

# Workgroup to Study Child Custody Court Proceedings Involving Child Abuse or Domestic Violence Allegations/Disclosures

## *Potential 2020 Legislative Session Recommendations:*

- i) **Cooperative Parent Friendly with Child Custody Decision Workgroup Codification of Common Law and Require Judges to Articulate Reasoning with Weights (2014)**
  - a. Failure to cooperate with or speaking negatively about an abuser shall not be considered material change in circumstance or a factor in determining BIC.
    - i. See VA - §20-124.3(9) if “any history of abuse” – disregard (6)-cooperate
    - ii. Alaska, Iowa, Minnesota, Montana, New Jersey, Oregon... (NCSL)
    - iii. MD common law confused with Joint-Custody only mentioned -Taylor
  
- ii) **FAMILY LAW §9-101 – (at least 22 states have presumption against custody-abuse)**
  - a. In any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall [determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party.] **DENY CUSTODY AND UNSUPERVISED VISITATION, UNLESS THE COURT ARTICULATES ITS FINDINGS OF FACT THAT THERE IS NO LIKELIHOOD OF FURTHER CHILD ABUSE OR NEGLECT BY THE PARTY.**
  - b. [Unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court shall deny custody or visitation rights to that party, except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.] see Baldwin v. Baynar (2013), and Michael Gerald D.v.Roseann B. (2014)
  - c. **IF IT IS IN THE BEST INTEREST OF THE CHILD, THE COURT MAY APPROVE A SUPERVISED VISITATION ARRANGEMENT THAT ASSURES THE SAFETY AND THE PHYSIOLOGICAL, PSYCHOLOGICAL, AND EMOTIONAL WELL-BEING OF THE CHILD. THE COURT MAY APPROVE UNSUPERVISED VISITATIONS IF IT ARTICULATES WHY, WITH CLEAR AND CONVINCING EVIDENCE, THE TOTALITY OF THE CIRCUMSTANCES DEMONSTRATE THE ARRANGEMNT IS IN THE BEST INTEREST OF THE CHILD. (~MD FL§9-101.2)**
  
- iii) **DATA & Monitoring Custody Evaluator Training, Transparency, and Performance**
  - a. Data Collection – what metrics do we need?
  - b. Certification specific to Trauma - Teach and test on dynamics of child abuse, especially child sexual abuse (such as delayed disclosure, disclosure is a process, might not have all info, child's affect may be very flat, dissociative, often love abuser, rareness of taint and suggestibility, how hard it is to actually "coach" a child, forensic interview techniques, indicia of reliability...)

## References:

**(1990) H.Con.Res. 172 – 101<sup>st</sup> Congress – Sponsor U.S. Rep. Connie Morella (R-MD) -**

Expressing the sense of the Congress that, for purposes of determining child custody, evidence of spousal abuse should create a statutory presumption that it is detrimental to the child to be placed in the custody of an abusive parent.

**Maryland Chapter 529 (1984) Chapter 659 (1985) (FL §9-101) – rebuttable presumption?**

**Chapter 98 (SB155) (1991) (FL §9-101.1) – May CONSIDER DV as a factor of child’s welfare - ... but amended “evidence of...”, or subject to rules of evidence – also amended out rebuttable presumption against joint custody that was originally in bill. Chapter 12 (HB152) (1995) – Shall weigh abuse in of others in child’s BIC assessment**

**Chapter 112 (2006) – (FL §9-101.2) – 1<sup>nd</sup> and 2<sup>nd</sup> degree murder convictions –BIC C&C evidence**

**The American Psychological Association** – “In matters of custody, preference should be given to the nonviolent parent whenever possible, and unsupervised visitation should not be granted to the perpetrator until an offender-specific treatment program is successfully completed, or the offender proves that he is no longer a threat to the physical and emotional safety of the child and the other parent.” APA Family Violence Report 1996

**The American Bar Association** – “Even if your state statute does not have a rebuttable presumption against custody, there are three reasons to support a finding that a batterer is an unfit custodian: First, the abuser has ignored the child’s interests by harming the child’s other parent. Second, the pattern of control and domination common to abusers often continues after the physical separation of the abuser and victim. Third, abusers are highly likely to use children in their care, or attempt to gain custody of their children, as a means of controlling their former spouse or partner. ABA, A Judge’s Guide: Making Child-Centered Decisions...(2008)

**National Council of Juvenile and Family Court Judges** – Judicial Guide – “You should award visitation to an abusive parent only if you find that adequate provisions for the child’s and the abused parent’s safety can be made, assuming that contact with the abusive parent is advised at all.” – NCJFCJ’s Family Violence: A Model State Code §401 (1994). (Conrad Hilton Funded)

**Wingspread Conference (2007) – 5 Priorities (in order)**

Priority 1: **Protect Children!**

Priority 2: Protect the safety and well-being of the victim parent.

Priority 3: Respect the right of adult victims to direct their own lives.

Priority 4: Hold perpetrators accountable for their abusive behavior.

Priority 5: Allow child access to both parents – (however, may be sacrificed for 1-4)