



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

Members in Attendance: Secretary John Wobensmith, Senator Susan Lee, Melissa Brown for Senator Mary Beth Carroza, Kristin Cassard for Delegate Vanessa Atterbear, 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 Council, Cooperative Parent Requirements

Ms. Ruth added the civil right to council 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.