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Senate Judicial Proceedings Committee

Senate Bill 675 - Child Custody – Cases Involving Child Abuse or Domestic Violence – Training for Judges and Child's Counsel

Family law practitioners will be the first to concede that judges presiding over normal contested child custody proceedings may not be adequately familiar with family law, especially new judges because many come from backgrounds as prosecutors, and few come to the table with sufficient family law familiarity. There is a "learning curve" as even the judiciary's staunches supporters would concede. This legislation asks a fundamental question, how do we as policymakers allow judges' learning curves bend away from justice and break the backs of vulnerable and voiceless children, who for no fault of their own are before the court, but not a party to the proceedings? Even experienced judges, who get training in other areas of family law, are encouraged to push for familial contact, yet are not adequately trained to be competent to directly examine the allegations of abuse as required in Family Law §9-101/9-101.1. Training is required.

This legislation also requires training of court appointed lawyers for children at issue in custody and visitation cases. The term best interest attorney seems Orwellian when one thinks the preference or interest of a child can be subverted by a lawyer with six hours of perhaps the wrong type of training to handle complex cases where there are allegations/disclosures of abuse. Too often, these ill-trained conduits between waring parents serve as a wall between the facts derived from the children, and insulate judges from criticism. At the very least, the courts should provide surveys to children once they become adults to understand how the process treated them. Perhaps this report card would require summer school. Maryland has no continuing legal education requirements, so this bill is not a heavy lift for those only those permitted to practice law in this sensitive role, for which they are paid. This is not community service.

This bill aims to fortify our judiciary with experts on the bench, for specific judges assigned to these difficult family law dockets. In a heavy emotional and disproportionately pro se docket, all legal professionals must be intimately familiar with best practices and underlying scientific understanding required to pass fair and considered judgement on custody and visitation when child abuse and domestic violence disclosures come to the court without an investigation, such as in CINA proceedings. As mandated reporters have had fewer interactions with children, judges are the first and last line of defense.

Neither judges, nor BIAs are mandated reporters. Trainings listed for the Family Law University are specific to important topics, but none are specifically on point with the workgroup recommendations codified in this bill. As Malcom Gladwell noted in his recent book "Talking to Strangers", there is an underlying problem with "truth default theory," where we are more likely to believe the less horrendous story, all things being equal. It is easier to imagine someone is lying to game the system than someone who seems normal in court and in public, could be a monster in private. This miscalculation occurs in the criminal context, but perhaps more nefariously in family law, where we want to assume parents wouldn't harm their children.

Senate Bill 675 highlights some of the horrors depicted in Allen v. Farrow, an ongoing HBO documentary about parental alienation claims used to hide child sexual abuse. The law in Maryland was updated to reflect the concerns raised in similar cases back in the early 1990s, but the training for judges to understand the dynamics hasn't caught up with the law, and in fact, the law has been hijacked by this same disproven theory that was inspired in part by the arguments raised during this case. After 30 years, we are learning more about the facts behind those circumstances, but the Maryland judiciary is not prioritizing similar concerns raised here now.

Maryland is not unique. Judges across the country have similar laws to apply to the facts, but they are hesitant to get at the facts in abuse disclosures, because there usually is not an investigation in family court. Judges, as well as so-called experts and court appointed counsel are also not adequately trained, and when the legislature pushes for reforms, the judiciary fails to even recognize the problem, let alone confront it head-on. We wouldn't be here if the judiciary was willing to fully examine this problem themselves. The legislative policy-making body of the state must act, because they don't. What higher priority do we have than preventing the state from sending child sexual assault victims and domestic violence survivors back under the thumb of their abusers.

In Allen v. Farrow the alleged abuser said the allegations were, "bizarre concoctions of a woman scorned." While the survivors articulated at an older age that, "I wish that I had been stronger and didn't crumple under pressure." The other party conceded that, "if I felt weird it was my fault, and I was doing something wrong" and "I get why people can't believe it, I couldn't believe it." The dynamic is familiar for protective parents in Maryland. This is not just New York in the 1990s, this is family law courts everywhere, except where there are trained judges and BIAs. Even there problem arise, but they are recognized and prioritized.

The lack of training of judges, Best Interest Attorneys and notably, blocking the transparency of training materials under a court issued Rule create the atmosphere that allows these abuse cases to fester and the scene in depicted on HBO is far too familiar of a scenario, that plays out day after day, in every jurisdiction across the state and country, with less fanfare and legal assistance.

Please read the appeal in the Allen case that notes - "While the evidence in support of the allegations remains inconclusive, it is clear that the investigation of the charges in and of itself could not have left Dylan unaffected." Alarmingly and tellingly, the dissent provides that – "Mr. Allen is being estranged and alienated from his son by the current custody and visitation arrangement. "Mr. Allen would welcome Satchel by hugging him, telling him how much he loved him, and how much he missed him…"

Evidence of a friendly relationship with child does not exonerate against accusations of sexual abuse against another child. Even the behaviors of a child who was abused themselves, doesn't on their face clear the allegations of wrongdoing. Investigations are required for Child in Need of Assistance cases, which are to be completed within a few months. But under family law disputes, a simple analysis of the expressions of a child seem to be sufficient to contradict other evidence for some judges. That is why we need adequate training in Maryland, this year. Who wants our vulnerable children to fall off of this judicial learning curve? Our children and victims of domestic violence deserve so much more.

For these reasons, I respectfully request a favorable committee report on Senate Bill 675.