

THE COALITION TO PROTECT MARYLAND'S CHILDREN

Our Mission: To combine and amplify the power of organizations and citizens working together to keep children safe from abuse and neglect. We strive to secure the budgetary and public policy resources to make meaningful and measurable improvements in safety, permanence, and well-being.

Testimony before the Senate Judicial Proceedings Committee
Bill # HB 338: Child Abuse and Neglect – Definition of Neglect

OPPOSE

February 8, 2022

The Coalition to Protect Maryland's Children (CPMC) is a consortium of Maryland organizations and individuals formed in 1996 to promote meaningful child welfare reform. CPMC **opposes** passage of HB 338: Child Abuse and Neglect – Definition of Neglect.¹

House Bill 338 would strip a child's persistent exposure to domestic violence in the child's home, an exposure grave enough to cause the child mental harm, or substantial risk of such harm, from the statutory definitions of child neglect. Both the CINA statute and the Family Law statute would be revised to exclude, expressly, this significant category of harm and risk of harm. As result, local DSS agencies would lose legal authority to intervene in families with chronic domestic violence and no longer would be able to protect children and provide services to address the family violence and to alleviate the substantial mental harm to children. Juvenile courts would not be able to intervene, either. The result would be an increase in substantial harm to children, reduction in services to alleviate domestic violence and a likely increase in domestic violence.

Under current law, the Juvenile Causes Act and the Family Law Article define child neglect to include circumstances where "the child's health or welfare is harmed or placed at substantial risk of harm" or where "the child has suffered mental injury or been placed at substantial risk of mental injury" resulting from a caregiver's failure to provide "proper care and attention" to the child. Md. Code Ann., Cts. & Jud. § 3-801(s); Md. Code Ann., Fam. Law § 5-701(s). HB 338 would substantially curtail this definition by creating an exception for victims of domestic violence in five circumstances: (1) failing to protect the child from witnessing domestic violence; (2) failing to leave the home; (3) failing to end a relationship with the alleged perpetrator; (4) failing to report the domestic violence; and (5) failing to seek a protective order. In essence, HB 338 would carve out from the statutory definition of child neglect any circumstance where a child experiences tangible mental harm or substantial risk of such harm from persistent exposure to domestic violence. ***Enacting such a carve-out inevitably will injure children.***

Exposure to domestic violence is a well-recognized cause of traumatic injury to children. Chapter 52 of 2019 established a Workgroup to Study Child Custody Court Proceedings Involving Child Abuse or Domestic Violence Allegation ("DV Workgroup"). its final report ("DV Workgroup Rep."), submitted to the General Assembly in 2020, summarized the research literature:

[C]hildren who have been exposed to domestic violence are more likely than their peers to (1) exhibit signs of depression and anxiety, fear and withdrawal, low self-esteem, and higher levels of anger and disobedience and (2) experience difficulties in school,

¹ Members in support of position include: LIST.

concentration, and task completion and score lower on assessments of verbal, motor, and cognitive skills. Children exposed to domestic violence also have higher rates of delinquency and substance use. According to the report, research has demonstrated that frequent exposure to domestic violence teaches and normalizes violence, increasing the risks that the children will become the next generation of victims and abusers. Finally, as one of the identified ACEs, exposure to domestic violence is also a risk factor for some of the most common causes of death in the United States, including substance abuse, smoking, and obesity.²

The DV Workgroup's foremost recommendation called for revising the "best interests of the child" standard in child custody cases:

[B]est interest factors must give extra weight to the physical and psychological safety of a child, as this must be the primary priority of any custody decision. Before evaluating *any* other best interest factor, the court must assess physical and psychological safety risks and claims of child abuse or domestic violence.³

By prohibiting a court from even considering the harm or risk of harm from the child's exposure to persistent domestic violence, HB 338 would diametrically contravene the DV Workgroup's foremost recommendation that courts give primacy to assessing psychological safety risks (and other safety risks) to children. It runs counter to the very positive, substantial work that the General Assembly has done in recent years to reduce exposure to ACEs (adverse childhood experiences) that harm children's cognitive and emotional development.⁴

HB 338 also would result in a diminution of services to families in crisis. Without a basis for reporting suspected maltreatment of the child, CPS will not screen in a case and refer it for investigation and services, nor will it refer the case for "alternative response" or "Non-CPS Risk of Harm" services. Currently through this "Non-CPS Risk of Harm" track, a local DSS can reach out and offer services for reports of domestic violence, even when it isn't clear that there has been harm to the child. HB 338 could lead DSS to no longer reach out and offer assistance to these families. Again, the inevitable result would be a higher incidence of harm to the child, as well as increased severity of harm.

Nothing in the DV Workgroup report supports any such earthquake in the State's laws of child protection. CPMC is unaware of any incidence of events, incidents, or court decisions that warrant it, either. ***For all of these reasons we urge an unfavorable committee report on HB 338: Child Abuse and Neglect – Definition of Neglect with no amendments.***

² DV Workgroup Rep. 6 (citing U.S. DHHS report on research literature).

³ *Id.* at 17 (emphasis in original).

⁴ *Id.* at 1, 3, 5-6 (discussing legislative activity, ACEs, and lasting health effects on children).