



SCHOOL OF SOCIAL WORK

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To: Maryland Senate Judicial Proceedings Committee

From: Daniel G. Saunders, Ph.D., Professor Emeritus

Re: Maryland Senate Bill 57: Child Custody and Visitation – Factors for Determining Allocation of Decision-Making and Parenting Time

Chairman Smith, Vice-Chair Waldstreicher, and Members of the Committee, I am grateful for this opportunity to voice my support for Senate Bill 57 and provide some comments.

I am Professor Emeritus at the University of Michigan's School of Social Work. In October 2019, I had the honor of providing detailed in-person and written testimony to your "Workgroup to Study Child Custody Court Proceedings Involving Child Abuse or Domestic Violence Allegations" (written testimony at http://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnChdAbuseDomViol/Testimony_by_Daniel_Saunders.pdf; video testimony at <http://mgahouse.maryland.gov/mga/play/ec54a59f-cbd7-4a4a-95ed-dd4010b6381d/?catalog/03e481c7-8a42-4438-a7da-93ff74bdaa4c&autostart=true>)

The implementation of your Workgroup's recommendations will significantly improve the lives of Maryland's families by increasing the safety and well-being of survivors of domestic abuse and their children. This bill flows directly from the Workgroup's recommendations.

The proposed bill has significant strengths. Commendable is the focus on evidence of abuse of the parents. This focus is illustrated in the following statement: "In a custody or visitation proceeding, the court shall consider, when deciding custody or visitation issues, evidence of abuse by a party against (1) the other parent of the party's child; (2) the party's spouse." Children will not be safe unless the parents are safe. Research consistently finds that children are at risk of physical and emotional harm when domestic abuse occurs, even after parental separation (Devaney, 2015).

Also commendable is the statement that joint custody is not presumed. Most scholars who study custody decisions agree that decisions about the children's best interests need to be individualized (Pruett & DiFonzo, 2014). Evaluators need to thoroughly assess the potential impact of many factors when determining the best interests of children.

Our research (Saunders et al., 2011) shows that many custody evaluators overestimate the extent to which parents are making false claims of child abuse. Such bias is related to the belief that abuse claims are meant to alienate the children from the other parent. Therefore, Bill 57

includes important provisions, specifically that: “a report of child abuse or domestic violence may not be considered unfavorably against the reporting party” and “any reasonable effort to protect a child or a party to a custody or visitation order from the other party may not be deemed as unjustifiable denials or interferences with visitation granted by a custody or visitation order.”

As shown in two studies on the impact of state statutes (Saunders, 2017; Morrill et al., 2005), best interest factors that require a parent to facilitate a positive relationship between the children and the other parent are associated with joint custody arrangements with an abusive parent. Thus, two provisions of this bill are essential: a) extra weight being given to the physical and psychological safety of the child; and b) “if a case involves domestic violence or child abuse, the court shall exclude any factors listed in subsections (e) and (f) of this section that promote the willingness of a party to facilitate contact between the child or the party with the other party.”

In line with the Workgroup recommendations, the Committee might consider more specific provisions for supervised visits. The Workgroup Final Report states that “**statutory law should be expanded to provide specific examples of the types of permissible custody or visitation arrangements that would best protect victims of domestic violence.** For example, following a finding that a party has engaged in domestic violence, Wisconsin courts are statutorily required to impose one or more of the following conditions, as appropriate: “(1) mandating that the exchange of a child take place in a protected setting or requiring supervised exchanges or visitation in the presence of an appropriate third party who agrees to assume responsibility assigned by the court and to be accountable to the court; (2) requiring the abusive parent to pay the costs of supervised visitation; (3) requiring the abusive parent to attend and complete an appropriate abuser intervention program as a condition of exercising visitation; (4) requiring the abusive parent to abstain from alcohol or other controlled substances during visitations and for a period of time prior to each visitation; (5) prohibiting an abusive parent from having overnight visitations; (6) requiring the abusive parent to post a bond for the return and safety of the child; or (7) any other condition that the court determines is necessary for the safety and well-being of the child or the safety of the victim parent.” NCJFCJ has also recognized the importance of such measures in domestic violence cases by noting that visitation should *only* be awarded if a judge finds that adequate provisions for the safety of the child and the abused parent can be made.”

The type of abuse should also be taken into account when determining visitation arrangements, as recommended by the Workgroup: “**supervised visitation arrangements that fall under § 9-101 must take into account whether the case involves neglect or child abuse (including separate considerations, as appropriate, depending on whether the abuse was emotional, physical, or sexual)**”. In cases with the highest risk to children and parents, supervision by a para-professional or professional is needed at a specialized agency. The international organization, Supervised Visitation Network, has standards and training for such agencies <https://www.svnworldwide.org/becoming-a-professional-sv-provider> .

I have a concern about statements on the need for finding “that there is no likelihood of further child abuse or neglect . . . “. Mental health professionals and judges cannot conclude that

there is no future risk of abuse. There is always some risk, even if the risk is extremely low. “Minimal risk” is a term that might fit instead.

Thank you for the opportunity to provide comments on important legislation to help protect Maryland’s citizens from harm.

References

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