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“Custody and Visitation Decisions in Cases of Intimate Partner Violence:

Evidence of Major Problems and Promising Solutions”

Testimony before the State of Maryland

Workgroup to Study Child Custody Court Proceedings Involving

Child Abuse or Domestic Violence Allegations

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October 1, 2019

Secretary and Chairman Wobensmith and Workgroup members, it is an honor for me to join you today as you carry out your extremely important work to enhance the safety of Maryland families. It is hard for me to imagine a situation more unjust and traumatic than when survivors of domestic abuse, after suffering abuse in the relationship and more abuse after it ends, are then forced to face a custody battle to keep their children safe from an abusive ex-partner.

Too often, a survivor’s fear of unsafe custody and visitation arrangements becomes a reality. I applaud your commitment to ensuring that your family law proceedings place the safety of survivors and children first.

Today, I will give evidence of the most common and serious problems faced by domestic abuse survivors and their children in these proceedings. I will then present promising solutions, guided when possible by empirical evidence.

1) Problem: Professionals often fail to screen for domestic violence in child custody-visitation cases. Research shows high rates of non-detection of intimate partner violence (IPV) by mediators and child custody evaluators. Many cases are inaccurately labeled as “high conflict,” which masks the abuse and implies mutual responsibility for problems. Universal screening is needed since many cases will be missed if investigations only focus on allegations.

Possible Solution: Mandatory Intake Screening for Domestic Violence by All Professionals in All Settings. One study found that questions on intake forms increased detection rates beyond the interview questioning of an intake worker or information from court documents (Keilitz et al., 1997). As an example of a statutory solution, a Wisconsin law regarding mediation intake states: “Any intake form that the family court services requires the parties to complete before commencement of mediation shall ask each party whether either of the parties has engaged in interspousal battery . . . or domestic abuse”. Family court staff in California are required to use written answers from intake forms to determine if they must meet with parties separately for evaluation or mediation.

Research in health care settings shows that professionals need only a few questions to detect abuse. Newly developed, comprehensive screening tools are available from the Battered Women’s Justice Project, the Wisconsin Coalition to End Domestic Violence and others. Professionals need to be trained in interview methods that increase the trust and comfort level of survivors since many survivors are reluctant to disclose abuse out of fear and shame.

2) Problem: Focus of evaluations is sometimes on irrelevant factors. For example, some evaluators place too much emphasis on psychological test results which are not highly predictive of parenting behavior. Psychological symptoms need to be interpreted through the lens of trauma histories. Evaluation methods need to follow the special guidelines of professional societies.

Possible Solution: Mandatory Template or Form for Custody Evaluators to Follow When Preparing Reports. As an example, California recently enacted a law that specifies what custody evaluators must assess stating: “The form shall provide a standardized template for all information necessary to provide a full and complete analysis of the types of allegations raised in contested proceedings involving child custody or visitation rights where there are serious allegations of child sexual abuse or other forms of abuse” (Assembly Bill 1179).

3) Problem: Assumption that joint custody or parenting time is the best option for the safety and welfare of the children. This assumption can outweigh the evidence of harm to children from child and domestic abuse.

Possible Solution: Presumptions regarding joint custody or parenting time should be avoided. Experts who have conducted comprehensive literature reviews conclude that the safest outcomes are achieved through individualized assessments of the best interests of the children.

4) Problem: Domestic abuse is often not taken seriously in custody and visitation decisions. When considering the best interests of the child, child maltreatment and IPV are often given equal or less weight compared with other factors

Possible Solutions: a) Presumption that Abusers Should Not Have Custody. Scientific reviews clearly show the negative impact on children of being exposed to IPV and the high risk

the domestic abuser will abuse them. The 1994 Model Policy of the National Council of Juvenile and Family Court Judges states that “a determination by the court that domestic or family violence has occurred raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence.” About 20 states have not adopted this presumption. Some have been reluctant to do so because the evidentiary standard to establish the occurrence of domestic violence seems too high. Advocates in some states believe that protections are best achieved through the application of best interest factors regarding child and domestic abuse.

b) Enact best interest factors that give extra weight or priority to child maltreatment and IPV among the factors to be considered. Eight states give extra weight to IPV as a factor. One state makes the potential for child maltreatment the *primary* factor (LA, 2018). I concur with the Maryland General Assembly Commission on Child Custody Decision-making (2014) that a statute with best interest factors is needed because, as they state: “A comprehensive list of what a court is to consider will inform the public, especially those who do not have attorneys, about what evidence and testimony they will need in a court proceeding where custody will be determined.” (Appendix 1, page 5). Custody evaluators and courts also need clear guidance. In addition, best interest factors allow for exemptions for IPV in certain standards.

5) Problem: Assumption made that survivor-parents must always facilitate a good relationship between the children and their ex-partners. If these parents raise concerns about children’s contact with an abusive ex-partner, they are often labelled as “uncooperative” or “parental alienators”, which is then used against them in the custody determination. Ideally, parents are willing and able to facilitate a close and continuing relationship between the children and the other parent. However, this ideal outcome is usually unrealistic when a history of domestic violence or sexual assault exists. Two studies show that states with “friendly parent” standards have higher rates of recommendations for custody to a domestic abuser. This is the case *even when there is a presumption that abusers should not have custody* (Saunders, 2017).

Possible Solutions: a) Enact legislation stating that parental reports of child or spousal abuse cannot be considered unfavorably against the reporting parent in custody/visitation determinations. As an example, Michigan has a standard that states “(j) A court may not consider negatively for the purposes of this [“friendly parent”] factor any reasonable action taken by a parent to protect a child or that parent from sexual assault or domestic violence by the child's other parent.”

b) Enact exemptions for the “friendly parent” standard in IPV cases. At least eight states thus far have IPV exemptions for their “friendly parent” best interest factor.

c) Mandate training on reasons survivors are reluctant to have their children in unsupervised contact with an abusive ex-partner.

6) Problem: Assumption that co-parenting is always possible. Co-parenting and even the simplest communication between ex-partners may be impossible. Conner (2011) concludes in a lengthy review of the literature: “Communication is made difficult, if not impossible, when one parent harasses, abuses, and intimidates the other parent. Not only are batterers poor decision-makers, they also tend to use the power of joint parenting to exert control over the other parent” (p. 260). Some abusers only take an interest in their children after separation and use the court proceedings to harass. Survivors and their children are often put at risk.

Possible Solution: Training on assessment methods to determine what is feasible, whether it is co-parenting, parallel parenting, or no contact between parents.

7) Problem: The impact of coercive behavior is often ignored when making custody and visitation decisions. Evidence shows that coercive and controlling behaviors negatively impact survivors and children to the same extent as physical abuse. In our NIJ study (Saunders, Faller & Tolman, 2011), only 23% of evaluators paid attention to coercive behavior in a vignette depiction of abuse. Evaluators attending to coercion recommend parenting plans with higher levels of safety, and they are more likely to recommend custody for survivor-mothers. Such responses are related to more extensive IPV training.

Possible Solutions: a) Expand the definition of abuse in policies and training material to include coercive behavior;

b) Use assessment tools that measure coercion;

c) Use the assessment of coercion to tailor recommendations. For example, a guidebook for evaluators from the State of Wisconsin includes steps to consider when there is coercion but no physical abuse. Coercion is also a focus of the Association of Family and Conciliation Courts’ Guidelines for Examining Intimate Partner Violence (2016)

8) Problem: Professionals may not be aware of heightened lethality risks to parents and children after separation

Possible Solution: Mandate training for all professionals on lethality assessment methods. Mandate lethality assessments in all settings by all professionals. Training and valid measures are available, including online training.

9) Problem: Gender Bias Against Mother-Survivors Is Related to:

a) Myths about custody-visitation in domestic abuse cases (for example that false allegations are common, mothers alienate children, domestic abuse is not important to consider); and to

b) Recommendations that abuser have joint/sole custody, unsupervised visits, and mediation

Many federal, state and local commissions find gender bias, predominantly against women, that lead judges to accuse victims of lying, blaming them for the violence, and trivializing it. In a national, nonrepresentative survey of 465 custody evaluators and 200 judges, sexist beliefs appeared to underlie a web of myths about custody and domestic abuse (Saunders, Faller, Tolman 2011). Moreover, sexist beliefs and custody myths were linked to recommendations likely to harm survivors and their children, namely to grant sole or joint custody to perpetrators or allow them unsupervised visits (see Figure below).

Beliefs & Recommendations of Judges and Evaluators

(Based on Saunders, D., Faller, K., & Tolman, R., 2011, Child Custody Evaluators' Beliefs About Domestic Abuse Allegations)



Possible Solutions: a) **Mandate gender bias reduction training** for all professionals involved in proceedings. Bias reduction needs to be a sustained effort (See in particular the work of Dr. Patricia Devine at the University of Wisconsin). The National Center for State Courts is producing new training material on bias reduction this year. Bias reduction is also a focus of the Association of Family and Conciliation Courts' Guidelines for Examining Intimate Partner Violence (2016)

b) **Screen out evaluators who show bias.** Kleilitz and her colleagues (1997) suggest specific questions to ask of potential evaluators to assess whether the evaluator has potential misconceptions or biases about IPV.

10) Problem: Mental health symptoms of survivors may not be adequately assessed as being caused by traumatic events and can mistakenly be interpreted as chronic traits affecting parental fitness. In one survey, evaluators who viewed mental health symptoms as trauma-induced were more likely to recommend custody to the survivor.

Possible Solutions: a) Mandate training for all professionals on the traumatic effects of IPV, including the trauma of possibly losing child custody or of having unsafe visitation arrangements.

b) Enact legislation, such as that in Louisiana, stating that evidence that an abused parent suffers from the effects of past abuse by the other parent shall not be grounds for denying that parent custody.

11) Problem: Children and Survivors Can be Endangered in Connection with Child Visits.

Children can be harmed if the visits are unsupervised or poorly supervised. Survivors can be endangered during the process of exchange.

Possible Solution: Place Conditions on Visitation with the Child. For example, an Alaskan law states. “. . . the court may set conditions for the visitation, including: (1) the transfer of the child for visitation must occur in a protected setting; (2) visitation shall be supervised by another person or agency and under specified conditions as ordered by the court; (3) the perpetrator shall attend and complete, to the satisfaction of the court, a program for the rehabilitation of perpetrators of domestic violence that meets the standards set by the Department of Corrections, or other counseling; the perpetrator shall be required to pay the costs of the program or other counseling; (4) the perpetrator shall abstain from possession or consumption of alcohol or controlled substances during the visitation and for 24 hours before visitation . . .”

Other Statutory Provisions to Consider for Increasing Safety to Survivors and Children.

Legislation on most of the following provisions can be found on the web site of the National Council of Juvenile and Family Court Judges:

Mediated Agreement can be Declined by Court if Domestic Violence Affected Victim’s Ability to Make the Agreement

Modify Policies for DV Survivors Regarding Charges of Child Abandonment if They Flee for Safety Without Their Children

Mediation: Require the Ability of Survivors to Opt-out of Mediation or Implement Protective Procedures

Relocation Because of Domestic Violence as a Factor in Custody/Visitation Determinations (see the existing statement in Model Policy of NCJFCJ)

Custody and Visitation in Civil Protection Orders. See: [Guiding Principles and Suggested Practices for Courts and Communities](#), August 2, 2017, NCJFCJ

Standards for Obtaining an Abduction Prevention Order

Minimum Qualifications for Custody Evaluators. (See [Evaluating the Evaluators: Research-based Guidance for Attorneys, D.G. Saunders](#))

Safety Planning and Safety Features in Family Court Settings – See: California Administrative Code, 2019; [Guiding Principles for Effectively Addressing Child Custody and Parenting Time in Cases Involving Domestic Violence](#), January 10, 2017, NCJFC; [Model Order Appointing a Custody Evaluator](#), June 8, 2016, NCJFC.

Conclusion

There is abundant evidence of serious problems in custody and visitation proceedings in the United States. Research on solutions to these problems is in its infancy, and therefore we need to be cautious in recommending solutions. Effective solutions are likely to be multi-pronged, covering primarily the areas of professional education and legislation. The implementation of your Workgroup recommendations will no doubt “make a difference” in the lives of Maryland families by increasing the safety and well-being of survivors of abuse and their children.

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References

[Association of Family and Conciliation Courts. 2016. *Guidelines for Intimate Partner Violence: A Supplement to the AFCC Model Standards of Practice for Child Custody Evaluation*.](#)

[Conner, D. H. \(2011\). Back to the drawing board: Barriers to joint decision-making in custody cases involving intimate partner violence. *Duke Journal of Gender Law & Policy*, 18, 223.](#)

[Keilitz, S. L., Davis, C. V., Flango, C. R., Garcia, V., Jones, A. M., Peterson, M., & Spinozza, D. M., 1997. *Domestic violence and child custody disputes: A resource handbook for judges and court managers*. Williamsburg, VA: National Center for State Courts.](#)

[Maryland General Assembly Commission on Child Custody Decision-making, Final Report, 2014.](#)

[Saunders, D. G. \(2017\). State laws related to family judges' and custody evaluators' recommendations in cases of intimate partner violence: Final summary overview. Final report to the National Institute of Justice, U.S. Department of Justice. Office of Justice Programs. National Criminal Justice Reference Service No. 250667.](#)

[Saunders, D. G., Faller, K. C., & Tolman, R. M. \(2011\). Child custody evaluators' beliefs about domestic abuse allegations: Their relationship to evaluator demographics, background, domestic violence knowledge, and custody visitation recommendations. Final technical report to the National Institute of Justice.](#)

[Wisconsin Governor's Council on Domestic Abuse and End Domestic Abuse Wisconsin, March 2017. Domestic Abuse Guidebook for Wisconsin Guardians Ad Litem: Addressing Custody, Placement, and Safety Issues](#)

Recommended research reviews that form the basis for much of this testimony:

[Davis, G. \(2015\). A systematic approach to domestic abuse-informed child custody decision making in family law cases. *Family Court Review*, 53\(4\), 565-577.](#)

[Jeffries, S. \(2016\). In the best interests of the abuser: Coercive control, child custody proceedings, and the "expert" assessments that guide judicial determinations. *Laws*, 5\(1\), 14.](#)

[Saunders, D. G. \(2015\). Research-based recommendations for child custody evaluation practices and policies in cases of intimate partner violence. *Journal of Child Custody*, 12\(1\), 71-92.](#)

[Stark, D. P., Choplin, J. M., & Wellard, S. \(2019\). Mich. J. Gender & L. \(2019\). Properly Accounting for Domestic Violence in Child Custody Cases: An Evidence-Based Analysis and Reform](#)

[Working group on complex divorces - multidisciplinary collaboration, CSMS Group, Netherlands \(2019\). "It won't stop, until you protect the victims". Complex divorces and suspicions/allegations of domestic violence'.](#)

Resources:

Battered Women's Justice Project <http://www.bwjp.org/our-work/projects/national-child-custody-project.html>

Praxis International: <http://www.praxisinternational.org/>

Family Violence Department, Nat'l Council of Juvenile & Family Court Judges: <http://www.ncjfcj.org/dept/fvd/>

Leadership Council on Child Abuse & Interpersonal Violence: <http://www.leadershipcouncil.org>

Futures Without Violence: <https://www.futureswithoutviolence.org/>