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SB13: Family Law: Custody Evaluators – Qualifications and Training

Written Testimony, Jennifer Shaw, Psy.D.

Thank you for this opportunity to share a child-centered perspective SB 13.

It is imperative that all stakeholders in a position to change the trajectory of a child's life understand that child abuse and neglect is a traumatic brain injury. Whether that injury is a temporary disruption of development or a wound that neuroscience confirms will persist throughout the lifespan depends on what we do as soon as the wound is discovered. In cases of custody, separation from an abusive parent often follows such a discovery. This separation from a parent places a life-altering decision in the hands of courts. An injured child's rehabilitation needs must be the priority of anyone tasked with determining the environment best suited to both safety and recovery needs.

While the implications of this bill are complex, the request today is simply to ensure that this determination only be made by a professional with sufficient training to identify the complex implications on a child's brain when harm done is ignored and warning signs for further harm are not heeded.

On behalf of all those dedicated to both the protection and restoration of children (social workers, child advocates, protective parents, forensic interviewers, teachers and counselors, and child therapists), I ask you to consider a traumatized child cannot recover until her home proves to be a space of physical and psychological safety.

We ask you to accept the science: children cannot begin to heal until they are safe, feel safe consistently, and custodial decision-making is based on a parent's capacity to prioritize research-informed recovery needs.

We cannot begin our work when a child's right to safety is postponed, or considered secondary to an adult's right to parent, or deemed debatable as they wait for a final custody determination.

For providers and court advocates, our most important job is to put adult words to the suffering of children, including making recommendations so that their adult stewards prioritize them above all else. Some children are too young to know the words, others have learned their words won't make a difference, and others reserve them for when the world proves that their safety is the priority. We serve as trained translators for children; today we ask that all custody evaluators be asked to learn the same language before offering a recommendation for custody and visitation in cases involving an abuse allegation.

This bill proposes that evaluations must be based on what injured children need most: not the perfect parent, or the one with more financial resources, or the one most equipped to present their case in a courtroom, but one with the greatest capacity to create a safe, secure, and predictable home; an environment most conducive for emotional and psychological rehabilitation, one that can be reasonably predicted to do no further harm and can invite an injured brain to resume typical development.

Whether or not a child heals depends much less on the approach of a therapist or the resiliency of a child but much more on what their world does next.

We all know children are incredibly resilient. However, we cannot rely on a capacity for resilience as justification for a passive response to an active threat to that very capacity. A developing brain

either explores or retreats; thrives or survives; attaches to a healthy ally or learns the risk of harm or rejection is just too great. It can grow in the direction of tomorrow or first wait to see if tomorrow is a safe place to be. They are resilient but creating conditions to activate that resilience is on us. In most cases, children survive abuse but let's give injured children a chance to consider that their present circumstance is temporary, and the future is not determined by what has happened but rather how the world responded when it did.

As you consider SB 13, I offer an adult voice to just one of many little voices that was never heard in court.

Until a custody evaluator's report to the court could be finalized, and the protective parent could borrow enough money to pay her share of the unaffordable report, 5-year-old Liam was ordered to continue his Wednesday evenings and every other weekend visit with his father. Liam had done what we tell children to do, to tell a trusted adult if hurt or touched inappropriately. He trusted his mother most of all. Liam told his mom, his teacher, started touching his Pre-K classmates, and asked his therapist to play the penis game. A motion to deny visitation was to be considered at a future date as Liam's mother was told she had to continue dropping him off even when he screamed and hid when it was time to go. He was interviewed once by a stranger and refused to speak. Liam had already told the stories and the forensic interviewer was well-qualified but had no relationship with him.

We seem to forget we don't tell children to wait for a forensic interview with a stranger before saying they have been harmed. We don't tell them to stop sharing with us because we could be accused of coaching. We don't stop a disclosure of sexual abuse and tell them to wait until they visit an expert stranger. Telling his trusted adult, the protective parent, was considered an unfounded allegation because it was not repeated on camera and first told to his mother. From then on, with help from his attorney, Liam's abuser argued he was a victim of parental alienation. The protective parent did seek to alienate her child, as we all would if our child disclosed repeated sexual abuse while displaying all signs and symptoms consistent with the disclosure. Failing to protect includes failing to alienate him from his abuser.

All subsequent court hearings centered on Liam's mother attempting to prove she was not the one who harmed her son. The court-ordered evaluator had no training in child development or child abuse, including what would have made all the difference for Liam – understanding the neuroscience behind recognizing signs of symptoms of sexual abuse in young children. The evaluator did not talk with his daycare provider, teacher, or his therapist. The person with the most information about Liam's change in behavior and functioning was his mother, his full-time caregiver. Yet her data was an opinion deemed as credible as his abuser's denial.

Liam's father was wealthy; he hired a team of attorneys. He paid travel expenses for experts who testified on his father's behalf, including one who argued a 5-year-old believed in Santa Claus and the tooth fairy so we can't expect him to tell the difference between truth and fantasy. His mother drained her 401K and sold her home. Now traumatized and feeling powerless herself, she was less and less equipped to fight for Liam. Each hearing, whether continued or not, cost her up to 5K. She stopped submitting motions because she had no money to do so. While the court limited the abuser's time and court hearings were continued for one reason or another, Liam continued to travel from a place of safety to a place of danger every week. As Liam and his mother waited for a fair and child-centered hearing, Liam's father showed him his gun collection and told that his mother and his therapist would be killed if he continued to talk.

As his father grew emboldened by successful attempts to discredit his mother, Liam lost control of his bladder, clung to his mother, started hitting other children, had chronic headaches and

stomachaches, stopped learning in school, and nightmares interrupted his sleep. The only thing that helped him sleep was a trained guard dog who slept next to him every night.

The court ordered child therapy, once a week for 45 minutes as if Liam could heal when his injury was ignored or reopened in between his sessions. If any of us were assaulted and informed the police, I doubt we could function if we were then ordered to have dinner with the assailant on Wednesdays and trust him not to do it again every other weekend, at least until our case could be heard in court next year. No one would pick us up and force us out of the car until the accused had a fair hearing. We would not survive psychologically, and we have adult brain capacity.

Whether or not a child heals does not depend on the type of therapy he receives; rehabilitation depends on how the world responds once the visible or invisible wound is discovered. In short, this bill is part of a comprehensive but common-sense effort to ensure no child citizen's right to safety is postponed and no protective parent needs to buy a guard dog, find a pro-bono attorney and pro-bono therapist, or is asked to choose between handing her injured child to an abuser, or be threatened with contempt of court for refusing to do so. Liam was not safe until he was 8 years old, only after physical evidence was considered sufficient for the court to stop requiring Liam to have dinner with his abuser on Wednesdays and trust him every other weekend. This was a full 3 years after he first showed his mom and his therapist how to play the penis game.

Today, you're hearing all the reasons why this bill is so important. I ask you to consider the impact on the recovery of a traumatized child should we fail to require child or custody evaluators sufficient training in all relevant areas of child abuse.

Thank you,

Jennifer Shaw, Psy.D.