties may request that fees for any family service ordered by a court be waived if the party cannot afford to pay the costs. The workgroup heard various accounts, from presenters and even from members of the audience, emphasizing the role that financial resources can play in a custody case. It is important to note that this impact is not limited to individuals in financial situations that would typically qualify them for financial waivers using traditional eligibility guidelines. Some of the testimony provided detailed fees for custody evaluations well into the tens of thousands of dollars, which alone would impose a financial burden on most individuals even before accounting for other potential costs, such as legal fees. **The workgroup therefore recommends the mandatory implementation in all courts of an income-based fee structure that includes a cap on the fee amount that is allowed to be charged for custody evaluations.**

Recommendation 20: Depositions

Under Maryland Rule 9-205.3, unless permission is obtained, any deposition of a court employee or an individual who is paid by the court is limited to two hours. Practitioners on the workgroup cited this time allotment as being insufficient for cases with complex issues of domestic violence or child abuse. **As a result, the workgroup recommends increasing the allotted deposition time to six hours.**

Recommendation 21: Custody Evaluators and Evaluations – Uniform Requirements

Under Maryland Rule 9-205.3, a custody evaluation must include (1) a review of the relevant court records pertaining to the litigation; (2) an interview of each party; (3) an interview of the child, unless the custody evaluator determines and explains that by reason of age, disability, or lack of maturity, the child lacks capacity to be interviewed; (4) a review of any relevant educational, medical, and legal records pertaining to the child; (5) if feasible, observations of the child with each party, whenever possible in that party's household; (6) factual findings about the

needs of the child and the capacity of each party to meet the child's needs; and (7) a custody and visitation recommendation based upon an analysis of the facts found or, if such a recommendation cannot be made, an explanation of why. At the discretion of the custody evaluator, an evaluation may also include contact with collateral sources of information, a review of additional records, employment verification, and an interview of any other individual residing in the household. Finally, subject to the approval of the court if additional costs will be incurred, a custody evaluation also may include a mental health evaluation; consultation with other experts to develop information that is beyond the scope of the evaluator's practice or area of expertise; and an investigation into any other relevant information about the child's needs. Furthermore, under Rule 9-205.3, a custody evaluator is required to provide a written report of a custody evaluation only under certain circumstances.

Dr. Daniel Saunders highlighted in his presentation and members relayed from their own experiences that custody evaluators sometimes focus on or give undue weight to irrelevant factors. On its face, the rule authorizes the evaluator to determine what is relevant and to report only on what was reviewed. Consistent with Dr. Saunders's recommendations as well as in keeping with action taken by other jurisdictions, **the workgroup recommends requiring a uniform mandatory template or form to be developed by the courts that more clearly articulates what custody evaluators are required to do and what information must be contained in a custody evaluation in cases where there has been a disclosure or discovery of child abuse or domestic violence.** This template or form should reflect the workgroup's specific recommendations regarding the content for custody evaluations and related actions by custody evaluators, as shown in **Exhibit 6.** The model and specific criteria should account for domestic violence and different types of child abuse, as appropriate.

Exhibit 6

Uniform Requirements for Custody Evaluators and Evaluations

The workgroup recommends that a custody evaluator be required to:

- prepare a written report in all cases where there has been a disclosure or discovery of child abuse or domestic violence;

- when determining whether to interview a child, 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;

- consult with all relevant sources of information, specifically (1) 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, with particular emphasis on the caregiver who has spent the most time with the child and (2) individuals to whom a disclosure of abuse has been made;

- include comparisons of parent-reported and school personnel-reported measures of current mental health and socioemotional and academic functioning of the child;

- if any applicable privilege has been waived, 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;

- 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;

- 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;

- review and summarize for the court any child welfare agency and/or law enforcement investigations and reports related to the child or a party;

- 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

- specifically address (1) trauma-informed physical and psychological safety recommendations for the child currently and if custody or visitation is awarded to the abusive parent; (2) each best interest factor; (3) the impact of domestic violence 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 other 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.

Recommendation 22: Custody Evaluations – Additional Considerations and Procedures

The workgroup also wants to ensure that appropriate safety measures are in place during the custody evaluation process. Therefore, if the court orders an evaluation in a child custody matter based on the disclosure or discovery of child abuse or domestic violence, **the court should be specifically required 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 disclosure/discovery has been made to visitations in which a third party designated by the court is present or (2) suspend or deny visitation. Another issue raised by the workgroup was a concern that courts are relying on custody evaluators to make determinations as to whether or not child abuse of any kind actually occurred, including in situations where abuse is first disclosed or discovered after custody proceedings have already been initiated. **As a result, the workgroup recommends the establishment of a process to ensure that when there is an initial disclosure or discovery of child abuse, it must be reported to the appropriate entities prior to the initiation or continuation of the custody evaluation process.** This recommendation is to ensure that the incident is properly reported to the entities, including local departments of social services, law enforcement, and child advocacy centers, which are required by statute to respond to and investigate reports of suspected child abuse. It must not be construed as relieving *judges* of the ultimate responsibility, using all of the information presented to them as part of the custody case, of making the determination as to whether abuse has occurred.

Recommendation 23: Uniform Recordkeeping

The workgroup also recommends establishing 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 that 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.

Parties Must Have Access to Relevant Resources without Financial Hardship

Recommendation 24: Access to Relevant Resources

As discussed above, the workgroup is aware of the tremendous burden on many parents from the costs associated with custody cases, particularly those involving complex issues of child abuse or domestic violence. Workgroup members also discussed the disparate resources available to parties, which can vary widely by jurisdiction. For example, because the circuit courts in Baltimore City and Anne Arundel, Baltimore, Frederick, Harford, Howard, Montgomery, and Prince George's counties employ staff custody evaluators, parties in those jurisdictions have the opportunity to have custody evaluations performed free of charge. The availability and cost of court-operated supervised visitation and monitored exchange programs also vary by jurisdiction. The workgroup wants to express the importance of making relevant resources, including legal representation, available to parties, particularly in such complex custody cases. However, the workgroup acknowledges that additional State and local funding would be necessary to achieve this and is also cognizant of the perilous financial position of the State and the economy in general at the time of this report's submission. In light of these issues, the workgroup is not submitting specific funding proposals or priorities. **However, it does recommend generally that when weighing budgetary priorities and the allocation of limited financial resources, the State and local governments should recognize the importance of making attorneys, custody**

evaluations, counsel appointed on behalf of a child, and supervised visitation/monitored exchange programs accessible to more parents without financial hardship.

Conclusion

After hearing from numerous experts, stakeholders, and protective parents, reviewing current Maryland law and practice as well as laws from other states, examining relevant resources, and much consideration, the workgroup is confident that the implementation of these recommendations will result in safer outcomes for children and other individuals who have experienced child abuse or domestic violence.

Appendix 1. Chapter 52 of 2019

Chapter 52

(Senate Bill 567)

AN ACT concerning

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

FOR the purpose of establishing the Workgroup to Study Child Custody Court ~~Decisions~~ Proceedings Involving Child Abuse or Domestic Violence Allegations; providing for the composition, chair, and staffing of the Workgroup; prohibiting a member of the Workgroup from receiving certain compensation, but authorizing the reimbursement of certain expenses; requiring the Workgroup to study and make recommendations regarding certain matters; requiring the Workgroup to report its findings and recommendations to the Governor and the General Assembly on or before certain dates; providing for the termination of this Act; and generally relating to the Workgroup to Study Child Custody Court ~~Decisions~~ Proceedings Involving Child Abuse or Domestic Violence Allegations.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That:

(a) There is a Workgroup to Study Child Custody Court ~~Decisions~~ Proceedings Involving Child Abuse or Domestic Violence Allegations.

(b) The Workgroup consists of the following members:

(1) two members of the Senate of Maryland, appointed by the President of the Senate;

(2) two members of the House of Delegates, appointed by the Speaker of the House;

(3) the Secretary of State, or the Secretary's designee;

(4) ~~the Chair of the Conference of Circuit Court Judges, or the Chair's designee~~ the Public Defender of Maryland, or the Public Defender's designee; and

(5) the following members, appointed by the Governor:

(i) three representatives of child advocacy nonprofit organizations;

(ii) one representative of the Maryland State's Attorneys' Association;

(iii) one attorney specializing in family law matters;

(iv) one prosecutor who handles primarily child abuse cases;

(v) one representative of the Department of Human Services;

(vi) one representative of Child Advocacy Centers;

(vii) one ~~retired circuit court judge~~ representative of a domestic violence victim advocacy group or coalition;

(viii) one trauma recovery and education expert;

(ix) one nonoffending parent who has been involved in a child abuse matter and has taken legal action to protect the nonoffending parent's children; ~~and~~

(x) one representative of a rape crisis center or coalition;

(xi) one representative of a fathers' rights group; and

(xii) one individual appointed at the Governor's discretion.

(c) The Secretary of State, or the Secretary's designee, shall chair the Workgroup.

(d) The Department of Legislative Services shall provide staff for the Workgroup.

(e) A member of the Workgroup:

(1) may not receive compensation as a member of the Workgroup; but

(2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(f) The Workgroup shall:

(1) study State child custody court ~~decisions involving~~ processes for when child abuse or domestic violence allegations are made during court proceedings;

(2) study available science and best practices pertaining to children in traumatic situations, including trauma–informed decision making; and

(3) make recommendations about how State courts could incorporate in court proceedings the latest science ~~in making legal determinations regarding~~ regarding the safety and well–being of children and other victims of domestic violence.

(g) On or before December 1, 2019, the Workgroup shall submit an interim report of its findings and recommendations to the Governor and, in accordance with § 2–1246 of the State Government Article, the General Assembly.

(h) On or before June 1, 2020, the Workgroup shall submit a final report of its findings and recommendations to the Governor and, in accordance with § 2–1246 of the State Government Article, the General Assembly.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2019. It shall remain effective for a period of 1 year and 6 months and, at the end of November 30, 2020, this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.

Approved by the Governor, April 18, 2019.

Appendix 2. Meeting Summaries and Meeting Minutes

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

Secretary of State John Wobensmith, Chair

Meeting Minutes – June 11, 2019

(prepared by the staff of the Secretary of State's Office)

Members in Attendance: Secretary John Wobensmith, Senator Susan Lee, Melissa Brown for Senator Mary Beth Carroza, Kristin Cassard for Delegate Vanessa Atterbeary, Camille Cooper, Sonia Hinds, Anne Hoyer, Inga James, Eileen King for Paul Griffin, Protective Parent, Claudia Remington, Laure Ruth, and Jennifer Shaw

Other Attendees: Luis Borunda, Kelly Gorman, Tyler Jones, Dorothy Lennig, Michael Lore, Brittany Luzader, Kelley Mitchell, Doug Mohler, Nikia Nickerson, Margaret Rath, David Shultie, Nisa Subasinghe, Jessica Wheeler, and Josaphine Yuzuik

Welcome and Introductions

Secretary of State John Wobensmith opened the first meeting of the Child Custody Court Proceedings Workgroup by welcoming and thanking everyone in attendance. He introduced himself as chair of the workgroup, and asked the members and attendees for their introductions.

Chapter 52 (Senate Bill 567)

Michael Lore, Chief of Staff for Senator Lee, outlined Chapter 52 (Senate Bill 567) that authorized the workgroup. Senator Lee was the bill's lead sponsor, and all senators on Judicial Proceedings Committee signed on as sponsors. Mr. Lore ran through the list of appointed members, noting 4 vacancies. He explained that the Administrative Office of the Courts declined a formal role in the workgroup, but agreed to stay informed and to vocalize questions and comments as they arise. Chapter 52 instructs the workgroup to study child custody court processes for when allegations of domestic violence or child abuse are made during court proceedings, and to study available science regarding trauma-informed decision making and best practices for children in traumatic situations. Mr. Lore suggested that workgroup discussion include disclosures of abuse as well as allegations. The bill mandates the workgroup to make recommendations on incorporating in court proceedings the latest science on the safety and well-being of children and other victims of domestic violence. Mr. Lore made it clear that the workgroup will not presuppose outcomes, but will examine the issue and submit findings to the Governor and General Assembly in an interim report required by December 1, 2019. The final report, due June 1, 2020, will focus on recommendations and legislation, if there is any. Workgroup authorization ends on November 30, 2020, but can be extended through legislation if needed.

Secretary Wobensmith thanked Mr. Lore for the briefing and Senator Lee for her terrific effort to get the bill passed. He added that the workgroup will not criticize or highlight past failures. The goal is to collect and analyze data to determine what recommendations or common-sense legislation will help protect our children and support our judges and magistrates.

H. Con. Res. 72 (115th Congress, 2017-2018)

Ms. Cooper acknowledged the Center for Judicial Excellence, Joan Meier from Domestic Violence LEAP, and Eileen King and Child Justice, Inc. for their work and dedication to initiate and pass the resolution. She read H. Con. Res. 72 aloud to set the tone for the workgroup. (Click for link to H. Con. Res. 72).

Ms. Cooper applauded the emphasis the resolution puts on the frequent application of scientifically unsound theories to reject reports of abuse. Lack of scientific study creates a vacuum, so "junk" science fills the void and mucks everything up. She pointed out the importance of holding appointed fee-paid professionals to a certain standard regarding experience and expertise, as the resolution mandates, but added that non-fee paid professionals such as CASA, GALs and CPS should also be included in the scope of our work.

Secretary Wobensmith thanked Ms. Cooper for reading H. Con. Res. 72, saying that it looks like a good blue print for what this workgroup intends to accomplish. It outlines the work we need to do. He opened the floor to comments. Ms. King said that we have the protective parents to thank for going to the hill. She's deeply grateful to them that it passed.

Roundtable Discussion: Workgroup Topics

Disclosure

Ms. Cooper said that RAINN runs several hotlines throughout the country and serves over 25,000 people a month. Eighty percent of hotline callers said that their first experience disclosing abuse is often very negative, regardless to whom the disclosure is made. Ms. Cooper would like to discuss this further as it shows that people being disclosed to are not responding appropriately. Whether disclosure is made to a mandated reporter or not, people need the ability to disclose.

Data Tracking

Mr. Lore said that the Administrative Office of the Courts (AOC) does not currently track data we need, and suggested we look into cases like the 38 in Montgomery County that are sent to mediation then kicked back, possibly because of abuse.

Ms. Ruth said that she does not know what the AOC can collect, but fears that self-represented defendants and even those represented by the Law Center or House of Ruth would not be included in their data. She mentioned as a possible resource the Governor's Family Violence Council and their focus on trauma informed services. She added that Prince George's county is an example for needed reform because there is no one in the court house qualified to look for a fee-paid professional. She warned that although the resolution addresses many of these issues, the problem is systemic.

Due Process

Ms. King said that the issue of due process comes up in these cases. She used Child Protective Services (CPS) as an example, citing a case in which they determined that the father, the alleged abuser, should supervise the mother. Many workgroup members agreed that, in their experience, due process is a problem in many of these situations.

Misuse of Assessments and Registries

Ms. Cooper said that sex offender risk assessments and evaluations are often misapplied. We need to look at law enforcement investigation and examine the quality of joint investigations between law enforcement and CPS. We should include the misapplication of Static-99 and the Abel Assessment which are used early to determine the risk of offending, though that is not the intention of the assessments. They are meant to indicate what kind of therapy might be useful, not to disqualify abuse or measure risk of offending. She explained that the nature of the test allows an incest offender to pass the test easily; for this and many other reasons, it should not be used to measure risk of offending.

Disclosure by Young Children

Ms. Shaw agreed, adding that the breakdown is often where or how information is obtained; is the child interviewed? The person accused of offending? The right referral questions must be included. Disclosure needs to count when made during play, or as artwork, etc. Ms. Shaw urged the group to focus on collaboration and the scope of evaluation.

Remarks by Senator Lee

Secretary Wobensmith paused the meeting to introduce Senator Susan Lee, praising her for adroitly and professionally getting the legislation through, noting that it passed unanimously in both the House and the Senate. Senator Lee thanked Secretary Wobensmith for his leadership, mentioning the Safe Harbor workgroup he chaired which produced substantive legislation

addressing human trafficking and sex trafficking. Senator Lee remarked that this workgroup is new territory; she is excited to get all the stakeholders together to produce something meaningful.

Expert Testimony

Secretary Wobensmith said that he would like to invite expert testimony for our next meeting, someone with a good understanding and years of experience with Maryland's family court system, to explain how it works and why this workgroup is so critical. Ms. Cooper echoed the importance of getting a baseline. University of Baltimore Law Professor Barbara Babb was suggested.

Ms. Ruth agreed, adding that Ms. Babb was active in establishing Maryland's family court system and will be able to explain the intent of family court. She said that we need to know both what is happening theoretically, and what is actually happening. She suggests the input of the Family Law Section of Maryland State Bar Association and Joe Jones of the Center for Urban Families. Ms. Ruth recommends as well a presentation by Richard Abbott or someone else with the AOC in order to get a feel for the Judiciary's view on what is going on in its courts.

Roundtable Discussion: Workgroup Topics, Continued

Judges and Family Court

Ms. James said that domestic violence court is like drug court. One judge follows the case from protective order to custody. The problem is that a lot of information does not get passed to family court; this is not best practice. Ms. Cooper said it would be great to hear from the courts and asked if there are specialized judges for family court. Ms. Ruth said that there are not. Baltimore County, for example, rotates judges every 6 months. Ms. Hoyer explained that for Circuit Court, judges show up and hear whatever they are assigned that morning. The type of case is not taken into account. This concerns Ms. Cooper since judges who hear many acrimonious cases cannot easily separate domestic violence and sexual assault out from the others. These judges must hear everything, which affects their decision-making ability.

Protective Orders

The conversation bounced from the protective orders in district court to when both district and circuit courts have jurisdiction; it touched upon civil protection orders and circled back around to the need for a separate court for criminal domestic violence. It was stated that some districts in Maryland only have 1 circuit court judge and that Maryland ought to account for significant differences across different jurisdictions.

Judicial Training Requirements

Ms. Ruth stated that training for judges is consistent throughout Maryland. Judge Cynthia Callahan developed the Family Law curriculum for "baby judge school," the five-day training for incoming judges. Judges receive mandatory family law training every few years, but select whichever continuing education credits they wish to pursue. There is no requirement for any additional family law training. A frequent complaint is that the judges who need family law training never chose to take it. Mr. Lore asked if any state has explored hazard pay for family law judges. No one knew of any that state that had.

Ms. Hoyer explained that we can put judges in a room, and we can mandate they receive more or better training, but in order to protect our children, the commitment must be within each judge.

2013 Commission on Child Custody Decision Making

Ms. Lennig mentioned the Child Custody Decision Making Committee that produced a 300 page report with recommendations that have gone nowhere. She sat on the committee with Ms. Ruth and explained that they looked into other models and that the report would be a good starting place for this workgroup. One family/one judge works well, she continued, if you get the judge you like.

Secretary Wobensmith said that looking at the report seems worthwhile. He asked about Dropbox or another idea for workgroup members to easily share documents and research. Mr. Lore had inquired with the General Assembly's IT department, who suggested that we create a webpage. Mr. Lore reminded the group that once we find a way to share research, we want to make sure we contribute information from a variety of perspectives.

Right to Counsel, Cooperative Parent Requirements

Ms. Ruth added the civil right to counsel as another topic to be discussed as it is at the core of a lot of injustice. Survivors compromise themselves due to lack of representation. Self-represented survivors do not know what they can ask of judges. Mr. Lore mentioned that most family law is case law. He suggested listing cooperative parent requirements as another topic.

Discrediting Disclosure

Ms. Hinds informed that in Maryland, disclosure by children under the age of five is discarded for lack of credibility. A young child has no voice. The workgroup must examine how the court treats disclosures by children. Ms. Cooper agreed, adding that RAINN's research on law enforcement training for sex crimes revealed that officers are trained explicitly not to believe children when the parents are involved in divorce or custody proceedings. Children's own words

are not believed or taken into account. This practice, along with the idea of suggestibility in children, and the assumption that children are usually coached by a vindictive parent, has infiltrated social services as well as the courtroom. Although these myths have been debunked as scientifically unsound, courts and social services still rely on them to inform decision-making. Ms. Shaw added that coaching is always complicated. Determining if a child has been coached requires a therapeutic assessment and a lot of time spent with a consistent therapist.

Rules of Evidence

Ms. Ruth stated that the rules of evidence present a big problem for a three year old since any disclosure by a young child is considered hearsay. Ms. Cooper cited Ohio vs. Clark in which the Ohio Supreme Court ruled that truth of statement can come through a third party; no need for the child to testify as long as the third party has been verified. A briefing on the case is available on the Supreme Court of the United States' website. Ms. King said that court evaluators can be either extremely helpful or problematic depending on with whom they speak.

Expert Testimony without Scientific Methodology

The workgroup's non-offending parent expressed the need for a protective plan for children when the allegation is still just an allegation. Ms. Shaw agreed and pointed to another problem: court supervisors who do not understand the psychology of trauma. Many times visitation supervisors will assert that the child was affectionate and loving towards the alleged abuser. They do not comprehend the dynamics of abuse and that children may still love the abuser and seek their approval. Children try to hide the guilt and shame; they behave to try to make the abuse go away. It is unlikely for a child to cry and hide in a corner during visitation with an alleged abuser, particularly when it is supervised and the child feels safe because other people are present. The protective parent said that adequate supervision often does not occur; courts do not require it as long as the children stay physically safe. Ms. Cooper added that Maryland allows family members of the alleged abuser to supervise visits. She mentioned a case where the grandmother, as the supervisor, allowed the sexually abusive father to sleep in the same bed with his daughter. The courts determined this was okay because the father behaved well under observation. Ms. Cooper asked if attachment theory were popular in Maryland. Ms. Shaw commented that children do not disclose because their whole world falls apart when they do, or it did when they disclosed in the past. They see everything as their fault. They believe they are to blame for the fall-out.

Judges as Mandated Reporters

Mr. Lore said that upon speaking to judicial officers, it became clear that no one seemed realize that judges are mandated reporters. If the judges themselves were held accountable for reporting abuse, some issues may be resolved, or at least the child would have a better chance of being protected.

Presumption of Joint Custody

Ms. Lennig pointed out that many of these issues involve custody and access, and the problem with the presumption of joint custody. She cautioned that there are a lot of strong feelings on both sides regarding joint custody and the presumption that it is best for the child. She said that it is not from a lack of understanding, but a different perspective, and that the issue is not training, but strong conviction. She blames this as the reason why the 2013 Commission on Child Custody set forth great recommendations, but none of the legislation moved.

Closing Remarks

Senator Lee observed that for many years we didn't understand the complexities of trauma. We are finally waking up to the need to study it. Secretary Wobensmith agreed, and added that our workgroup is off to a good start. Between this meeting and the next, we will organize the topics discussed today and decide how to continue. He announced that the workgroup will meet biweekly as much as possible.

Senator Lee said we must make sure to bring forth evidence and identify the right people to testify on any legislation we might propose. Ms. Hoyer said the safety of the child must be the primary focus, not the interests of fathers or mothers. She said this workgroup exists to protect judges as well. Their lives and their families are also destroyed when they are ill-equipped make a decision, especially when it results in the death or continued abuse of a child.

Ms. King suggested a book recently published by Rachel Louise Snyder, *No Visible Bruises: What We Don't Know About Domestic Violence Can Kill Us.*

Secretary Wobensmith thanked everyone for their attendance and ended the meeting 15 minutes before 12 noon.

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

Meeting Summary – June 25, 2019

The Workgroup to Study Child Custody Proceedings Involving Domestic Violence or Child Abuse Allegations held its second meeting of the 2019 interim on Tuesday, June 25, 2019, in Room 101 of the Judiciary Committee Room in Annapolis, Maryland. The following members were present:

Secretary of State John C. Wobensmith, Chair
Senator Susan C. Lee
Delegate Vanessa E. Atterbeary
Ms. Melissa Brown for Senator Mary Beth Carroza
Ms. Camille Cooper
Mr. Paul Griffin
Ms. Anne Hoyer
Ms. Joyce Lombardi
Ms. Ruby Parker
Ms. Claudia Remington
Ms. Laure Ruth
The protective parent member was also present.

Welcome and Introductions

The chairman of the workgroup, Secretary of State John C. Wobensmith, commenced the meeting by thanking everyone in attendance. He advised that the workgroup intends to continue meeting every two weeks in Annapolis. The chair expressed satisfaction with the information exchanged at the workgroup's first meeting and asked members to review the minutes from the prior meeting and send any suggestions for additions or edits to Brittany Luzader. He introduced himself as chair of the workgroup and asked members and attendees for their introductions.

Testimony from Protective Parent

The committee next heard from "Faith," a mother of three and a survivor of domestic violence. Faith became an advocate when she left her relationship after 14 and a half years of physical and emotional abuse committed against herself and her children by her ex-husband. Faith shared with the committee that over a four-year period after leaving her ex-husband, she had three proceedings in criminal court yet had to attend family court 63 times. Although these proceedings were in a different state, she believes many of the things she encountered are present in Maryland as well. Although her ex-husband's parental rights were eventually terminated, she questions why it took so long. While some of the decisions made in her case were in the best interests of the children, there were too many mechanisms in the law, such as appeals and modifications, which

allowed an abuser who had no interest in rehabilitating to come before the court multiple times. Although she was never allowed to be the voice of her children in court, she can be that voice now.

She read passages from the book she wrote, including pieces written by her son and daughter, and asked the workgroup to remember that it must serve as the voice for the children whose parents have not left abusive situations. She ended by expressing gratitude for the address confidentiality programs that have been established in numerous states. Secretary Wobensmith thanked Faith and introduced the next speaker.

Presentation by Professor Joan Meier

The next speaker, Professor Joan Meier, is a clinical law professor at George Washington University School of Law and the founder and legal director of Domestic Violence Legal Empowerment and Appeals Project (DV LEAP). Professor Meier has published widely on domestic violence and custody and received a grant in 2015 from the National Institute of Justice to conduct empirical research on child custody outcomes in cases involving parental alienation and abuse allegations.

Professor Meier advised that DV LEAP does appellate work all over the country (including in the U.S. Supreme Court) and that the vast majority of cases involve mothers who are finding it impossible to keep their children safe during the course of custody litigation. DV LEAP also does training for judges, attorneys, and other professionals. When DV LEAP was founded in 2003, it was with the intent to be an appellate resource in the domestic violence field; however, within a few years, they were inundated with requests for help with custody cases and parental alienation was often a key factor. She noted at the time that there was a gulf between family court professionals and those in the abuse field and indicated her appreciation that this workgroup includes both domestic violence advocates and child abuse advocates.

When commencing her research, she originally wanted data on alienation claims and how they impact custody. Initial hypotheses were as follows: (1) courts are skeptical of mothers' abuse claims, resulting in a loss of custody; (2) alienation cross-claims fuel the rejection of abuse claims and custody losses by mothers; and (3) alienation theory is highly gender-biased. Following a pilot study of 240 cases in which findings included that child sexual abuse claims are rarely believed by courts, her team was awarded funding to study all electronically published court opinions in child custody cases involving abuse or alienation claims over a 10-year period (2005 to 2015). The research team eventually narrowed the dataset to approximately 4,300 cases and created over 100 codes to be used to analyze results.

Professor Meier next walked the workgroup through selected aspects of her research. First, for the paradigm cases in which the mother alleged abuse and the father claimed alienation, the team analyzed whether the abuse claims were credited and whether or not the mother lost custody

(defined as a switch of primary custody from mother to the father). The team found that child abuse, and particularly child sexual abuse, was credited far less than domestic violence abuse cases and that overall courts credited 41% of abuse claims. When alienation was cross-claimed, only 23% of abuse claims were credited. In response to a question, Professor Meier briefly explained parental alienation to be a theory that when a parent (typically a mother) alleges abuse against the other parent, they are doing so not because the abuse happened but in an attempt to drive the other parent out of the family. Professor Meier noted that in reviewing 51 cases in which child sexual abuse was claimed, only one child was believed when alienation was cross-claimed. However, objective research has suggested that up to three-fourths of sexual abuse allegations in divorce are true.

The presentation next examined custody outcomes for cases in which alienation was not alleged as a defense and demonstrated that if a mother raises abuse of any type in a custody case, there is a one in four chance of losing custody. Even in cases in which the abuse is believed by the court, a mother may still lose custody. For example, in 14% of domestic violence cases and 19% of child physical abuse cases, primary custody was still transferred from the mother (who raised the abuse allegation) to the father (the abuser). Custody was not transferred in cases in which child sexual abuse was believed. Professor Meier noted that the study is limited in its ability to explain why courts made decisions in these cases (*e.g.*, the abuse may have been deemed as minor, the mother may have had other difficulties, *etc.*). Professor Meier next reviewed outcomes when alienation is claimed and showed that a mother's chance of losing custody increases significantly. The data demonstrates that claims of alienation are enhancing bad outcomes for mothers who allege abuse. When alienation was credited by the court, custody losses by mothers skyrocketed (*e.g.*, mothers lost custody in 60% of domestic violence cases and 79% of domestic violence/child abuse cases). There were no cases in which the court believed alienation and also that child abuse had occurred, which demonstrates how courts believe that alienation is a strategy to drive fathers out. However, there were instances in which a court believed both alienation and domestic violence. She indicated that the team pondered how widely to publish the findings as they recognized that the findings basically provide a roadmap for fathers accused of abuse in custody cases by demonstrating the power of an alienation defense.

The presentation then examined gender in custody cases. In general, alienation claims were shown to be more powerful for fathers; when accused of alienation, mothers have approximately twice the odds of losing custody compared to fathers. Further analysis demonstrated that when fathers accuse mothers of any type of abuse and the mothers cross-claimed alienation, the rate of custody loss for fathers was not impacted. However, relative gender parity was found in two circumstances. In examined cases in which no abuse was claimed, although fathers lost custody to mothers less often than vice versa, the results were not statistically significant. Also, when courts believed the alienation claim, fathers and mothers lost custody at identical rates.

Professor Meier next moved to a summary of outcomes in cases that included the involvement of either a guardian ad litem (GAL) or a neutral custody evaluator. Mr. Paul Griffin noted that in Maryland, child advocates/child attorneys were rarely used (generally only for older children) and that best interest attorneys were more frequently appointed. The research showed that when GALs were present, mothers were more likely to lose custody. By contrast, a GAL had no significantly statistical impact on a fathers' likelihood of losing custody. She noted that the findings were counterintuitive to what you would expect (*i.e.*, it would make sense to want a GAL involved as you would expect them to be beneficial, however the findings seemingly indicate a GAL bias against mothers who claim abuse). Mothers were also more likely to lose custody when an evaluator was present, yet the presence of an evaluator had no statistically significant impact on a father's loss of custody.

Professor Meier concluded by noting the limitations of the study. Because the study is comprised primarily of cases that were appealed, it may not be fully representative of typical trial court decisions. Furthermore, the study does not demonstrate that the rejections of abuse claims within the cases are incorrect, only that such rejections are very prevalent.

Questions and Group Discussion

Numerous members thanked Professor Meier for the work that she has done and were particularly grateful to her for getting the data to back up what has been observed anecdotally. In response to a question from Ms. Joyce Lombardi, Professor Meier indicated that the research was not broken down by the age of the child. However, all of the data for the Maryland cases (including the associated codings) can be provided to the group for further analysis. She also noted that the research team created codes for corroboration and child welfare involvement.

Because she recognizes the potential damage done to children when allegations are not brought to light, Ms. Laure Ruth expressed dismay that attorneys representing survivors of domestic violence may find that not including child abuse allegations may be strategically advantageous in some cases. Professor Meier noted that parties must weigh the risk of not protecting the child against the risk of losing all access to child, which is the punishment a mother could face if the court decides she is falsely alleging abuse. Professor Meier indicated that based on her experience, the findings of child protective services' agencies are not a good measure of the truth as other factors, such as the avoidance of labor-intensive litigation, are often involved. Professor Meier noted the importance of experts on child sexual abuse and getting an independent evaluator. She also noted a technique known as abuse proofing. This is when a therapist has both parents come in and swear to the child that abuse is wrong and no matter what happens in the future, the child should report it. Ms. Ruth stated how valuable Professor Meier's presentation would be for family law judges and asked representatives of the Judiciary to explore this.

Ms. Camille Cooper asked Professor Meier to provide a brief overview of the origins of Dr. Richard A. Gardner and parental alienation theory. Dr. Gardner had previously done some credible work on divorce and children yet turned at some point to focus on the issue of child sexual abuse in custody and divorce cases. He developed the theory of parental alienation syndrome (PAS) which was based solely on his experiences evaluating and testifying in cases and not on empirical data. Parental alienation syndrome claimed that when a mother comes to court alleging that a father has sexually abused a child, it is very likely that she is doing so only because she is vengeful and wants to drive the father away and not because it is true; however, allegations were likely true if they were not made in connection to a court procedure. Furthermore, behaviors that professionals know to be indicators of abuse were instead explained by Gardner to be signifiers of PAS. PAS initially gained traction, particularly in the family courts. There were also documented examples of Gardner condoning pedophilia and protecting child sexual abusers. Although the courts have now moved away from parental alienation as a syndrome, they continue to recognize parental alienation claims. Delegate Kathleen M. Dumais shared a prior experience in litigating a case in which Gardner testified. She also noted the difficulty in subjectively evaluating custody cases.

When asked by Mr. Griffin if she had any theories regarding the presence of gender bias in these cases, Professor Meier indicated that she does not believe gender bias has been eradicated from our culture in general. In response to another question, she advised that while some studies have shown that physical abuse is committed equally by males and females within relationships, the studies are not differentiating between types of violence (*e.g.*, self-defense, violence committed with the intent to control, *etc.*).

Ms. Cooper advised that statistics she has seen indicate that over 80% of individuals received a negative reaction when they disclosed abuse for the first time. Professor Meier noted that courts are ignoring links between an interest in child pornography and child sexual abuse. Ms. Joyce Lombardi stated that in addition to gender bias, there is a strong bias against believing children. Ms. Lombardi stated that adults not believing children is the root of problem because ultimately in child abuse cases it is the child alleging abuse. It is unfortunately easier to believe a mother is lying than that a father is sexually abusing his children. Professor Meier remarked that there is also evidence of courts wanting to reward fathers who are seen as fighting for their children. She thinks it is important to train judges on implicit bias and vicarious trauma and to allow judges to hear from different voices, including child abuse advocates and individuals who work with internet crime, and not just attorneys for mothers. Ms. Claudia Remington also noted the importance of looking at overall social norms regarding abuse and framing recommendations in a way that is not seen as just criticizing the courts. Senator Susan C. Lee noted the significance of having evidence-based data and the value of the workgroup's experienced members. Professor Meier advised that the workgroup's product may be the pilot legislation that gets used around the country, as other states are looking into how to amend custody laws to properly address the federal resolution.

Secretary Wobensmith thanked Professor Meier and members for the discussion and the presentation and advised that the workgroup would likely meet again in two weeks. He will begin to develop a list of topics for the workgroup to study and asked members to provide input when he does so.

Note: This summary has been prepared at the request of the chairman; however, please note that the archived livestream video of the workgroup meeting, available at http://dls.maryland.gov/policy-areas/workgroup-study-child-custody-child-abuse-domestic-violence, is also available and constitutes the official minutes of the meeting.

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

Meeting Summary – July 9, 2019

The Workgroup to Study Child Custody Proceedings Involving Domestic Violence or Child Abuse Allegations held its third meeting of the 2019 interim on Tuesday, July 9, 2019, in Room 230 of the House Economic Matters Committee Room in Annapolis, Maryland. The following members were present:

Secretary of State John C. Wobensmith, Chair
Senator Susan C. Lee
Senator Mary Beth Carroza
Delegate Vanessa E. Atterbeary
Ms. Camille Cooper
Mr. Paul Griffin
Ms. Sonia Hinds
Ms. Anne Hoyer
Ms. Ruby Parker
Ms. Claudia Remington
Ms. Laure Ruth
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 and asked the members of the workgroup for their introductions. He thanked the members of the audience who were in attendance and welcomed their participation and input. The secretary took a moment to acknowledge the difficult task ahead and noted the workgroup's responsibility to prepare thoughtful recommendations on how to best protect children.

Survivor Testimony

The workgroup heard from Ms. Susan Carrington, who shared her experience in the Maryland family courts with the workgroup. She noted that when courts see cases such as hers where there are over 700 docket entries, it is automatically assumed that these are just two people who do not get along without recognizing that abusers often harass their victims through persistent litigation. Although she left her marriage because she felt that not doing so demonstrated to her daughters that the abuse that their father was inflicting was okay, she is not sure that it was the right decision as now she has not seen her children in almost nine years. The judge in the custody proceedings did not want to hear about the domestic violence instances even though the judge was aware that there were two prior protective orders. Her ex-husband repeatedly violated the orders

yet was never held accountable. Mr. Paul Griffin, who assisted with the case, reminded the workgroup that statutory provisions do require courts to consider prior domestic violence when making custody determinations, yet the trial court in Ms. Carrington's case ignored this. He cited this as an example of even when there is a good law in place, it sometimes is not enough; Ms. Carrington's case amounted to a miscarriage of justice. Ms. Carrington noted that throughout the course of the litigation she appeared in front of 12 judges, and no one was going back to look at prior case history. She thought a dedicated domestic violence court might be beneficial.

Ms. Laure Ruth asked the chairman to think about requesting a pre-session briefing in front of the Judiciary and Judicial Proceedings committees where Ms. Carrington's story could be shared in front of the members who first consider relevant legislation. In response to a question from Senator Mary Beth Carroza, Ms. Carrington stated that the court failed her by not holding her ex-husband accountable for violating the protective orders (in addition to a failure of not taking the domestic violence or prior convictions into account). She also noted the extreme weight that the court placed on a problematic custody evaluation. The secretary asked her to elaborate on the financial burden of her litigation. Ms. Carrington stated that she has incurred hundreds of thousands of dollars in litigation expenses and that her ex-husband, who has family money, has used serial litigation to manipulate her.

Ms. Nenutzka Villamar noted that in her experience, courts often impose additional impediments, such as psychiatric evaluations and counseling, on parents (including domestic violence victims) who have their children removed from the home. Mr. Griffin noted a lack of evidence that anger management has any effect on abusers. On further clarification, he advised that he was distinguishing abuser intervention programs from anger management. After hearing Ms. Carrington state that her ex-husband has prohibited her children from receiving counseling and getting the help they need, Ms. Sonia Hinds remarked that it might be helpful for the committee to look into how to advocate for a child when a parent opposes therapy.

Presentation from Richard Ducote

The remainder of the meeting was spent with Mr. Richard Ducote sharing experiences and insight from his 41-year career, which has involved thousands of cases in 46 states. He began his presentation by sharing his background with the workgroup, including noting that his early experience working as a juvenile probation officer while in law school helped shape his professional career. In the course of his work with families involved in the foster care system, he noticed the system's inability to deal with youth in bad situations. Mr. Ducote noted the continued emphasis on reunification, even when parents are horribly abusive. He advised of the conflicting messages that the system gives mothers: if you are in an abusive relationship and you do not leave to protect your child, we come in and take your child, however, the family courts then deem the mother as vindictive for trying to take the child away from the father. He noted that the vast majority of custody arrangements are worked out without conflict by the parents, yet there is a

small percentage that get most of the courts' attention and end up skewing the courts' perception. Because the abusive parent is generally more prominent and has more financial resources, having those involved in the legal system understand the psyche of abusers and realizing that abusers will do anything to prevent their victims from leaving is critical. He also emphasized the importance of due process and thorough fact-finding in these cases. In Mr. Ducote's opinion, the significance of facts in family courts has diminished over the years; instead, practices and procedures have allowed family courts to become an industry for mental health professionals and various types of lawyers who have realized and benefited from the lucrative nature of family litigation.

Mr. Ducote noted that Maryland already has some excellent laws, including Sections 9– 101 and 9–101.1 of the Family Law Article. However, he believes that even with these laws, the fact-finding process is compromised with the use of attorneys who are tasked with representing the best interests of the children. In his opinion, there is no legitimate basis in having an attorney who plays that role when the decisions are supposed to be made on evidence and facts. Judges are ignoring the evidence and facts and relying too heavily on the opinions of best interest attorneys. He also discussed *Nagle v. Hooks* or "child's privilege" attorneys (which are unique to Maryland), who make the determination as to when a child's privilege should be waived. He expressed incredulity that there can be a situation in which a child discloses abuse or neglect to a therapist, yet a court charged with determining the best interests of the child never hears that critical information because a *Nagle v. Hooks* attorney has refused to waive the privilege on behalf of the child. He would suggest eliminating best interest and child's privilege attorneys; however, he believes child advocate attorneys work well.

His next recommendation was to examine the legitimacy of custody examiners and the weight to which judges are giving custody evaluations. He pointed out that while most custody examiners have been involved in dozens of cases, there is no way of measuring the accuracy and effects of prior recommendations (*i.e.,* the evaluators serve a temporary role in the cases and do not follow up with the children to see whether or not the recommendations made turned out to be the right ones). He thinks custody evaluations are performed most often in cases where a child is most at risk (*e.g.*, cases involving domestic violence or child abuse allegations), yet nothing that is done in a custody evaluation can answer the question of whether or not abuse has occurred. He also noted the problems in having an individual observe the alleged abusive parent and the child interact in the typical evaluation setting, as the child is often deceptively going to appear to have a healthy relationship with the parent. Mr. Ducote also noted that a custody evaluator is often inappropriately making determinations as to the credibility of witnesses, which under the rules of evidence is the job of the trier of fact. He also notes that while the Maryland Rules require custody evaluators to have specified training in domestic violence and child abuse, exceptions exist under grandfather clauses. It is also extremely problematic that a custody evaluator's report can be admitted into evidence without the evaluator's presence (and availability for cross-examination). It is also critical to ensure that the tools the custody evaluator relies upon for the examination are actually designed for and demonstrably useful in assessing what the evaluation is seeking to

examine (*e.g.*, personality tests cannot determine whether or not a person is abusive). Custody evaluators should not be making factual determinations and should be cross-examined.

In response to a question as to whether there is any expert testimony that can be useful in helping a court understand a child's testimony of abuse, Mr. Ducote said that having an expert testify that it is not inconsistent for an abused child to still appear to have a good relationship with the abusive parent when in a public or other controlled setting (such as a therapist's office) is often valuable. Expert testimony may also be useful in explaining that a child may perceive or describe sexual acts in different ways and that there is often no medical or physical evidence of abuse.

Ms. Ruth noted that despite the enhanced criminal penalty in cases involving a child who has witnessed domestic violence, the family courts do not seem to recognize the impact this has, and the justification of "well, he didn't hurt the children" is common in the ordering of joint custody in cases involving domestic violence. She also said that in her experience, she has generally heard that when a child's privilege attorney invokes the privilege, it is done so in furtherance of the therapeutic relationship in order to protect the child's line of communication to the therapist. In Mr. Ducote's opinion, the need to get the facts about a child's abuse clearly outweighs the benefits of a therapeutic relationship. Mr. Ducote once again reiterated the value of child advocacy attorneys and suggested the elimination of best interest and child's privilege attorneys.

Closing Remarks and Adjournment

Chair Wobensmith made brief closing remarks and the meeting was adjourned.

Note: This summary has been prepared at the request of the Chairman; however, please note the archived livestream video of the workgroup meeting, available at http://dls.maryland.gov/policy-areas/workgroup-study-child-custody-child-abuse-domestic-violence, is also available and constitutes as the official minutes of the meeting.

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

Meeting Summary – August 6, 2019

The Workgroup to Study Child Custody Proceedings Involving Domestic Violence or Child Abuse Allegations held its fourth meeting of the 2019 interim on Tuesday, August 6, 2019, in Room 101 of the House Judiciary Committee Room in Annapolis, Maryland. The following members were present:

Secretary of State John C. Wobensmith, Chair
Senator Mary Beth Carozza
Delegate Jazz Lewis
Ms. Camille Cooper
Ms. Buffy Giddens
Mr. Paul Griffin
Ms. Sonia Hinds
Ms. Anne Hoyer
Ms. Inga James
Ms. Joyce Lombardi
Ms. Ruby Parker
Ms. Claudia Remington
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, welcomed everyone and invited the audience to participate in the workgroup's activities. He asked the members of the workgroup for their introductions. The workgroup adopted the minutes from the June 11, 2019 meeting.

Advocate Testimony

The workgroup heard from Ms. Eileen King, the Executive Director of Child Justice. Ms. King noted the importance of the pioneering efforts of the workgroup and provided a brief overview of her background and the evolution of Child Justice. Using an example from one of her cases, she spoke of the tremendous and lasting effects of trauma that is experienced in childhood has on individuals and emphasized how critical it is to make the public aware of these impacts. In response to a question from Senator Mary Beth Carozza, Ms. King stated the importance of early interference in addressing abusive situations and taking reports of abuse seriously. Ms. Nenutzka Villamar stated that in her experience, the fact that domestic violence is occurring

in a home is often held against the non abusive parent, as he or she is accused of failing to protect the child. She inquired whether Ms. King thought that legislation to protect a parent who reports domestic violence from allegations of failing to protect the child would be beneficial. Although Ms. King stated that she has not encountered this situation often in her cases, she thought it would be interesting legislation to further explore and discuss. Ms. Joyce Lombardi expressed the importance of strengthening mandatory reporting laws and enhancing training for the professionals who are required to report suspected child abuse and neglect.

Presentation from Dr. Jennifer Shaw

Workgroup member Dr. Jennifer Shaw next addressed the group and presented on the overall effects of childhood trauma. Dr. Shaw explained that when something is traumatic, it has overwhelmed the baseline capacity to cope; for children, this begins to derail development. Although all people experience trauma, not everyone is necessarily traumatized by it. Dr. Shaw said that sexual abuse is *always* traumatic for a child. Type 1 trauma is an acute event that is generally followed by a phase of safety and stability; Type 2 traumas are traumatic and occur repeatedly over time. Type 2 traumas bring a range of responses, including intense feelings of fear and shame and a loss of trust in others. Complex trauma (also called interpersonal trauma or betrayal trauma) is beginning to be acknowledged more; there is a difference when the traumatic experience involves a trusted caregiver, as the impact is more far reaching and treatment takes longer. Brain development is always altered with complex trauma.

Dr. Shaw also reminded the group of the broad range of sexually abusive behaviors, noting that sexual abuse may include touching and nontouching acts. The Adverse Childhood Experiences Study estimates that 25% of females and 16% of males have experienced sexual abuse as children. Most children (75%) are sexually abused by someone they know; children often believe the abuse is their fault (or may not even understand that the actions are abusive). Warning signs of possible sexual abuse, such as younger children mimicking adult-like sexual behaviors and self-injury in adolescents, were also covered. The remainder of Dr. Shaw's presentation was devoted to sharing and explaining projects created by children during play or art therapy sessions.

Presentation from Sonia Hinds

Workgroup member, Ms. Sonia Hinds next spoke with the group on strategies to create a trauma-informed courtroom. She noted that the stress of a courtroom setting may affect the ability of trauma survivors to communicate effectively. Ms. Hinds advised that children who have been abused may worry that they will be removed from the home or that their parents will be taken away from them. She stressed the importance of creating a safe and compassionate environment, where individuals are listening in order to understand the child and not to criticize or traumatize (*e.g.*, asking "what happened to you" and not "what is wrong with you"). Physical modifications of the environment, such as softer lighting and the presence of security officers, may be helpful as

can having the judge take off his or her robe and come down to the child's level for the testimony (and/or allowing testimony to be given in chambers). Other strategies may include (1) the availability of small fidgets or allowing the child to hold a favorite toy during testimony; (2) therapy dogs; (3) avoiding long waiting periods; and (4) training attorneys to avoid unnecessary cross examinations. She emphasized that various types of therapy are available and should be used when abuse has occurred. She closed by reading "The Girl Who Lost Her Voice," a brief story about a girl who had to testify in court, as an example of a resource that therapists may use in preparing children for court.

Questions and Discussion

In response to a question from Delegate Jazz Lewis, Ms. Hinds answered that many of the recommendations from her presentation can be accommodated by a judge without any necessary statutory changes. She advised that the aggressiveness of opposing attorneys is the main problem. Ms. Villamar acknowledged that her position may not be popular with the group but cautioned that procedural protections for the child must be balanced against a parent's right to test allegations that may impact that parent's constitutional right to raise his or her child. The interests and rights of a parent must be protected and recognized. Dr. Shaw briefly discussed the therapeutic response to situations in which parents who were abused themselves are abusive to children. Ms. Camille Cooper and Ms. Claudia Remington both expressed concerns with the qualifications of some individuals who have been deemed as experts by the courts when allegations of child abuse have been raised. Dr. Shaw noted that a degree in a related field is not enough and stressed the importance of targeted training and experience.

Closing Remarks and Adjournment

Chair Wobensmith made brief closing remarks and the meeting was adjourned.

Note: This summary has been prepared at the request of the chairman; however, please note that the archived livestream video of the workgroup meeting is also available and constitutes the official minutes of the meeting.

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

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

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 statue 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

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.

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

Meeting Summary – August 27, 2019

The Workgroup to Study Child Custody Proceedings Involving Domestic Violence or Child Abuse Allegations held its sixth meeting of the 2019 interim on Tuesday, August 27, 2019, in Room 101 of the House Judiciary Committee Room in Annapolis, Maryland. The following members were present:

Secretary of State John C. Wobensmith, Chair
Senator Mary Beth Carozza
Senator Susan Lee
Delegate Jazz Lewis
Mr. Paul Griffin
Ms. Sonia Hinds
Ms. Anne Hoyer
Ms. Joyce Lombardi
Ms. Claudia Remington
Ms. Laure Ruth
Ms. Jennifer Shaw
The protective parent member was also present.

Welcome and Introductions

The chairman of the workgroup, Secretary of State John C. Wobensmith, welcomed everyone and made numerous announcements, including advising that the workgroup will be forming subgroups in order to facilitate its work. He introduced Professor Barbara Babb of the University of Baltimore School of Law, who was invited to present to the committee on the evolution and structure of the family court system in Maryland. Professor Babb has been instrumental in family court reform both across the country and internationally.

Presentation from Professor Babb

Professor Babb noted that family law represents 46% of Maryland's trial court cases; this percentage has remained fairly consistent throughout the years. Prior to the creation of Maryland's family divisions (the State's version of a unified family court), litigants in family law cases were often subject to duplicative procedures in front of numerous judges/magistrates and competing orders within the same case. She explained the background of the creation of a unified family court system in Maryland, which included an Attorney General's advisory council, a Governor's task force, and 10 years of legislative advocacy. The entities charged with studying the issue identified numerous problems with the prior way of handling family law cases, including the lack of attention given to child-related issues and the lack of interest, temperament, and understanding of some

judges in hearing family law cases. Maryland's family divisions were eventually created by Maryland Rule in 1998 (See Maryland Rule 16-307).

Pursuant to the rule, Maryland's family divisions exist in each of the five jurisdictions (Anne Arundel, Baltimore, Baltimore City, Montgomery, and Prince George's counties) where there are at least seven resident judges of the circuit court; Howard County also essentially operates a family division. One of the most important features of a family division is its comprehensive subject matter jurisdiction over all family cases. This provides the means to have a holistic look at families and children and hear the full range of family law matters (*e.g.,* divorce, protective orders, child abuse, *etc.*). The rule also identifies essential family support services in recognition of the fact that non-legal issues (*e.g.*, poverty, mental health, substance use, *etc.*) are often as important as the legal issues. These essential family support services include mediation, custody investigations, assistance for self-represented litigants, parenting seminars, and behavioral health evaluations. Case management plans and the allocation of appropriate judicial resources are also required. Furthermore, every circuit court (regardless of whether it has a family division) must have a family services support coordinator. Among other responsibilities, this position is tasked with identifying relevant services within the community and making the court aware of them.

Professor Babb also reviewed the system values and intended outcomes of the family divisions, which include (1) preserving the rule of law; (2) stabilizing families in transition; (3) providing safety and protection; (4) preserving family relationships where possible; (5) increasing access to the family justice system; and (6) developing a familiarity with each family. Professor Babb gave examples of specific services within a family division by speaking in greater detail about what is available in Baltimore City. Mr. Richard Abbott, the Director of the Department of Juvenile and Family Services within the Administrative Office of the Courts also gave brief remarks.

In order to assess the performance of trial courts, the Bureau of Justice provides specific measures that can be used: (1) access to justice; (2) expedition and timelines; (3) equality, fairness, and integrity; (4) accountability and independence; and (5) public trust and confidence. At the direction of the General Assembly, a workgroup used this framework to develop specific performance standards and measures for the State's family divisions. Professor Babb encouraged workgroup members to look at the developed standards.

Professor Babb also noted that the final report of the Commission on Child Custody Decision-Making and the recommendations contained within may be useful to the workgroup. She advised that many of the recommendations of the commission may align with the workgroup's charge.

Questions and Discussion

Senator Susan Lee spoke briefly about the unsuccessful efforts in passing legislation to implement the recommendations of the Commission on Child Custody Decision-Making and the importance of continuing to build on and advocate for many of those recommendations. Ms. Laure Ruth mentioned that one of the issues being discussed by the workgroup was the option of a specialized court for cases in which domestic violence or child abuse has been alleged and asked for Professor Babb's thoughts. Professor Babb noted that her vision is a unified family court rather than a specialized court. In her opinion, a specialized court does not provide a holistic look at a family. In response to questions from Senator Mary Beth Carozza regarding organizational changes, Professor Babb supported looking into the expansion of family divisions to other jurisdictions. She also noted the difficulty of changing the structure of the court system without involving the Judiciary. Delegate Kathleen Dumais expressed her agreement with the importance of expanding family divisions and the difficulties of having a true unified, specialized family court due to the structure of Maryland's Judiciary system, in which circuit courts are partially funded and administrated at the local level. Delegate Dumais spoke of the importance of the family law training that judges receive and expressed conflicting feelings about having judges who only hear family law matters. On the one hand, these judges naturally develop expertise in family law, however, the problem of "issue fatigue" (*i.e.*, missing nuances due to a cynical feeling of "I've heard this before") is also present. In her opinion, the Judiciary is taking family law cases very seriously and constantly trying to better train judges.

In response to a question, Professor Babb expressed her opinion that legislation to specify in statute what factors a court must consider to determine the "best interest of a child" in a custody case would be beneficial; this was a recommendation of the Commission on Child Custody Decision-Making. Delegate Dumais shared other recommendations of the commission, some of which would be implemented by the Judiciary (*e.g.,* enhanced training) and others by the General Assembly (*e.g.,* a civil Gideon rule to provide attorneys for low-income litigants). Mr. Paul Griffin asked Professor Babb whether she thought the rule has had any impact on the identified problem of judges lacking the temperament and interest in family law cases. Professor Babb expressed her belief that the judicial nominating and appointments process must ensure that even if nominees do not have prior experience in family law issues, they must have at least the willingness to learn. The necessity of appropriate temperament was also discussed. Professor Babb and Mr. Griffin spoke briefly about problem-solving courts and the possibility of utilizing specialized dockets with dedicated judges to hear child custody cases involving allegations of child abuse and/or domestic violence. In response to a question from Ms. Joyce Lombardi, Professor Babb noted her support for training as many of the stakeholders as possible and looking into whether relevant Maryland Rules related to required trainings could be improved.

Closing Remarks and Adjournment

Chair Wobensmith made brief closing remarks and the meeting was adjourned.

Note: This summary has been prepared at the request of the chairman; however, please note that the archived livestream video of the workgroup meeting is also available and constitutes the official minutes of the meeting.

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

Meeting Summary – September 3, 2019

The Workgroup to Study Child Custody Proceedings Involving Domestic Violence or Child Abuse Allegations held its seventh meeting of the 2019 interim on Tuesday, September 3, 2019, in Room 101 of the House Judiciary Committee Room in Annapolis, Maryland. The following members were present:

Secretary of State John C. Wobensmith, Chair
Senator Mary Beth Carozza
Senator Susan Lee
Ms. Camille Cooper
Mr. Paul Griffin
Ms. Anne Hoyer
Dr. Inga James
Ms. Joyce Lombardi
Ms. Claudia Remington
Ms. Laure Ruth
Ms. Nena Villamar
The protective parent member was also present.

Welcome and Introductions

The chairman of the workgroup, Secretary of State John C. Wobensmith, welcomed everyone and asked members if there were any additions to the proposed minutes of the August 20, 2019 meeting. Hearing no objections, the minutes were adopted. Secretary Wobensmith then briefly summarized the previous workgroup meeting featuring Professor Barbara Babb. He clarified that Professor Babb's presentation was meant to give a general overview and historical perspective of the family court system and that some aspects of the presentation did not relate to the specific focus of the workgroup. He urged the group to continue to focus its examination on custody outcomes in a data-driven, trauma-focused manner.

Secretary Wobensmith then introduced Ms. Hera McLeod, who was invited to present to the workgroup on her experience in the Maryland family court system leading up to the murder of her 15-month old son, Prince, by his father during an unsupervised visitation.

Presentation from Ms. McLeod

Ms. McLeod began by highlighting changes in Maryland that have happened since her case occurred, including the addition of a supervised visitation center in Montgomery County. However, Ms. McLeod noted that there is still necessary work to be done in the area of family court reform in order to protect children.

Ms. McLeod next spoke about the abusive relationship she had with her child's father and outlined the information she presented in her custody case, including the witnesses she was able to offer and the evidence that was not allowed to be used against the father. For example, Ms. McLeod described her custody evaluator as being excellent but not qualified or in a position to evaluate the psychological health of the father. Ms. McLeod noted that the custody evaluator was also hindered in her ability to evaluate the fitness of the father as a parent because the father was a Virginia resident and the custody evaluator was therefore unable to conduct an in-home assessment. She also relayed that although the court ordered the child's father to undergo a psychiatric examination, it allowed the father to choose his own evaluator. As a result, the father was able to use a Virginia-licensed therapist who misrepresented her credentials. The individual was licensed only as a school therapist and was not qualified to assess adults; she diagnosed the father as having only mild depression.

Ms. McLeod described the court as having "a lot of smoke" in her case to the degree that the judge was unable to see clearly and needed physical evidence of abuse. She highlighted that opposing counsel also built a case of parental alienation. Although Ms. McLeod initially blamed the judge for her son's death, she now believes the judge was also a victim of the system. She spoke of systemic issues, including errors by child protective services (CPS), criminal court, police errors, and errors in the family court process; such issues cripple a judge's ability to make sound decisions. She emphasized that her case is not unique.

Questions and Discussion

Ms. Laure Ruth asked what pertinent information would have helped the judge protect Prince more. Ms. McLeod answered that the judge did not have the resources or time to vet the therapist used by the father for his psychological evaluation. Ms. McLeod recommended that the court limit psychological evaluations to forensic psychologists known to the court. She also noted the problem of accessing court and police records from other states, especially when there is no conviction. After Ms. Ruth asked Ms. McLeod how she thought the court should get such information, Ms. McLeod suggested that the court have an investigative arm.

Ms. Joyce Lombardi asked if Ms. McLeod had access to prior CPS records during the trial and whether they were introduced. Ms. McLeod said that part of the issue with past CPS records was that they were from Virginia (where another child of Prince's father resided). Ms. McLeod reached out to Virginia for the relevant file, but for reasons unknown to her, they did not have it and she instead had to attempt to introduce a police report of the initial incident. However, the judge did not allow the report to be entered into evidence because the arresting officer was not available. Another issue was that the father was eventually able to have his record expunged, so there was no criminal record to introduce. The inability of Ms. McLeod to offer into evidence police, CPS, and court records from another state relating to the father's previous arrest (for the abuse of another child) was revisited several times throughout the hearing.

Senator Mary Beth Carozza asked Ms. McLeod to elaborate on whether her custody evaluator was limited by the current system. Ms. McLeod stressed that prior to her meeting with the custody evaluator, she had been advised by her attorneys on how to approach the evaluator in order to avoid accusations of parental alienation. Instead of offering her own opinions, Ms. McLeod presented information gathered from a private investigator; the custody evaluator concluded that the father was unwell and recommend supervised visitation. Ms. McLeod then outlined the challenges she faced when the recommended visitation supervisor had no prior training as a supervised visitation professional. She noted that the court, over her attorney's objection, allowed opinion evidence from the visitation supervisor on a subject that Ms. McLeod felt the supervisor was unqualified to give. She talked about the function of a supervised visitation professional and how there are no statutory requirements in Maryland for individuals supervising visitation. Ms. McLeod also pointed out that supervised visitation at the time was very costly for her.

Ms. Nena Villamar then asked for clarification regarding the involvement of CPS. Ms. McLeod responded that she left the relationship when Prince was only two weeks old and CPS activity was limited to Virginia (where another child of Prince's father resided). Ms. McLeod expressed a desire for the courts of different states to be able to work more collaboratively to share information on issues like child abuse proceedings. Ms. McLeod also offered that while there may have only been circumstantial evidence pointing to the dangerousness of her child's father, considering the lower standard of proof in a civil proceeding, she believes it should not take a conviction for the court to take action to protect a child.

In response to a question from Mr. Paul Griffin, Ms. McLeod stated that there was never a specific finding by the court that the father had committed domestic violence. Ms. McLeod talked about how victims of domestic violence react to or understand the violence against them in unexpected ways. Later in the meeting, Ms. McLeod further spoke to the fact that victims of domestic violence often do not present well in court, in large measure because the court process requires survivors to re-experience their trauma repeatedly through continued exposure to their abuser.

Ms. Claudia Remington asked Ms. McLeod to elaborate on the advice she received from counsel. Ms. McLeod discussed the juxtaposition of abiding by some of the attorney's advice, such as expressing the desire for her son to have a healthy relationship with his father and always referring to Prince as "our son," while also communicating to the court that her son's father was a "psychopath killer rapist." After Ms. McLeod noted that she was required to attend a co-parenting class, Ms. Remington asked whether Maryland courts need to better understand that there are situations where co-parenting is not possible. Ms. McLeod stated she believed this was at the core of the current movement. She again stressed the importance of infrastructure to support safe, supervised visitation for children who are never going to be safe around parents or for victims of

domestic violence for whom unsupervised custody exchanges are dangerous. She also framed the issue as a public health issue, not just a courts issue.

Ms. McLeod then fielded several questions from audience members. In response to one audience member, Ms. McLeod pointed to potential conflicts of interests and recommended that attorneys selected to represent a child should not also be allowed to work for profit representing parents. In response to another question regarding the power of individual judges, Ms. McLeod opined that it might be desirable to establish a panel system for family court judges, in part because the current system places a tremendous burden on individual judges. Responding to another audience question regarding the mental evaluation of her son's father, Ms. McLeod pointed out that even though serious cases do not represent the majority of the family court docket, there has still not been enough discussion on how to scientifically identify dangerous parents. She opined that courts should have the tools to identify serious cases and have an identified list of independent professionals to conduct evaluations rather than relying on experts selected by parties.

Following questions from the audience, an extended examination of the mental health professional hired by the father ensued with questions from Ms. Camille Cooper and Senator Susan Lee. Ms. McLeod reiterated that the mental health professional who evaluated the father was not assigned by the court. That professional held herself out, including during cross examination by Ms. McLeod's counsel, as being a clinical practitioner equivalent to what is required in this State. However, her credentials as a school counselor in Virginia did not qualify her to evaluate an adult and were not equivalent to Maryland requirements. It was noted that there is currently no method for the court to independently verify or assess the credentials of a mental health professional beyond an opposing party's cross examination.

Ms. Ruth then touched on an issue that she has experienced with courts not providing parties enough time to effectively present a case, which Ms. McLeod said was not an issue in her situation. Ms. McLeod noted the cost burden extended litigation presents to many people and expressed an interest in exploring a process outside of the court for the presentation of some evidence. After Ms. Ruth tried to ground discussion in existing constitutional and evidentiary requirements and the resulting realities of our family court system, Ms. McLeod encouraged the workgroup to not just accept flaws in the system, but to think outside the box and work to change them. Secretary Wobensmith agreed and reiterated this as the focus of the workgroup.

Following several additional comments from the audience, Dr. Inga James reiterated that the workgroup should remain mindful of the volume of individuals making money from child custody and visitation.

Closing Remarks and Adjournment

Secretary Wobensmith then made brief closing remarks, including noting the formation of subcommittees within the workgroup, and the meeting was adjourned.

Note: This summary has been prepared at the request of the chairman; however, please note that the archived livestream video of the workgroup meeting is also available and constitutes the official minutes of the meeting.

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

Meeting Minutes – September 17, 2019

The Workgroup to Study Child Custody Proceedings Involving Domestic Violence or Child Abuse Allegations held its eighth meeting of the 2019 interim on Tuesday, September 17, 2019, in Room 101 of the House Judiciary Committee Room in Annapolis, Maryland. The workgroup met in the House Judiciary Committee Room for approximately one hour before breaking down into three subgroups. The subgroups met separately for approximately one hour.

The following members were present:

Secretary of State John C. Wobensmith, Chair
Senator Mary Beth Carozza
Senator Susan Lee
Ms. Camille Cooper
Mr. Paul Griffin
Ms. Sonia Hinds
Ms. Anne Hoyer
Dr. Inga James
Ms. Joyce Lombardi
Ms. Ruby Parker
Ms. Claudia Remington
Ms. Laure Ruth
Ms. Nenutzka Villamar
The protective parent member was also present.

Welcome and Upcoming Meeting Dates

The chairman of the workgroup, Secretary of State John C. Wobensmith, commenced the meeting at 11:06 a.m. and welcomed everyone to the meeting. The chairman advised that because the scheduled presenter for the meeting had canceled, the workgroup would instead first receive a presentation from Mr. Michael Lore, Chief of Staff for Senator Susan Lee, on potential 2020 legislation for the workgroup to consider. Following Mr. Lore's presentation, the workgroup would break down into preassigned subgroups.

The chairman reviewed the structure for the subgroup meetings. The chairman stated that although the subgroup meetings will not be live streamed, they will be announced in the same manner as full workgroup meetings, and the committee staff from the Department of Legislative

Services (DLS) will prepare the minutes. While the subgroup meetings are open to the public, participation in the subgroups' discussions will be limited to the workgroup members. The chairman said that the subgroups may hold additional meetings if desired, but that arrangements to do so must be done through DLS staff.

The chairman announced the workgroup's upcoming meeting dates on October 1, 2019, and October 15, 2019, which will be dedicated solely for subgroup work. The workgroup will reconvene as a whole on November 12, 2019, at which point the subgroups will report on their progress and receive input from the full group. The workgroup will also meet as a whole on December 17, 2019, and January 7, 2020. The workgroup will take a hiatus during the 2020 session and reconvene after *Sine Die*.

Potential 2020 Legislation

The chairman stated that the workgroup's final report, due June 1, 2020, will contain the workgroup's recommendations and findings; however, there are several less complicated issues that the workgroup may wish to consider for the 2020 session. The chairman introduced Mr. Lore to present potential legislation for the 2020 session. Mr. Lore informed the workgroup that his presentation was based on his review of family law literature, Maryland's family law legislative history, and a review of relevant statutes in other states. Mr. Lore suggested that the workgroup's interim report could be a summary of various pertinent sources and statutes to serve as a guide for *pro se* litigants, and include relevant scientific-based information. He also suggested that the workgroup consider what data and metrics the workgroup may want to be tracked.

Mr. Lore referenced the 2014 report of the Commission on Child Custody Decision–Making and recommended the codification of current common law, including the best interest of a child standard, and then clarifying and modifying the law where appropriate. Mr. Lore noted that because much of the law in this area is common law, it is difficult for *pro se* litigants to understand and find. By codifying the law, *pro se* litigants will be better equipped to understand the law and it would be easier to modify particular standards in the future.

Mr. Lore next reviewed prior legislative history related to §9–101 of the Family Law Article, including proposed legislation from 1990. Mr. Lore also suggested looking at other states, particularly North Dakota, as potential models. Mr. Lore recommended initially focusing on situations in which there has been direct abuse of the child who is the subject of the custody action. Specifically, he recommended eliminating the requirement that the court must first determine whether there is a likelihood of continued abuse or neglect before denying custody and visitation rights. In his opinion, many judges skip this step once a party has shown reasonable grounds that

a child has been abused or neglected. Instead, the court would be required to deny custody and unsupervised visitation unless the abusive parent can prove rehabilitation and no likelihood of continued abuse by a preponderance of the evidence. Mr. Lore recommended that in order to obtain supervised visitation, a parent who had abused or neglected the child must show by a preponderance of the evidence that doing so is in the best interest of the child. Mr. Lore also mentioned the possibility of adopting the standard that if there is clear and convincing evidence that it is in the best interest of the child to be with a particular parent (for instance, in cases where there is abuse by both parents), then the court may make such an award. Mr. Lore noted that he was concerned with cases that have allowed family members to supervise visitation between a child and an alleged abuser, even though the person supervising the visitation is on record as stating that he or she did not believe there was any abuse. He also noted that grants to counties to support supervised visitation centers may be required.

Ms. Laure Ruth wanted to recognize the research stating that children who witness violence between intimate partners, but who are not themselves victims of child abuse, suffer from the same trauma and reactions as victims of child abuse. She expressed that domestic violence is as bad as child abuse, and she does not want to diminish the impact of domestic violence by focusing statutory changes solely on child abuse. Mr. Lore stated that his recommendations were "low-hanging fruit" and he wanted to focus on the direct abuse of children because that is "one step removed" from a child witnessing intimate partner abuse. He opined that it would be easier to first pass a law dealing with the direct abuse of children, then later expand the law to include children who witness abuse. To support his approach Mr. Lore cited a Wingspread Conference report that stated that the protection of children is the first priority. Ms. Ruth agreed that it may be easier to pass the law suggested by Mr. Lore but worried that such a law would undercut the seriousness of domestic violence and create a precedent that child abuse was more important.

Ms. Camille Cooper opined that legislation, including the codification of the best interest of the child standard, should be broken down by types of abuse. She stated that sexual abuse is not the same as abuse and neglect, and that sexual abuse may need to be treated and approached separately. Ms. Cooper also cautioned against codifying case law that penalizes poor parents who have difficulty providing food, clothing, and shelter for their children, and emphasized the need for caution and precision when drafting legislation relating to neglect. Mr. Lore noted that the best interest of the child standard always provides a "catch all" and the need for judges to articulate the basis for their findings in this regard, particularly in cases where a judge awards an abusive parent visitation. Ms. Cooper stated that a further exploration of standards related to the best interest of the child may be necessary; it is her organization's belief that it is never in a child's best interest to be reunited with a sexual abuser. Mr. Lore noted that under the *Taylor v. Taylor*, 306 Md. 290 (1986) decision, the assumption of joint custody does not apply if there is child abuse. However,

Mr. Lore again emphasized the need to codify the current common law standards in order to adopt changes in the future. He also expressed that even judges were confused about appropriate application of common law standards.

Dr. Inga James supported Ms. Ruth's statement about the damage domestic violence does to children, and noted the number of abusers who use the family court system to control their victims. Later in the meeting, Ms. Claudia Remington expressed her support of this position and the need for policymakers to understand the adverse harm experiencing abuse or neglect and/or witnessing intimate partner abuse has on children. Numerous audience members also shared their experiences and recommendations, including suggestions that (1) some limitations need to be put on what decisions judges can make; (2) standards relating to the best interest of the child should be re-examined; and (3) the roles and qualifications of other individuals involved in the custody process (such as best interest attorneys) should be evaluated.

The discussion of potential legislation continued, with Mr. Lore further clarifying his proposals and strategies in response to questions and comments from workgroup members. He repeatedly framed his suggestions as low-hanging fruit and read statements from publications of the American Psychological Association and the National Council of Juvenile and Family Court Judges that reiterated the inappropriateness of child custody and visitation when there have been allegations of abuse unless specified precautions or conditions have been met. He also touched on the importance of appropriately training custody evaluators, the potential of certifying evaluators, and the misuse of parental alienation syndrome.

Audience member Ms. Lisae Jordan of the Maryland Coalition Against Sexual Assault, expressed her appreciation for the workgroup's efforts and urged the members not to start at a position of compromise and to instead include domestic violence and child abuse in any legislative proposals, as both are extremely detrimental to children. Senator Lee reiterated that the workgroup will be considering everything. After thanking Mr. Lore for his presentation, the chairman made closing remarks and adjourned the full meeting shortly after noon in order for the members to attend subgroup meetings.

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

Meeting Summary – October 1, 2019

The Workgroup to Study Child Custody Proceedings Involving Domestic Violence or Child Abuse Allegations held its ninth meeting of the 2019 interim on Tuesday, October 1, 2019, in Room 100 of the House Judiciary Committee Room in Annapolis, Maryland.

The following members were present:

Secretary of State John C. Wobensmith, Chair
Senator Mary Beth Carozza
Senator Susan Lee
Mr. Paul Griffin
Ms. Sonia Hinds
Ms. Anne Hoyer
Ms. Ruby Parker
Ms. Claudia Remington
Ms. Laure Ruth
Ms. Nenutzka Villamar
The protective parent member was also present.

Welcome

The chairman of the workgroup, Secretary of State John C. Wobensmith, welcomed everyone to the meeting and advised that the workgroup's prior plans to only meet in subgroups this October had changed due to the availability of the meeting's presenter, Dr. Daniel G. Saunders. The chairman reminded the workgroup members that they are eligible for expense reimbursements and stated that the upcoming workgroup meeting, on October 15, 2019, will be dedicated to subgroup meetings. The chairman said that the subgroups may hold additional meetings if desired but that arrangements to do so must be done through the Department of Legislative Services staff. The chairman also asked member if there were any additions to the proposed minutes of the September 17, 2019 meeting. Hearing no objections, the minutes were adopted.

Certificates of Appreciation

The chairman recognized three individuals for their work in Maryland. The chairman first recognized Duane Dieter, founder and developer of Close Quarters Defense, for his Citizens Hero Network program. The Citizens Hero Network strengthens communities by empowering young

children to stand up for themselves, their peers, and what is right. The program also has a training component to restore trust in law enforcement. The program focuses on appropriate de-escalation techniques and proper use of force, emphasizes character building, and encourages officers to act as positive role models and mentors. The chairman next recognized Robert Duckworth, former Clerk of the Circuit Court for Anne Arundel County, and Kathleen Blough, former Assistant Chief Deputy Clerk of the Circuit Court for Anne Arundel County, for their efforts in creating and advocating for a deed shielding procedure to provide survivors of domestic violence and human trafficking the opportunity to purchase a home without risking their safety. Senator Mary Beth Carozza conveyed her appreciation and expressed the positive impact legislative and non-legislative efforts can have on the lives of individuals.

Presentation from Daniel G. Saunders, Ph.D.

The chairman then introduced Dr. Saunders, professor emeritus of social work at the University of Michigan. Dr. Saunders' presentation focused on custody and visitation decisions in cases of intimate partner violence (IPV). Dr. Saunders told the workgroup that in order to provide a comprehensive understanding of IPV, his presentation is based on information gathered from a variety of sources and not solely on his own research. His presentation will identify 11 main problem areas that have been identified through research and potential solutions.

Dr. Saunders noted some of the features of post-separation domestic violence, including a higher risk of stalking and homicides, lengthy litigation as a form of ongoing control and harassment, and that half of the abusers are likely to be child abusers as well. He also noted some of the short-term impacts that exposure to domestic violence has on children, including aggressive behavior, nightmares, flashbacks, depression, and teen substance abuse. He explained that he uses the term "exposure to domestic violence" instead of "witness violence" because children often hear, rather than see, domestic violence, but the trauma to the child is the same.

The first problem identified by Dr. Saunders was that IPV is often undetected because professionals fail to properly screen for domestic violence in child custody and visitation cases. Nondetection of IPV rates are as high as 40 to 50%, in part due to the failure of professionals to ask the proper questions to detect IPV. Additionally, approximately 40% of IPV cases are inaccurately labeled as high conflict. Dr. Saunders recommended against using the term high conflict to describe child custody cases because the term implies that both parties are equally culpable. Dr. Saunders noted that the detection of domestic violence still has little impact on the decisions and recommendations in custody and visitation cases. Dr. Saunders recommended mandatory intake screening for domestic violence by all professions in all settings. Dr. Saunders cited California and Wisconsin as examples of states that require specific questions on intake forms

to increase detection of IPV. He also recommended implementing comprehensive screening tools, such as those available from the Battered Women's Justice Project or the Wisconsin Coalition to End Domestic Violence. Lastly, Dr. Saunders recommended training for professionals. The training should include interview methods to increase the trust and comfort level of survivors and education on the effects of IPV. Dr. Saunders said that a major reason individuals leave an abusive relationship is concern over the impact of violence on their children. He also emphasized reasons why an individual may stay in an abusive relationship including (1) fear of financial loss; (2) the belief that a child needs their father; (3) fear that they will lose custody; (4) fear that they will be killed or stalked; and (5) family pressure.

The second problem identified by Dr. Saunders was that custody evaluations are too broad and/or focus on irrelevant factors. Dr. Saunders recommended the adoption of a mandatory template or form for custody evaluators to follow. As examples, Dr. Saunders pointed to a recent California law that specifies what custody evaluators must assess and to guidelines promoted by the nonprofit organization Child Abuse Solutions. Dr. Saunders also encouraged the workgroup to review the National Council of Juvenile and Family Court Judges' recommendations for custody evaluations. Specific information needed in a custody evaluation includes the short- and long-term safety concerns for children and/or a parent and the impact of abusive behaviors on each child, each parent, and each parent/child relationship.

The third problem identified by Dr. Saunders was the assumption that joint custody is the best option for promoting the safety and welfare of children. Dr. Saunders stated that this assumption places the interests of parents over children, particularly in cases involving domestic violence and child abuse. Dr. Saunders recommended avoiding the presumption that joint custody is in the best interest of children and noted that research supports the conclusion that the safest outcomes for children are achieved through individualized assessments of a child's best interests.

The fourth problem identified by Dr. Saunders was that domestic abuse is not taken seriously in custody and visitation decisions. When evaluating the best interests of a child, child maltreatment and IPV are often given equal or lessor weight than other factors judges are required to consider. As a solution, Dr. Saunders recommended adopting the presumption that abusers should not have custody. Dr. Saunders noted that approximately 30 states have already adopted the presumption that abusers should not have custody. Dr. Saunders explained that some states have been reluctant to adopt this presumption, arguing that the evidentiary standards to establish IPV are too high. If the presumption that abusers should not have custody is not adopted, Dr. Saunders recommended a requirement to give extra weight or priority to child maltreatment and IPV in a best interest evaluation. Dr. Saunders noted that 8 states have adopted this approach; this includes Louisiana, which makes the potential for child maltreatment the primary factor.

Dr. Saunders also recommended enacting the best interest factor law as recommended in the 2014 report from the Commission on Child Custody Decision-Making.

The fifth problem identified by Dr. Saunders was the assumption that survivor parents must always facilitate a good relationship between the children and their ex-partner. Dr. Saunders noted that this assumption causes the most harm to survivors and their children because when survivor parents raise concerns about their ex-partners, the survivor parent is labeled as uncooperative or as a parental alienator. States with "friendly parent" statutes have higher rates of recommendations for custody to abusive parents, even in states with a presumption that abusers should not have custody. Dr. Saunders also reviewed the results of another study that found that, when using a vignette, if there was an exemption to the friendly parent provision for IPV, judges had a higher likelihood of recommending custody to an abused mother and a lower likelihood of a joint custody award. Dr. Saunders recommended (1) adopting legislation stating that parental reports of child abuse cannot be used against a parent in custody and visitation determinations; (2) enacting exemptions to the friendly parent standard in IPV cases; and (3) mandating training on the reasons that survivors are reluctant to have children in unsupervised contact with an abusive ex-partner.

The sixth problem identified by Dr. Saunders was the assumption that co-parenting is always possible and that it is preferable in IPV cases. Dr. Saunders explained that co-parenting, or even the simplest communications between ex-partners, may be impossible. Some abusive parents use co-parenting merely to exert control over the survivor parent and have little actual interest in maintaining a relationship with the children. Dr. Saunders recommended training on assessment methods to determine whether co-parenting, parallel parenting, or no contact between parents is most feasible in a particular custody arrangement.

The seventh problem identified by Dr. Saunders was that coercive behavior is often ignored when making custody and visitation decisions. This is a problem because coercive and controlling behaviors negatively impact survivors and children to the same extent as physical abuse. Dr. Saunders noted that in one vignette study, only 23% of evaluators paid attention to coercive behavior. Dr. Saunders recommended (1) expanding the definition of abuse in policies and training material to include coercive behavior; (2) using assessment tools that measure coercion, such as the *Mediator's Assessment of Safety Issues and Concerns* by Connie Beck; and (3) using the assessment of coercion to tailor recommendations. Dr. Saunders also highlighted some of the difficulties that arise during assessments. Dr. Saunders stated that trauma can lead to memory problems that make survivors appear noncredible. Survivors may also recant for a variety of reasons including fear, family pressures, or the desire to protect someone they feel close to. Additionally, Dr. Saunders noted that some proponents of parental alienation believe that it is easy to discern when a claim of child abuse is real or fake based on inaccurate stereotypes.

The eighth problem identified by Dr. Saunders was that professionals may not be aware of heightened lethality risks to parents and children after separation. Dr. Saunders recommended mandated training for all professionals (judges, custody evaluators, etc.) on lethality assessment methods, and noted that the leader in these efforts, Dr. Jacqueline Campbell, is located in Maryland.

The ninth problem identified by Dr. Saunders was implicit gender bias against mother survivors. Dr. Saunders explained that numerous gender bias studies have overwhelmingly detected a gender bias against mother survivors, which leads to the mistrust of mother survivors and the trivializing of their claims of abuse. He gave examples of how sexist beliefs and myths can impact outcomes in custody cases, putting children at risk. Dr. Saunders compared these prejudices to habits and recommended sustained, mandated gender bias reduction training in order to break them. Dr. Saunders also recommended assessing evaluators in order to screen out those who show bias, particularly since judges give custody evaluations so much weight. He noted that training on implicit, or unintended, bias can be particularly helpful, as it reduces some of the defensiveness that individuals feel when confronted with evidence of prejudicial attitudes.

The tenth problem identified by Dr. Saunders was how mental health issues caused by the traumatic effects of abuse may mistakenly be interpreted as chronic traits affecting parental fitness. Dr. Saunders recommended mandated training for all professionals on the traumatic effects of IPV, including the trauma of potentially losing child custody or having an unsafe visiting arrangement. Additionally, Dr. Saunders recommended adopting legislation, such as in Louisiana, that states that evidence that an abused parent suffered from the effects of past abuse by the other parent must not be grounds for denying that parent custody. It is imperative for the mental health symptoms of survivors to not be viewed as chronic traits that demonstrate the survivor's shortcomings as a parent. Instead, the traits should be recognized as stemming from the traumatic and abusive conditions. While the survivor's parenting ability may be affected, it can generally return after a period of safety.

The final problem identified by Dr. Saunders was that children and survivors may be harmed during unsupervised or poorly supervised visits. Dr. Saunders recommended placing conditions on visitations and exchanges of the child and suggested requirements for supervised visitation to be supervised by an agency or a person who is not a family member or friend for transfers to occur in a protected setting and for courts to require that perpetrators complete certain requirements, such as abuser intervention programs.

Questions and Discussion

The chairman thanked Dr. Saunders for his presentation and invited questions from the members. In response to questions and comments from Senator Carozza, Dr. Saunders emphasized that judges should not simply accept the recommendations and opinions of evaluators. Judges need to receive training on domestic violence and the effects of trauma so that they can critically review the evaluations they receive. At the same time, it is important to recognize that judges do rely heavily on the evaluations; therefore, training and other requirements are needed to improve the quality of what is submitted to judges. Dr. Saunders also recommended training for all supervised visitation programs through the National Council of Juvenile and Family Court Judges. Additionally, Dr. Saunders recommended that all supervised visitation programs be members of the Supervised Visitation Network and again reiterated the necessity of training on lethality assessment risks.

Ms. Camille Cooper raised issues with having a goal of reunification in cases involving child sexual abuse because *any* contact between a child and the sexual abuser may be traumatizing for the child. Instead, Ms. Cooper said that the goal should be for children to be able to heal from their sexual abuse. Dr. Saunders acknowledged that a reunification presumption, like a joint custody presumption, may be damaging to the child. Dr. Saunders stated he would try to locate studies that rebut the presumption of reunification in cases involving child sexual abuse.

In response to a question from Ms. Nenutzka Villamar, Dr. Saunders acknowledged that victims of domestic abuse are faced with the problem of speaking out about their abuse and being labeled as an alienator or staying in an abusive relationship and being blamed for failing to protect the child. Ms. Laure Ruth encouraged the workgroup to heed the advice of many of the presenters to review the 2014 report from the Commission on Child Custody Decision-Making. In response to a question from Ms. Ruth, Dr. Saunders discussed studies that have attempted to analyze the effectiveness of abuser intervention programs. He also stated that he believes most treatment programs, often six months or one year in duration, are too short to adequately address the causes of abusive behavior and prevent recidivism.

Mr. Paul Griffin raised the issues of the "just world" belief. Mr. Griffin stated that IPV may be minimized due to the perception that a "good" person would not marry an abuser, therefore the nonabuser must also be at fault or not really a "good" person. Mr. Griffin agreed with the presenter's recommendations about the need for training for judges and evaluators but also raised his concern over the effectiveness of training. Dr. Saunders acknowledged that some individuals receiving the training may already be predisposed to accept the training's message.

In response to a question from Senator Susan Lee, the speaker discussed continuing efforts from fathers' rights groups around the country to establish a joint custody presumption. Ms. Claudia Remington emphasized the need to look at legal custody, not just physical custody, because an abuser may still exercise coercive control over a survivor through legal custody even if the abuser does not have physical custody or visitations.

Closing Remarks and Adjournment

The chairman made brief closing remarks and adjourned the meeting.

Note: This summary has been prepared at the request of the chairman; however, please note that the archived livestream video of the workgroup meeting is also available and constitutes the official minutes of the meeting.

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

Meeting Summary – November 12, 2019

The Workgroup to Study Child Custody Proceedings Involving Domestic Violence or Child Abuse Allegations held its tenth meeting of the 2019 interim on Tuesday, November 12, 2019, in Room 100 of the House Judiciary Committee Room in Annapolis, Maryland.

The following members were present:

Secretary of State John C. Wobensmith, Chair
Senator Susan Lee
Ms. Camille Cooper
Mr. Paul Griffin
Ms. Anne Hoyer
Dr. Inga James
Ms. Joyce Lombardi
Ms. Ruby Parker
Ms. Laure Ruth
The protective parent member was also present.

Welcome

After the chairman of the workgroup, Secretary of State John C. Wobensmith welcomed everyone to the meeting, the members viewed a short video called *Voices from Family Court: A Call for Reform* by Danielle Pollack, which provided additional context for the work the workgroup has been tasked with and demonstrated that the problems in family court are not just limited to Maryland. The chairman made additional announcements, including noting that the interim report will not contain recommendations and the workgroup still does not plan to support legislation in 2020.

Subgroup A

Senator Susan Lee briefed the workgroup on the progress Subgroup A has made so far regarding recommendations. The subgroup has not reached a consensus on a recommendation for a specialized court or a specialized docket. The subgroup has discussed whether it is necessary to create a specialized court or docket in statute, or whether a recommendation would suffice. The subgroup noted that the Administrative Office of Courts currently has an application process for problem-solving courts (*e.g.* drug courts) that would permit the creation of a specialized family law court. If there is a recommendation for a specialized court or docket in statute, some members

of the subgroup expressed an interest in an initial pilot program, potentially in Baltimore or Montgomery County. In a potential pilot program, one judge with an expressed interest in family law cases would be appointed to the specialized family court. This judge would receive access to resources and experts. It was also discussed that in this pilot program, the right to civil counsel could apply to all parties. Senator Lee noted that the subgroup does not have a recommendation at this time regarding the right to civil counsel. While the subgroup is in favor of the civil right to counsel with an emphasis on civil right to counsel in child custody cases involving allegations of child abuse or domestic violence and believes that counsel is an important tool in child custody cases, there is concern that the high fiscal note associated with such a recommendation would be a barrier, as has been the case in previous sessions.

The subgroup has also discussed codifying the "best interest of the child" standard. While the subgroup is in favor of adopting this standard and believes that it would be very beneficial in child custody cases, members want to be sure that the recommendation is within the scope of the workgroup's focus. The subgroup has discussed recommending that a parent's failure to seek a protective order or to protect a child from exposure to domestic violence should not be a basis for an allegation of neglect against the victim of domestic violence. The subgroup discussed whether to add this potential recommendation in code or as a recommendation to the Department of Human Services. Finally, the subgroup discussed potential changes to § 9-101 of the Family Law Article. These potential changes included clarifying that § 9-101 should not apply to Child in Need of Assistance and Termination of Parental Rights cases. Additionally, the subgroup discussed adding language into § 9-101 to specify that "when determining whether abuse or neglect is likely to occur if custody or visitation rights are granted to a party, the court must articulate what factors the judge considered and how those factors effected the judge's finding."

Subgroup B

Ms. Camille Cooper presented a report on the progress on Subgroup B. She noted that the subgroup had spent most of its time so far discussing recommendations pertaining to judicial training. Instead of a general recommendation for increased training, members really want to make sure that specific elements/topics are covered within trainings. The subgroup did not necessarily want to recommend specific trainings; instead, the subgroup noted the need to allow for flexibility. As new trainings are developed and become available, members want judges to be able to take advantage of new opportunities, and not be limited to those specific trainings that members know about now.

The subgroup is still developing and tweaking specific language, but the general consensus so far would be to codify judicial training requirements, as other states have done. Statutory language would require mandatory training for judges who preside over child custody cases that

include an allegation of domestic violence, child abuse, and/or child sexual abuse. Ms. Cooper presented preliminary ideas for a list of topics that judges would be required to receive training on, which included (1) child development; (2) adverse childhood experiences; (3) dynamics and effects of child sexual abuse, child abuse, and domestic violence; (4) implicit bias; (5) parental alienation; and (6) best practices for eliminating trauma to the child caused by the court process. The subgroup would like to mandate that before any judge is assigned to hear any child custody case, the judge must have received a minimum number of hours of training on the above topics and that education on these topics continues.

Subgroup C

Finally, Dr. Inga James shared the progress of Subgroup C. Draft recommendations of the subgroup include the use of a uniform intake form that includes tools to flag domestic violence and child abuse. Courts would be required to provide notice to parties of the existence of custody evaluators and financial assistance should also be provided for low-income parties to use custody evaluators. The subgroup supports creating a standardized assessment of custody evaluators (such as a credentialing) and requiring at least a master's degree for all custody evaluators. Ongoing training for all custody evaluators is also a recommendation; the training should include (1) domestic violence and child abuse; (2) the impact of trauma; (3) implicit bias; (4) the impact of all forms of child maltreatment on the development of a child; and (4) forensic interviewing. The subgroup supports uniform record keeping requirements for custody evaluators and for evaluators to be required to disclose policies, procedures, and fees prior to engagement. The subgroup also recommend establishing uniform requirements for what is included in a custody evaluation. Other draft recommendations of the subgroup (some of which Dr. James noted may be beyond the scope of the subgroup's assigned topics) include (1) providing judges with elements that must be considered in deciding custody, including weighted elements: (2) establishing real criteria for the best interests of the child; (3) articulating that co-parenting is not the assumed default and placing emphasis on safe children is best; (4) establishing a presumption that suspected abusers should not have custody and a presumption that supervised visitation is required where abuse is alleged and under investigation; and (5) more guidelines on custody supervision including ending practice of other family members acting as supervisors

Workgroup Discussion

Ms. Cooper expressed an interest in recommendations related to enhance data gathering (assigned to Subgroup A) and offered to provide further ideas to the group in a memo. Mr. Paul Griffin noted the existence of numerous bench books produced by national organizations that might be helpful for the Judiciary to adopt. Ms. Laure Ruth also reiterated the need for an update of literature that summarizes the current social science pertaining to child custody. She

noted that topics including implicit bias, trauma, and adverse childhood experiences would be helpful to cover. Ms. Ruth also noted that in some cases, parties cannot afford best interest attorneys, and encouraged Subgroup B to consider access to justice issues when making any recommendations. She also noted that child custody evaluations are funded differently depending on the jurisdiction (*e.g.* in some jurisdictions, they are done by court employees free-of-charge). Mr. Griffin noted that only two hours is allowed for a deposition when child custody evaluations are done by court employees; this is extremely inadequate and presents a due process issue. Ms. Anne Hoyer noted her interest in the creation of a specialized court/docket to handle child custody cases where there is an allegation of child abuse and/or domestic violence. Ms. Ruth noted that the Center for Court Innovation may have some resources for the group to consider.

Closing Remarks and Adjournment

The chairman made brief closing remarks and adjourned the meeting.

Note: This summary has been prepared at the request of the chairman; however, please note that the archived livestream video of the workgroup meeting is also available and constitutes the official minutes of the meeting.

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

Meeting Summary – January 7, 2020

The Workgroup to Study Child Custody Proceedings Involving Domestic Violence or Child Abuse Allegations held its eleventh meeting of the 2019 interim on Tuesday, January 7, 2020, in Room 100 of the House Judiciary Committee Room in Annapolis, Maryland.

The following members were present:

Secretary of State John C. Wobensmith, Chair
Senator Mary Beth Carozza
Ms. Camille Cooper
Mr. Paul Griffin
Ms. Sonia Hinds
Ms. Anne Hoyer
Ms. Ruby Parker
Ms. Claudia Remington
Ms. Nenutzka Villamar
The protective parent member was also present.

Welcome

The chairman of the workgroup, Secretary of State John C. Wobensmith, welcomed everyone to the meeting and reminded those present of the presentation by Professor Deborah Epstein scheduled for Tuesday, January 28, 2020 at the Office of the Secretary of State.

Subgroup A

Mr. Paul Griffin presented on behalf of Subgroup A and discussed the concept of a specialized docket for family law cases with allegations of child abuse or domestic violence. The subgroup is trying to be cognizant of the need to allow for flexibility by individual jurisdictions, while still ensuring that only judges who have received specialized training in child abuse and domestic violence preside over custody cases that include these allegations. The subgroup proposed that cases for the specialized docket not be self-identified and encouraged the use of a screening tool instead. The group also recommended changes to the judicial nomination process to ensure the inclusion of individuals with experience in family violence and trauma on nominating commissions. The group further recommended changing the definition of domestic violence in Maryland to mirror that of the Centers for Disease Control and creating a rebuttable presumption that a person who has committed domestic violence should not be granted custody. Subgroup A also discussed the concept of a civil right to counsel, but acknowledged that the costs associated with implementing such a right are problematic.

Following the presentation, Ms. Claudia Remington noted that, in addition to altering the definition of domestic violence, altering the definition of child abuse in the context of child custody cases might be beneficial since civil custody cases are not analogous to the State deciding whether or not to remove a child from the home. Ms. Camille Cooper suggested that there be a uniform questionnaire for local departments of social services and law enforcement to provide information to the court on what procedures were followed in investigating an allegation of child abuse so that the court is aware of what led to a finding by a local department. Ms. Nenutzka Villamar clarified that any changes to standards for determinations made under § 9-101 of the Family Law Article would require specific language expressly excluding those cases involving the State Child in Need of Assistance (CINA) cases, in part due to constitutional concerns.

Subgroup B

The recommendations of Subgroup B, which focused on the training of judges and other legal professionals, were also reviewed. The subgroup has thus far focused primarily on training for judges, and recommended that judges receive mandatory training on a multitude of topics prior to being assigned to preside over custody cases in which there is an allegation of child abuse and/or domestic violence. Such topics include child development, the effects of trauma on the developing brain, and the process of investigating reports of child abuse (including the role of child advocacy centers and the limitations of local departments of social services when investigating allegations). Other mandatory training topics recommended by the group include (1) the dynamics and effects of child abuse and domestic violence; (2) understanding lethality assessments; (3) the negative impact domestic violence has on children, regardless of whether the child directly witnesses physical abuse; (4) implicit bias and the potential impact that it has on custody proceedings; and (5) the history of parental alienation and its invalidity as a syndrome.

Ms. Anne Hoyer also noted the importance of data showing child pornography collection and distribution and the correlation with custody cases where child sexual abuse is alleged. She also advocated for judicial training on the likelihood that an individual will commit abuse through a better understanding of an overall picture of commonalities between abusers. Later in the meeting, Ms. Sonia Hinds stressed that more training was needed for judges to understand how children who are sexually abused behave and how to weigh evidence of abuse if a child has recanted testimony or failed to directly report the abuse.

Subgroup C

Senator Mary Beth Carozza presented on behalf of Subgroup C. The subgroup recommended greater standardization for custody evaluators and custody evaluations. The subgroup echoed the other subgroups in calling for a standardized intake form that includes screening for child abuse and domestic violence. Also mentioned was establishing a requirement that the court notify parties of the availability and role of custody evaluators. Subgroup C also

recommended (1) uniform, ongoing, science-based training for all custody evaluators; (2) establishing a Statewide, uniform record-keeping requirement for custody evaluators; and (3) requiring custody evaluators to provide the parties with information on the evaluator's policies, procedures, and costs. Subgroup C also recommended establishing uniform requirements for the contents of a custody evaluation. The Department of Legislative Services (DLS) clarified that the workgroup is aware of existing Maryland Rules related to custody evaluations and that Subgroup C was focused on improving current practice, noting that an earlier presenter, Dr. Saunders, had specifically recommended looking at California legislation as something potentially useful for Maryland.

Ms. Cooper requested a specific reference in any training for custody evaluators addressing the disproven parental alienation syndrome and its inappropriateness in a custody evaluation. She also encouraged the group to get more specific regarding the background requirements for a custody evaluator and to consider capping the fees for a custody evaluation. There was a discussion from Senator Susan C. Lee's staff on how custody evaluators use the courts within the family law proceedings to collect fees, including requiring payment prior to issuing the custody evaluation. Ms. Cooper related that she has experience with cases where a protective parent lost custody of a child due to an inability to pay fees and requested a strict prohibition against that practice. Mr. Griffin noted that he had seen judges use the contempt power to jail an individual due to nonpayment.

Following a question as to whether there had been any discussion on licensure requirements for custody evaluators, DLS explained that licensure or accreditation requirements were discussed by the subgroup but that there was concern by members regarding costs involved and the complication of the numerous governing boards overseeing the professions authorized to act as custody evaluators. Mr. Griffin mentioned that the Code of Maryland Regulations has provisions for psychologists regulating their professional behavior when conducting custody evaluations, and wondered whether similar provisions could be adopted for other professions.

Other Discussion and Closing Remarks

Ms. Villamar asked if any of the other subgroups had discussed the concept of the failure to protect. She noted that when a victim of domestic violence does not report abuse, under the CINA statute the failure to report is held against the victim. She wanted to address this issue specifically for civil custody proceedings. Senator Lee's staff noted that there is seemingly a lack of uniformity on this issue by jurisdiction and wondered if the failure to protect applied only to child abuse or extended to domestic violence against the parent. Ms. Villamar related that she had witnessed cases where a parent's failure to shield a child from the parent's own abuse was held against that parent in a CINA proceeding. Mr. Griffin stated that he had seen the opposite in custody cases and that, rather than finding that there was domestic violence from which the parent failed to shield the child, more often than not there was a finding that the person alleging domestic

violence was lying and trying to alienate the child from the other parent. Mrs. Cooper discussed what she saw as an unwinnable situation for victims of domestic violence where if they fail to report the abuse they have failed to protect the child, but if they report abuse they are accused of fabrication and trying to alienate the child from the other parent.

After brief comments by the chairman and staff, including the importance of focusing on key objectives within the workgroup's statutory charge, the meeting was adjourned.

Note: This summary has been prepared at the request of the chairman; however, please note that the archived livestream video of the workgroup meeting is also available and constitutes the official minutes of the meeting.

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

Meeting Minutes – January 28, 2020
Prepared by the staff of the Secretary of State's Office

The Workgroup to Study Child Custody Court Proceedings Involving Domestic Violence or Child Abuse Allegations held its twelfth meeting on Tuesday, January 28, 2020, in the Fourth Floor Conference Room in the Office of the Secretary of State in Annapolis, Maryland.

The following members were present:

Secretary of State John C. Wobensmith, Chair
Mr. Paul Griffin
Ms. Sonia Hinds
Ms. Anne Hoyer
Ms. Ruby Parker
Ms. Claudia Remington
Ms. Laure Ruth
The protective parent member was also present.

Welcome and Introduction

The chairman of the workgroup, Secretary of State John C. Wobensmith, commenced the meeting at 10:10 am by welcoming everyone and thanking them for their attendance. He informed everyone that the workgroup was meeting exclusively for a presentation and, in deference to the legislative members of the workgroup who were unable to attend as the meeting occurred during the legislative session, there would be no deliberations on recommendations.

Secretary Wobensmith then introduced Professor Deborah Epstein, Co-director of the Domestic Violence Clinic at Georgetown University Law Center, citing her extensive experience in DC Superior Court representing and overseeing the representation of clients, establishing the court's domestic violence unit, and training law enforcement.

Presentation by Professor Deborah Epstein

Professor Epstein presented on her article *Discounting Women: Doubting Domestic Violence Survivors' Credibility and Dismissing Their Experiences.* Professor Epstein stated that she began this project as the Me Too movement was gaining prominence, and she felt that the numerous narratives exposed by that movement made it clear that society and, especially the justice system, does not accord women the same level of trust and belief that it accords men.

Plausibility – Internal Consistency

Professor Epstein examined the ways that society credits a story, beginning with the plausibility of the story itself, apart from the individual who is telling the story. She explained that narrative theorists and cognitive scientists agree that the human brain is hard-wired for stories. Human beings hear a set of facts and cannot understand or believe them to be true unless they can conceptualize the facts as a story. This information is important because stories are central to the justice system and the way that judges and juries think about evidence and decide how to credit facts. Professor Epstein explained that for a story to be plausible, it must have internal consistency by making sense logically and emotionally and following a coherent, linear thread without significant gaps in the plot.

Traumatic Brain Injury

Professor Epstein pointed out that for many survivors of domestic violence, however, telling a truthful story about their experiences necessitates a narrative that does not fit with the generally accepted conception of plausibility. Professor Epstein argued that one major reason for this is due to traumatic brain injury (TBI) caused either by blunt force trauma to the head or oxygen deprivation resulting from strangulation. Both blunt force trauma and strangulation are common among domestic violence survivors and often experienced repeatedly. TBI can result in a profound impact on memory, with symptoms including confusion, poor recall, the inability to link parts of the experience together, and the inability to articulate a logical sequence of events.

Professor Epstein highlighted that research on the connection between TBI and domestic violence is relatively new and that few emergency rooms screen for TBI when a patient presents for domestic violence-related injuries. Few women survivors are aware of TBI; they do not know the short- or long-term effects. She also stated that few judges are aware of the connection, and the lack of understanding leads judges to hear a victim's story as internally inconsistent.

Professor Epstein shared the story of a survivor who experienced strangulation from a telephone cord. The survivor could only recall the experience in flashes when she could remember it at all. She remembered being outside and, at other times, being inside. She provided different dates for the incident. Sometimes she believed it occurred as they were about to eat dinner, at other times she thought it was caused by an argument over an apple. She could not tell the story as a linear narrative. Professor Epstein pointed out that, to a trauma expert, the disjointed way this survivor told her story makes it quite likely that she was actually the victim of a strangulation incident and that the loss of oxygen to her brain resulted in the inconsistencies of the story. For a

trauma expert, the way the survivor told her story is consistent with symptoms of TBI, which would make the story all the more plausible. However, for a police officer determining whether or not to arrest an alleged abuser, or for a judge deciding whether or not to issue a protective order, the way that the survivor told her story likely would have the opposite effect. For justice system gatekeepers, the inconsistent, disjointed way that the survivor shares the narrative sounds internally inconsistent and, therefore, not plausible.

Psychological Trauma

In response to a question, Professor Epstein stated that she personally believes that shaking can cause some symptoms similar to blunt force trauma, but she does not have specific supporting information. She said that aside from neurological trauma, most survivors of intimate partner violence experience significant psychological trauma. The majority of survivors meet the diagnostic criteria for Post-traumatic Stress Disorder (PTSD). Psychological trauma operates very similarly to neurological trauma to undermine the plausibility of a survivor's story by causing memory lapses. The symptoms of PTSD are intense emotional reactivity to triggers or reminders of the incident. For many survivors, reviewing the details of an abusive incident in a small courtroom with the perpetrator present can be incredibly triggering. On the witness stand, survivors may experience a flashback or become overwhelmed with intense emotion. This typically results in the inability of the survivor to articulate large parts of the story. While disjointed storytelling and gaps in testimony may actually be evidence supporting a victim's story, to someone who is not a trauma expert, it sounds internally inconsistent and, therefore, not plausible. Psychological trauma can combine with neurological trauma to create a situation where the more a victim tries to be faithful to her actual memory, the more likely it is that the victim will suffer a credibility discount.

Plausibility – External Consistency

Professor Epstein then introduced the concept of external consistency, another factor that contributes to a story's plausibility. Human beings are more likely to believe stories that resonate with an established understanding of how the world works. For example, if a person enters a room with a wet umbrella and announces that the person has just walked through a fire, most individuals would doubt the plausibility of the story because it does not fit with the general understanding of fire. One would expect the person to be singed or smelling of smoke, not dripping wet, so the plausibility of the story would be doubted.

False Consensus Bias

The problem with external consistency is, Professor Epstein stated, false consensus bias. Most people tend to assume that their own experience of how the world works is universal. However, this assumption is wrong. The particular life experiences of an individual contribute greatly to how the individual understands and reacts to the world. For example, a passenger who has survived a very serious car crash reacts very differently when a driver suddenly slams on the brakes than someone who has never been in a car accident. Another example is combat veterans who react differently to sudden loud noises than someone who has never seen combat.

The effects of a similar experiential gap were seen in the early days of domestic violence advocacy, when many people questioned why a person would not leave an abusive situation. Individuals who have experienced violence or who have worked closely with survivors of domestic violence understand that the decision to stay is often a normal response to an abnormal situation where realistic options do not exist. This is in sharp contrast to those people fortunate enough not to have been exposed to interpersonal violence. Individuals without these experiences do not understand the physical, emotional, and spiritual obstacles to fleeing abuse and almost obsessively question why a victim did not leave. This is the false consensus bias: in her shoes, I would have left. Because I would not let this happen to me, I cannot believe that she would allow it to happen to her, so it must not be true. Research demonstrates that the decision to stay in an abusive relationship is often viewed negatively by judges and policy makers. Because it is inconsistent with how their own world works, the story appears less plausible, and credibility is discounted. This is classic false consensus bias.

Professor Epstein shared an example from a protection order case that was denied in DC Superior Court because the judge did not find the petitioner credible. Photographs introduced by the accused perpetrator showed the petitioner and the accused dining in a restaurant only two days after an alleged incident that was particularly violent. In the photos, the petitioner appeared happy and romantically engaged with the accused. Professor Epstein pointed out that the behavior of the petitioner at the restaurant might have been driven by many things, including a desire to maintain a relationship for the children, an effort to appease the perpetrator and avoid further violence, ambivalence about ending a long relationship, *etc*. The judge, however, did not question any of this, but instead decided that no one would do these two things so close together in time. The judge did not consider the petitioner to be credible, discounted her story, and denied the order.

Prioritization of Harms

Professor Epstein explained that, statistically, most judges do not experience intimate partner violence and that many judges tend to assume that in domestic violence cases, the physical abuse far outweighs the psychological harm. There is a common judicial expectation that a "real" victim, a person telling the truth, would lead with physical violence when talking about their experience. However, for many women, although their relationships are characterized by episodic outbursts of physical violence, the pervasive abuse tends to be psychological and emotional. Research on domestic violence demonstrates that victims of domestic violence cite psychological, not physical, harm as the greatest contributor to their distress.

In court, where 80% to 90% of people are not represented by lawyers, Professor Epstein stated that this often results in a victim who is seeking protection detailing the psychological aspects of an abusive relationship and sometimes not raising the physical violence until prompted by a judge. Then, judges who lack experience tend to engage in false consensus bias and assume that an individual in an abusive relationship would find physical violence worse than psychological violence and would therefore lead with telling about the physical violence. As a result of this bias, courts may perceive someone who highlights psychological or emotional abuse over physical abuse as telling a story that is not externally consistent, and therefore less credible. A women who details psychological rather than physical harms, and shares her story as she experiences it, mentioning physical violence only when asked about it, may be perceived as fabricating or exaggerating.

Survivors have learned the hard way about this obstacle to justice. Lisa Goodman, co-author of the article presented by Professor Epstein, found examples of this when she interviewed *pro se* litigants in custody cases during her study of Massachusetts family court. Professor Epstein shared a quote by a woman in the study ", my advice to other women trying to get custody is just don't say anything about the violence. The way the system is now, you better talk to your priest, talk to your family; tell them your story . . . but don't bring it into the courtroom because the judge will say, 'there is no way that could happen to me, there is no way it happened to you.'"

Trustworthiness – Demeanor

Professor Epstein then discussed the importance a listener places on the demeanor of a story teller. We all know intuitively that the demeanor of the person telling the story affects the likelihood that we will credit the story. People tend to believe a story teller whose emotional affect matches the substantive content of the story and tend to give less credit to those who are deadpan

or highly emotive. Unfortunately, the core dimensions of PTSD all result in disconnect between the emotional demeanor of the person with PTSD telling the story and the customarily expected emotional demeanor for the type of story being relayed. For example, dissociation is a core dimension of PTSD that produces a numbing response that may result in a very flat affect. Professor Epstein relayed that, practically speaking, this might result in a victim sharing experiences of sexual assault as if talking about the weather. Alternatively, a central symptom of PTSD is hyperarousal, which is a constant state of alertness that may result in a survivor sounding paranoid. A victim suffering from hyperarousal often has very intense emotions and even appears hysterical when talking about the victim's experience. The psychological symptoms associated with PTSD caused by the domestic violence undermine the ability of a survivor to present experiences in a way that seem credible, especially in court.

Trustworthiness – Motive

Professor Epstein also discussed the impact that a number of different gender-based, cultural stereotypes have in court proceedings when women allege abuse. One of the pervasive stereotypes discussed was the grasping, system-gaming "woman on the make." The trustworthiness of a woman who seems to be trying to get something, particularly when it is from a male partner or the government, is suspect culturally. This was seen in the Reagan-era image of the welfare queen, an intersection of race and gender stereotypes, where women were portrayed as having more children in order to increase their monthly welfare check. We distrust their credibility because we think they are grasping. A more contemporary example is the image of the "gold digger," women who target wealthy men for child support. The grasping woman stereotype is pervasive in our society.

However, most women seeking to leave an abusive relationship require concrete resources because classic patterns of coercive control characteristic of domestic violence isolate a victim from family and friends. Because of this, legislatures in every state have provided resources for victims of domestic violence, such as priority in shelter access or requesting that an abusive partner be vacated from a shared residence. The issue, as explained by Professor Epstein, is that when women request the resources provided by law, they risk being seen as system manipulators and suffering from a credibility discount. Professor Epstein recounted that during her years of judicial training in DC, she heard veteran judges from domestic violence court warn incoming judges that women come to domestic violence court as a workaround to get their partner rapidly vacated from a shared residence rather than waiting for the divorce case. This judicial skepticism persists despite a complete lack of evidence.

Professor Epstein revealed that she recognized the power behind such stereotypes and relied on them at times for closing arguments. For example, when she had a client with resources who did not need to ask for much from the court, she would argue that her client's testimony should be credited because she was not requesting much. Professor Epstein stated that she now deeply regrets the harm caused by such arguments that work to undermine the credibility of women who are actually in need of the full scope of the resources provided by law. The idea that women survivors are grasping and system gaming and motived by obtaining something other than safety or justice falls on really receptive ears in our society because of these virulent and discriminatory stereotypes. A woman who seeks a protective order is presented with a serious double-bind. One option is to go to trial and seek the full scope of relief needed for safety, and risk being discredited and denied all relief, or limit the amount of relief requested as a tradeoff in order to be believed by the court.

Another negative stereotype discussed was that of women seeking unfair advantage in custody cases. Courts distrust women when they seek custody of their children. Custody statutes across the country require judges to consider parent-on-parent violence when deciding custody cases because witnessing violence without experiencing it can still have a harmful effect on children. When women pursue these rights, however, they are frequently discredited in family court. Joan Meier's study, among others, revealed that mothers who allege intimate partner violence are more likely to lose custody of their children than mothers who do not assert intimate partner violence. Women gain advantage by remaining silent.

Judges tend to credit, based on no actual evidence, a father's uncorroborated allegation that the woman is fabricating the abuse allegation in order to alienate the children from the father. The experience of intimate partner violence is turned on its head to support the perpetrator's claim that he is the better parent. There is a pattern of disbelieving women more when they allege violence, even though we know that incidents of parent-on-parent abuse are high in contested custody cases. Judges find it easier to believe that women are lying than that men are abusing the mothers of their children.

Trustworthiness – Social Location

Professor Epstein then discussed how society distrusts women because they are women. In our culture, we routinely devalue the trustworthiness of historically less powerful groups. We distrust women, we distrust people of color, and we distrust people in poverty. Many of Professor Epstein's clients fit into all three categories. Professor Epstein argued that this devaluation is based on commonly held derogatory stereotypes that are associated with attributes related to poor truth telling: for example, over emotionality, lack of an ability for logical thinking,

and inferior intelligence. We discount the credibility of people who fall into these categories. Professor Epstein then shared some examples to demonstrate that if you start looking at the popular culture images of women, you will see depictions everywhere of women grasping or trying to get something, and women not being trustworthy simply because they are women.

Experiential Discounting

Professor Epstein continued by addressing the fact that women face a societal discount not only to their credibility but also to their actual experience. All too frequently our society, and justice system gatekeepers in particular, will dismiss the importance of women's actual experience of harm. To understand why credibility discounting is so devastating, we need to understand it in the broader context; when harm is inflicted on women, society does not care about it as much as when harm is inflected on men. This is known as experiential discounting. Regardless of the plausibility of a story or the trustworthiness of the individual, even when a woman is believed, society tends to trivialize the harm she experienced.

Professor Epstein shared an example of this in the context of public subsidized housing. Many counties and cities across the United States, including the 20 largest cities, have crime control or nuisance ordinances known as the three-strike rule. Under such a rule, if 9-1-1 is called three times for the same public housing residence within a set statutory period, the occupant is required to be evicted from public housing. Landlords have no choice and will be fined or lose their license if they do not evict; there is no room for individual decision making. Of the 59 jurisdictions that have these crime control measures, 39 expressly include calls to 9-1-1 for domestic violence, even if the result will be the eviction of a victim. Very few make an exception if the call is from the victim, despite the fact that the purpose of the laws is to evict the person creating a nuisance or perpetrating the crime, not the victim of a crime. A study from Milwaukee found that roughly one-third of the excessive 9-1-1 call citations over a two-year period were based on emergency reports to the police about domestic violence, and that 57% of those cases resulted in a victim being evicted.

Professor Epstein shared the story of a victim in Pennsylvania whose adult daughter called the police when her former boyfriend attacked her in her subsidized apartment. When the police came, they warned her that this was her second strike and that another would result in her eviction. She was paranoid about calling the police; she had a three-year old daughter and did not want to lose housing. One night, her boyfriend cut her throat with a broken ashtray. When the victim awoke from being unconscious, her only thought was to prevent 9-1-1 from being called. She tried to get as far from her apartment as she could, but a neighbor saw her and called 9-1-1. She was airlifted to the hospital, released after three days, and evicted. The American Civil Liberties Union (ACLU)

sued the city of Norristown, Pennsylvania on her behalf and won, the law was subsequently repealed, and the victim moved back into her apartment. These laws continue to appear across the county without appropriate exceptions for a victim of a crime despite the efforts of ACLU for such exceptions. Only 4 of the 59 jurisdictions that have these ordinances have created exceptions for victims. In this example, no one doubted the story of the victim, but no one took the harm that she suffered seriously. This context helps to understand the way that discounting experience affects people in real life.

Harm Caused by Discounting Credibility

The obvious harm caused by discounting credibility is the lack of appropriate crediting of witnesses, victims not being taken seriously, and perpetrators not being held accountable by the justice system. Beyond this, there are several distinct harms from the experience of not being believed. Many victims in violent intimate partner relationships experience this discounting on an individual level, then again on an institutional level. Individual perpetrators of domestic violence often discredit the plausibility of a woman's story, claiming ", I didn't do it, it is all your fault, you caused it…" They also frequently discredit the credibility of a survivor ", you're so hysterical, you are too emotional, you cannot think straight, no one will believe you." They often dismiss the experience of harm ", why do you make such a big deal out of everything?" This technique of manipulation is often referred to as gaslighting. For many women, being subjected to the credibility discounting by the justice system replicates the credibility discounting they experienced in their intimate partnerships. Women are experiencing a gauntlet of disbelief in the system and in their personal lives.

Research shows that there are real psychological consequences to being disbelieved. Women tend to develop a sense of powerlessness and futility. They try to take action by going to court, only to find that there is nothing they can do. They develop a sense of worthlessness and self-doubt. They are not believed so many times that they begin to doubt their own experiences. These individual experiences of doubt that cause a victim to doubt herself also cause her to sound unsure when sharing her story, which makes her sound less credible. It is a vicious cycle.

Solutions

Professor Epstein then addressed possible steps that could be taken to improve the handling of domestic violence in the courts. Professor Epstein mentioned training for judges about neurological trauma, PTSD, prioritization of harms, *etc*., but warned that sometimes judicial training is effective and sometimes it is not. Success depends on whether judges are open and receptive and, if they are, the idea then must translate to judicial work. Judicial training is no panacea. Professor Epstein noted that there are other pieces, conscious and unconscious, that

cannot be fixed through training. Change will not come easily to this gendered way we credit or discredit. We, as a society, need to collectively take responsibility to shift away from the deeply ingrained, automatic tendency to disbelieve women and their stories. We need to distrust our own distrust. Once we recognize that our judgements about credibility are inherently flawed, it makes sense to impose a self-distrust rule. This does not mean that because we do not do a good job at assessing credibility, we must believe every woman and everything she says without question. Rather, we must resist this reflexive presumption against crediting women. We must accept a broader range of people as potentially credible and a broader range of stories as consistent with how the world works. We must follow the philosophy of Jose Medina and engage in virtuous listening.

Questions

Professor Epstein cut her presentation short to allow time for questions. The first was from a member of the audience who asked for a recommendation to people in these relationships. Professor Epstein responded that we need to get away from the "he said, she said" paradigm and that is more possible these days with cell phones offering corroborative evidence. She noted that this workaround skips the fundamental social problem of discrediting. In response to a question, Professor Epstein said that there is not a lot of judicial training or training in law schools about credibility beyond trusting your instinct and deciding with your gut. She stated that she has not seen much judicial training offered on how to assess credibility, and even the extensive workshops on implicit bias do not connect it concretely to determining credibility.

Someone asked about judicial accountability. Professor Epstein replied that monitoring the predominantly *pro se* cases and mechanisms like court watch and fatality review boards are important to help reflect back to judges the patterns in their decision making of which they might not be aware.

Ms. Laure Ruth thanked Professor Epstein for a study with actual results supporting what so many have experienced to be true. She said that based on judicial interviews, within two weeks of being appointed to the bench, the whole approach to domestic violence cases changes, due to the older seasoned judges warning the incoming judges not to believe women. It goes beyond the mandatory and self-selected judicial training. She mentioned a bill in the legislature in the 2020 session that would require the judge's name to be made available on judicial case search as a mechanism to support judicial accountability. Though she has no position on the bill, she invited anyone who does support it to involve themselves in democracy and offer testimony.

In response to a question, Professor Epstein said that she understands the skepticism judges and others have when a training instructor is an advocate. Trainings need to be more concrete. If a judge finds himself not believing a person in front of him, what questions should he ask? Judges have no problem pushing for facts about what actually happened, but they do not push for facts about credibility.

Secretary Wobensmith said it sounds like these issues around discounting credibility need to be addressed at the grammar school level, long before even law school. Ms. Remington agreed and asked about social norms campaigns on this topic expanding beyond the justice system. She asked if any states have addressed the three-strike law on the state level. Ms. Ruth responded that Maryland passed a law allowing a victim of domestic violence to use that as a defense to eviction, or to terminate a lease early without penalty.

The discussion circled back to providing feedback to judges. Ms. Ruby Parker mentioned a specific jurisdiction in Virginia where all case filings were reviewed and later presented to the judges so they could see, among other things, how frequently they awarded custody to an abusive parent. A rule was put in place so judges have the opportunity to see their own biases. Professor Epstein said that while she is all in favor of feedback to judges, it takes a lot of resources, and the cases must be carefully examined. In response to a final question, Professor Epstein said that she observed, in recent years, no distinction between male and female judges; no gender distribution.

Closing Remarks and Adjournment

Secretary Wobensmith made brief closing remarks and the meeting was adjourned.