

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

Meeting Summary – January 7, 2020

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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.

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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

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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

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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.