

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

Meeting Summary – October 1, 2019

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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

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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

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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.

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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.

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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.

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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.