

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

Meeting Summary – November 12, 2019

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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

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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

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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

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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.