

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

Meeting Minutes – September 17, 2019

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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

Meeting Minutes  
September 17, 2019

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

Meeting Minutes  
September 17, 2019

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,

Meeting Minutes  
September 17, 2019

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.