MARYLAND GENERAL ASSEMBLY

COMMISSION ON CHILD CUSTODY DECISION-MAKING

HB 687/CH 633, 2013 (MSAR #9554)

FINAL REPORT

DECEMBER 1, 2014

HONORABLE CYNTHIA CALLAHAN, CHAIR

COMMISSION ON CHILD CUSTODY DECISION-MAKING

December 1, 2014

Honorable Martin O'Malley
Governor
State House
100 State Circle
Annapolis, Maryland 21401

Dear Governor O'Malley:

In April 2013, you signed House Bill 687 into law, creating the Commission on Child Custody Decision Making. The Commission was formed to study a wide variety of topics relating to the child custody decision making process in Maryland, and to report findings and recommendations to the Maryland General Assembly. With this letter, I am pleased to submit the Commission's Report.

The Commission held five (5) public hearings throughout the state in 2013, and the testimony at those hearings helped focus our work. In early 2014, six Committees were formed, which

- conducted in-depth research on best practices in a wide variety of areas (detailed in the Literature Review Committee report);
- reviewed custody determination processes in the fifty (50) states and the District of Columbia (detailed in the Statutory Considerations Committee report);
- identified and analyzed the existence of bias in the Maryland custody law and process (detailed in the Identifying and Eliminating Bias Committee report);
- studied the impact of Domestic Violence on custody determinations and processes (detailed in the Domestic Violence Committee report);
- surveyed the 24 jurisdictions in Maryland to ascertain the court processes and procedures used in custody cases state-wide (detailed in the Court Processes Committee report); and
- examined the availability, use, and success of alternative dispute resolution processes around the state (detailed in the Alternative Dispute Resolution Committee report).

The Commission and its various committees and subcommittees, comprised of over 125 stakeholders and experts, have met more than 90 times since the commissioners were appointed in August, 2013.

The attached report and recommendations represents a culmination of sixteen (16) months of vigorous and intensive research, evaluation, and analysis. It is the hope of the Commission that this report will inform efforts to improve the custody decision-making process, and thus ensure better outcomes for Maryland's children and families.

Sincerely,

Honorable Cynthia Callahan
Chair, Commission on Child Custody Decision-Making

Website: http://www.mdcourts.gov/family/cccdm.html
Email: childcustodydecisionmaking@mdcourts.gov

MARYLAND GENERAL ASSEMBLY

COMMISSION ON CHILD CUSTODY DECISION-MAKING

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Commission on Child Custody Decision-Making

Honorable Cynthia Callahan, Chair

Circuit Court for Montgomery County
Appointed to the Commission by the Chief Judge of the Court of Appeals
Appointed to serve as Chair by the Governor

Appointed by the Governor:

Renee Bronfein Ades, Esq.
Attorney, Law Offices of Renee Bronfein Ades, LLC

Wayne Beckles
Dean, Baltimore City Community College

Michele R. Harris, Esq.
The Law Offices of Michele R. Harris, LLC

Paul C. Berman, Ph.D.
Psychologist, Berman & Killeen, P.A.

Dorothy J. Lennig, Esq.
House of Ruth Maryland

David L. Levy, Esq.
Attorney

Carlton E. Munson, Ph.D., LCSW-C
Professor, University of Maryland, Baltimore

Kathleen A. Nardella, Esq., LCSW-C
Licensed Clinical Social Worker and Attorney

Laure Anne Ruth
Attorney, Women's Law Center of Maryland, Inc.

Keith N. Schiszik, Esq.
Attorney, Day & Schiszik

Vernon E. Wallace, Jr.
Program Manager, Baltimore Responsible Fatherhood Project, Center for Urban Families

Lauren Young, Esq.
Maryland Disability Law Center

Appointed by the Chief Judge of the Court of Appeals:

Hon. Shannon E. Avery
District Court for Baltimore City (Now Circuit Court for Baltimore City)

Hon. Videtta A. Brown
Circuit Court for Baltimore City

Master Richard J. Sandy
Circuit Court for Frederick County

Appointed by the Speaker of the House:

Delegate Kathleen M. Dumais
Democrat, Ethridge, Quinn, Kemp, McAuliffe, Rowan and Hartinger, P.A

Delegate Susan K. McComas
Republican, District 35B, Harford County

Appointed by the President of the Senate:

Senator Jennie M. Forehand
Democrat, District 17, Montgomery County

Senator Joseph M. Getty
Republican, District 5 - Baltimore County & Carroll County
(September 2013 - May 2014)

Staffed by the Deparment of Family Administration,
Administrative Office of the Courts:

Connie Kratovil-Lavelle, Esq.,
Executive Director
Christine Feddersen

Sarah R. Kaplan, Esq.
Gerald Loiacono, Esq.
David R. Shultie, Esq.

Joseph Warren
Adam Wheeler, Esq.
Pen Whewell

Chapter 633

(House Bill 687)

AN ACT concerning

Commission on Child Custody Decision Making

FOR the purpose of establishing the Commission on Child Custody Decision Making; providing for the composition, chair, and staffing of the Commission; prohibiting a member of the Commission from receiving certain compensation, but authorizing the reimbursement of certain expenses; requiring the Commission to perform certain duties; requiring the Commission to be appointed, organized, and meet by a certain date; requiring the Commission to submit certain reports to the Governor and the General Assembly on or before certain dates; providing for the termination of this Act; and generally relating to the Commission on Child Custody Decision Making.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That:

(a) There is a Commission on Child Custody Decision Making.

(b) The Commission consists of the following members:

(1) two members of the Senate Judicial Proceedings Committee, appointed by the President of the Senate;

(2) two members of the House Judiciary Committee, appointed by the Speaker of the House;

(3) two circuit court judges and one District Court judge from diverse geographical regions of the State, each of whom has experience hearing family law, domestic violence, or child custody cases, appointed by the Chief Judge of the Court of Appeals;

(4) one experienced family law master, appointed by the Chief Judge of the Court of Appeals; and

(5) the following members, appointed by the Governor in consultation with the President of the Senate and the Speaker of the House:

(i) two representatives of the Maryland State Bar Association Family Law Section from diverse geographical regions of the State, at least one of

whom shall be from Baltimore City and have experience representing fathers in contested custody matters;

(ii) one representative of a domestic violence advocacy group;

(iii) one representative of a fathers' rights group;

(iv) one representative of the Women's Law Center;

(v) one educator on family law;

(vi) three licensed mental health workers who have experience with family law or child custody cases, at least one of whom shall be a psychologist and one of whom shall have expertise in the area of the study of the African American family;

(vii) one representative ~~from~~ of the Children's Rights Fund of Maryland; ~~and~~

(viii) one representative of the Maryland Commission on Disabilities; and

~~(viii)~~ (ix) one sociologist from the University of Maryland School of Social Work, recommended by the President of the University of Maryland, Baltimore.

(c) The Governor shall designate the chair of the Commission.

(d) The Department of Family Administration in the Administrative Office of the Courts shall provide staff for the Commission.

(e) A member of the Commission:

(1) may not receive compensation as a member of the Commission; but

(2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(f) The Commission shall:

(1) study the practice, principles, and process for child custody decision making in Maryland;

(2) by December 31, 2013, hold one hearing each in Baltimore City, Harford County, Prince George's County, Western Maryland, and the Eastern Shore to

allow for public input and participation by interested persons on child custody decision making in Maryland;

(3) study how to make the establishment and modification of child custody orders more uniform, fair, and equitable;

(4) study how to reduce litigation in child custody proceedings;

(5) study and consider the adverse effects of child custody litigation and ways the court system can minimize those effects;

(6) study how to promote and ensure that children have ongoing relationships with each parent;

(7) study how to maximize the involvement of both parents in each child's life;

(8) study the advantages and disadvantages of joint physical custody and the impact of joint physical custody on the health and well–being of children;

(9) study whether or not there is any gender discrimination in custody decisions in Maryland and, if so, how to address such discrimination;

(10) study statutes from other states used for child custody determinations and assess whether those statutes improve the quality of decisions in child custody cases;

(11) study whether the Annotated Code of Maryland should contain a statute regarding child custody decision making that would include definitions and factors for consideration in such decisions;

(12) study case management systems for family law cases in Maryland and other states and study how to improve timely access to the court for temporary, pendente lite custody disputes, initial custody determinations, ~~and~~ custody modification proceedings, and emergency proceedings, and how to expedite denial of visitation proceedings;

(13) study the accountability of Maryland courts when using interventions such as protective orders, whether the courts should adopt processes to allow for compliance hearings, and the impact of domestic violence proceedings on temporary and final custody determinations;

(14) make recommendations regarding the most effective manner in which to facilitate cooperative decision making by parents involved in child custody proceedings as it relates to their children;

(15) study the training programs currently available to Maryland judges regarding child custody decision making and assess how to improve the training, including making it more culturally sensitive and diverse, and how to make the training more available to all judges on a consistent, ongoing basis;

(16) review the literature and research on decision–making responsibility and physical custody determinations, including child development literature and research on the effect of separation and divorce, and the literature and research on decision–making responsibility and physical custody determinations when the parents in the case were never married and may not have lived together;

(17) study standardization of the language used by courts in making child custody determinations for clarity and to eliminate exclusionary or discriminatory terms;

(18) study how to ensure that child custody determinations involving parents with mental health issues or sensory or physical disabilities are handled in a fair and even manner based on actual evidence and not presumed limitations;

~~(18)~~ (19) gather quantitative and qualitative data on the total number of contested custody cases per jurisdiction, including whether the court awarded joint physical custody to the parties or primary physical custody to the mother or the father over a 2–year period; and

~~(19)~~ (20) gather quantitative data on whether pro bono legal resources are equally available for petitioners and respondents in domestic violence protective order proceedings in Maryland.

(g) The Commission shall:

(1) be appointed, organized, and begin its deliberations no later than September 1, 2013;

(2) submit an interim report of its findings and recommendations to the Governor and, in accordance with § 2–1246 of the State Government Article, the General Assembly, on or before December 31, 2013; and

(3) submit a final report of its findings and any recommendations for legislation to the Governor and, in accordance with § 2–1246 of the State Government Article, the General Assembly, on or before December 1, 2014.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2013. It shall remain effective for a period of 1 year and 6 months and, at the end of December 31, 2014, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.

Approved by the Governor, May 16, 2013.

Executive Summary

The Commission on Child Custody Decision-Making (hereafter "Commission") was created by the enactment of Chapter 633 (House Bill 687) in the 2013 session of the Maryland General Assembly. The Commission was formed to study a wide variety of topics relating to the child custody decision-making process, and to report findings and recommendations to the Maryland General Assembly. The legislation directs the Department of Family Administration of the Administrative Office of the Courts to provide staff for the Commission. No budget was established for the Commission.

Consistent with the directives of Chapter 633, individuals who have expertise or particular interest in child custody decision-making were appointed to serve on the Commission. The Commission members represent a variety of perspectives and constituencies.

The Commission held its first meeting on September 12, 2013 at the Judicial Education and Training Center in Annapolis, Maryland. Two tasks were prioritized for Fall 2013, consistent with the dictates of Chapter 633, sections f(2) (hearings in five specified Maryland jurisdictions) and g(2) (preparing the interim report, due December 31, 2013). In addition to the prioritized tasks, Department of Family Administration staff conducted background research about legislation and processes affecting custody decision-making in Maryland and other states. The Interim Report was timely submitted.

In 2014, the full Commission held six meetings, two of which were all day (eight hours). At the meeting held February 6, 2014, Commissioners identified issues raised at the five public hearings, and six committees were appointed to carry out the Commission's analysis of the issues raised, and to make recommendations to the full Commission. Those committees and their chairs are:

ALTERNATIVE DISPUTE RESOLUTION: Delegate Susan K. McComas and Kathleen Nardella, Esq., LCSW-C, Co-Chairs

COURT PROCESS: Family Division Master Richard J. Sandy, Chair

DOMESTIC VIOLENCE: Dorothy J. Lennig, Esq., Chair

IDENTIFYING AND ELIMINATING BIAS: Vernon E. Wallace, Jr. and Lauren Young, Esq., Co-Chairs

LITERATURE REVIEW: Carlton E. Munson, Ph.D., Chair

STATUTORY CONSIDERATIONS: Keith N. Schiszik, Esq., Chair

Each of the six Committees was comprised of Commissioners and community members representing a broad range of perspectives. Each Committee's roster is provided in the Appendices hereto. Additionally, each Committee consulted with experts who were not officially Committee members, including Judiciary branch employees around the state, law school professors, and other experts who provided information and/or attended meetings as requested, on a variety of topics. All told, the Committees (and their subcommittees) held over ninety (90) meetings. Each Committee's recommendations and a summary of their findings can also found in the Appendices to this Report.

The Commission identified, discussed, and approved the following "guiding principles:"

1. The need for a **Maryland Custody Decision-Making Statute** providing a clear, consistent, predictable, gender-neutral process guiding custody determinations for litigants, lawyers, and judges, focusing on factors that affect a child's long-term adjustment, including significant regular contact with each parent, parenting quality, a child's developmental needs, the quality (conflict or not) of the relationship between the parents or parent figures, the parents' psychological adjustment, and a child's need to maintain significant relationships.

2. There should be **No Presumed Schedule of Parenting Time.**

3. The need for increased and enhanced **Judicial Training**, in areas including explicit and implicit bias, child developmental needs, cultural competency, disability issues, domestic violence, alternative dispute resolution methods (mediation, collaborative law and neutral facilitation), and predictable attorney's fees.

4. The use of **Non-Discriminatory and Gender Neutral Terms** in statutes, rules, court forms, and instructions whenever possible, in compliance with federal law, including the amendments to the Americans with Disabilities Act.

5. The need for additional **Alternative Dispute Resolution** processes, incorporated into court case management systems, providing uniform opportunities state-wide for services including mediation, facilitation and collaborative law.

6. The need for a rule creating a state-wide process for **Expedited and Emergency Hearings**, with defined criteria and uniform implementation.

7. A requirement that parties submit a **Parenting Plan** as part of the custody determinations pretrial process.

8. The need for further exploration of a Maryland **Family Court** consolidating the court-related family law judiciary and related services, recognizing this will require further study and a detailed plan.

9. The need for the establishment of a **Civil Right to Counsel** for parents in custody cases.

10. The need for clear statewide policies regarding coordination and propriety of court-ordered services, especially regarding **Mediation in Domestic Violence Cases** and **Mediation Following Child Custody Evaluation Reports,** including when, if ever, mediation is appropriate in domestic violence cases, and precluding a case custody evaluator from functioning as the case mediator or facilitator.

Details regarding the implementation of the guiding principles and the research supporting them are in the full Commission Report, and in the Appendices to the Report.

Two of the Commission's enumerated duties in HB687 were not completed by the Commission.

Task number 19 directs the Commission to "[g]ather quantitative and qualitative data on the total number of contested custody cases per jurisdiction, including whether the court awarded joint physical custody to the parties or primary physical custody to the mother or the father over a two-year period."

At present, Maryland Court database systems are not programmed to capture this data. In researching how the Commission might collect this data, two studies relating to outcomes in family law cases in Maryland were reviewed. Both were managed by the Women's Law Center of Maryland (WLC). They were conducted in 1999 (report issued 2003) and 2003 (report issued 2006). Neither study provided the specific data sought by HB687.

The 1999 study sampled 1867 cases and cost $125,000. The 2003 study sampled 3366 cases statewide cost $200,000.[1] Both were grant funded. The research was directed by a part-time project manager and out-sourced professional data analysis. Each took three years to complete.

With this information in hand, in the 2014 Session of the General Assembly, the Commission sought an extended term (one additional year) and funding. Neither was successful.

Task number 20 directs the Commission to "[g]ather quantitative data on whether pro bono legal resources are equally available for petitioners and respondents in domestic violence protective order proceedings in Maryland."

The Commission did not undertake this task, as it was duplicative of the work being done by the Task Force to Study Implementing a Civil Right to Counsel in Maryland[2]. Their Report was issued on October 1, 2014. Delegate Kathleen Dumais served on both the Task Force and

[1] The first represents about 2%, and the second about 4%, of the approximately 85,000 non-Juvenile family cases filed annually in Maryland.
[2] The Report can be found at http://www.mdcourts.gov/mdatjc/taskforcecivilcounsel/pdfs/finalreport201410.pdf.

the Commission. The Commission thus had the benefit of the Task Force research, and wholeheartedly endorses their findings and their recommendations:

- Create a right to counsel in civil domestic violence cases through a four year, phased-in expansion of existing programs that provide representation to income-eligible petitioners and respondents
- Establish a right to counsel pilot program in child custody matters by increasing funding for the Judicare program administered by the Maryland Legal Services Corporation.

COMMISSION ON CHILD CUSTODY DECISION MAKING IN MARYLAND
PROPOSED DRAFT CUSTODY STATUTE

FAMILY LAW 9-1X1 (NEW).

Definitions [NEW]

(a) In this title the following words have the meanings indicated.

(b) "Abandoned" means left without provision for reasonable and necessary care or supervision.

(c) "Child" is as defined in the Annotated Code of Maryland.

(d) "Child-parent relationship" means a relationship that:

(l) exists or did exist preceding the filing of an action under this section, in which a person provides or provided for the physical needs of a child by supplying food, shelter, and clothing and provides or provided the child with necessary care, education, and discipline;

(2) continues or existed on a day-to-day basis through interaction, companionship, and mutuality that fulfill the child's psychological need for a parent as well as the child's physical needs; and

(3) meets or met the child's need for continuity of care by providing permanency or stability in residence, schooling, and activities outside of the home.

(e) "Disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual, a record of such impairment, or being regarded as having such an impairment, consistent with the Americans with Disabilities Amendment Act of 2008 (PL 110-325, 42 USC Sec. 12101 *et. seq*.).

(f) "Legal decision-making authority" means the right and obligation to make decisions involving health, education, religion, culture, medical care, and other matters of major significance concerning the child's life and welfare.

(g) "Ongoing personal relationship" means a relationship with substantial continuity through interaction, companionship, and mutuality that has met significant emotional or psychological needs of a child.

(h) "Parenting Time and Responsibility" means:

(1) the time the child is in a Parent's care according to an agreed–on or court–ordered schedule; and

(2) the right and obligation of a parent to provide a home for the child, address the child's needs, and to make the day–to–day decisions required during the time the child is with that parent.

(i) "Parties" are individuals with a child-parent relationship as defined in (d) above, or individuals with an on-going personal relationship, as defined in (g) above.

FAMILY LAW 9-1X2 (formerly §5–203).
POWERS AND DUTIES; CUSTODY

(a) (1) The parents are the joint legal and physical custodians of their minor child.

(2) A parent is the sole legal and physical custodian of the minor child if:

(i) the other parent dies, abandons the family, or is incapable of acting as a parent;

(ii) there is only one legal parent.

(b) Each parent of a minor child (as defined in §1–103 of the General Provisions Article):

(1) is responsible for the child's support, care, nurture, welfare, and education; and

(2) has the same powers and duties in relation to the child.

(c) If one or both parents of a minor child is an unemancipated minor, the parents of that minor parent are jointly and severally responsible for any child support for a grandchild that is a recipient of temporary cash assistance to the extent that the minor parent has insufficient financial resources to fulfill the child support responsibility of the minor parent.

(d) (1) If the parents live apart, a court may award parenting time and responsibility and legal decision-making authority of a minor child to either parent or jointly to both parents.

(2) Absent a court order, neither parent has any right to parenting time and responsibility and legal decision-making authority that is superior to the right of the other parent.

FAMILY LAW 9-1X3 (formerly §5–204).
DOMICILE OF CHILD

(a) (1) If a minor child has only 1 parent, the domicile of the child is the same as that of the parent.

(2) If the parents of a minor child live together, and the child lives with them, the domicile of the child is the same as that of the parents.

(b) If the parents of a minor child live apart, the domicile of the child is the same as that of:

(1) the parent with whom the child primarily resides, if no court order has been issued otherwise; or,

(2) the parent to whom primary parenting time and responsibility is awarded.

(c) If a minor child does not live with either parent, the domicile of the child is the same as that of the person who acts in the capacity of a parent.

FAMILY LAW 9-1X4 (formerly §5–205).
RIGHT TO CHILD'S SERVICES

One parent, to the exclusion of the other parent, is entitled to the services and earnings of a minor child if:

(1) that parent has been awarded custody of the child; ~~or~~

(2) the other parent has abandoned the child or is dead;~~.~~ Or

(3) there is only one parent.

FAMILY LAW 9-1X4 (formerly §5–206).
RIGHT TO SUE FOR SEDUCTION AND WRONGFUL INJURY

(a) One parent, to the exclusion of the other parent, may sue for the loss of services and earnings of the parent's minor child if:

(1) the loss was caused by:

(i) the seduction of the child; or

(ii) an injury wrongfully or negligently inflicted on the child; and

(2) that parent has been awarded custody of the child or the other parent

has abandoned the child or is dead.

(b) This section does not affect any provision of the Maryland Workers' Compensation Act.

FAMILY LAW 9-2X1. (formerly §9–101)
DENIAL OF CUSTODY OR VISITATION ON BASIS OF LIKELY ABUSE OR NEGLECT

(a) In any proceeding involving determination of parenting time and responsibility or legal decision-making authority, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if parenting time and responsibility or legal decision-making authority are granted to the party.

(b) Unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court shall deny parenting time and responsibility or legal decision-making authority to that party, except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.

FAMILY LAW 9-2X2. (formerly §9–101.1)
ABUSE AGAINST CERTAIN INDIVIDUALS

(a) In this section, "abuse" has the meaning stated in § 4-501 of this article.

(b) In a proceeding to determine parenting time and responsibility or legal decision-making authority, the court shall consider, evidence of abuse by a party against:

(1) the other parent of the party's child;

(2) the party's spouse; or

(3) any child residing within the party's household, including a child other than the child who is the subject of the parenting time and responsibility or legal decision-making authority.

(c) If the court finds that a party has committed abuse against the other parent of the party's child, the party's spouse, or any child residing within the party's household, the court shall make arrangements for parenting time and responsibility or legal decision-making authority that best protect:

(1) the child who is the subject of the proceeding; and

(2) the victim of the abuse.

FAMILY LAW 9-2X3. (formerly §9–101.2)
PARENT CONVICTED OF MURDER OF CERTAIN PERSONS

(a) Except as provided in subsection (b) of this section, unless good cause for is shown by clear and convincing evidence, a court may not award parenting time and responsibility or legal decision-making authority:

(1) to a parent who has been found by a court of this State to be guilty of first degree or second degree murder of the other parent of the child, another child of the parent, or any family member residing in the household of either parent of the child; or

(2) to a parent who has been found by a court of any state or of the United States to be guilty of a crime that, if committed in this State, would be first degree murder or second degree murder of the other parent of the child, another child of the parent, or any family member residing in the household of either parent of the child.

(b) If it is in the best interest of the child, the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.

FAMILY LAW §9–102 ("PETITION BY GRANDPARENT FOR VISITATION") renamed and relocated; see 9-3XX, below)

FAMILY LAW 9-2X4. (formerly §9–103)
PETITION BY CHILD TO CHANGE PARENTING TIME AND RESPONSIBILITY AND LEGAL DECISION MAKING AUTHORITY

(a) A child who is 16 years old or older and who is subject to a custody order or decree may file a petition to change custody.

(b) A petitioner under this section may file the proceeding in the petitioner's own name and need not proceed by guardian or next friend.

(c) Notwithstanding any other provision of this article, if a petitioner under this section petitions a court to amend a custody order or decree, the court:

(1) shall hold a hearing; and

(2) may amend the order or decree and place the child in the custody of the parent or other appropriate individual designated by the child.

FAMILY LAW 9-2X5. (formerly §9–104)

ACCESS TO MEDICAL, DENTAL, AND EDUCATIONAL RECORDS BY NONCUSTODIAL PARENT

Unless otherwise ordered by a court, access to medical, dental, and educational records concerning the child may not be denied to a parent.

FAMILY LAW 9-2X6. (formerly §9–105)
INTERFERENCE WITH RIGHTS

In any proceeding awarding parenting time and responsibility for a minor child, if the court determines that a party to a parenting time and responsibility order has unjustifiably denied or interfered with the rights granted by said order, the court may, in addition to any other remedy available to the court and in a manner consistent with the best interests of the child, take any or all of the following actions:

(1) order that the parenting time be rescheduled;

(2) modify the parenting time and responsibility order to require additional terms or conditions designed to ensure future compliance with the order; or

(3) assess costs or counsel fees against the party who has unjustifiably denied or interfered with parenting time and responsibility rights.

FAMILY LAW 9-2X7. (formerly §9–106)
RELOCATION

(a) (1) Except as provided in subsection (b) of this section, in any parenting time and responsibility or legal decision-making authority proceeding the court shall include as a condition of a parenting time and responsibility or legal decision-making authority order a requirement that either party provide advance written notice of at least 90 days to the court, the other party, or both, of the intent to relocate the permanent residence of the party or the child either within or outside the State, except as provided in section (b) below.

(2) The court may prescribe the form and content of the notice requirement.

(3) If the court orders that notice be given to the other party, a mailing of the notice by certified mail, return receipt requested, to the last known address of the other party shall be deemed sufficient to comply with the notice requirement.

(4) If either party files a petition regarding a proposed relocation within 20 days of the written notice of the relocation required by paragraph (1) of this subsection, the court shall set a hearing on the petition on an expedited basis.

(b) On a showing that notice would expose the child or either party to abuse as defined in § 4–501 of this article or for any other good cause the court shall waive the notice required by this section.

(c) If either party is required to relocate in less than the 90–day period specified in the notice requirement, the court may consider as a defense to any action brought for a violation of the notice requirement that:

(1) relocation was necessary due to financial or other extenuating circumstances; and

(2) the required notice was given within a reasonable time after learning of the necessity to relocate.

(d) The court may consider any violation of the notice requirement as a factor in determining the merits of any subsequent proceeding to determine parenting time and responsibility or legal decision-making.

FAMILY LAW 9-2X8. (formerly §9–108)
DEPLOYMENT OF PARENT

(a) In this section:

(1) "deployment" means compliance with military orders received by a member of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, National Guard, or any other Reserve component to report for combat operations or other active service for which the member is required to report unaccompanied by any family member or that is classified by the member's branch as remote; and

(2) "deployment" does not include National Guard or Reserve annual training, inactive duty days, or drill weekends.

(b) Any order or modification of an existing parenting time and responsibility or legal decision-making authority order issued by a court during a term of a deployment of a parent shall specifically reference the deployment of the parent.

(c) (1) A parent who petitions the court for an order or modification of an existing order for parenting time and responsibility or legal decision-making authority after returning from a deployment shall specifically reference the date of the end of the deployment in the petition.

(2) (i) If the petition under paragraph (1) of this subsection is filed within 30 days after the end of the deployment of the parent, the court shall set a hearing on the petition on an expedited basis.

(ii) If the court finds that extenuating circumstances prohibited the filing of the petition within 30 days after the end of the deployment of the parent, the court may set a hearing on the petition on an expedited basis whenever the petition is filed.

(d) Any order for parenting time and responsibility or legal decision-making authority issued based on the deployment of a parent shall require that:

(1) the other parent reasonably accommodate the leave schedule of the parent who is subject to the deployment;

(2) the other parent facilitate opportunities for telephone and electronic mail contact between the parent who is subject to the deployment and the child during the period of deployment; and

(3) the parent who is subject to the deployment provides timely information regarding the parent's leave schedule to the other parent.

FAMILY LAW 9-3XX (NEW).

Family Law 9- 3X1 General Assembly's findings; purpose [NEW]

(a) The General Assembly finds that:
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(b) The purpose of this subtitle is to:

(1) Promote stability and long-term health and welfare for children by:

(i) assuring that minor children have frequent, regular and continuing contact with parents who have shown the ability to act in the best interest of their children;

(ii) encouraging parents to share in the rights and responsibilities of rearing their children when the parents do not reside together; and

(iii) fostering a child's relationships with siblings and with significant adults in the child's life.

(2) Provide children with physical and emotional security and protection from exposure to conflict and violence; and

(3) Provide for an expeditious, thoughtful, and consistent process for decision-making by courts to protect the best interests of children.

Family Law 9- 3X2 [NEW]
Parenting Time and Responsibility for a Minor Child

(a) Subject to §§ 9-201, 9-202, 9-203, and 9-206 [FORMERLY §§ 9-101, 9-101.1, 9-101.2, and 9-108] of this title, in deciding the appropriate allocation of parenting time and responsibility for a child between the parties, the court SHALL consider the following factors:

(1) The ability of each of the parties to meet the child's developmental needs, including:

(i) ensuring physical safety;

(ii) supporting emotional security and positive self-image;

(iii) promoting interpersonal skills;

(iv) promoting intellectual and cognitive growth.

(2) The relationship between the child and the parties, the child's siblings other relatives and any other person who may significantly affect the child;

(3) The ability of each party to meet the day to day needs of the child, including:

(i) Education;

(ii) Socialization;

(iii) Culture;

(iv) Religion;

(v) Food;

(vi) Shelter;

(vii) Clothing; and

(viii) Mental and physical health.

(4) The ability of each party to:

(i) consider and act upon the needs of the child, as opposed to the needs or desires of the party; and

(ii) protect the child from the adverse effects of the conflict between the parties.

(iii) support relationships with the other party, siblings, other relatives, or other persons who may significantly affect the child

(5) Any evidence of exposure of the child to domestic violence, child abuse, or child neglect.

(6) The age and gender of each child; and

(7) Military deployment of a party.

(b) Subject to §§ 9-201, 9-202, 9-203, and 9-206 [FORMERLY §§ 9-101, 9-101.1, 9-101.2, and 9-108], in deciding the appropriate allocation of parenting time and responsibility for a child between the parties, the court MAY consider the following factors:

(1) Evidence of any prior court orders or agreements between the parties, including prior agreements concerning the child's custodial arrangements or parenting responsibilities for the child.

(2) The parental responsibilities and the particular parenting tasks customarily performed by each party including:

(i) Tasks and responsibilities performed before the initiation of litigation;

(ii) Tasks and responsibilities performed during the pending litigation;

(iii) Tasks and responsibilities performed subsequent to previous orders of court; and

(iv) The extent to which the tasks have or will be undertaken by third parties;

(3) The proximity of the parties' homes as it relates to their ability to coordinate parenting time, school, and activities;

(4) The relationship of the parties, including:

(i) The ability of each party to effectively communicate with the other party;

(ii) The ability of each party to co-parent the child without disruption to the child's social and school life;

(5) The extent to which either party has initiated or engaged in frivolous or vexatious litigation (as defined in the Maryland Rules of Procedure § 1-341 and 1-351);

(6) The child's preference if:

(i) The child is of sufficient age and capacity to form a preference; and

(ii) The court considers the child's possible susceptibility to manipulation by a party or by others.

(7) Other factors that the court considers appropriate in determining how to best serve the physical, developmental, and emotional needs of the child.

(c) The court shall articulate its findings of fact on the record, including its consideration of each factor enumerated in subsection (a), its consideration of any factor enumerated in subsection (b) of this section, any other factor the Court considered and the importance of each factor.

(d) In deciding the appropriate allocation of parenting time and responsibility for a child between the parties, the following are relevant only to the extent that the court makes findings based on a preponderance of the evidence in the record a that it poses a substantial risk of harm to the health and safety of the child:

(1) The gender of a party;

(2) The sexual orientation of a party;

(3) The gender identity of a party;

(4) The age or sex of a party;

(5) The ancestry, color, national origin or race of a party;

(6) Religious affiliation, belief, creed, or opinion of a party;

(7) The marital status of a party;

(8) The ethnicity of a party;

(9) The mental or physical disability of a party;

(10) The parties' relative earning capacities or financial circumstances, except that the court may consider:

(i) the degree to which the combined financial resources of the parents set practical limits on the custodial arrangements; and

(ii) a parent's voluntary impoverishment;

(iii) the compliance of a parent with court orders regarding economic support, except on evidence that the nonpayment affects the welfare of the child.

(11) A child's physical or mental disability , unless evidence in the record establishes that the disability affects the best interests of the child; or

(12) The extramarital sexual conduct of a party.

9-3X3 -.[NEW]
Legal Decision-Making Authority

(a) (1) If the court determines that the parties are able to communicate and reach joint decisions concerning some or all of the child's needs described in subsection (a) of the definitions section, the court may award:

(i) joint legal decision-making authority to both parties;

(ii) joint legal decision-making authority, designating one party to make final decisions if the parties are unable to agree after thorough discussion of issues;

(iii) joint legal decision-making authority, allocating responsibility for specific issues to each party if the parties are unable to agree after thorough discussion of issues.

(2) If the court awards joint legal decision-making authority pursuant to (a)(1) of this section without allocating final decision making authority, neither party, without agreement of the other party, or order of the court, may unilaterally change the child's:

(i) Educational arrangements;

(ii) Religion;

(iii) Health care or health care professionals; or

(iv) Day care providers.

9-3X4 [NEW]
Modification of Prior Court Orders

(a) To modify a prior parenting time and responsibility and/or legal decision-making authority order:

(1) The court shall first determine if there has been a material change in circumstances subsequent to the entry of the last court order relating to the needs of the child or the ability of the parties to meet those needs.

(2) If the court determines that there has been a material change in circumstances, the court may modify parenting time and responsibility and legal decision making authority in accordance with 9-XX2 and 9-XX3.

(b) A party's proposal to relocate the residence of a party or the child in a way that would cause the parenting time and responsibility to be impractical constitutes a material change in circumstances.

9-3X5 [NEW]
Relationships and Children's Ongoing Personal Relationships

(a) In any proceeding under this section, the Court shall honor the decision of the legal parent(s) of a child concerning parenting time and responsibility, legal decision-making authority, and/or a visitation order, placement, or guardianship with the child unless the court finds by clear and convincing evidence that the parent's decision is contrary to the child's best interests.

(b) The court shall make findings of fact supporting its conclusion that a parent's decision is contrary to the child's best interests.

(c) Any person who alleges that they have established a child-parent relationship or an ongoing personal relationship with a child may file a motion for intervention with the court having jurisdiction over the parenting time and responsibility and/or legal decision-making authority, placement, guardianship, or visitation of that child or, if no such proceedings are pending, may petition for an order under subsection 4 of this section.

(d) (1) If the court determines by a preponderance of the evidence that a child-parent relationship exists and that the decision of the legal parent(s) described in subsection (a)(1) is contrary to the best interests of the child, the court shall determine whether it is in the best interest of the child to grant custody or visitation to the person having the child-parent relationship.

(2) If the court determines by clear and convincing evidence that an ongoing personal relationship exists and that the decision of the legal parent(s) as described in subsection (a) is contrary to the best interests of the child, the court shall determine whether it is in the best interest of the child to grant parenting time and responsibility and/or legal decision-making authority, visitation or contact rights to the person having the ongoing personal relationship.

(e) If the court determines that neither a parent-child relationship nor an ongoing personal relationship exists, it may grant relief under this section only if the legal parent is unfit or exceptional circumstances exist.

(f) In determining whether the decision of the legal parent of a child concerning parenting time and responsibility and/or legal decision-making authority, placement, guardianship or visitation is contrary to the best interest of the child and whether to award relief over the objection of the legal parent, in addition to other factors, the court may consider whether:

(1) the petitioner or intervenor is or recently has been the child's primary caretaker;

(2) the legal parent has fostered, encouraged, or consented to the relationship between the child and the petitioner or intervenor;

(3) circumstances detrimental to the child exist if relief is denied;

(4) the legal parent has unreasonably denied or limited contact between the child and the petitioner or intervenor; or

(5) granting relief would substantially interfere with the relationship between the child and the legal parent.

FINAL REPORT

REPORT AND RECOMMENDATIONS

The Commission's recommendations in this Report represent the result of its work and deliberations. Most recommendations are by consensus. However, in a few instances, there were differing views that could not be reconciled. The Report specifies these disagreements and presents both the majority and minority view.

The recommendations below are the result of the full Commission's review and discussion of the reports and recommendations of the six (6) committees. The Commission did not adopt all committee recommendations, and revised others.

Four of the committees (Alternative Dispute Resolution (ADR), Court Process (CPC), Domestic Violence (DRC) and Identifying and Eliminating Bias (IEB)) authored narrative reports containing their findings and recommendations. The Literature Review Committee (LRC) presents its findings as a balanced summary of the current, research-based literature on the topics explored by the Commission. The Statutory Considerations Committee (SCC) states its findings in brief narrative summary and detailed charts demonstrating nationwide use of factors, statutory enactments, and presumptions, and culminates with the statutory proposal. The full reports appear in the Appendices.

ALTERNATIVE DISPUTE RESOLUTION

The Commission believes that, wherever possible, parents should make their own decisions about their children's future in family cases. Separating and divorcing parents and never-married parents should be provided with the tools and support they need to make decisions together for their children. The Commission supports the involvement of both parents in their children's lives to the fullest extent possible given the particular facts and circumstances of each family case.

The following are the recommendations adopted by the full Commission:

- A uniform model for referral to and case management of mediation should be utilized across the State of Maryland, to the extent possible given the range in the sizes of the jurisdictions.
- Parents should be encouraged to demonstrate, at a minimum, a good faith effort to resolve "emergency" situations in family cases before the merits of these issues are considered by a judge or master, except for victims of domestic violence.

- Standards for mediation training should be established and only staff or contractual mediators who have completed this training should be utilized for court-ordered mediation in family cases.
- Fees for mediation should be reasonable and should be assessed on a sliding scale basis, with community mediation centers presented as an option.
- Fee waivers should be available for court-ordered mediation in those cases where the cost of mediation would otherwise be financially burdensome.
- The date for the required mediation in a custody case should be established at the time of the scheduling conference or otherwise have an identifiable date by which the mediation is to happen.
- The Maryland Rules should be revised to include reference to collaborative law as a form of ADR.
- Collaborative law should be referenced on all court forms that list ADR options, such as the Case Information Form and should be described on all educational materials provided by the Court to parents involved in custody proceedings.
- There should be status conferences at least every three (3) months for all custody cases in which a stay is entered to permit a collaborative law process.
- There should be more consistency in the manner in which settlement conferences and facilitation sessions are conducted across the State of Maryland and the accessibility of these services should be more uniform throughout the State.
- The Administrative Office of the Courts (AOC) should consider implementing a Pilot Early Neutral Evaluation (ENE) program in family cases and assess the effectiveness of this ADR approach formally from the onset.
- Settlement conferences, facilitation sessions and co-parenting classes should be utilized to educate parents about the benefits of ADR approaches.
- A media campaign using current technology, such as the internet and smartphone apps, should be undertaken to educate the public about ADR alternatives to litigation including, but not limited to, mediation, collaborative law, settlement conferences, facilitation sessions and, possibly, Early Neutral Evaluation (ENE).
- Court waiting areas and websites should be utilized to educate the public about ADR approaches through videos and informational brochures.
- Judges, Masters and other court personnel should receive training that equips them to become advocates for the broader use of ADR, particularly mediation and collaborative law.
- Each jurisdiction should have a designated professional who provides information to self-represented parties regarding ADR alternatives such as mediation, collaborative law, settlement conferences, facilitation sessions and possibly ENE.
- Supervised visitation should be added to the list of services that the Family Divisions may provide under Maryland Rule 16-204.
- Co-parenting classes should ordinarily be scheduled before mediation and should have a parenting plan component.

- Maryland should require parents to file parenting plans, possibly with the pretrial statement.
- The AOC website should provide educational materials to assist self-represented parties with the drafting of parenting plans.

DOMESTIC VIOLENCE

The Commission recognizes the prevalence of domestic violence in family systems, and the adverse impact on children and families when domestic violence issues are not appropriately addressed in custody decision-making.

The Domestic Violence Committee studied ways to more effectively address domestic violence in custody decision-making by looking at three areas: custody in protective order cases; problems faced by domestic violence litigants in circuit court custody cases; and the need for an expedited custody decision-making process following protective order proceedings.

The DVC reported a lack of adequate training for judges and professionals involved in custody cases, inadequate access to information on the court process and available resources, and limited access for petitioners and respondents to legal assistance in protective order cases where custody determinations are made.

The following are the recommendations adopted by the full Commission:

- Judicial training should be mandatory and ongoing and should include:
  - training regarding factors related to the best interest of the child for all judges, including those serving in District Court;
  - traumatic impact on children who witness domestic violence;
  - dynamics of domestic violence;
  - recognizing the factors of the lethality assessment, but not using it as a threshold test for the granting of a protective order;
  - impact of substance abuse and addiction of parents on children; and
  - considering and ordering all appropriate relief.
- The Governor's Family Violence Council should create gradual and safe ways to reintroduce children to an abusive parent in protective order litigation, and create a comprehensive, state-wide resource listing.
- The Domestic Violence Resource Manual should be updated to include training on the importance of considering and awarding all appropriate forms of relief, information on what is appropriate to order, including counseling for children, counseling for the abusive parent (abuser intervention programs), third-party supervision, supervised exchange facilities, and graduated access schedules for abusive parents.
- The Judiciary should develop ways to provide information about the protective order process to unrepresented litigants (e.g., brochures, videos).

- The General Assembly should consider a "Civil Gideon" Rule requiring counsel for low income parties in protective order proceedings where custody is an issue.
- Custody Evaluator standards should include thorough training in the area of domestic violence and should require compliance with professional standards for education and continuing education.
- The Judiciary should consider a mechanism to incorporate a child's voice into the domestic violence custody proceeding in a less onerous way than appointing a Best Interest Attorney, and should develop a list of appropriate questions for judges to ask children.
- An expedited procedural process for a circuit court custody determination should be made available for either party after a domestic violence proceeding. The hearing would have to be requested within 10 days of the entry of the domestic violence order, and would be held within 30 days of filing the request. This is an additional procedure regarding a custody determination in a domestic violence proceeding, *not* a replacement for that process.

IDENTIFYING & ELIMINATING BIAS

The Commission adopted recommendations made by the Identifying and Eliminating Bias Committee requiring the use of neutral language and establishment of procedural and legal safeguards to protect against bias related to disability, gender, and economic status. Additionally, recommendations were adopted to ensure Maryland is in compliance with the amendments to the Americans with Disabilities Act.

The following recommendations were adopted by the full Commission:

- Md. Code Ann. Family-Law § 9-107, uses offensive language to describe people with disabilities and may contribute to bias against parents with disabilities. The statutory language should be rewritten to define "disability" in a manner consistent with the federal Americans with Disabilities Act, as follows:

  "disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual, a record of such impairment, or being regarded as having such an impairment.

- This definition must be broadly interpreted, consistent with the ADA Amendments Act of 2008.
- The custody decision making statute should require the articulation of the nexus between parental disability and best interests of the child, and codify the burden of proof in order to prevent bias from being a determinant in child custody decisions. The statute should clarify that in order to consider a parent's disability as a factor in deciding the best interest of the child, the court must find by preponderance of the evidence that the

parent's disability poses a substantial risk of harm to the health or safety of the child, and such determination must be reflected in the court's record and in the findings of fact and conclusions of law. If another parent asserts that a person's disability renders them incapable of providing for the best interests of the child, that party bears the burden of proof. The same standard should apply to third party litigants.

- Whenever possible, statutes, rules, court forms and instructions should use gender neutral terms.
- The law should provide for appointment of counsel, including representation paid for by the state, pro bono services and limited representation, when an unrepresented individual with a disability is financially unable to retain counsel in a custody matte and is opposed by a party who has counsel.
- The Judiciary should determine a reasonable accommodations process to enable the court to appoint counsel, as needed, for a person whose disability interferes with their ability to have meaningful access to the court process. The court may request that the individual provide documentation from a health care professional justifying the need for counsel based on their knowledge of the individual and the individual's disability.
- The legal community needs to address means for providing counsel for unrepresented parents in custody matters, including providing counsel paid for by the state, pro bono services, limited representation and alternative dispute resolution.
- All family court professionals should receive training on a regular basis on parents with disabilities and their children.
- As many litigants in custody matters appear to believe that trial judges make custody decisions in a way that reflects gender bias, judicial education should address explicit and implicit bias.
- Parents should have more access to alternative dispute resolution and mediation to resolve custody disputes, where appropriate.
- Community education should encourage parents to be involved in the lives of their children.
- Where the parents have disparate incomes and economic resources, courts should make adequate and predictable awards of attorney's fees to the lower-income parent. This recommendation could be accomplished either through statutory or rule change.
- The downward adjustment of child support in cases of shared physical custody needs to be further investigated, particularly in cases where the child's principal household lacks adequate resources.
- Further investigation of Child Support guidelines should be conducted to determine whether the guidelines should provide a sufficient self-support set-aside for each parent.
- Further investigation should be conducted of child support administrative practices, including imputation of income, to ensure that low-income parents are not required to pay more child support than is reasonable.

COURT PROCESS

The Commission adopted many of the recommendations of the Court Process Committee. The recommendations focus on: 1) the lack of uniformity in court processes throughout the state, including the lack of uniformity in criteria and timing for expedited hearings and 2) the need to consolidate family issues and services into one process or case, whether or not the parents are married or have lived together. Other recommendations address the need for judicial training and the creation of a Family Court with a right to counsel.

The Commission adopted the following recommendations:

- The Department of Human Resources (DHR), Office of Child Support Enforcement (OSCE) and the Judiciary should provide increased co-parenting support by making information and assistance available, including providing information on filing for custody.
- OSCE should promote alternative dispute resolution in the process as well as the development of parenting plans.
- Improved case coordination, particularly in cases involving paternity and child support issues: the Judiciary should consolidate, or at a minimum, better coordinate the handling of multiple family law cases involving the same family (One Family One Judge) to better match the delivery of services to litigants in divorce cases with litigants who are not married.
- Lawmakers should revisit some of the legal provisions surrounding paternity and the separation of families through mechanisms other than divorce.
- Updated laws concerning adoption: lawmakers should consider issues surrounding adoption for same sex and never married couples, including second parent adoptions.
- Updated laws concerning paternity in modern family arrangements: lawmakers should update laws and processes surrounding the establishment of parentage to account for modern family arrangements, such as artificial reproductive techniques and collaborative reproduction.
- Creation of a court-based co-parenting pilot project: the Judiciary should create a pilot project aimed at encouraging co-parenting and reaching sustainable agreements between the parties. Other jurisdictions have successful programs
- An executive branch agency should create a program similar to CourtWatch that would periodically attend and observe proceedings, in an objective and unbiased manner, to monitor judicial conduct in line with principles emphasized during orientation and training.
- The Judiciary should create or adopt a civil custody order to be entered at the conclusion of a Child in Need of Assistance (CINA) case in which there has been an award of custody. This would allow the court, and others, to have access to the order on Maryland Judiciary Case Search or other electronic case records repositories.

- Enforcement of orders and expedited process: the courts should develop a process for scheduling expedited matters in either 7 days or 30 days. In cases of emergency, the court should provide a hearing within seven days; in non-emergency cases, where lack of court action may result in damage to the parent-child relationship or eventual harm to the child, the court should provide a hearing within 30 days.
- Standard for emergency relief: matters appropriate for emergency relief should include cases where there is a "substantial risk of imminent harm to a child", approximating the standard set in *Kalman v. Fuste*. This harm should have occurred or will happen 14 days within the time of filing the petition. Matters appropriate for emergency relief could include:
    - Serious physical, emotional or harm to the child
    - Removal of financial support that causes actual harm to a child (ie: disconnection of utilities)
    - Imminent removal of a child from the court's jurisdiction
    - Other matters the court finds appropriate.
- Standard for non-emergency expedited relief: matters appropriate for expedited relief may include:
    - Complete denial of access to minor children
    - Complete cessation of financial support to a dependent spouse or minor child
    - Imminent and major disruption of continued compulsory education for a minor child (which may include a transfer of the minor child to a new school without consent of both parents)
    - Non-imminent removal of a minor child from the state
    - Other matters the court finds appropriate.
- Process for seeking expedited relief: petitioners seeking expedited *pendente lite* relief must file a form, under oath. The request must be made as part of an underlying complaint for custody. The form should be developed by the Judiciary and be uniform statewide. Once filed, the request will be reviewed by a Judge or Master, who can make a decision based on the facts presented or schedule a hearing on the matter. The court should respond to the petitioner as soon as possible with an answer to the petition.
- Ex Parte relief: if the court grants ex parte relief, the Maryland Rules of Procedure should govern.
- Availability of Differentiated Case Management (DCM) Plans: each court should integrate their specific process for expedited relief into DCM plans. These plans should be available on the court website and available for inspection in the clerk's office. The process adopted by each court should be fully explained in the plan. This could aid self-represented litigants and practitioners who appear in multiple jurisdictions.
- Parenting Plans: a parenting plan form should be adopted statewide. Parties in a custody case should be required to file a parenting plan as part of a pretrial statement if an agreement has not been reached through other means.

- Mediation following custody evaluation report: mediation should be made available to parties following the presentation of a custody evaluation report. Optimally, mediation would not occur that day but mediation would be made available before the trial date.
- Maryland should have a stand-alone and unified Family Court for the uniform delivery of services and effective case management. This top down approach would allow the court to better address the unique needs of Maryland families.

STATUTORY CONSIDERATIONS

The Statutory Considerations Committee recommendations were informed by the work of the five (5) other committees. The full Commission synthesized the recommendations from all the committees, including the recommendation for a factors statute focusing on the child's developmental needs and long-term adjustment, without a presumption of joint custody. Those recommendations were adopted by the Commission and culminated in the proposed statute appearing in this report.

The Statutory Considerations Committee concluded early in their deliberations that a factors statute was needed, and established subcommittees to address three areas: parentage, whether there should be a presumption in favor of joint custody, and what factors should be in a custody statute.

Language regarding parentage was recommended and is included in the proposed statute, designed to:

- Promote stability and long-term health and welfare for children by:
    - assuring that minor children have frequent, regular and continuing contact with parents who have shown the ability to act in the best interest of their children;
    - encouraging parents to share in the rights and responsibilities of rearing their children when the parents do not reside together; and
    - fostering a child's relationships with siblings and with significant adults in the child's life.
- Provide children with physical and emotional security and protection from exposure to conflict and violence; and
- Provide for an expeditious, thoughtful, and consistent process for decision-making by courts to protect the best interests of children.

The Committee reviewed the custody statutes of the fifty (50) states and District of Columbia and identified all factors affecting custody decision-making. It was concluded that the vast majority of states do not have a presumption regarding joint physical custody. The Committee recommended that the statute contain no presumption regarding schedules or legal

decision-making. The Commission adopted this recommendation. The vast majority of the Commission agreed, but it was not unanimous. The topic is further detailed below.

AREAS OF DISAGREEMENT

As noted elsewhere in this report, the Commission was unanimous in virtually all of its recommendations with the exception of the three detailed here. In some cases re-wording resolved concerns or disagreement, but in the three areas detailed below, that approach was not successful. In each, a small minority of Commissioners opposed the majority recommendation.

Unanimous recommendations could not be achieved in three areas:

- Whether there should be a presumption of "joint custody;"
- Whether victims of domestic violence should be permitted to participate in custody mediation if they indicate they wish to do so; and
- The articulation and standard of proof required when a court is assessing an award of custody to a parent with a disability.

PRESUMPTION OF JOINT LEGAL AND/OR PHYSICAL CUSTODY

There has been a long-standing debate in Maryland regarding the benefits and drawbacks of a presumption of joint legal custody. Bills have been submitted to the Maryland Legislature supporting and opposing the enactment of such a presumption no fewer than ten times during the last fifteen years. The proponents argue that many, if not most, states have a presumption of joint legal custody and that a presumption is the only way to ensure that both parents will be actively involved in their children's lives given the historical prevalence of mothers as the primary residential custodian of children. The opponents counter that those statistics are the result of mothers requesting legal custody more often than fathers, that presumptions are dangerous for families where domestic violence exists, that presumptions do not consider a child's age and developmental needs, and that, in fact, only a small handful of states have a statutory presumption for joint custody. Given this history, the topic of joint custody presumption was thoroughly discussed and investigated by the Commission.

The Statutory Considerations Committee (SCC) took the lead on obtaining information from the laws of the 50 states and the District of Columbia (hereafter "jurisdictions"). After thorough research, the SCC's findings are that only seven jurisdictions have an arguable "presumption of joint physical custody" in the absence of agreement of the parents. Three of those jurisdictions articulate joint custody as "substantial time," "frequent and continuing time," and "significant well defined periods." Additionally, a preference for joint *legal* custody only appeared in the statues of 6 jurisdictions. A chart detailing each jurisdiction's statutory elements

was created (see Report of the Statutory Considerations Committee in the Appendix). Additionally, the SCC concluded that the vast majority of U.S. jurisdictions do not presume joint physical or legal custody.

The Literature Review Committee (LRC) examined the psychological research on parenting plans and parenting time arrangements, and provided a summary of the research on this topic to the Commission at its meeting on November 12, 2014. In summary, social scientists have reached consensus on the factors which affect children's and adolescents' long-term adjustment when the parents do not reside together. These factors affect a child's long-term adjustment whether they are from traditional or non-traditional families, and whether their parents were married or never married. The findings support the conclusion that a child's adjustment and healthy development is enhanced when the child enjoys high-quality relationships with both parents, with both parents actively in their child's life, participating in a wide range of everyday activities and routine parenting tasks. This includes, but is not limited to, bed time, morning wake up, transitions to and from school, recreational activities, and mealtimes. Other relevant factors include the quality (cooperation versus conflict) of the relationship between the parents or parenting figures, the quality of the parenting, the parents' psychological adjustment, the developmental needs of the child, the availability of adequate resources, and the child's ability to maintain significant relationships. Finally, the LRC noted that the consensus research applies to the majority of parents, but does not include situations with "special circumstances" such as domestic violence, or a parent with substance abuse or mental health problems which significantly impair parenting abilities.

The SCC recommended, and the Commission found, that it is the parents with "special circumstances" who are most often unable to reach any agreement which focuses on the needs of their children, which results in the caustic litigation which was the subject of much testimony at the public hearings throughout the state. Testimony before the Commission in 2013 raised concerns about the Court system, poor quality and cost of representation, and inability to adequately self-represent. One common thread was that the parents had been, and in many cases remained, unable to reach agreement about their child's best interests. The Commission agreed that a presumption in favor of joint custody would not resolve the inherent hostilities present between parents who live apart, and will not shield the children from parental "bad behaviors."

Another issue raised at the Fall, 2013 hearings was the perceived bias among the judiciary against never-married parents, and, in particular, never-married African-American fathers. As a result, the Literature Review committee was specifically tasked with investigating research on never-married parents.

A review of the research by the Literature Review committee found that a child's long-term adjustment to their parent's separation is not predicted by the status of the family structure independent of other factors. Put another way, the research shows that parental marriage *per se* does not predict a child's long-term adjustment and well-being. For example, it is well-

recognized in research on families that children who are born to unmarried parents show no noticeable benefits when their parents marry. Yet, the research also shows that children who live in married families generally have better long-term outcomes than children raised by never-married or single parents.

Other research explains this seeming discrepancy by showing that it is not the family structure *per se* (married vs. unmarried) that is the key to the child's long-term outcome, but other intervening variables which are related to both the family structure and the child's outcome (and well-being). These key factors have been found to be critical variables, as opposed to the family structure: greater economic resources, including parent's education and income; both parents' active involvement in the child's life and the presence of a relationship with each parent and child; fewer stressors on the parents (which allows them to spend more time with their child); less conflict between the parents; fewer employment changes for the adult and fewer school changes for the child; less overall disruption in the child's life; and, both parents more frequently remaining in the child's lives following the termination of the relationship between the parents. Thus, for children, the issue is not whether their parents were married, but the quality of their relationship with each other.

The LRC also summarized an emerging consensus among social scientists regarding the amount of parenting time needed to promote and maintain a high-quality relationship between a child and parents or parental figures. As a general rule, a minimum of 30 to 33 percent time with each parent is optimal when both parents are emotionally healthy and focused on the needs of their child. This general rule is in the context of a parenting plan based on the child's developmental age and needs. The Commission agreed that the majority of current researchers align against a simplistic approach which provides alternating weekend access as a "standard" or "typical" time arrangement.

The Commission reached the following conclusions:

- there should be no presumed schedule of any kind, but that a statute on custody decision-making should incorporate the factors outlined in the SCC's findings, relying on the LRC's research;
- a child's long-term adjustment is enhanced by a number of factors, including the quality of the child's relationship with each parent, the quality of the parenting, the developmental needs of the child, the quality (conflict or not) of the relationship between the parents or parent figures, the parents' psychological adjustment, and the loss of significant relationships;
- as a general rule, a minimum of 30 to 33 percent time with each parent is optimal for a child when both parents are emotionally healthy and focused on the needs of their child, in the context of a parenting plan based on the child's developmental age and needs.

MEDIATION IN CASES INVOLVING DOMESTIC VIOLENCE

Another long-standing debate in the Maryland Court and legal system is how to provide custody mediation services to couples when domestic violence has been reported. On one hand, a victim of domestic violence may not feel safe in mediation, and may capitulate to demands as learned response to past abuse. On the other hand, if a domestic violence victim indicates willingness to participate in mediation, and a skilled mediator (and perhaps a lawyer) is involved, the victim should not be denied the opportunity to resolve issues without litigation.

The ADR committee's report urges an examination of methods that could be used to safely provide custody mediation services to these couples. Several methods are suggested. Members of the ADR committee and the Domestic Violence committee met to discuss the topic. Ultimately, there was consensus that mediation might occur if a domestic violence victim *represented by counsel* should be permitted to participate in custody mediation. The Commission endorsed this formulation, recognizing that it is only a partial solution to a very difficult problem.

STANDARD OF PROOF REQUIRED WHEN A PARENTAL DISABILITY AFFECTS A CUSTODY DETERMINATION

The Identifying and Eliminating Bias (IEB) committee studied and made recommendations on a wide range of topics in which bias was perceived. One of the major recommendations made was to re-define the term "disability" in the family law article (currently FLA§9-107) to bring the definition in line with the Americans with Disabilities Act (ADA), and to specify findings a court must make if the court relies on parental disability as a factor in determining a child's best interest in a custody case.

The IEB committee recommended the following language:

> In order to considered a parent's disability as a factor in deciding the best interest of the child, the court must find by clear and convincing evidence that the parent's disability poses a substantial risk of harm to the health or safety of the child, and such determination must be reflected in the court's findings of fact and conclusions of law.

The Commission was in favor of the language, except the use of the "clear and convincing evidence" standard. The IEB co-chairs explained the use of the language, based in part on the language of a Tennessee statutory enactment, as a way to prevent a disability from being misused to exclude a parent from normal parenting and decision making roles. They cited their research

and the experiences of the members of their committee where a parent's disability overshadowed all other qualities of the parent. Concerns noted about the higher standard of proof included its affect as an impediment to focusing on the child's best interest, the amorphous nature of what constitutes "clear and convincing" evidence, and the recent removal of clear and convincing evidence as the standard of proof in domestic violence cases.

A majority of the Commission supported the substitution of "preponderance of the evidence" as the standard of proof.

RECOMMENDATIONS FOR FURTHER RESEARCH AND STUDY

During the course of the Commission's work, numerous collateral issues emerged that were either outside the scope of the Commission or beyond its capacity given limited resources and time. These issues, listed below, arose in the public hearings, reoccurred during the research and deliberations of the six (6) committees, and were discussed during full Commission meetings. While the Commission was unable to fully address these issues, there was unanimity that they are integrally related to the well-being of children and families involved in custody disputes and as such require further exploration:

- Disparity of remedies and services available to married versus unmarried litigants.
- Absence of a holistic approach to related family law legal issues.
- Immigration status challenges
- Further investigation of Maryland Child Support guidelines and administrative practices, including the self-support set-aside for each parent, the downward adjustment of child support in cases of shared physical custody, and imputation of income.
- Child support enforcement and protective order proceedings are often the first interaction between a family and the courts.

CONCLUSION

The Commission has detailed a wide-ranging set of recommendations designed to improve custody decision making in Maryland. The proposed changes are sweeping, but are rooted in research and sound practice. They will not be implemented instantly; the proposed statute and enhanced judicial training are key initial elements. They go hand in hand in improving the process and outcomes for children and their families in custody decision-making proceedings in Maryland. They are the foundation for the rest of the Commission's guiding principles, and are

the first steps toward a better future for Maryland children whose parents who do not reside together.

MARYLAND GENERAL ASSEMBLY

COMMISSION ON CHILD CUSTODY DECISION-MAKING

APPENDIX A —
Duties of the Commission

Duties of the Commission

House Bill 687 enumerates the duties of the Commission. Below is a discussion of each

Commission task and how it was addressed.

(1) Study the practice, principles, and process for child custody decision-making in Maryland.

Commission staff gathered background information on the custody process in Maryland. The Court Process and Statutory Considerations committees collected additional information in the course of their work. The study revealed that there is little consistency state-wide, attributable to size, location, philosophy, resources and lack of a comprehensive statutory and procedural approach. The Commission Report recommends the enactment of a custody determinations statute and multiple procedural enhancements.

(2) By December 31, 2013, hold one hearing each in Baltimore City, Harford County, Prince George's County, Western Maryland, and the Eastern Shore to allow for public input and participation by interested persons on child custody decision-making in Maryland.

The Commission held all public hearings as required.

A total of 166 members of the public attended the hearings, with 73 providing testimony.

Individuals spoke for at least five minutes each. Hearings were scheduled from 6:00 p.m. - 8:00 p.m. in each location, but ran over time in several jurisdictions.

Hearing Location Requirement	Location	Date	Number of Attendees	Number who Provided Testimony
Western Maryland	Allegany College of Maryland, Cumberland	October 10, 2013	5	4

Harford County	Harford Community College	November 7, 2013	20	14
Baltimore City	Baltimore City Community College	November 14, 2013	57	24
Eastern Shore	Chesapeake College, Wye Mills Campus	November 21, 2013	16	5
Prince George's County	Bowie Library	December 11, 2013	68	26

(3) Study how to make the establishment and modification of child custody orders more uniform, fair, and equitable.

This was the subject of much of the testimony we heard. It is the main focus of the Commission's work. The research of the Commission's six Committees (Court Process, Statutory Considerations, Identifying and Eliminating Bias, Domestic Violence, Alternative Dispute Resolution, and Literature Review) revealed the need for enhanced judicial education, a factors-based, child focused custody determinations statute, process improvements and coordinated services.

(4) Study how to reduce litigation in child custody proceedings.

The Alternative Dispute Resolution (ADR) Committee was created to explore alternatives to litigation, a topic mentioned frequently at the public hearings. The Committee made recommendations for enhancing access to ADR, and many of those recommendations were adopted, including the need for easily available ADR educational resources, and a required parenting plan (in a supported format available on-line).

Quantitative study was not undertaken in part due to lack of resources, and in part because a timely report by the Judiciary, entitled *Alternative Dispute Resolution Landscape: An Overview of ADR in the Maryland Court System*[1] provided a wealth of relevant information about ADR resources in Maryland.

(5) Study and consider the adverse effects of child custody litigation and ways the court system can minimize those effects.

[1] http://www.marylandadrresearch.org/landscape

Many speakers at public hearings framed their arguments in support or opposition of particular issues in the context of the adverse effects of child custody litigation on families. In the past 15 years, the court system has undertaken many initiatives to address these adverse effects. The Commission assessed these arguments and initiatives, the results of which are more fully detailed in the Committee Reports in the appendices.

(6) Study how to promote and ensure that children have ongoing relationships with each parent.

This was a primary focus of the Commission. Most speakers at the hearings expressed support for children having ongoing safe relationships with both parents in the context of the best interests of the child. The Commission's research, studying the statutes of all fifty states and the District of Columbia, revealed that the significant majority of jurisdictions in the U.S. have statutory child custody decision-making enactments which address these conflicting interests. The Commission recommends such a statutory enactment for Maryland.

(7) Study how to maximize the involvement of both parents in each child's life.

Please see (6), above.

Additionally, two unanimous recommendations of the Commission address this task:

- statutory language stating the importance of both parents in the lives of their children;
- enhancing judicial training on the role of parents in the lives of their children.

(8) Study the advantages and disadvantages of joint physical custody and the impact of joint physical custody on the health and well–being of children.

Testimony before the Commission articulated advantages and disadvantages of a presumption of a 50-50 joint physical custody arrangement. The Commission researched and reviewed best practices developmentally and psychologically, including a consensus on the factors which affect children's long-term adjustment when parents do not live together. The recommended statutory enactment, based on the dual principles of consistent regular contact with parents, and emotional and physical safety of children, is the result.

(9) Study whether or not there is any gender discrimination in custody decisions in Maryland and, if so, how to address such discrimination.

Speakers at public hearings testified regarding bias in many forms. The areas of bias reported included gender, race, sexual orientation, disability, and economic resources, among others. The Commission's Identifying and Elimination Bias Committee examined this issue and concluded that many litigants believe that custody decisions are made in a way that reflects bias, gender and

otherwise. The Commission recommends that judicial education include identifying and eliminating explicit and implicit bias in custody decision-making. The proposed custody decision-making statute also specifically prohibits discrimination (consistent with The Fairness for All Marylanders Act and the amendments to the Americans with Disabilities Act).

(10) Study statutes from other states used for child custody determinations and assess whether those statutes improve the quality of decisions in child custody cases.

The Commission's Statutory Considerations Committee, with the aid of Commission staff, completed a thorough review of the 50 states and the District of Columbia. The Committee concluded that 44 jurisdictions have custody decision-making statutes, and the Commission was unanimous that while the details of the statutes vary widely, a clear, factor-based statutory framework for custody decision-making improves the quality and predictability of custody decisions.

(11) Study whether the Annotated Code of Maryland should contain a statute regarding child custody decision-making that would include definitions and factors for consideration in such decisions.

Many speakers at the public hearings testified in support of a statute containing definitions and factors for consideration in child custody decisions. There was testimony that the case law is outdated and does not provide guidance for the court in modern family structures, that statutory guidance would result in more predictable outcomes, and that statutory factors would allow litigants and their attorneys to present better cases in court.

Following sixteen (16) months of analysis, the Commission unanimously concluded that a statute with factors for making custody determinations improves the quality of those decisions. The final Report includes a draft statute.

(12) Study case management systems for family law cases in Maryland and other states, and study how to improve timely access to the court for temporary, *pendente lite* custody disputes, initial custody determinations, and custody modification proceedings, and emergency proceedings, and how to expedite denial of visitation proceedings.

Timely access to the courts was raised by multiple speakers on topics including those enumerated above and numerous others. It is a consistent complaint, in some jurisdictions more than others. The Commission's Court Processes Committee recommends new court processes targeted at the enumerated issues and others which cause delay in resolution of litigation, including a process for expedited hearings pre-trial. The Commission's Final Report makes numerous recommendations to ensure timely access to courts.

(13) Study the accountability of Maryland courts when using interventions such as protective orders, whether the courts should adopt processes to allow for compliance

hearings, and the impact of domestic violence proceedings on temporary and final custody determinations.

Speakers at the public hearings testified that the existence of a protective order did not ensure their safety or the safety of their children and that further abuse occurred after the issuance of a protective order. Others testified that their spouse, or their child's other parent, used the court process to gain unfair advantage after falsely alleging domestic violence. Some alleged false allegations of abuse or neglect. The Commission's Domestic Violence Committee recommended processes to address the enumerated issues, including a process for an expedited full custody hearing after custody has been determined in a domestic violence proceeding, and the Commission adopted this recommendation.

(14) Make recommendations regarding the most effective manner in which to facilitate cooperative decision-making by parents involved in child custody proceedings as it relates to their children.

Many testified at the public hearings that court processes did not facilitate cooperative decision-making by parents. The Alternative Dispute Resolution (ADR) Committee recommended numerous changes in the way the court system provides access to ADR, including incorporation of additional alternative dispute resolution processes into case management systems; uniform opportunities state-wide for mediation, facilitation and collaborative law, and inclusion of a parenting plan in the pretrial process.

(15) Study the training programs currently available to Maryland judges regarding child

custody decision-making and assess how to improve the training, including making it more culturally sensitive and diverse, and how to make the training more available to all judges on a consistent, ongoing basis.

The Commission reviewed educational programs on family law topics currently available to Maryland judges. The Commission's recommendations include enhanced judicial training, particularly in the areas of children's developmental needs, the role of parents in the lives of their children, domestic violence, disability issues, implicit and explicit bias, alternative dispute resolution methods, and predictable attorney's fees. The Commission also recommended more robust tracking of compliance with mandatory judicial training.

(16) Review the literature and research on decision-making responsibility and physical custody determinations, including child development literature and research on the effect of separation and divorce, and the literature and research on decision-making responsibility and physical custody determinations when the parents in the case were never married and may not have lived together.

The Commission's Literature Committee (LRC) researched and assembled a bibliography with summaries. The LRC also acted as a research resource for the other Commission committees, providing information as needed. The LRC's report contains the literature selected as best representing seminal works and current thinking, on the enumerated topics and others.

The literature reveals that social scientists have reached consensus on the factors which affect children's and adolescent's long-term adjustment when parents do not reside together. The research also shows that these factors apply to traditional or non-traditional families, and whether parents were married or never married.

(17) Study standardization of the language used by courts in making child custody determinations for clarity and to eliminate exclusionary or discriminatory terms.

The Commission's Identifying and Eliminating Bias (IEB) Committee made recommendations about neutralizing and clarifying language, compliance with the amendments to the Americans with Disabilities Act, and the need for court forms, instructions and rules using gender neutral terms. The Commission unanimously adopted these recommendations. Examples of this include the phrases "parenting time and responsibility" to describe the time a parent spends with his or her child, and "legal decision-making authority" to describe the right to give and receive information, and to make decisions about the child's wellbeing. These terms replace "physical custody/"visitation," and "legal custody."

(18) Study how to ensure that child custody determinations involving parents with mental health issues or sensory or physical disabilities are handled in a fair and even manner based on actual evidence and not presumed limitations.

Testimony at hearings often included reference to mental health of parents and children. The Commission's Report details the need the distinguish "disability" from inability to parent, through the analysis of factors including the child's emotional and physical needs, safety, and the parent's ability to ameliorate a disability. The proposed statute includes a revised definition of "disability, which is consistent with the Americans with Disabilities Act, and requires the articulation of a nexus between parental disability and ability to parent to prevent bias in child custody decision-making.

(19) Gather quantitative and qualitative data on the total number of contested custody cases per jurisdiction, including whether the court awarded joint physical custody to the parties or primary physical custody to the mother or the father over a two-year period.

The Commission was unable to undertake this task.

At present, Maryland Court database systems are not programmed to capture this data. In research to determine how the Commission might collect this data, two studies relating to outcomes in family law cases in Maryland were reviewed. Both were managed by the Women's

Law Center of Maryland (WLC). They were conducted in 1999 (report issued 2003) and 2003 (report issued 2006). Neither study provided the specific data sought by HB687.

The 1999 study sampled 1867 cases and cost $125,000. The 2003 study sampled 3366 cases statewide cost $200,000.[2] Both were grant funded. The research was directed by a part-time project manager and out-sourced professional data analysis. Each took three years to complete.

With this information in hand, in the 2014 Session of the General Assembly, the Commission sought an extended term (one additional year) and funding. Neither was successful.

(20) Gather quantitative data on whether pro bono legal resources are equally available for petitioners and respondents in domestic violence protective order proceedings in Maryland.

The Commission did not undertake this task, as it was duplicative of the work being done by the Task Force to Study Implementing a Civil Right to Counsel in Maryland[3]. Their Report was issued on October 1, 2014. Delegate Kathleen Dumais served on both the Task Force and the Commission. The Commission thus had the benefit of the Task Force research, and wholeheartedly endorses their findings and their recommendations:

- Create a right to counsel in civil domestic violence cases through a four year, phased-in expansion of existing programs that provide representation to income-eligible petitioners and respondents.
- Establish a right to counsel pilot program in child custody matters by increasing funding for the Judicare program administered by the Maryland Legal Services Corporation.

[2] The first represents about 2%, and the second about 4%, of the approximately 85,000 non-Juvenile family cases filed annually in Maryland.

[3] The Report can be found at http://www.mdcourts.gov/mdatjc/taskforcecivilcounsel/pdfs/finalreport201410.pdf.

MARYLAND GENERAL ASSEMBLY

COMMISSION ON CHILD CUSTODY DECISION-MAKING

APPENDIX B —
Interim Report - December 31, 2013

MARYLAND GENERAL ASSEMBLY

COMMISSION ON CHILD CUSTODY DECISION-MAKING

INTERIM REPORT
DECEMBER 31, 2013

HONORABLE CYNTHIA CALLAHAN, CHAIR

MARYLAND GENERAL ASSEMBLY

COMMISSION ON CHILD CUSTODY DECISION-MAKING

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Commission on Child Custody Decision-Making

Honorable Cynthia Callahan, Chair
Circuit Court for Montgomery County

Appointed by the Governor:

Renee Bronfein Ades, Esq.
Attorney, Law Offices of Renee Bronfein Ades, LLC

Wayne Beckles
Dean, Baltimore City Community College

Michele R. Harris, Esq.
The Law Offices of Michele R. Harris, LLC

Paul C. Berman, Ph.D.
Psychologist, Berman & Killeen, P.A.

Dorothy J. Lennig, Esq.
House of Ruth Maryland

David L. Levy, Esq.
Attorney

Carlton E. Munson, Ph.D., LCSW-C
Professor, University of Maryland, Baltimore

Kathleen A. Nardella, Esq., LCSW-C
Licensed Clinical Social Worker and Attorney

Laure Anne Ruth
Attorney, Women's Law Center of Maryland, Inc.

Keith N. Schiszik, Esq.
Attorney, Day & Schiszik

Vernon E. Wallace, Jr.
Program Manager, Baltimore Responsible Fatherhood Project, Center for Urban Families

Lauren Young, Esq.
Maryland Disability Law Center

Appointed by the Chief Judge of the Court of Appeals:

Hon. Shannon E. Avery
District Court for Baltimore City

Hon. Videtta A. Brown
Circuit Court for Baltimore City

Master Richard J. Sandy
Circuit Court for Frederick County

Appointed by the Speaker of the House:

Delegate Kathleen M. Dumais
Ethridge, Quinn, Kemp, McAuliffe, Rowan and Hartinger, P.A

Delegate Susan K. McComas
Republican, District 35B, Harford County

Appointed by the President of the Senate:

Senator Jennie M. Forehand
Democrat, District 17, Montgomery County

Senator Joseph M. Getty
Republican, District 5 - Baltimore County and Carroll Coun

This report is submitted to the General Assembly pursuant to 2013 House Bill 687.

In accordance with State Government Article §2-1246, a copy has been furnished to the Speaker of the House of Delegates and to the President of the Senate. Five copies were submitted to the Department of Legislative Services.

Introduction

The Commission on Child Custody Decision-Making (hereafter "Commission") was created by the enactment of Chapter 633 (House Bill 687) in the 2013 session of the Maryland General Assembly. The Commission was formed to study a wide variety of topics relating to the child custody decision-making process, and to report findings and recommendations to the Maryland General Assembly. The legislation directs the Department of Family Administration of the Administrative Office of the Courts to provide staff for the Commission. No budget was established for the Commission.

Consistent with the directives of Chapter 633, individuals who have expertise or particular interest in child custody decision-making were appointed to serve on the Commission. The Commission members represent a variety of perspectives and constituencies.

The Commission held its first meeting on September 12, 2013 at the Judicial Education and Training Center in Annapolis, Maryland. The meeting was open to the public in compliance with the Maryland Open Meetings Act (MD. Code Ann., St. Gov. Art., Section 10-501 et. seq.). Approved minutes of that meeting are included.

Two tasks were prioritized for Fall 2013, consistent with the dictates of Chapter 633, sections f(2) (hearings in five specified Maryland jurisdictions) and g(2) (preparing this interim report, due December 31, 2013).

In addition to the prioritized tasks, Commission staff conducted background research about legislation and processes affecting custody decision-making in Maryland and other states. This information will be very important as we move into the next phase of the Commission's work.

In 2014, the Commission will begin to synthesize the information gathered from the public hearings with its study of the custody decision-making process in Maryland. The Commission will submit a final report of findings and recommendations on or before December 1, 2014.

Duties of the Commission

House Bill 687 enumerates the duties of the Commission. Below is a discussion of each Commission task and the progress made regarding each.

(1) Study the practice, principles, and process for child custody decision-making in Maryland.

Commission staff has gathered background information on the custody process in Maryland. In-depth discussions and work to develop a landscape of the current practices in Maryland will commence at the January 2014 meeting. Please see sections (19) and (20), below.

(2) By December 31, 2013, hold one hearing each in Baltimore City, Harford County, Prince George's County, Western Maryland, and the Eastern Shore to allow for public input and participation by interested persons on child custody decision-making in Maryland.

The Commission held all public hearings as required.

A total of 166 members of the public attended the hearings with 73 providing testimony. Individuals were permitted to speak for approximately five minutes each. Hearings were scheduled from 6:00 p.m. - 8:00 p.m. in each location, but ran over time in several jurisdictions. Individuals were also permitted to submit written testimony via email.

Hearing Location Requirement	Location	Date	Number of Attendees	Number who Provided Testimony
Western Maryland	Allegany College of Maryland, Cumberland	October 10, 2013	5	4
Harford County	Harford Community College	November 7, 2013	20	14
Baltimore City	Baltimore City Community College	November 14, 2013	57	24
Eastern Shore	Chesapeake College, Wye Mills Campus	November 21, 2013	16	5
Prince George's County	Bowie Library	December 11, 2013	68	26

(3) Study how to make the establishment and modification of child custody orders more uniform, fair, and equitable.

This was the subject of much of the testimony we heard. It is the main focus of the Commission's work. It is the heart of what we will undertake in 2014.

(4) Study how to reduce litigation in child custody proceedings.

Based on the comments provided at public hearings, alternative dispute resolution options may be helpful to child custody litigants. The Commission will explore options in 2014.

Meaningful quantitative study will be a challenge given the budgetary and time constraints of the Commission.

(5) Study and consider the adverse effects of child custody litigation and ways the court system can minimize those effects.

Many speakers at public hearings framed their arguments in support or opposition of particular issues in the context of the adverse effects of child custody litigation on families. In the past 15 years, the court system has undertaken many initiatives to address these adverse effects. Assessment of these arguments and initiatives will be a focus of the Commission in 2014.

(6) Study how to promote and ensure that children have ongoing relationships with each parent.

Most speakers at the hearings expressed support for children having ongoing safe relationships with both parents in the context of the best interests of the child. Many states have statutes which address these conflicting interests.

(7) Study how to maximize the involvement of both parents in each child's life.

Please see (6), above.

(8) Study the advantages and disadvantages of joint physical custody and the impact of joint physical custody on the health and well–being of children.

Literature and testimony provided to the Commission articulated advantages and disadvantages of joint physical custody, and positive and negative impacts on the health and well-being of children. The Commission will evaluate the testimony and research at future meetings.

(9) Study whether or not there is any gender discrimination in custody decisions in Maryland and, if so, how to address such discrimination.

Testimony was provided at public hearings that claimed both a bias and a lack of bias.

Quantitative analysis will be difficult given the variables in custody cases, as well as the lack of budget and the time constraints of the Commission.

(10) Study statutes from other states used for child custody determinations and assess whether those statutes improve the quality of decisions in child custody cases.

Commission staff has compiled the custody statutes of our sister states and the District of Columbia. The Commission members will be reviewing and evaluating these statutes in 2014.

(11) Study whether the Annotated Code of Maryland should contain a statute regarding child custody decision-making that would include definitions and factors for consideration in such decisions.

Many speakers testified in support of a statute containing definitions and factors for consideration in child custody decisions. There was testimony that the case law is outdated and does not provide guidance for the court in modern family structures, that statutory guidance would result in more predictable outcomes, and that statutory factors would allow litigants and their attorneys to present better cases in court.

The Commission will discuss the advantages and disadvantages of statutory definitions and factors at future meetings.

(12) Study case management systems for family law cases in Maryland and other states, and study how to improve timely access to the court for temporary, pendente lite custody disputes, initial custody determinations, and custody modification proceedings, and emergency proceedings, and how to expedite denial of visitation proceedings.

Timely access to the courts was raised by multiple speakers on topics including those enumerated above and numerous others. It is a consistent complaint especially in some jurisdictions. The Commission will seek further details about the way these proceedings are managed, and how the problems might be alleviated.

(13) Study the accountability of Maryland courts when using interventions such as protective orders, whether the courts should adopt processes to allow for compliance hearings, and the impact of domestic violence proceedings on temporary and final custody determinations.

Speakers testified that the existence of a protective order did not ensure their safety or the safety of their children and that further abuse occurred after the issuance of a protective order. Others testified that their spouse, or their child's other parent, used the court process to gain unfair advantage after falsely alleging domestic violence. Some alleged false allegations of abuse or neglect.

(14) Make recommendations regarding the most effective manner in which to facilitate cooperative decision-making by parents involved in child custody proceedings as it relates to their children.

Many testified that the court process did not facilitate cooperative decision-making by parents.

(15) Study the training programs currently available to Maryland judges regarding child custody decision-making and assess how to improve the training, including making it more culturally sensitive and diverse, and how to make the training more available to all judges on a consistent, ongoing basis.

The Commission will review family law programs currently available to Maryland judges.

(16) Review the literature and research on decision-making responsibility and physical custody determinations, including child development literature and research on the effect of separation and divorce, and the literature and research on decision-making responsibility and physical custody determinations when the parents in the case were never married and may not have lived together.

The Commission is currently compiling literature on these topics and will consider the literature in future meetings.

(17) Study standardization of the language used by courts in making child custody determinations for clarity and to eliminate exclusionary or discriminatory terms.

The Commission will examine language and make recommendations, possibly including recommendations to neutralize language such as the term "visitation" when referring to the time spent by a parent with his or her children.

(**18) Study how to ensure that child custody determinations involving parents with mental health issues or sensory or physical disabilities are handled in a fair and even manner based on actual evidence and not presumed limitations.**

Testimony at hearings often included reference to mental health of parents and children. The Commission will study this issue and discuss at future Commission meetings.

(19) Gather quantitative and qualitative data on the total number of contested custody cases per jurisdiction, including whether the court awarded joint physical custody to the parties or primary physical custody to the mother or the father over a two-year period.

Court database systems do not currently collect or maintain this data and are not programmed to capture this data. The Commission is aware of two studies relating to family law cases in Maryland, managed by the Women's Law Center of Maryland (WLC), conducted in 1999 (reported issued 2003) and 2003 (report issued 2006). The first sampled 1867 cases statewide; the second sampled 3366 cases statewide. The cost of the first study was $125,000; the second approached $200,000. This included a part time project manager and an out-sourced professional data analysis.

The WLC samples represent a only a small percentage of the 85,000 non-Juvenile family cases filed each year in Maryland. The information on to whom custody was awarded, and under what circumstances, requires an analysis of each case individually. Given the cost of the sampling done in the WLC studies, it is safe to say that the Study mandated by HB 687 would have a significant cost. Currently, the Commission has no budget.

(20) Gather quantitative data on whether pro bono legal resources are equally available for petitioners and respondents in domestic violence protective order proceedings in Maryland.

Quantitative analysis of legal service provisions will be difficult given the budgetary and time constraints on the Commission.

Additional issues:

In addition to the tasks assigned by the General Assembly in Chapter 633, other child custody decision-making topics were raised at the hearings, including:

- Parenthood and third party access rights, including de facto parenting and other concerns of same-sex parents.
- Interference with parenting time.
- Enforcement of rights to parenting time, including safe exchange locations.
- Identifying and preventing or ameliorating interference with parental rights.
- The danger of statutory presumptions historically.
- Discrimination in custody determinations based on sexual orientation or disability.
- Child support enforcement and protective order proceedings are often the first interaction between a family and the courts.
- Disparity of remedies and services available to married versus unmarried litigants.
- Absence of a holistic approach to related family law legal issues.
- Immigration status challenges.

Conclusion

While the Commission's work has just begun, a number of preliminary observations can be made following the testimony presented at the public hearings.

Many who testified expressed dissatisfaction with the court process, in particular the length of time to get relief from the court and the expense of litigation. Not surprisingly, the Commission heard the negative experiences of those testifying. The Commission will have to gather data (to the extent available) on how cases are processed, both in terms of timing and services, in order to understand the issues. In 2014, enhanced alternative dispute resolution and expedited hearings will be among the topics explored.

As part of its work in 2014, the Commission will be examining not only how custody decisions are made within Maryland, but also how other states address custody decision-making. It is the objective of the Commission that such examination will reveal ways to enhance our current decision-making process and lead to better outcomes for Maryland families.

Honorable Cynthia Callahan, Chair

Commission Staff:
Connie Kratovil-Lavelle, Executive Director
Michael Dunston, Deputy Director
Christine Feddersen, Executive Administrative Assistant
Sarah Kaplan, Juvenile Law Manager
Gerald Loiacono, Staff Attorney
Pam Luby, Staff Attorney
Joseph Warren, Database Specialist
Adam Wheeler, Staff Attorney
Pen Whewell, Administrative Assistant

COMMISSION ON CHILD CUSTODY DECISION-MAKING

MINUTES

Commission Meeting

September 12, 2013 ◦ 6:00 p.m. – 8:00 p.m.

Location: The Judiciary Education and Conference Center
2011 C/D Commerce Park Drive, Annapolis, Maryland 21401

Commissioners in Attendance:

Honorable Cynthia Callahan, Chair
Honorable Shannon E. Avery
Wayne Beckles
Paul C. Berman
Delegate Kathleen M. Dumais
Senator Jennie M. Forehand
Michele R. Harris, Esq.
Dorothy J. Lennig, Esq.
David L. Levy, Esq.
Delegate Susan K. McComas
Carlton Munson, Ph.D., LCSW-C
Kathleen A. Nardella, Esq., LCSW-C
Laure Anne Ruth
Master Richard J. Sandy
Keith N. Schiszik, Esq.
Vernon E. Wallace, Jr.

Department of Family Administration Staff:

Connie Kratovil-Lavelle, Esq.
Christine Feddersen
Gerald Loiacono, Esq.
Adam Wheeler, Esq.

Public Attendance:

Philip Cronin, Maryland Psychiatric Society
LaSandra Diggs, Department of Juvenile Services
Sandie Horne, CASA
Eileen King, Child Justice, Inc.
Kelley O'Connor, Maryland Judiciary
Suzanne Pelz, Maryland Judiciary

Judge Cynthia Callahan opened the meeting at 6:08 p.m. She asked that each Commission member introduce him or herself. She gave opening remarks including a brief description of the Commission's purpose and tasks as set out in HB 687.

Commission Tasks

The Commission discussed that some tasks established in the authorizing legislation, HB 687 CH 633, Acts of 2013, cannot be accomplished without a substantial budget. The Committee addressed particularly Section (f)(19) which requires the Commission to:

> gather quantitative and qualitative data on the total number of contested custody cases per jurisdiction, including whether the court awarded joint physical custody to the parties or primary physical custody to the mother or the father over a 2–year period[.]

Judge Callahan indicated that committees would be formed to address specific tasks enumerated within the statute. Committees will be comprised of Commission and non-Commission members. The tasks may include, but won't be limited to:

- Parenting issues.
- Court process.
- Neutralizing and standardizing language.
- Resolving Disputes outside the Court System.
- Judicial education.
- 3rd-Party Parenting issues.
- Statutes and case law on custody in Maryland.

It was noted that the Commission should always consider the impact of various proposals on self-represented litigants.

Other issues considered included:

- Caretakers and changing rules.
- Changing families.
- Gestational parents.
- Judicial education.
- Third Party Rights and Parenting Issues.
- Supervised visitation.

Public Hearings

The Committee discussed the scheduling and location of the public hearings required by HB 687. Judge Callahan noted that the Interim Report will likely be derived in part from information gained from public hearings. Public hearings are required to be held in:

- Baltimore City
- Harford County
- Prince George's County
- Western Maryland
- Eastern Shore

The Commission discussed potential issues with the public hearings including:

- Security
- Neutrality of space
- Physical Capacity, ADA compliance issues
- Adequacy of notice

Specific venues were discussed including:

- Baltimore City
    1. School of Social Work
    2. Baltimore City Community College, North Morse St. in Baltimore City
    3. District Court
- Prince George's Community Center suggested by Delegate Kathleen Dumais.
- Western Maryland, possibly in Hagerstown.

It was suggested that the public hearings be recorded. As the Commission is unfunded, it may not have the resources for a professional recording of each meeting.

It was decided that notice to public will be provided through posting on the General Assembly webpage and Judiciary's Department of Family Administration website, notice to the State Bar and local Bar Associations, and Commissioners were encourage to spread the word.

Staff will arrange for public hearings in designated areas. The schedule will be distributed to the Commissioners and others via email and website.

Future Meetings

The next meeting was not scheduled, as the Public Hearings must be completed in the Fall 2013, which takes priority at the moment.

The Chair closed the meeting at 8:05 p.m.

COMMISSION ON CHILD CUSTODY DECISION-MAKING

SUMMARY

Western Maryland - PUBLIC HEARING #1

October 10, 2013, 6:00 p.m. – 8:00 p.m.

Location: Allegany College of Maryland, Cumberland Campus
12401 Willowbrook Road, Cumberland, Maryland 21502

Commissioners in Attendance:

Honorable Cynthia Callahan, Chair
Renee Bronfein Ades, Esq.
Honorable Shannon E. Avery
Delegate Kathleen M. Dumais
Dr. Carlton E. Munson
Kathleen A. Nardella, Esq., LCSW-C
Keith N. Schiszik, Esq.

Department of Family Administration Staff:

Gerald Loiacono
Joseph Warren
Adam Wheeler

Interpreters:

Lawrence Haller, Spanish Interpreter
Mandy Hawk, ASL Interpreter

Public Attendance:

Testify	Name	Organization
yes	Gannon, Chris	n/a
yes	Schaaf, Greg	presented
yes	Smith, Sr., David W.	The Children's Rights Fund of Maryland
yes	Washington, David	Fair-4-Justice

Chair commenced the hearing at 6:15 p.m.

Testimony commenced at 6:20 p.m.

Witnesses in alphabetical order:

Chris Gannon - Father/Concerned Citizen

- States that he was wrongfully accused of substance abuse during custody case.
- Believes that custody cases can be damaging to families both emotionally and financially.
- Provided materials for the Commission.

Greg Schaaf – Family Law Attorney, Allegany County

- Believes that courts should have a mechanism for scheduling emergency cases.
- States that Maryland custody law should be updated to reflect modern families.

David Smith - "Fathers for Access" Group, Prince George's County

- Told commission that he will expand at later meetings.

David Washington – Fair-4-Justice, Prince George's County

- Believes that there should be expanded rights for shared parenting.
- Promised to speak at later commission meetings.
- Submitted a journal for commission to review.

Hearing concluded at 7:45 p.m.

COMMISSION ON CHILD CUSTODY DECISION-MAKING

SUMMARY

Harford County - PUBLIC HEARING #2

November 7, 2013 ◦ 6:00 p.m. – 8:00 p.m.

Location: Harford Community College
Edgewood Hall - Room E132, James LaCalle Lecture Hall
401 Thomas Run Road, Bel Air, Maryland 21015-1698

Commissioners in Attendance:

Honorable Cynthia Callahan, Chair
Wayne Beckles
Dorothy J. Lennig, Esq.
David L. Levy, Esq.
Delegate Susan K. McComas
Dr. Carlton E. Munson
Kathleen A. Nardella, Esq., LCSW-C
Laure Anne Ruth
Keith N. Schiszik, Esq.
Vernon E. Wallace, Jr.
Lauren Young, Esq.

Department of Family Administration Staff:

Connie Kratovil-Lavelle, Esq.
Gerald Loiacono
Adam Wheeler

Interpreters:

Susan Roza, ASL Interpreter
Caroline Schutz, Spanish Interpreter

Public Attendance:

Testify	Name	Organization
yes	Boback, Brandon	Father
yes	Chick, John	N/A
yes	Cyzyk, Mark	Father/NPO
yes	Gannon, Chris	Father
yes	Hausner, Deena	House of Ruth
no	Hurff, Matt	Self

yes	Iannacone, Sharon	Family Court Services
no	Koda, Paul	Self
yes	Lang, Jennifer	Self
yes	Little, Craig	Attorney
no	Mosier, Lauren	Self
yes	Nicholson, Chris	Attorney
no	Pelz, Suzanne	Maryland Judiciary
no	Roza, Susan	
no	Rueed, A.	GFLS
no	Schaffer, Eric	Father
no	Tate, Gwendolyn	SARC
no	Wagner, Kim	OPD/panel
no	Wasanow, David	Fair-4-Justice
yes	Weir, Christopher	Father
no	Williams, Joe	Family Court Services

Chair commenced the hearing at 6:20 p.m.

Testimony commenced at 6:25 p.m.

John Chick - Damascus, Maryland

- Believes Maryland should have a joint custody presumption.
- Claims 37 states have a presumption for joint custody, or language allowing for legal or physical joint custody.
- States that domestic violence research is outdated and should be updated. Says conflict is reduced under functioning shared parenting.

Sharon Iannacone - Harford County Circuit Court Family Services

- Notes that Court seeks a safe relationship with both parents.
- States that uniformity sometimes comes at the cost of clear and instructive orders for litigants.
- Believes that designation of judicial officers/parent coordinators can reduce conflict.
- Submitted written testimony.

Mike Cyzyk - Father/NPO

- States that fathers have an important role in the lives of children.
- Believes that shared parenting works.

Denna Hausner - House of Ruth

- States that presumption of joint custody increases likelihood of violence.
- Notes that decisions should be made by courts on an individual basis without presumption of outcome.
- Says that exceptions in presumption statutes aren't enough to prevent violence.

Brandon Boback - Father

- Believes that men are often wrongly accused of domestic violence or sexual abuse.
- Says there is too much weight given to the opinions in expert reports and evaluations.

Christopher Weir - Father

- Believes there should be a presumption towards joint custody.
- Says that men are often wrongly accused of seeking joint custody as a cost saving measure.

Eric Schaffer - Father

- Believes that psychologists involved in custody disputes operate with a dishonest agenda.
- States that men are wrongly accused of sexual abuse with no evidence.

Chris Nicholson - Family Law Attorney

- Makes Three Recommendations:
  1. There should be no presumption in custody cases, children should be put first.
  2. There should statutory factors to create predictable decisions.
  3. There should be an administrative structure that allows cases to be heard within 90 days within filing.

Jennifer Lang - Self

- States that punishment for violations of protective order should be more severe and enforced.
- Believes there should be classes for children going through divorce.
- Says Orders and statutes should have a glossary of terms to make them easier to understand.
- Notes that there should be provisions to prevent judge shopping - one family, one judge.

Craig Little - Family Law Attorney

- Notes that joint custody is not always the best option.

- States there should be no presumption of any other custody arrangement Says parents and the court should develop individualized solutions for children.
- Gives the example of his son, who had 50-50 custody and revealed at age 20 that he hated it.
-

Chris Gannon - Father

- Believes mediation needs to be expanded and supported by the courts.
- Says there should be a way to challenge false allegations made by one parent against another.
- States that parental alienation syndrome should be acknowledged by the Maryland courts.
- Provides additional materials.

Hearing concluded at 7:50 p.m.

COMMISSION ON CHILD CUSTODY DECISION-MAKING

SUMMARY

Baltimore City - PUBLIC HEARING #3

November 14, 2013 ◦ 6:00 p.m. – 8:00 p.m.

Location: Baltimore City Community College, Mini Conference Center, Fine Arts Wing
2901 Liberty Heights Avenue, Baltimore, Maryland 21215-7807

Commissioners in Attendance:

Honorable Cynthia Callahan, Chair
Renee Bronfein Ades, Esq.
Honorable Shannon E. Avery
Wayne Beckles
Delegate Kathleen M. Dumais
David L. Levy, Esq.
Dr. Carlton E. Munson
Kathleen A. Nardella, Esq., LCSW-C
Laure Anne Ruth
Master Richard J. Sandy
Keith N. Schiszik, Esq.
Vernon E. Wallace, Jr.
Lauren Young, Esq.

Department of Family Administration Staff:

Michael Dunston
Sarah R. Kaplan, Esq.
Pen Whewell

Interpreters:

Sheryl Cooper, ASL Interpreter
Jaime Ochoa, Spanish Interpreter

Public Attendance:

Testify	Name	Organization
yes	Aneli, Roald	Self
yes	Bates, Aaron	Father
no	Bates, Bruce	Children's Rights Fund
yes	Bates, Madelene	Children's Rights
yes	Beck, Laura	Self, Mom

yes	Boback, Brandon	Father
no	Burton, Joyce	
yes	Carter, Jill P.	Self
no	Caster, Troy	None
no	Cheu, Citwill	House of Ruth
yes	Chick, John	N/A
no	Conlon, Amelia	House of Ruth
no	Cyzyk, Mark	
no	DiJulio, Christopher	
yes	Dulring, Danielle	
no	Elgin, Susan	Attorney
no	Fields, Lou	BAAYC
no	Fink, Lisa	Baltimore City Visitation Center
yes	Flagg, Desmond R.	Self
no	Fuerst Adams, Rita	National Parents Org.
yes	Harlow, Britt	House of Ruth
no	Holcombe, Olivia	Joan Wilbon & Assoc.
no	Holland, Scott	
yes	Holmes, Naeesah	Child
no	Inis Givolito, Mario	SAO Baltimore City SVU
yes	Jackson, Larry	
no	James, Johnathan	NPO - National Parents Org.
no	Kasimu, Sekou	None
no	Kearney, Japonica	Self
no	Kernes, Troy	Self
yes	King, Eileen	Child Justice, Inc.
no	Koda, Paul	National Parents Org.
no	Little, Craig	Attorney
yes	MacArthur, A.	
no	MacFarlane, C.	Self
yes	Matthews, Mark	Clean State America
yes	McLeod, Hera	
no	Merces, Jennifer	Student, UMB School of Law
yes	Mugman, Ellen	
yes	Nielsen, Eric	Self
yes	Nitsch, Lisa	House of Ruth
no	Pelz,, Suzanne	Maryland Judiciary
yes	Pezzulla, Mary	House of Ruth
yes	Phelps, Godfrey	
no	Picbto, Bianca	Tahirih Justice Center
no	Ray, Robert	Self
yes	Sarkar, Shaoli	House of Ruth Legal Clinic
no	Schaffer, Eric	Self
yes	Shalsazz, Ori	N/A
yes	Smith, Sr., David W.	Children's Rights Fund
no	Tapp, Kenneth	Self

no	Taylor, Bonnie	Children's Rights
no	Taylor, Yanita	Office Public Defender
no	Traini, Cecilia	House of Ruth
no	Washington, David	Fair-4-Justice
no	White, Gary	
no	Write, Brittany	

Chair commenced the hearing at 6:10 p.m.

Testimony commenced at 6:20 p.m.

Witnesses in alphabetical order:

Aneli, Roald – Self, Baltimore City

- States he did not get heard by the judge, who was only concerned about the money.

Bates, Aaron – Father, Howard County

- Addressed his personally difficult custody situation.
- States that he did not do anything wrong towards his child, but he was advised by counsel not to challenge custody.
- Says he did not understand the effect of the order on his situation.

Bates, Madelene - Children's Rights, Highland, Howard County

- States that after her son and his girlfriend split up, there was a 8 month custody fight. Son was pressed to agree to joint custody.
- Says her son has to pay support even though he has the child almost 50% of the time.
- Believes there would have been less money spent and less fighting with presumed 50/50 custody.

Beck, Laura - Self, Mom, New Market

- States her husband exploited the current law, leaving her as working poor, with no hope of recovery.
- Believes the child's preference was used to turn the child against her.
- Stresses the importance of finances – her husband knew she could not afford to fight.

Boback, Brandon – Father, Gaithersburg, Montgomery County

- States he has a case in Carroll County, involving false abuse allegations.
- Says he lost joint custody based on inability of the parties to communicate after 8 years of joint custody.

Carter, Jill P. - Delegate, 41st District

- States she pushed for laws that resulted in Commission being established.
- Stresses that too often, the father is relegated to monetary considerations alone. Often he first hears of the case when he is called to give DNA for child support.
- Notes the issue in the case should be how to co-parent, how to be a parent.
- Says that abuse and domestic violence rebut the presumption of joint custody.
- Suggests that we start at the middle with the child having joint access.

Chick, John - N/A, Damascus

- States that presumption is in child's best interests, with exemption for violence and abuse.
- Reminds that at last week's hearing he submitted information on studies supporting joint custody.
- Says that parties trade time for money in custody cases.
- Alleges that people who spoke for joint custody are everyday people; people who spoke against it were speaking to their own selfish interests.

Duerling, Danielle - Baltimore City

- Speaks as a mother and step-mother to her partner's child, effect on her partner of not having joint custody.

Flagg, Desmond R. - Self

- Says he is in favor of presumed joint custody.
- States that children do better with both parents involved.
- Alleges he lost joint custody after 1½ years because he did not have a lawyer.

Harlow, Britt - House of Ruth

- Urges that presumption of joint custody should not be the law.
- States that victims of domestic violence in protective order cases are generally unrepresented and will not know or understand the effect of the presumption.

Holmes, Naeesah – Child, Baltimore City

- Believes she was subjected to a false report of abuse in a child welfare case, fighting to get her child back for 8 months.

King, Eileen - Child Justice, Inc., Silver Springs, Montgomery County

- States that "child rights" should have been used in the law.
- Says that most custody cases settle, and those that do not settle are the least appropriate for a joint custody presumption.
- Believes that "Parental alienation" is used to apply against women, to flip the case the be against the protective parent.
- Would like to see a systematic look at all the parties.
- Urges the Commission to be aware of what is happening on the federal level and of research on best practices.

Matthews, Mark - Clean State America, Baltimore City

- States that he has been the single parent of his now 17-year old son since the child was 3 months old.
- Notes the importance of both parents protect the child.
- Says there is a negative effect of a child of being raised in a single parent household.

McLeod, Hera - Gaithersburg, Montgomery County

- Her son was murdered by his father on a unsupervised visit that she had strenuously opposed.
- Says that the judge who heard the custody case began the hearing by stating how much he hated these cases.
- Urges the end of the rotation of judges in custody cases – the judges who hear custody should want to hear custody cases.
- States that If there is evidence of a psychiatric problem, the person alleged to have the psychiatric problem should not be permitted to select his/her own psychiatrist to do testing.
- Notes that the issue should be the child's rights, not the parent's.
- Asks that cases like hers be reviewed to learn what to do differently.

Mugman, Ellen - Elkridge

- Concerned that child's best interest is not in law as the paramount issue – that is how the law should be changed.
- Concerned that there is not children's rights advocate on the Commission
- Asks that the Commission consider research in its work.
- Says that "Parental alienation" was deemed junk science by the National Council of Juvenile & Family Court Judges. See research by Toby Kleinman; A Mother's Nightmare by John Myers.

Nielsen, Eric - Self, Bethesda

- States that Parental Alienation Syndrome (PAS) - should be included in DSM V.
- Says that absence of PAS from DSM V is a reason courts do not consider it in custody cases.
- Notes he is a frequent Amazon reviewer who comments frequently on PAS.

Nitsch, Lisa - House of Ruth (Baltimore City)

- House of Ruth Clinical Director.
- Cited to several studies, including a 2005 study from a presumption state which found a doubling of motions for modification after joint custody was awarded.
- Says that exposure to parental conflict – not the presence of a parent – is what affects a child's well development.
- States that if parents cannot talk, hard to negotiate joint custody.
- Notes that she is an advocate for fatherhood.
- Believes a Presumption will push judges to order joint custody.

Pezzulla, Mary - House of Ruth

- Managing attorney at House of Ruth.
- States that the presumption of joint custody would be harmful to victims of domestic violence.
- Notes custody cases require individual consideration of the child's best interest.
- Believes an exemption for cases in which domestic violence has occured would not be sufficient.
- Says having joint custody as the default would support lack of consideration for each child's individual circumstances.

Phelps, Godfrey - Anne Arundel County

- Believes there is no consideration of the rights of men in paternity cases.

Sarkar, Shaoli - House of Ruth Legal Clinic

- Believes the presumption may take away the ability to present testimony.
- Does not want to give judges a quick way to resolve a case without considering the child.
- Says there will be a negative effect on a petitioner in a protective order case if extensive contact with the abusing parent is required.

Shalsazz, Ori - N/A, Baltimore City

- Spoke from father's point of view.
- Says child support continued to be assessed against him even though he is the custodian.
- Needs to be a way to deal with large support arrearages when a father does not have a way to pay it.

Smith, Sr., David W. - Children's Rights Fund, Prince George's County

- He has spoken before and will speak again at the Prince George's meeting.
- Says he has faced these issues as a father.
- Believes there is currently a female bias.
- States that equal presumption is best for children.
- Mentioned "Women for Joint Parenting," an organization in Massachusetts.

Hearing concluded at 8:12 p.m.

COMMISSION ON CHILD CUSTODY DECISION-MAKING

SUMMARY

Eastern Shore - PUBLIC HEARING #4

November 21, 2013 ◦ 6:00 p.m. – 8:00 p.m.

Location: Chesapeake College - Wye Mills Campus, Room HEC110
1000 College Drive, Wye Mills, Maryland 21679

Commissioners in Attendance:

Honorable Cynthia Callahan, Chair
Renee Bronfein Ades, Esq.
Honorable Shannon E. Avery
Kathleen M. Dumais
Dorothy J. Lennig, Esq.
David L. Levy, Esq.
Carlton E. Munson, Ph.D., LCSW-C
Kathleen A. Nardella, JD, LCSW-C
Laure Anne Ruth
Keith N. Schiszik, Esq.
Vernon E. Wallace, Jr.
Lauren Young, Esq.

Department of Family Administration Staff:

Christine Feddersen
Connie Kratovil-Lavelle, Esq.
Gerald Loiacono
Adam Wheeler

Interpreters:

Jaime Ochoa - Interpreter, Spanish
Carrie Quigley - Interpreter, ASL

Public Attendance:

Testify	Name	Organization
Yes	ACP #13035,"Mich"	Self
No	Barton, Linda	
Yes	Bates, Aaron	Self, father
No	Baumann, Jen	Circuit Court
Yes	Brown, Dana	
Yes	Chick, John	Self
No	Cullen, Kate	Mediation Services of Frederick
Yes	DiJulio, Christopher	Dad
No	Jurrius, Cynthia	Mid-Shore Mediation
No	Koda, Paul	National Parents Organization
No	Kranitz, Martin	Mediation Services of Annapolis
No	Land, Susan	Attorney
No	Meta, Jean D.	Judiciary
No	Pittsinger, Katie	Mid-Shore Council on Family Violence
No	Sharp, Bryon	NPO - National Parents Org.
No	Wolpert, Rachel	Maryland Legal Aid

Chair commenced the hearing at 6:08 p.m.

Chair, Cynthia Callahan, made opening remarks on the nature of the Commission and its responsibilities. She discussed the rules for speaking before the Commission.

Testimony commenced at 6:10 p.m.

Dana Brown - Charles County

- States he believes there is a major bias against fathers in custody decisions
- Cites a recent study by the Women's Law Center
- Alleges that the House of Ruth is wrong to oppose "shared" (50/50) parenting.
- Wants rebuttable presumption of joint (50/50) custody.

Christopher DiJulio – Father, Anne Arundel County

- Suggests domestic violence allegations made during the course of a custody dispute be heard in Circuit Court by the judge assigned to the custody case.
- Gives examples of multiple filings of protective order proceedings in his case.
- Wants police or Department of Social Services to investigate allegations of parental drug abuse within 14 days.

"Mich" [Alias], - Self, St. Mary's County

- States several judges had to recuse because ex-husband retained their old firm.
- Alleges she had clear evidence of lying in custody proceedings by ex-husband.
- Moved to Maryland, lost full custody to father and received no visitation.
- Wants retired judges required to have continuing education and be tested for mental acuity.

John Chick – Litigant, Damascus, Maryland

- Cites 2010 article in Journal of Pediatrics and Child Health for evidence that children do better when raised by both parents.
- Alleges presumption of joint custody has an exception for domestic violence.
- Outlines three ways to avoid domestic violence:
    - Supervised exchange centers paid for by those who use the service;
    - Mandatory co-parenting classes;
    - Removing causes of parental conflict like bias against fathers;
    - Adopting shared custody which leads to lower parental conflict.
- Claims 37 other states have some type of shared parenting language.
- Notes California's statutory language that it is the public policy of the state to ensure frequent and continuing contact between a child and both parents.

Aaron Bates – Self, father, Highland, Maryland

- Claims that rights and laws are ignored by courts and lawyers.
- Complains that no evaluation of the mother's mental state or living situation was done after she disappeared with the child.
- Says ultimately he was awarded seven nights short of 50-50 parenting time.
- Alleges mother uses child support to pay for her own desires.
- Claims child support is 40% of his gross income which makes his business unprofitable.

6:41 p.m. - Honorable Cynthia Callahan, Chair, announced that the Commission would recess as there were no more speakers waiting. If no new speakers arrived before 7:30 p.m., the hearing would be adjourned.

7:30 p.m. - Hearing adjourned.

COMMISSION ON CHILD CUSTODY DECISION-MAKING

SUMMARY

Prince George's County - PUBLIC HEARING #5

December 11, 2013 ◦ 6:00 p.m. – 8:00 p.m.

Location: *Bowie Library, Meeting Room*
15210 Annapolis Road, Bowie, Maryland 20715

Commissioners in Attendance:

Honorable Cynthia Callahan, Chair
Renee Bronfein Ades, Esq.
Honorable Shannon E. Avery
Paul C. Berman, Ph. D.
Delegate Kathleen M. Dumais
Michele R. Harris, Esq.
Dorothy J. Lennig, Esq.
David L. Levy, Esq.
Carlton E. Munson, Ph.D., LCSW-C
Kathleen A. Nardella, JD, LCSW-C
Keith N. Schiszik, Esq.
Lauren Young, Esq.

Department of Family Administration Staff:

Connie Kratovil-Lavelle, Esq.
Michael Dunston
Christine Feddersen
Gerald Loiacono
Pam Luby
Adam Wheeler

Interpreters:

Carolina Schutz - Interpreter, Spanish
Carrie Quigley - Interpreter, ASL

Public Attendance:

Testify	Name	Organization
Yes	Amster, Jayson	N/A
No	Barberman, Jr., John L.	Attorney, The Bowen Law Firm, Trustee Children's Rights Council
No	Barbour, Lawrence D.	

Testify	Name	Organization
No	Barues, D.	
No	Bates, Aaron R.	Father
No	Bates, Bruce	
No	Bishop, David A.	
No	Blgay, Walakewon	
No	Boback, Brandon	Father
No	Borie, Dennis	
No	Bouquet, Ed	Brodsky, Reneharetal
Yes	Bovma, Laura	Mom's Fighting Howard County Court Corruption
Yes	Browne, Ronald	Self, father
No	Burnett, Sr., Arthur L.	Retired Judge, DC Superior Court
Yes	Carrington, Darrell	Carrington Assoc.
Yes	Clements, David	House of David
No	Dalichow, Karin	Community Legal Services
Yes	Debra	HCMFCC
No	DiJulio, Christopher	Self
No	Dill, Jennifer	Ferrente & Dill, LLC
Yes	Donahue, Diane	So. Md. Center for Family Advocacy
No	Erdmann, Lindsey	McNammee Hosea
Yes	Fisher, Cliff	Self
Yes	Fountain, Cheryl	Self
Yes	Gilhooly, Susan	OPD
No	Gindles Belgel, Patricia	Prince George's Co. Circuit Court
Yes	Gordon, Elizabeth	House of Ruth, Maryland
No	Gunter, Francine	Self
Yes	Haywood, Cassandra	MMCH
No	Hein, Leo	Fathers' Rights
No	Henry, Ron	The Boys Initiative
No	Jackson, Larry	
No	James, Johnathan	NPO - National Parents Organization
No	Judy, Patricia	
Yes	Kahlor, Margaret	Self
No	Kukuk, Brad	Maryland Domestic Law Report
No	Lawrence, Anthony	N/A
No	Levy, Esq., Ellen	
No	Lewis, II, Vincent	
Yes	Malone, Frank	The 100 Fathers, Inc.
No	Markoski, Peter	MSBA Family Law Committee
Yes	Maypin, Margaret	Legal Aid Bureau
Yes	McAvoy, Vince	
No	McClaron, Maisha	
No	Moore, Earnest	Men Aiming Higher
No	Mustaf, Jerrod	Take Charge Program
No	Nielsen, Eric	Self

Testify	Name	Organization
No	Pelz, Suzanne	Maryland Judiciary
Yes	Polikoff, Nancy	American University, Washington College of Law
No	Porter, Tom	Fairwindz.org
No	Ralls, Davon	
Yes	Ramsey, Teresa L.	Self
No	Ramsey, Will	Self
No	Rupert, Maya	National Center for Lesbian Rights
No	Sapp, T Chaka	100 Fathers Inc.
No	Sharp, Bryan	NPO - National Parents Org.
Yes	Silber, Susan	Silbe, Perlmaj
Yes	Simpson, Nancy R.	Simpson Family
No	Smith, Sr., David W.	Children's Rights Fund
Yes	Sundermen, Heather	Law Office of Maibel Lafountaine
No	Turner, Stephen	
Yes	Venzen-Peck, Renee	Mom's Fighting Howard County Court Corruption
Yes	Walter, Jen	Free State Legal
Yes	White, Darren	Self, Visitation father
Yes	Wills, Vincent	Self
Yes	Wolfer, Judith	House of Ruth, Maryland
No	Woodall, Judy	Section Counsel Family Law

Chair commenced the hearing at 6:15 p.m.

Testimony commenced at 6:16 p.m.

Nancy Polikoff - Professor, American University Washington College of Law

- Argues there is a need for a statutory definition of de facto parentage.
- States that de facto parentage assures that people without a genetic link to a child for whom they act as a parent are recognized as parents by the law.
- Points out that many states recognize de facto parentage including the District of Columbia and Delaware.

Cliff Fisher - Laurel, MD (Prince George's County)

- States that children do better with both parents.
- Wants law mandating joint physical custody.
- Proposes exceptions to joint:
    - history of domestic violence;
    - history of mental illness; or
    - other danger to the child.

Diana Donahue - Southern Maryland Center for Family Advocacy, Hollywood, MD

- States she represents clients in domestic violence (DV) and other family law cases.
- Notes serious concerns about presumption of joint physical custody:
  - Abusers use manipulation and control which can involve the child;
  - Presumption presents another obstacle to escaping a violent relationship.
- Asks that Commission to focus on protecting an ongoing POSITIVE relationship with parents rather than simply "ongoing relationship" (HB687, f(6)).

Cheryl Fountain - Mt. Rainier, MD (Prince George's County)

- States her partner conceived child through artificial insemination; she and partner co-parented, then separated when child was one year old.
- Notes she received some visitation through recognition of de facto parentage.
- Has regular visitation with her child, positive relationship with former partner.

Debra - Moms Fighting Howard County Court Corruption (Howard County)

- Say husbands, mental health experts, and judges want to destroy fit mothers who are seeking custody.
- Claims there is a conspiracy to remove mothers from children's lives.
- Alleges mothers are consistently losing their children in Howard County courts.
- Says children were brainwashed to hate her and wants recognition of maternal alienation.

Judith Wolfer - House of Ruth (Prince George's County, Montgomery County)

- States that the impact of children witnessing DV is minimized by judges who focus on whether children were directly abused.
- Argues that Judges, Masters and the Bar should be trained on the impact of witnessing DV between parents.
- Says an accelerated access and custody hearing is needed to preserve the parenting division of labor prior to the separation.
- Wants the custody factors recommended by the Commission to go beyond those in *Montgomery Co. v. Sanders* and *Taylor v. Taylor* and consider today's family.

Ronald Browne - Prince George's County

- States that four ex parte DV cases and four child abuse cases against him were thrown out.
- Alleges wife caused parental alienation.
- Wants a presumption of shared physical custody.
- Argues that parental alienation is child abuse, and custodial interference should be criminalized (cites Missouri law).
- States those who file false DV claims should be punished.

Margaret Kahlor - Elkridge, MD (Howard County)

- Margaret K. of the *Janice M. v. Margaret K.* case
- States that Margaret adopted child to be raised by her and Janice, but after separation, over time, Janice became more restrictive on visitation.
- Court of Appeals eliminated de facto parenthood in her case, and despite Court finding of alienation witness had no recourse.

Renee Venzen-Peck - Ellicott City, MD (Howard County)(Moms Fighting Howard County Court Corruption)

- Lost custody of her son in 2010 after trial in Howard County Circuit Court. At end of trial, judge did not retire for deliberations.
- Judge was biased and had predetermined the outcome of the case.

Franklin Malone - 100 Fathers, Inc.

- Provides fatherhood mentoring services.
- Promotes the Family Bill of Rights.
- Claims that 85% of Maryland custody cases are found in favor of the mother.
- Noted that incarceration, truancy and delinquency may be related to father absence.

Theresa Ramsey - Takoma Park, MD (Prince George's County)

- States she has practiced family law in many states.
- Cites Washington State law requiring parenting plans to be filed with petition for custody disputes, which causes parents to focus on children at the outset.
- Wants the Commission to recommend shared parenting.

Darren White - Glendale, MD (Prince George's County)

- Accused of child abuse despite no corroborating evidence which lead to indictment, trial, and the jury returned a not guilty verdict.
- Claims that judge appointed a former co-worker as the best interest attorney in the custody case.
- Urges more specific custody and visitation orders to avoid costly re-litigation.
- Show cause hearings must be set promptly (5 months too long)
- States too many custody cases heard and tried solely by women.

Vince Wills - Montgomery County

- Family law practitioner for over twenty years and a child of divorce
- Argues that if a presumption of shared custody is imposed, the court cannot reach the best interests of the child until the presumption is overcome.
- States from personal experience he does not favor presumption of 50/50.
- Believes that division of labor should be imposed in custody arrangements (one parent with primary job, one with child rearing responsibilities).

Susan Gilhooly - Prince George's County

- CINA division supervisor for the Office of the Public Defender in multiple counties in Southern Maryland.
- Wants post-closure CINA cases to use the best interest standard instead of the unfitness or extraordinary circumstances (3rd party custody cases) standard.
- Argues for fair treatment for all gender, ethnic, cultural, religious, and socioeconomic statuses.

Heather Sunderman - Gaithersburg, MD (Montgomery County)

- Family law practitioner in Rockville, MD and child of divorce.

- Wants impact on children in custody cases minimized through:
    - avoiding litigation;
    - increasing parenting education on encouraging avoiding conflict.
- Notes need for uniformity in custody evaluations and judicial determinations about children testifying custody disputes.

Jayson Amster

- Lawyer for 44 years; family law practitioner for past 20 years.
- Argues that the adversarial system does not work for or protect children.
- States that the vast majority of custody disputes settle.
- Argues that judges should be trained child development, family dynamics, and other aspects of family cases.
- Opposes a presumption of joint physical custody.

Laura Bouma - Queen Anne's County

- Claims that abusive and alcoholic ex-husband was awarded custody with no visitation for her.
- States that she was not allowed to present any evidence or testimony at trial.
- Custody evaluator's recommendation in the case was for custody to the father.
- Custody evaluations cost $43,000 which mother cannot afford.

Margaret Maupin

- Maryland Legal Aid's Southern Maryland office. 25-year family law and DV practice.
- States she has not seen a judge make a decision based on gender.
- Notes that there is already a presumption that both parents have equal parenting rights.
- Against a presumption of joint custody.
- Believes joint custody can and does work but not in the majority of cases that reach trial, where deep conflict hinders the success of joint custody.
- Wants judges to be more educated on the effects of DV.

Susan Silber - Takoma Park, MD

- Family law practitioner in Maryland for over 30 years.
- Wants a strong non-discrimination principle for application of the custody factors.
- Argues for the adoption of the Uniform Parentage Act.
- Seeks expedited treatment of custody and access issues to minimize the harm of custodial interference and disruption.
- Says de facto parenthood should be reinstated in Maryland law.

Elizabeth Gordon - Montgomery County

- House of Ruth counselor and child therapist.
- Opposes presumption of joint custody, which assumes that parents who cannot overcome conflict on their own will do so if there is a presumption.
- Wants more guidance for judges on what is in the best interests of the child.
- Notes that children need more stability and predictability in their environment.

Darrell Carrington - Bowie, MD (Prince George's County)

- Represents the Children's Rights Fund of Maryland.
- Wants a presumption of joint custody.

Vince McAvoy - Baltimore, MD

- Claims that the tender years doctrine is being perpetuated in Maryland's courts.
- Alleges that court processes and personnel eliminate fathers from children's lives.
- Wants 50/50 rebuttable presumption of joint custody.
- Argues that faith-based groups should be included to teach ethical behavior.
- States that custodial interference should be treated like failing to pay child support.

Cassandra Haywood - Howard Co. (Moms Fighting Howard County Court Corruption)

- Has two upcoming court cases. Has not seen daughter in eight months.
- Claims she sought child support in 2011, husband responded by seeking sole custody, and he won.
- States that the children are displaying physical and mental issues in father's custody.
- Notes she has filed grievances against her own attorney, expert witnesses, and others.
- Wants consideration of immigration status in custody determinations.

Nancy Simpson - Bowie, MD

- Grandmother of two boys.
- States that father has sole custody but is not providing proper medical care.
- Wants greater emphasis on the medical needs of the child in custody decisions.

David Clements

- Founded father's advocacy group, House of David.
- States he has 50/50 joint custody arrangement with his children, which he sought and won at trial.
- Complains that Office of Child Support Enforcement insists on referring to wife as the custodial parent.
- Wants a presumption of joint physical custody.

Hearing concluded at 8:32 p.m.

Chapter 633

(House Bill 687)

AN ACT concerning

Commission on Child Custody Decision Making

FOR the purpose of establishing the Commission on Child Custody Decision Making; providing for the composition, chair, and staffing of the Commission; prohibiting a member of the Commission from receiving certain compensation, but authorizing the reimbursement of certain expenses; requiring the Commission to perform certain duties; requiring the Commission to be appointed, organized, and meet by a certain date; requiring the Commission to submit certain reports to the Governor and the General Assembly on or before certain dates; providing for the termination of this Act; and generally relating to the Commission on Child Custody Decision Making.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That:

(a) There is a Commission on Child Custody Decision Making.

(b) The Commission consists of the following members:

(1) two members of the Senate Judicial Proceedings Committee, appointed by the President of the Senate;

(2) two members of the House Judiciary Committee, appointed by the Speaker of the House;

(3) two circuit court judges and one District Court judge from diverse geographical regions of the State, each of whom has experience hearing family law, domestic violence, or child custody cases, appointed by the Chief Judge of the Court of Appeals;

(4) one experienced family law master, appointed by the Chief Judge of the Court of Appeals; and

(5) the following members, appointed by the Governor in consultation with the President of the Senate and the Speaker of the House:

(i) two representatives of the Maryland State Bar Association Family Law Section from diverse geographical regions of the State, at least one of

whom shall be from Baltimore City and have experience representing fathers in contested custody matters;

(ii) one representative of a domestic violence advocacy group;

(iii) one representative of a fathers' rights group;

(iv) one representative of the Women's Law Center;

(v) one educator on family law;

(vi) three licensed mental health workers who have experience with family law or child custody cases, at least one of whom shall be a psychologist and one of whom shall have expertise in the area of the study of the African American family;

(vii) one representative ~~from~~ of the Children's Rights Fund of Maryland; ~~and~~

(viii) one representative of the Maryland Commission on Disabilities; and

~~(viii)~~ (ix) one sociologist from the University of Maryland School of Social Work, recommended by the President of the University of Maryland, Baltimore.

(c) The Governor shall designate the chair of the Commission.

(d) The Department of Family Administration in the Administrative Office of the Courts shall provide staff for the Commission.

(e) A member of the Commission:

(1) may not receive compensation as a member of the Commission; but

(2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(f) The Commission shall:

(1) study the practice, principles, and process for child custody decision making in Maryland;

(2) by December 31, 2013, hold one hearing each in Baltimore City, Harford County, Prince George's County, Western Maryland, and the Eastern Shore to

allow for public input and participation by interested persons on child custody decision making in Maryland;

(3) study how to make the establishment and modification of child custody orders more uniform, fair, and equitable;

(4) study how to reduce litigation in child custody proceedings;

(5) study and consider the adverse effects of child custody litigation and ways the court system can minimize those effects;

(6) study how to promote and ensure that children have ongoing relationships with each parent;

(7) study how to maximize the involvement of both parents in each child's life;

(8) study the advantages and disadvantages of joint physical custody and the impact of joint physical custody on the health and well–being of children;

(9) study whether or not there is any gender discrimination in custody decisions in Maryland and, if so, how to address such discrimination;

(10) study statutes from other states used for child custody determinations and assess whether those statutes improve the quality of decisions in child custody cases;

(11) study whether the Annotated Code of Maryland should contain a statute regarding child custody decision making that would include definitions and factors for consideration in such decisions;

(12) study case management systems for family law cases in Maryland and other states and study how to improve timely access to the court for temporary, pendente lite custody disputes, initial custody determinations, ~~and~~ custody modification proceedings, and emergency proceedings, and how to expedite denial of visitation proceedings;

(13) study the accountability of Maryland courts when using interventions such as protective orders, whether the courts should adopt processes to allow for compliance hearings, and the impact of domestic violence proceedings on temporary and final custody determinations;

(14) make recommendations regarding the most effective manner in which to facilitate cooperative decision making by parents involved in child custody proceedings as it relates to their children;

(15) study the training programs currently available to Maryland judges regarding child custody decision making and assess how to improve the training, including making it more culturally sensitive and diverse, and how to make the training more available to all judges on a consistent, ongoing basis;

(16) review the literature and research on decision–making responsibility and physical custody determinations, including child development literature and research on the effect of separation and divorce, and the literature and research on decision–making responsibility and physical custody determinations when the parents in the case were never married and may not have lived together;

(17) study standardization of the language used by courts in making child custody determinations for clarity and to eliminate exclusionary or discriminatory terms;

(18) study how to ensure that child custody determinations involving parents with mental health issues or sensory or physical disabilities are handled in a fair and even manner based on actual evidence and not presumed limitations;

~~(18)~~ (19) gather quantitative and qualitative data on the total number of contested custody cases per jurisdiction, including whether the court awarded joint physical custody to the parties or primary physical custody to the mother or the father over a 2–year period; and

~~(19)~~ (20) gather quantitative data on whether pro bono legal resources are equally available for petitioners and respondents in domestic violence protective order proceedings in Maryland.

(g) The Commission shall:

(1) be appointed, organized, and begin its deliberations no later than September 1, 2013;

(2) submit an interim report of its findings and recommendations to the Governor and, in accordance with § 2–1246 of the State Government Article, the General Assembly, on or before December 31, 2013; and

(3) submit a final report of its findings and any recommendations for legislation to the Governor and, in accordance with § 2–1246 of the State Government Article, the General Assembly, on or before December 1, 2014.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2013. It shall remain effective for a period of 1 year and 6 months and, at the end of December 31, 2014, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.

Approved by the Governor, May 16, 2013.

MARYLAND GENERAL ASSEMBLY

COMMISSION ON CHILD CUSTODY DECISION-MAKING

APPENDIX C

Minutes—January 1, 2014 thru December 1, 2014

COMMISSION ON CHILD CUSTODY DECISION MAKING

http://www.mdcourts.gov/family/cccdm.html

HB687 - CH633

Minutes and Summaries

DATE	LOCATED IN:	MEETING / PUBLIC HEARING
September 12, 2013 *6:00 pm – 8:00 pm*	Interim Report	Commission meeting Judiciary Education and Conference Center 2011 Commerce Park Drive, Annapolis, MD 21401
October 10, 2013 *6:00 pm – 8:00 pm*	Interim Report	Public Hearing: Western Maryland Allegany College of Maryland, Cumberland Campus 12401 Willowbrook Road, Cumberland, Maryland 21502
November 7, 2013 *6:00 pm – 8:00 pm*	Interim Report	Public Hearing: Harford County Harford Community College 401 Thomas Run Road, Bel Air, MD 21015-1698
November 14, 2013 *6:00 pm – 8:00 pm*	Interim Report	Public Hearing: Baltimore City Baltimore City Community College 2901 Liberty Heights Avenue, Baltimore, MD 21215-7807
November 21, 2013 *6:00 pm – 8:00 pm*	Interim Report	Public Hearing: Eastern Shore Chesapeake College - Wye Mills Campus 1000 College Drive, Wye Mills, MD 21679
December 11, 2013 *6:00 pm – 8:00 pm*	Interim Report	Public Hearing: Prince George's County Bowie Library, 15210 Annapolis Road, Bowie, MD 20715
CANCELLED - INCLEMENT WEATHER *January 22, 2014* *6:00 pm – 8:00 pm*	N/A	Commission meeting Judiciary Education and Conference Center 2011 Commerce Park Drive, Annapolis, MD 21401
February 6, 2014 *6:00 pm – 8:00 pm*	Appendix	Commission meeting Judiciary Education and Conference Center 2011 Commerce Park Drive, Annapolis, MD 21401
April 9, 2014 *6:00 pm – 8:00 pm*	Appendix	Commission meeting Judiciary Education and Conference Center 2011 Commerce Park Drive, Annapolis, MD 21401
May 27, 2014 *6:00 pm – 8:00 pm*	Appendix	Commission meeting Judiciary Education and Conference Center 2011 Commerce Park Drive, Annapolis, MD 21401
July 1, 2014 *6:00 pm – 8:00 pm*	Appendix	Commission meeting Judiciary Education and Conference Center 2011 Commerce Park Drive, Annapolis, MD 21401
September 8, 2014 *6:00 pm – 8:00 pm*	Appendix	Commission meeting Judiciary Education and Conference Center 2011 Commerce Park Drive, Annapolis, MD 21401
October 8, 2014 *9:00 am – 5:00 pm*	Appendix	Commission meeting Judiciary Education and Conference Center 2011 Commerce Park Drive, Annapolis, MD 21401
November 12, 2014 *9:00 am – 5:00 pm*	Appendix	Commission meeting Judiciary Education and Conference Center 2011 Commerce Park Drive, Annapolis, MD 21401

COMMISSION ON CHILD CUSTODY DECISION-MAKING

MINUTES

Commission Meeting

February 6, 2014 ◦ 6:00 p.m. – 8:00 p.m.

Location: The Judiciary Education and Conference Center
2011 C/D Commerce Park Drive, Annapolis, Maryland 21401

Commissioners in Attendance:

Honorable Cynthia Callahan, Chair
Honorable Shannon E. Avery
Renee Bronfein Ades, Esq.
Wayne Beckles
Paul C. Berman
Delegate Kathleen M. Dumais
Senator Jennie M. Forehand
Michele R. Harris, Esq.
Dorothy J. Lennig, Esq.
David L. Levy, Esq.
Delegate Susan K. McComas
Carlton Munson, Ph.D., LCSW-C
Kathleen A. Nardella, Esq., LCSW-C
Laure Anne Ruth
Master Richard J. Sandy
Keith N. Schiszik, Esq.
Vernon E. Wallace, Jr.
Lauren Young, Esq.

Department of Family Administration Staff:

Connie Kratovil-Lavelle, Esq.
Michael Dunston
Christine Feddersen
Gerald Loiacono, Esq.
Pam Luby, Esq.
Joseph Warren
Adam Wheeler, Esq.
Pen Whewell

Interpreters

Carrie Quigley, ASL
Carolina Schutz, Spanish

Public Attendance:

Dennis Borie
Elizabeth Britt, Children's Rights Council
Darrell Carrington, Children's Rights Fund
Christopher DiJulio
Roberta Eisen, practitioner
Sal Frasca, Children's Rights Council
Eileen Kiup, Child Justice, Inc.
Suzanne Pelz, MD Judiciary
David W. Smith, Sr., Children's Rights Fund

Judge Cynthia Callahan opened the meeting at 6:00 p.m.

The meeting began with identifying issues raised at the five public hearings held throughout the State. Those issues were organized into categories listed below:

JUDICIAL ISSUES

1. Training of judges
2. Judicial attitudes on custody
3. Judicial rotations to the family law docket
4. Mental illness/substance abuse awareness for bench

STATUTORY ISSUES

1. Joint custody presumption and other statutory recommendations
2. Parentage determination:
    a. Reinstating *de facto* parentage by statute
    b. Presumption of parentage with respect to same sex couples
    c. Parentage issues with gestational carriers
    d. Reviewing presumption for married parents
3. Visitation: Third party and grandparent/relative
4. Time standards on emergency hearings and other hearings
5. Statutory non-discrimination for LGBT and others
6. Statutory "material change in circumstances" test
7. Domestic Violence Issues
    a. Unfounded domestic violence claims influencing decisions
    b. Claims of domestic violence being ignored
    c. Balance of parental involvement and safety or domestic violence issues
8. DSS involvement and custody determinations
9. Balancing parental wants and child needs

COURT PROCESSES

1. Giving all parties the opportunity to be heard/ fairness to participants
2. Timeliness of hearings
3. Quick response to high-conflict cases before extensive litigation
    a. Initial stabilization of families
    b. Parenting plans with initial pleading?
4. Umbrella for services and process for never-married parents in family law cases (custody, access, child support, etc.)
5. High cost of litigation
6. Including the child's voice in the custody decision-making process
7. Improved court responsiveness on enforcement of access and/or custodial interference
8. Aligning determination of custody/visitation issues with child support determinations
9. Time standards for case completion
10. "One family one judge" model

REPRESENTATION ISSUES/ INDIVIDUAL PROCESSES

1. Litigant confusion about the law, the process, and/or the outcome of their case
2. Reduce complexity and increase transparency of custody determinations
3. Costs and due process considerations for self-represented litigants
4. Attorneys "taking over" case and/or litigants losing control
5. Increase litigant input in parenting time decisions

The Commission members then volunteered for positions on the subcommittees proposed by the Chair.

1) ADR COMMITTEE
    a. Delegate McComas
    b. Kathleen Nardella

2) *STATUTORY COMMITTEE*
    a. David Levy
    b. Keith Schiszik
    c. Renee Ades

3) LITERATURE REVIEW
    a. Dr. Carlton Munson
    b. Honorable Videtta Brown
    c. Wayne Beckles
    d. Paul Berman

4) COURT PROCESSES
    a. Laure Anne Ruth
    b. David Levy
    c. Master Richard Sandy
    d. Delegate Kathleen Dumais
    e. Honorable Videtta Brown
    f. Michele Harris

5) BIAS / NEUTRAL LANGUAGE / PARENTS WITH DISABILITIES, ETC.
    a. Vernon Wallace
    b. Lauren Young
    c. Dr. Carlton Munson

6) DOMESTIC VIOLENCE
    a. Dorothy Lennig
    b. Honorable Shannon Avery
    c. Senator Jennie Forehand

Delegate Dumais noted that she planned to propose legislation to extend the term of the Commission by another year. Brief discussion followed.

The meeting was adjourned at 8:15 p.m.

COMMISSION ON CHILD CUSTODY DECISION-MAKING

MINUTES

Commission Meeting

April 9, 2014 ◦ 6:00 p.m. – 8:00 p.m.

Location: The Judiciary Education and Conference Center
2011 C/D Commerce Park Drive, Annapolis, Maryland 21401

Commissioners in Attendance:

Honorable Cynthia Callahan, Chair
Honorable Shannon E. Avery
Renee Bronfein Ades, Esq.
Paul C. Berman
Delegate Kathleen M. Dumais
Dorothy J. Lennig, Esq.
David L. Levy, Esq.
Delegate Susan K. McComas
Carlton Munson, Ph.D., LCSW-C
Kathleen A. Nardella, Esq., LCSW-C
Laure Anne Ruth
Master Richard J. Sandy
Keith N. Schiszik, Esq.
Lauren Young, Esq.

Department of Family Administration Staff:

Connie Kratovil-Lavelle, Esq.
Christine Feddersen
Sarah R. Kaplan, Esq.
Gerald Loiacono, Esq.
Joseph Warren
Adam Wheeler, Esq.
Pen Whewell

Interpreters

Sara Smith, ASL
Carolina Schutz, Spanish

Public Attendance:

Christopher DiJulio
Mark DeDeritt, Master Sandy Intern
Sal Frasca, Children's Rights Council
David W. Smith, Sr., Children's Rights Fund
David Washington, Fair 4 Justice

Judge Cynthia Callahan opened the meeting at 6:10 p.m.

Review of Minutes

The Commission began by reviewing the minutes of the previous meeting. Three revisions were proposed. First, the minutes did not reflect that Mr. David Levy had indicated that the Commission would need more funding if extended by legislation. Second, the minutes did not reflect that Judge Videtta Brown had been in attendance. Third, the minutes did not reflect that Judge Shannon Avery had requested that the Commission add another judge from the District Court.

The proposed changes were adopted by the Commission.

Reports from the Committees

The Chair requested that the committee chairs update the Commission on the initial committee meetings.

The Alternative Dispute Resolution (ADR) Committee presented first. The ADR committee wants to look at what other states are doing with their ADR programs and what programs are already available in Maryland. The Committee would also like to consider, for example, whether mediation is appropriate for domestic violence cases. The Committee is comprised of twenty-four members including many mental health professionals and ADR experts.

The Statutory Considerations Committee presented second. This Committee had a large number of legal professionals but had worked to include non-legal perspectives for inclusion. The Committee wants to build a new foundation for a Maryland custody statute by considering the broad issues like parentage and other states' factors for custody decision-making. The Committee would like to meet about every three weeks.

The Literature Review Committee presented third. This Committee discussed methods for gathering literature and identified some experts who had already done some work in the field. The Committee will also rely on other committees to request information and research. The Committee will also be asked to determine whether literature is reliable based on their professional expertise.

The Court Process Committee presented fourth. This Committee is composed of clerks, masters, judges, and other experts. The Committee has split its members into subcommittees to address specific issues. Those issues are: (a) unmarried couples; (b) emergency hearings; (c) child in need of assistance cases; (d) treatment of custody evaluations post-*Sumpter*; (e) judicial education; and (f) enforcement of orders. The Committee also reported that it had begun reviewing survey results on the treatment of emergency and *pendente lite* requests in the various jurisdictions.

The Identifying and Eliminating Bias Committee presented fifth. This Committee discussed the various perspectives of its members. The Committee had set a schedule for future meetings and begun doing some "homework." The Committee plans to examine the language and word choices used in statutes.

The Domestic Violence Committee presented sixth. This Committee began with high-level discussions of the interplay between custody cases and domestic violence. The Committee plans to approach the issue from two directions: (1) custody aspects of protective orders cases and (2) domestic violence issues in custody cases. The Committee also discussed the perceived use of domestic violence claims for leverage in custody cases and the need to get dangerous domestic violence cases into court quickly.

Other Business

Legislation extending the deadline for the Commission failed in the General Assembly's most recent session. As a result, the Commission's final work product must be completed by December 1, 2014. As a result, the Chair set deadlines for the various committees work product over the coming months. By the end of September, all committees need to have completed their work and have their final work product ready for presentation to the Commission. Two all-day meetings will be scheduled for October and November.

The substance of the Commission's final report should be like the Groner Commission's report from the 1970's. While it would be more helpful to have one report than two, the General Assembly is not averse to receiving a dissent or minority report. The General Assembly will receive the final report and possibly develop legislation based on the recommendations contained within. Changes to court process or judicial education could potentially be made within the Judiciary by the Rules Committee or the Administrative Office of the Courts.

The venue for future meetings will be either at the Judicial Education and Conference Center (JECC) in Annapolis or by phone.

Next Meeting

The next Commission meeting was scheduled for Tuesday, May 27th from 6 p.m. - 8 pm. A meeting of committee chairs would take place immediately before that from 4-6 p.m.

The Commission also planned to meet July 1st from 6-8 PM and August 19th from 6-8 PM. Dates for the September and October meetings would be determined later.

The meeting was adjourned at 7:40 p.m. by Judge Cynthia Callahan.

COMMISSION ON CHILD CUSTODY DECISION-MAKING

MINUTES

Commission Meeting

May 27, 2014 ◦ 6:00 p.m. – 8:00 p.m.

Location: The Judiciary Education and Conference Center
2011 C/D Commerce Park Drive, Annapolis, Maryland 21401

Commissioners in Attendance:

Honorable Cynthia Callahan, Chair
Renee Bronfein Ades, Esq.
Paul C. Berman
Delegate Kathleen M. Dumais
Dorothy J. Lennig, Esq.
David L. Levy, Esq.
Delegate Susan K. McComas
Carlton Munson, Ph.D., LCSW-C
Kathleen A. Nardella, Esq., LCSW-C
Laure Anne Ruth
Keith N. Schiszik, Esq.
Vernon Wallace, Jr.
Lauren Young, Esq.

Department of Family Administration Staff:

Connie Kratovil-Lavelle, Esq.
Christine Feddersen
Sarah R. Kaplan, Esq.
Gerald Loiacono, Esq.
Joseph Warren
Adam Wheeler, Esq.
Pen Whewell

Interpreters:

Carolina Schutz, Spanish
Sigourney Coulston, ASL

Public Attendance:

Christopher DiJulio, Children's Rights Fund
Suzanne Pelz, Maryland Judiciary
David W. Smith, Sr., Children's Rights Fund

Judge Cynthia Callahan opened the meeting at 6:17 p.m.

Review of Minutes

The Commission began by reviewing the minutes of the previous meeting. No revisions were proposed. The April Minutes were adopted.

Reports from the Committees

The Chair requested that the committee chairs update the Commission on their work so far.

1. **Alternative Dispute Resolution (ADR) Committee**

   The Committee has recently received a copy of the Judiciary's major research report on ADR programs in Maryland. This report will be reviewed and discussed by the Committee. The Committee has met once. At their meeting, they discussed the current use of ADR in Maryland and how to expand it throughout the state. The Committee believes that more public information and education about available ADR programs would be help litigants in the court system.

2. **Statutory Considerations Committee**

   This Committee has split into three working groups: (1) Statutory Factors; (2) Parentage; and (3) Presumptions of Joint Legal Custody and Joint Physical Custody.

   a. The Statutory Factors group has identified four core mental health concepts that will form the basis of the child-centered statutory factors. Those concepts are the child's sense of safety and security, the child's self-image, the child's intellectual functioning, and the child's interpersonal relationships.

   b. The Parentage group has identified a number of issues, though addressing all of them may not be practical within the Commission's time constraints. Those issues are de facto parentage, the marital presumption of paternity, the impact of assisted reproductive technologies on parentage, and the possibility of adopting the Uniform Parentage Act in Maryland.

   c. The Presumptions group will be presenting suggested statutory language at the next meeting of the committee.

3. Literature Review Committee

The Committee developed a list of approximately fifteen topics at their most recent meeting. The Committee will be reviewing information shared from other committees and providing information to those committees as requested.

4. Court Process Committee

Judge Callahan presented the Committee's work in place of Master Sandy. The Committee has split into multiple subcommittees: (1) CINA/Custody; (2) Enforcement of Orders; (3) Emergency Standards; (4) Judicial Education; and (5) Access for Never-Married Parents. The Committee has run efficiently and has begun working on recommendations.

a. CINA/Custody Subcommittee is examining how child custody and child welfare cases intersect. The Subcommittee has collected information from around the state about how the circuits are dealing with parents who seek to regain custody of their children after their children are found CINA.

b. The Enforcement of Orders Subcommittee has collected differentiated case management (DCM) plans from courts around the state.

c. The Emergency Standards Subcommittee has reviewed the processes used by courts throughout the state for determining whether an emergency exists in a custody case.

d. The Judicial Education Subcommittee has discussed the need for improving judicial education, especially for diversity, non-traditional families, and families with multiple cases.

e. The Access for Never-Married Parents Subcommittee has examined improving access to the custody process in circuit court for parents who initially come to court for domestic violence or child support issues. The subcommittee will be considering innovations in this regard in Texas and Michigan.

5. Identifying and Eliminating Bias Committee

The Committee's work thus far has focused on what areas of bias should be addressed. The initial issues to address are bias on the basis of gender, sexual orientation, race, ethnicity, and disability. The Committee will also look at neutral language to be used in statute to avoid bias. The Committee has also formed some subcommittees to address particular issues. Bias on the basis of socioeconomic status has been discussed in subcommittee and other

information from the state's Commission to Study Civil Right to Counsel will be provided to that subcommittee.

6. The Domestic Violence Committee

The Committee has split into three subcommittees named for their chairs: (1) Milko Subcommittee; (2) Avery Subcommittee; and (3) Eason Subcommittee.

a. The Milko Subcommittee is addressing how to improve and expedite access to the Circuit Courts for custody issues where an initial allocation of custodial rights has been made through the protective order process.

b. The Avery Subcommittee is examining the custody issues of litigants in domestic violence cases. For example, the Subcommittee is considering the best way to order custody when the respondent is ordered to stay away from the petitioner.

c. The Eason Subcommittee is examining the domestic violence issues of litigants in custody cases. For example, the best way for judges to hear children's voices in a custody case involving domestic violence and improving judicial education and the trauma experienced by children witnessing domestic violence.

Other Business

None.

Next Meetings

The Commission's upcoming meetings will be held in Annapolis on:

- July 1, 2014 from 6:00 p.m. – 8:00 p.m.
- August 19, 2014 from 6:00 p.m. – 8:00 p.m.
- October 8, 2014 – Full day meeting from 9:00 a.m. – 5:00 p.m.
- November 12, 2014 – Full day meeting from 9:00 a.m. – 5:00 p.m.

Adjournment

Judge Callahan adjourned the meeting at 7:25 p.m.

COMMISSION ON CHILD CUSTODY DECISION-MAKING

MINUTES

Commission Meeting

July 1, 2014 ◦ 6:00 p.m. – 8:00 p.m.

Location: The Judiciary Education and Conference Center
2011 C/D Commerce Park Drive, Annapolis, Maryland 21401

Commissioners in Attendance:

Honorable Cynthia Callahan, Chair
Renee Bronfein Ades, Esq.
Honorable Shannon E. Avery
Paul C. Berman
Honorable Videtta A. Brown
Delegate Kathleen M. Dumais
Dorothy J. Lennig, Esq.
David L. Levy, Esq.
Delegate Susan K. McComas
Carlton Munson, Ph.D., LCSW-C
Kathleen A. Nardella, Esq., LCSW-C
Laure Anne Ruth
Master Richard J. Sandy
Keith N. Schiszik, Esq.
Vernon Wallace, Jr.

Department of Family Administration Staff:

Connie Kratovil-Lavelle, Esq.
Christine Feddersen
Meredith Kushner
Gerald Loiacono, Esq.
Joseph Warren
Adam Wheeler, Esq.

Interpreters:

Carolina Schutz, Spanish
Carrie Quigley, ASL

Public Attendance:

Mary Atwater, PsyD, Collaborative Mediation Services
Eileen King, Child Justice
Christian Paasch, National Parents Organization
Suzanne Pelz, Maryland Judiciary
David W. Smith, Sr., Children's Rights Fund

Judge Cynthia Callahan opened the meeting at 6:08 PM.

Review of Minutes

The minutes of the May 27, 2014 Commission meeting were adopted without amendment.

Drafting the Report

Each committee of the CCCDM will submit their findings to the Commission. There will be no standard format for committee submissions. Each committee will attach the information it feels is relevant for the Commission's consideration.

The final report will be authored by the Commissioners, committee members, and CCCDM staff.

Reports from the Committees

The Chair requested that the committee chairs update the Commission on their work so far.

1. **Alternative Dispute Resolution (ADR) Committee**

   The Committee held their second meeting on June 2nd. The Committee discussed:
   - Developing a parenting plan form that may be either recommended or required in initial pleadings.
   - Minimizing the adverse effects of custody litigation on children.

   The Committee has formed workgroups.
   - The Education workgroup is focusing on ways to educate the public about alternative methods to litigation for custody dispute resolution.
   - The Family Court workgroup is talking about unifying the family court services that are currently provided into a more holistic and streamlined package.
   - The Parenting Plan workgroup is working on drafting a model parenting plan.

2. **Statutory Considerations Committee**

   This Committee has three working groups: (1) Statutory Factors; (2) Parentage; and (3) Presumptions of Joint Legal Custody and Joint Physical Custody.

   - The Statutory Factors group has been working through a list of factors from other states and selecting factors for inclusion in Maryland's best interests test. The group wants to distinguish factors focused on the

needs of the child from factors focused on the abilities of the parents. New factors for modification are also being discussed.

- The Parentage group has been working on identifying states where third party visitation statutes are in use within the bounds of the Supreme Court's ruling in *Troxel*. The group has been meeting frequently and will likely have recommendations by the committee's next meeting.
- The Presumptions group has been reviewing custody presumptions in other states. This group will continue working on research about which states have a presumptions of joint custody, what kind of custody is presumed, and why some states rescinded their presumption of joint custody.

3. Literature Review Committee

The Committee has been reviewing literature broadly and developing reports on individual topics. The Committee is working to present the information in a format that is accessible to the General Assembly, judges, lawyers, and other interested parties. The Committee will also provide the Commission with a small number of articles that the Committee feels provide good background on the relevant issues in various areas.

4. Court Process Committee

- CINA/Custody Subcommittee is in the final stages of its work and should have its recommendation to the Commission completed after the next Committee meeting.
- The Enforcement of Orders Subcommittee has been discussing improving access to expedited hearings for cases where there is serious but not direct harm to the child. The Subcommittee will work on a specific rule for expedited hearings.
- The Emergency Standards Subcommittee is working on a specific for emergency hearings.
- The Judicial Education Subcommittee has discussed the education available to judges and where emphasis should be placed in training. The Subcommittee is critical of the mechanism to track a judge's or magistrate's attendance. The Subcommittee may also recommend a court-watching program involving volunteers observing and reporting on judges or masters.

5. Identifying and Eliminating Bias Committee

The Committee last met on June 12th, when it decided on assignments to subcommittees. The subcommittees have been working on gender bias, economic disparity, and neutral language in statutes.

One area of interest was the definition of disability in the Maryland Code to be more specific than what is currently found at Human Relations Article 20-601(B), and its need for updating.

6. The Domestic Violence Committee

The Committee has three subcommittees named for their chairs: (1) Milko Subcommittee; (2) Avery Subcommittee; and (3) Eason Subcommittee.

- The Milko Subcommittee is working to develop a process for deciding custody in cases where temporary custody was ordered as part of a protective order.

- The Avery Subcommittee is focusing on educating judges on the impact of domestic violence on children, the dynamics of domestic violence, lethality factors and the effect of substance abuse by parents on their children. The Subcommittee has also discussed the general reluctance of judges to make custody decisions in protective order cases.

- The Eason Subcommittee is examining how the court can better identify and respond to domestic violence issues in custody cases. They will be recommending training for judges, masters and other court staff to identify domestic violence issues not necessarily stated in court filings.

Other Business

None.

Next Meetings

The Commission's upcoming meetings will be held in Annapolis on:

- August 19, 2014 from 6:00 p.m. – 8:00 p.m. Note: This has since been changed to September 8, 2014.
- October 8, 2014 – Full day meeting from 9:00 a.m. – 5:00 p.m.
- November 12, 2014 – Full day meeting from 9:00 a.m. – 5:00 p.m.

Adjournment

Judge Callahan adjourned the meeting at 8:05 PM.

COMMISSION ON CHILD CUSTODY DECISION-MAKING

MINUTES

Commission Meeting

September 8, 2014 ◦ 6:00 p.m. – 8:00 p.m.

Location: The Judiciary Education and Conference Center
2011 C/D Commerce Park Drive, Annapolis, Maryland 21401

Commissioners in Attendance:

Honorable Cynthia Callahan, Chair
Renee Bronfein Ades, Esq.
Paul C. Berman, Ph.D.
Honorable Videtta A. Brown
Delegate Kathleen M. Dumais
Dorothy J. Lennig, Esq.
David L. Levy, Esq.
Delegate Susan K. McComas
Kathleen A. Nardella, Esq., LCSW-C
Laure Anne Ruth
Master Richard J. Sandy
Keith N. Schiszik, Esq.
Lauren Young, Esq.

Department of Family Administration Staff:

Connie Kratovil-Lavelle, Esq.
Sarah R. Kaplan, Esq.
Maria Nick
Joseph Warren
Pen Whewell

Interpreters:

Carolina Schutz, Spanish
Carrie Quigley, ASL

Public Attendance:

Christopher C. DiJulio, Children's Rights Fund
Christine Donovan
Eileen King, Child Justice
Martin Kranitz
Meredith Kushner
Gerald Loiacono, Esq.
David W. Smith, Sr., Children's Rights Fund

Judge Cynthia Callahan opened the meeting.

Review of Minutes

The minutes of the July 1, 2014 Commission meeting were adopted without amendment.

Reports from Committees

Committees provided written summaries of their activities and reported orally on their work.

1. **Court Process Committee**

   Master Richard Sandy addressed the work of the Committee's six subcommittees: Unmarried Couples, Judicial Training, CINA/Custody Overlap, Emergency Process, Enforcement of Orders and *Sumpter* Issues and reviewed the subcommittees' recommendations. Two recommendations receiving particular attention were:

   - Court-Based Co-Parenting Pilot Project. The Unmarried Couples Subcommittee recommended that the court create a pilot project aimed at encouraging co-parenting and reaching sustainable agreements between the parties, including addressing child support enforcement issues.
   - Standard for Emergency Relief. The Enforcement of Orders and Emergency Process Subcommittee recognized the need for uniform procedures for emergency relief and suggested that the procedure be contained in a rule.

2. **Alternative Dispute Resolution (ADR) Committee**

   Kathleen Nardella, Esq. addressed the work of the Committee's four workgroups: Education/Public Awareness, Family Court/Court Process, Parenting Plans and Domestic Violence. In particular, the discussion addressed:

   - Parties should receive substantially more information concerning the various ADR options, including collaborative law, and this information should be provided at the various stages of the process.
   - If a case is stayed to permit a collaborative process, there should be status conferences at least every six months.
   - A family law court would be an optimal method of responding to these cases.
   - The timing of mediation after a settlement conference at which a custody evaluator presents recommendations. There was not agreement as to whether mediation should follow immediately (because it was more efficient and the parties are already present) or on a later date (because it would allow parties the opportunity to consider fully the recommendations).

3. **Identifying and Eliminating Bias Committee**

Lauren Young, Esq. addressed the work of the Committee's two subcommittees: Gender/Economic Disparity and Disability.

Recommendations receiving particular attention included:

- The sexes of the child and parent are irrelevant in a custody determination.
- Judges and other family court professionals need additional relevant training, including training regarding persons with disabilities and their children, and training related to both explicit and implicit bias.
- The definition of "disability" in Family Law Article §9-107 should be amended to be more consistent with ADA language.
- For disability to be considered by the court, there should be a nexus between that disability and the child's best interests.
- Counsel should be provided to an unrepresented individual who is a qualified person with a disability under certain circumstances.

4. **Domestic Violence Committee**

Dorothy Lennig reported on the work of the Committee's three subcommittees. Issues related to:

- Custody in Protective Order Cases.
- Problems Domestic Violence Litigants Face in Circuit Court Custody Cases.
- Creation of an Expedited Custody Procedure in Matters Arising from Protective Order Proceedings.

In particular, there was discussion concerning the recommendation that a process be established for an expedited hearing at the circuit court within 30 days, available to either party by filing the request within 10 days.

5. **Literature Review Committee**

Dr. Paul Berman reported on the Committee's work. The dual purposes of the literature review (providing information and serving as a reference to readers) were discussed. The full report will be preliminarily ready by September 22, 2014.

6. **Statutory Considerations Committee**

Keith Schiszik, Esq. addressed the Committees work. Issues the Committee is considering include:

- What if any factors should be included, including development factors.
- Whether and how to address presumptions of joint legal or joint physical custody.

Next Meetings

The Commission's upcoming meetings will be held in Annapolis on:

- October 8, 2014 – Full day meeting from 9:00 a.m. – 5:00 p.m.
- November 12, 2014 – Full day meeting from 9:00 a.m. – 5:00 p.m.

Adjournment

Judge Callahan adjourned the meeting.

COMMISSION ON CHILD CUSTODY DECISION-MAKING

MINUTES

Commission Meeting

October 8, 2014 ◦ 9:00 a.m. – 5:00 p.m.

Location: The Judiciary Education and Conference Center
2011 C/D Commerce Park Drive, Annapolis, Maryland 21401

Commissioners in Attendance:

Honorable Cynthia Callahan, Chair
Renee Bronfein Ades, Esq.
Honorable Shannon E. Avery
Delegate Kathleen M. Dumais
Dorothy J. Lennig, Esq.
David L. Levy, Esq.
Delegate Susan K. McComas
Carlton Munson, Ph.D., LCSW-C
Kathleen A. Nardella, Esq., LCSW-C
Laure Anne Ruth, Esq.
Master Richard J. Sandy
Keith N. Schiszik, Esq.
Vernon Wallace, Jr.
Lauren Young, Esq.

Department of Family Administration Staff:

Connie Kratovil-Lavelle, Esq.
Michael Dunston
Christine Feddersen
Sarah R. Kaplan, Esq.
Maria Nick
David Shultie, Esq.
Joseph Warren
Pen Whewell

Interpreters:

Elizabeth McPherson, Spanish
Carrie Quigley, ASL

Public Attendance:

Gerald Loiacono, Esq.
Kelly O'Connor
David W. Smith, Sr.

Judge Cynthia Callahan opened the meeting.

Review of Minutes

The minutes of the September 8, 2014 Commission meeting were adopted with one amendment on page 3, under recommendations of the Identifying and Eliminating Bias Committee, replacing "The statute should specifically state that gender is not applicable to custody proceedings" with "The statute should specifically state that the sex of the parent and the child are irrelevant to a custody proceeding".

REVIEW OF REPORTS FROM COMMITTEES

The chair described the agenda for the day and the materials that were to be reviewed by commission members, noting that the materials did not include a draft report from the Statutory Considerations Committee. The Chair explained that the day's discussions would impact any final draft statute. The Chair noted that commission members had been provided with written summaries, reports, or recommendations from each of the committees.

Overlap Issues and Overlap Recommendations

The commission members reviewed a document entitled "Overlap Issues". The document summarized those issues that were addressed by multiple committees and for which multiple committees rendered recommendations either in committee reports or in committee deliberations. Commission members discussed recommendations related to each overlap issue and identified "overlap recommendations", those recommendations that multiple committees made independent of the others, based on their individual research and conclusions. The members concluded there was consensus in numerous areas. (see attachment A, "Overlap/Joint Recommendations").

It was noted that there are recommendations from the various committees for which there is not consensus.

ADR Committee Report and Recommendations

The members reviewed the report and recommendations from the ADR Committee. Committee co-chairs, Kathleen Nardella and Delegate Susan McComas, explained the committee's rationale for each recommendation. Dr. Carlton Munson, chair of the Literature Review Committee, provided information on research his committee conducted related to ADR issues and provided to the ADR Committee for their deliberations.

Discussion followed and the recommendations were revised. (See attachment B, "Recommendations Based on Committee Research and Reports").

Domestic Violence Committee Recommendations

The members reviewed the report and recommendations from the Domestic Violence Committee. Committee chair, Dorothy Lennig, explained the committee's rationale for each recommendation.

Dr. Carlton Munson, chair of the Literature Review Committee, provided information on research his committee conducted related to domestic violence issues and provided to the Domestic Violence Committee for their deliberations.

Discussion followed and the recommendations were revised. (See attachment B, "Recommendations Based on Committee Research and Reports").

Court Process Committee Recommendations

The members reviewed the report and recommendations from the Court Processes Committee. Committee chair, Master Richard Sandy, explained the committee's rationale for each recommendation.

Dr. Carlton Munson, chair of the Literature Review Committee, provided information on research his committee conducted related to court process issues and provided to the Court Process Committee for their deliberations.

Discussion followed and the recommendations were revised. (See attachment B, "Recommendations Based on Committee Research and Reports").

Identifying and Eliminating Bias Committee Recommendations

The members reviewed the report and recommendations from the Identifying and Eliminating Bias Committee. Committee co-chairs, Vernon Wallace and Lauren Young, explained the committee's rationale for each recommendation.

Dr. Carlton Munson, chair of the Literature Review Committee, provided information on research his committee conducted related to bias issues and provided to the Identifying and Eliminating Bias Committee for their deliberations.

Discussion followed and the recommendations were revised. (See attachment B, "Recommendations Based on Committee Research and Reports").

Next Meeting

The chair, Judge Cynthia Callahan, announced the commission's next and likely final meeting will be held in Annapolis on:

- November 12, 2014 – Full day meeting from 9:00 a.m. – 5:00 p.m.

Adjournment

Judge Callahan adjourned the meeting.

Attachment A - Revised

OVERLAP/JOINT RECOMMENDATIONS

November 12, 2014
Commission on Child Custody Decision-Making

1. **Judicial Training:** all committees supported increased judicial training as a guiding principle; training topics should include childrens' developmental needs, the role of parents in lives of their children, domestic violence, disability issues, implicit and explicit bias, alternative dispute resolution methods, including mediation, collaborative law and neutral facilitation, and predictable attorney's fees.
2. **Mediation in Domestic Violence Cases:** there was consensus that mediation should not occur in cases of domestic violence; consensus that this be a guiding principle.
3. **Mediation Following Child Custody Evaluation Report:** there was consensus, as a guiding principle, that mediation occur following the report and that the custody evaluator should not function as a mediator or facilitator for determining child access.
4. **Parenting Plans:** there was consensus that parties should be required to submit parenting plans as part of the pretrial process.
5. **Expedited process:** there was consensus that a process should be developed for expedited hearings, including emergency hearings; that criteria needs to be defined for an expedited hearing; that a uniform~~ed~~ process needs to be developed via the Rules Committee.
6. **Anti-discrimination:** there was consensus that custody decision-making process and Maryland statutes should be compliant with federal law, including the amendments to the Americans with Disabilities Act; consensus that whenever possible court forms, instructions and rules should use gender neutral terms.
7. **Family Court:** all committees recommended the creation of a family court, recognizing that will require further study and investigation.
8. **Civil Right to Counsel:** there was consensus that there should be a civil right to counsel for parents in custody cases.
9. **Alternative Dispute Resolution:** there was consensus that additional alternative dispute resolution processes should be incorporated into case management systems; that parties should be uniformly be provided opportunities for ADR, including mediation, facilitation and collaborative law.

Attachment B - Revised

RECOMMENDATIONS

BASED ON THE RESEARCH AND REPORTS FROM COMMITTEES

November 12, 2014
Commission on Child Custody Decision-Making

ALTERNATIVE DISPUTE RESOLUTION (ADR)

1. A uniform model for referral to and case management of mediation should be utilized across the State of Maryland to the extent possible given the range in the sizes of the jurisdictions.
2. Parents should be encouraged to demonstrate, at a minimum, a good faith effort to resolve "emergency" situations in family cases before the merits of these issues are considered by a judge or master, except for victims of domestic violence.
3. Standards for mediation training should be established and only staff or contractual mediators who have completed this training should be utilized for court-ordered mediations in family cases.
4. Fees for mediation should be reasonable and should be assessed on a sliding scale basis with community mediation centers presented as an option.
5. Fee waivers should be available for court-ordered mediations in those cases where the cost of mediation would otherwise be financially burdensome.
6. The date for the required mediation in a custody case should be established at the time of the scheduling conference or otherwise have an identifiable date by which the mediation is to happen.
7. The Maryland Rules should be revised to include reference to collaborative law as a form of ADR.
8. Collaborative law should be referenced on all court forms that list ADR options, such as the Case Information Form; collaborative law should be described on all educational materials provided by the Court to separating and divorcing parents.
9. There should be status conferences at least every three (3) months for all custody cases in which a stay is entered to permit a collaborative law process.
10. There should be more consistency in the manner in which settlement conferences and facilitation sessions are conducted across the State of Maryland and the accessibility of these services should be more uniform throughout the State.
11. The Administrative Office of the Courts (AOC) should consider implementing a Pilot Early Neutral Evaluation (ENE) program in family cases and assess the effectiveness of this ADR approach formally from the onset.
12. Settlement conferences, facilitation sessions and co-parenting classes should be utilized to educate parents about the benefits of ADR approaches.

13. A media campaign using current technology, such as the internet and smartphone apps, should be undertaken to educate the public about ADR alternatives to litigation including, but not limited to, mediation, collaborative law, settlement conferences, facilitation sessions and, possibly, Early Neutral Evaluation (ENE).
14. Court waiting areas and websites should be utilized to educate the public about ADR approaches through videos and informational brochures.
15. Judges, masters and other court personnel should receive training that equips them to become advocates for the broader use of ADR, particularly mediation and collaborative law.
16. Each jurisdiction should have a designated professional who provides information to pro se parties regarding ADR alternatives such as mediation, collaborative law, settlement conferences, facilitation sessions and possibly Early Neutral Evaluation.
17. Supervised visitation should be added to the list of services that the Family Divisions may provide under Maryland Rule 16-204.
18. Co-parenting classes should ordinarily be scheduled before mediation and should have a parenting plan component.
19. Maryland should require parents to file parenting plans, possibly with the pretrial statement.
20. The AOC website should provide educational materials to assist pro se parties with the drafting of parenting plans.

DOMESTIC VIOLENCE

21. Judicial training should be mandatory and ongoing and should include training regarding factors related to the best interest of the child, traumatic impact on children who witness domestic violence, dynamics of domestic violence, recognizing the factors of lethality assessment, but not using as a threshold test for the granting of a protective order, impact of substance abuse and addiction of parents on children, and considering and ordering all appropriate relief.
22. The Family Violence Council should develop protocols for gradual and safe ways to reintroduce children to an abusive parent in protective order litigation, create a list of resources for families and create a comprehensive, statewide resource listings/provide representation for pro se litigants
23. The Domestic Violence Resource Manual should include information on what is appropriate to order, including counseling for children, counseling for the abusive parent (abuser intervention programs), third-party supervision, supervised exchange facilities, and graduated access schedules for abusive parents.
24. The Judiciary should develop ways to provide information about the protective order process to unrepresented litigants (e.g. Judges should develop a way to provide appropriate information to unrepresented litigants without providing legal advice, brochures, videos).
25. The General Assembly should consider a “Civil Gideon” Rule requiring counsel be available for low income parties in protective order proceedings where custody is an issue.

26. Custody Evaluators should be subject to standards that include extensive training in the area of domestic violence and should be required to comply with professional standards for education and continuing education.
27. The Judiciary should create a mechanism to incorporate a child's voice into the custody proceeding in a less onerous way than appointing a Best Interest Attorney and should utilize a list of appropriate questions to ask children if judges are to speak to the children.
28. The subcommittee recommends that an expedited procedural process be made available at the circuit court level within 30 days of filing. This remedy would be available to either party by filing the request within a 10 day period. The Committee is ***in no way suggesting*** that Judges in Protective Order proceedings should refrain from making custody and visitation determinations in domestic violence proceedings on the grounds that another jurist may be more equipped to do so in a subsequent, expedited custody proceeding

COURT PROCESS

29. DHR, Office of Child Support Enforcement (OSCE) and the Judiciary should provide increased co-parenting support by making information and assistance available, including providing information on filing for custody.
30. OSCE should promote alternative dispute resolution in the process as well as the development of parenting plans.
31. Improved case coordination, particularly in cases involving paternity and child support issues: the Judiciary should consolidate, or at a minimum, better coordinate the handling of multiple family law cases involving the same family to better match the delivery of services to litigants in divorce cases with litigants who are not married.
32. Lawmakers should revisit some of the legal provisions surrounding paternity and the separation of families through mechanisms other than divorce.
33. Updated laws concerning adoption: lawmakers should consider issues surrounding adoption for same sex and never married couples, including second parent adoptions.
34. Updated laws concerning paternity in modern family arrangements: Lawmakers should update laws and processes surrounding the establishment of parentage to account for modern family arrangements, such as artificial reproductive techniques and collaborative reproduction.
35. Creation of a court-based co-parenting pilot project: the Judiciary should create a pilot project aimed at encouraging co-parenting and reaching sustainable agreements between the parties. Other jurisdictions have successful programs
36. An executive branch agency should create a program similar to CourtWatch that would periodically attend and observe proceedings, in an objective and unbiased manner, to monitor judicial conduct in line with principles emphasized during orientation and training.
37. The Judiciary should create or adopt a civil custody order to be entered at the conclusion of a CINA case in which there has been an award of custody. This would

allow the court, and others, to have access to the order on Maryland Judiciary Case Search or other electronic case records repositories.

38. Enforcement of orders and expedited process: the courts should develop a process for scheduling expedited matters in either 7 days or 30 days. In cases of emergency, the court should provide a hearing within seven days; in non-emergency cases, where lack court action may result in damage to the parent-child relationship or eventual harm to the child, the court should provide a hearing within 30 days.
39. Standard for emergency relief: matters appropriate for emergency relief should include cases where there is a "substantial risk of imminent harm to a child", approximating the standard set in *Kalman v. Fuste. T*his harm should have occurred or will happen 14 days within the time of filing the petition. Matters appropriate for emergency relief could include:
    a. Serious physical, emotional or harm to the child
    b. Removal of financial support that causes actual harm to a child (ie: disconnection of utilities)
    c. Imminent removal of a child from the court's jurisdiction
    d. Other matters the court finds appropriate.
40. Standard for non-emergency expedited relief: matters appropriate for expedited relief may include:
    a. Complete denial of access to minor children
    b. Complete cessation of financial support to a dependent spouse or minor child
    c. Imminent and major disruption of continued compulsory education for a minor child (which may include a transfer of the minor child to a new school without consent of both parents)
    d. Non-imminent removal of a minor child from the state
    e. Other matters the court finds appropriate.
41. Process for seeking expedited relief: petitioners seeking expedited *pendente lite* relief must file a form, under oath. The request must be made as part of an underlying complaint for custody. The form should be developed by the Judiciary and be uniform statewide. Once filed, the request will be reviewed by a Judge or Master, who can make a decision based on the facts presented or schedule a hearing on the matter. The court should respond to the petitioner as soon as possible with an answer to the petition.
42. Ex Parte relief: if the court grants ex parte relief, the Maryland Rules of Procedure should govern . .
43. Availability of DCM Plans: each court should integrate their specific process for expedited relief into DCM plans. These plans should be available on the court website and available for inspection in the clerk's office. The process adopted by each court should be fully explained in the plan. This could aid self-represented litigants and practitioners who appear in multiple jurisdictions.
44. Parenting Plans: a parenting plan form should be adopted statewide. Parties in a custody case should be required to file a parenting plan as part of a pretrial statement if an agreement has not been reached through other means.

45. Mediation following custody evaluation report: mediation should be made available to parties following the presentation of a custody evaluation report. Optimally, mediation would not occur that day but mediation would be made available before the trial date.
46. Maryland should have a stand-alone and unified Family Court for the uniform delivery of services and effective case management. This top down approach would allow the court to better address the unique needs of Maryland families.

IDENTIFYING & ELIMNATING BIAS

47. Md. Code Ann. Family-Law § 9-107, uses offensive language to describe people with disabilities and may contribute to bias against parents with disabilities. The statutory language should be rewritten to define "disability" in a manner consistent with the federal Americans with Disabilities Act, as follows:
    "disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual, a record of such impairment, or being regarded as having such an impairment.
48. This definition must be broadly interpreted, consistent with the ADA Amendments Act of 2008.
49. The custody decision making statute should require the articulation of the nexus between parental disability and best interests of the child, and codify the burden of proof in order to prevent bias from being a determinant in child custody decisions. The statute should clarify that in order to consider a parent's disability as a factor in deciding the best interest of the child, the court must find by preponderance of the evidence that the parent's disability poses a substantial risk of harm to the health or safety of the child, and such determination must be reflected in the court's record and in the findings of fact and conclusions of law. If another parent asserts that a person's disability renders them incapable of providing for the best interests of the child, that party bears the burden of proof. The same standard should apply to third party litigants.
50. Whenever possible, statutes, rules, court forms and instructions should use gender neutral terms.
51. The law should provide for appointment of counsel, including representation paid for by the state, pro bono services and limited representation, when an unrepresented individual with a disability is financially unable to retain counsel in a custody matter; and is opposed by a party who has counsel.
52. The Judiciary should determine a reasonable accommodations process to enable the court to appoint counsel, as needed, for a person whose disability interferes with their ability to have meaningful access to the court process. The court may request that the individual provide documentation from a health care professional justifying the need for counsel based on their knowledge of the individual and the individual's disability
53. The legal community needs to address means for providing counsel for unrepresented parents in custody matters, including providing counsel paid for by the state, pro bono services, limited representation and alternative dispute resolution.

54. All family court professionals should receive training on a regular basis on parents with disabilities and their children.
55. As many litigants in custody matters appear to believe that trial judges make custody decisions in a way that reflects gender bias, judicial education should address explicit and implicit bias.
56. Parents should have more access to alternative dispute resolution and mediation to resolve custody disputes, where appropriate.
57. Community education should encourage parents to be involved in the lives of their children.
58. Where the parents have disparate incomes and economic resources, courts should make adequate and predictable awards of attorney's fees to the lower-income parent. This recommendation could be accomplished either through statutory or rule change.
59. The downward adjustment of child support in cases of shared physical custody needs to be further investigated, particularly in cases where the child's principal household lacks adequate resources.
60. Further investigation of Child Support guidelines should be conducted to determine whether the guidelines should provide a sufficient self-support set-aside for each parent.
61. Further investigation should be conducted of child support administrative practices, including imputation of income, to ensure that low-income parents are not required to pay more child support than is reasonable.

COMMISSION ON CHILD CUSTODY DECISION-MAKING

MINUTES

Commission Meeting

November 12, 2014 ◦ 9:00 a.m. – 5:00 p.m.

Location: The Judiciary Education and Conference Center
2011 C/D Commerce Park Drive, Annapolis, Maryland 21401

Commissioners in Attendance:

Honorable Cynthia Callahan, Chair
Renee Bronfein Ades, Esq.
Honorable Shannon E. Avery
Paul Berman
Delegate Kathleen M. Dumais
Dorothy J. Lennig, Esq
Delegate Susan K. McComas
Carlton Munson, Ph.D., LCSW-C
Kathleen A. Nardella, Esq., LCSW-C
Laure Anne Ruth, Esq.
Master Richard J. Sandy
Keith N. Schiszik, Esq.
Vernon Wallace, Jr.
Lauren Young, Esq.

Department of Family Administration Staff:

Connie Kratovil-Lavelle, Esq.
Michael Dunston
Christine Feddersen
Sarah R. Kaplan, Esq.
Meredith Kushner
David R. Shultie, Esq.
Joseph Warren
Pen Whewell

Interpreters:

Carolina Schutz Spanish
Carrie Quigley, ASL

Public Attendance:

Kelly O'Connor, Maryland Judiciary
Drew Snyder
R. Abdullah, Office of Public Defender
David W. Smith, Sr.

Chair, Judge Cynthia Callahan, opened the meeting.

Review of Minutes

The minutes of the October 8, 2014 Commission meeting were adopted without change.

The Attachments to the minutes were then reviewed. Attachment A, "Overlap/Joint Recommendations", was modified. Recommendation #1, Judicial Training, was modified to include training on issues related to disability, bias, children's developmental needs and the role of parents in the lives of their children (see Attachment A- Revised).

Attachment B, Recommendations Based on the Research and Reports from the Committee, was modified to include: a recommendation under the domestic violence section that any expedited custody process should not preclude or encourage courts in a protective order hearing from awarding custody or emergency family maintenance; a recommendation under the bias section that the statute should require the court to articulate any nexus between parental disability and the best interest of the child; a recommendation under the bias section that whenever possible, statutes, rules, court forms and instructions should use gender neutral terms (see Attachment B- Revised).

Attachment A and Attachment B were adopted with the changes above.

Review of Report of the Statutory Considerations Committee

The Commission chair then asked Keith Schiszik, chair of the Statutory Considerations Committee (SCC), to give that committee's report.

Keith Schiszk described the SCC's composition, tasks and the three (3) areas of focus for the committee's work. Those areas are: 1) whether there should be a presumption of joint custody 2) what factors, if any, should be contained in a statute and 3) how third party custody and visitation should be addressed. Mr. Schiszik explained that three subcommittees were formed to research, explore, and make recommendations regarding the three focus areas.

Regarding a presumption of joint custody, the majority of the SCC (all but one) agreed that there should be no presumption. It was noted that while there was broad consensus, it was not unanimous. Mr. Schiszik further noted that historically, presumptions regarding custody have proven to be flawed and to exclude one parent over the other, citing the presumption of paternal custody, the maternal presumption, and the tender years presumption.

Mr. Schiszik reported that there was consensus within the SCC that if both parents are healthy mentally, emotionally, and otherwise, it is best for children to have as much contact as possible with both parents.

Mr. Schiszik then described the committee's deliberations regarding a joint custody presumption, noting that one committee member argued first that thirty (30) states had a joint custody presumption then modified the assertion to fourteen (13) states and the District of Columbia having a statutory presumption. The committee then undertook an in-depth examination of the statutes in each of the fourteen jurisdictions.

Following the committee's research into the fourteen, the committee concluded that a small number of states (7) have a statutory presumption of joint physical (and possibly legal) custody, and another 6 states have a statutory presumption in favor of joint decision-making. Thus, the majority of states do not subscribe to a presumption of joint custody. The majority (all but one) of the SCC members concluded that custody decisions should be tailored to the individual case and not based on presumptions.

Mr. Schiszik then described the research undertaken by the committee regarding statutory factors for custody determinations. He explained that they completed an in depth review of the statutes from all fifty (50) states and the District of Columbia. As part of the research, any and all factors used in custody decisions in any jurisdiction were identified. Any preference or presumption for joint custody in any state statute was identified and thoroughly explored. Mr. Schiszik explained that many states' statutes expressly promote a policy to promote to the active participation of both parents in the lives of their children, but very few articulate have created a presumption of joint (50-50) custody.

Dr. Paul Berman, Ph. D., a Commissioner and member of the Literature Review committee, then provided an overview of the research and literature on children and the involvement of parents in the child's life. Dr. Berman explained that the in general, children do better when they have regular contact with both parents, assuming both parents are reasonably adequate parents and that that is the case for the vast majority. He further explained that the literature supports better outcomes for children when both parents are actively involved in the lives of their children. Dr. Berman also stated that in general, the 30%-33% with each parent is desirable for the majority of parents, but cautioned that it does not include situations where domestic violence is present, or a parent has mental health or substance abuse problems which significantly impair their parenting, or where a parent has difficulty meeting a child's needs or other impairment in parenting.

In response to a question, Dr. Berman then added that the research does not support a presumption of joint custody nor a 50-50 time sharing arrangement. He described the work of two leading researchers on the importance of fathers in the lives of their children. Dr. Berman cited eminent researchers Michael Lamb and Arnold Shienvold who advocate for active participation of fathers in the lives of their children, but do not support a presumption of joint custody.

Keith Schiszik noted that the primary advocate on the commission for a presumption of joint custody, David Levy, was not present at the meeting. In Mr. Levy's absence, Mr. Schiszik summarized the arguments and recommendations made by Mr. Levy in the committee's deliberations.

At the outset Mr. Levy advocated that most states – as many as 30 – had statutory presumptions for an award of joint (50/50) custody. Over time, as the Commission's research revealed that there were far fewer states with a presumption of any kind, Mr. Levy recommended that the draft statute should contain language requiring a court to one-third to one-half time to each parent, requiring a court to articulate the reasons for doing otherwise.

Delegate Kathleen Dumais then reported on the work she did with the committee chair, Mr. Schiszik, to convert the findings and recommendations of the SCC and other committees into a draft comprehensive custody statute.

The Commission members reviewed, edited, and reached consensus on the draft statute The Chair, Judge Callahan, then described next steps; revising the statute to reflect the changes made by consensus of the commission members; circulating the revisions and the final report to the members for feedback, and submitting the final report to the General Assembly by December 1, 2014.

The Chair thanked the members for their work.

Adjournment

Judge Callahan adjourned the meeting.

MARYLAND GENERAL ASSEMBLY

COMMISSION ON CHILD CUSTODY DECISION-MAKING

APPENDIX D —
Literature Review Committee Report

Literature Review Committee
of the Commission on Child Custody Decision-Making

Final Report

The Literature Review Committee of the Commission on Child Custody Decision-Making (Commission) was formed by the Commission to identify relevant literature related to the work of the Commission and its constituent Committees. The Committee was chaired by Professor Carlton Munson, who also is a member of the Commission.

Committee Membership

Committee membership included Commission members and individuals not on the Commission, and included judges, academicians, attorneys, psychologists and social workers. The members are:

Carlton E. Munson, Ph.D., LCSW-C, Chair
Professor, University of Maryland School of Social Work

Honorable Cynthia Callahan, Chair-CCCDM
Circuit Court for Montgomery County

Paul C. Berman, Ph.D.
Psychologist, Berman & Killeen, P.A.

Wayne Beckles
Dean, Baltimore City Community College

Honorable Videtta A. Brown
Circuit Court for Baltimore City

Natasha J. Cabrera
Associate Professor, University of Maryland,
Student assist.: Elizabeth Karberg

Gloria Danziger, Esq.
Senior Fellow, Sayra and Neil Meyerhoff Center for Families, Children and the Courts
University of Baltimore School of Law

Margo Kushner, Ph.D., LCSW-C
Assistant Professor, Salisbury University
Social Work Department

Luanne McKenna
Master's student in Psychology
University of Maryland

Staff
Sarah R. Kaplan, Esq.
Juvenile Law Manager
Department of Family Administration,
Administrative Office of the Courts

Staff
Adam Wheeler, Esq.
Family Law Research Specialist
Department of Family Administration,
Administrative Office of the Courts

Committee Task

The Commission assigned the Literature Review Committee the following task from HB 687, Section 1(f):

> (16) review the literature and research on decision–making responsibility and physical custody determinations, including child development literature and research on the effect of separation and divorce, and the literature and research on decision–making responsibility and physical custody determinations when the parents in the case were never married and may not have lived together;

To meet this task, the Committee addressed these research areas:

- Alternative dispute resolution (ADR);
- Attachment and the developmental effects of custody decisions;
- Best practices for incorporating cultural and gender considerations into the decision-making process;
- Best practices for judicial interviews of children;
- Impact of father involvement on a child's long-term outcomes;
- Legal status of third party relationships (including the possibility of affording visitation/custody rights to third parties such as grandparents and siblings);
- Parenting plans (including overnights for young children);
- Preparing children for court;
- Shared parenting.

Committee Activity

The literature review has been a complex process due to the vast scope of the literature on child custody issues. There is relevant literature in law, psychiatry, psychology, social work, and sociology. The task is further complicated because there is no standard generally accepted terminology for many areas of child custody, which makes concise analysis of the literature difficult.

Criteria for Inclusion

The Literature Review Committee adopted the following three criteria for inclusion of items in its report:

(1) ***Currency***. The work must have been written within the last five years, unless the work is either a seminal contribution to the literature or no literature was found that was published in the last five years;

(2) ***Based on research.*** The work has been judged to be based on research or analysis of existing scientific literature including meta-analyses (*i.e.*, studies that combine the findings from independent studies); and

(3) ***Balance.*** The work provides a balanced view of the issue. If a work takes a singular position and has been included because, for example, it is considered seminal, every effort has been made to include a citation that presents an opposing or counter view.

Format

Citations generally follow the American Psychological Association style manual for citations and include a brief summary description.

Works are listed alphabetically by author and topic areas are identified for each work. This approach was selected in recognition that few works address only one subject area. Topic areas include the research areas identified above, the areas studied by certain other Commission committees and other discrete topics. The topic areas are:

- ADR — Materials addressing all types of alternative dispute resolution, such as mediation, child centered mediation, Australia's family centres; collaborative divorce, early neutral evaluation and parent (or parenting) coordination.

- Attachment — Materials addressing attachment theory.

- Bias — Materials addressing bias, including bias against a party in a custody/visitation proceeding.
- Child maltreatment — Materials addressing child abuse and neglect, including in the context of custody/visitation proceeding.
- Child custody evaluation — Materials addressing child custody evaluations, including elements of such an evaluation or the qualifications of the evaluator.
- Child development — Materials addressing child development generally and the developmental effects of child custody decisions on children, including the parent-child relationship.
- Disabilities — Materials addressing parents or children with physical or mental disabilities, including the effect of a parental disability on parenting and the court's consideration of parental disability in making a child custody decision.
- Diverse populations — Materials addressing considerations of race, culture, religion, gender, sexual preference or economic circumstances in child custody decisions.
- Domestic violence. — Materials addressing violence or emotional abuse by one parent in the relationship against the other parent.
- Father involvement — Materials addressing the father-child relationship.
- International child abduction — Materials addressing the abduction of a child by a parent who removes the child to a foreign country.
- Judicial interviews of children — Materials addressing the manner or method by which judges interview children.

- Never married parents — Materials addressing parents who were never married to each other at the time of the custody proceeding.
- Parent education programs — Materials addressing programs that focus on enhancing parenting practices and behaviors.
- Parenting arrangements — Materials addressing all types of parenting arrangements (such as shared custody, shared parenting, joint custody), the approximation rule, overnights and relocation.
- Parenting plans — Materials addressing parenting plans, including development and elements.
- Statutory review — Materials that include a multi-state statutory review.
- Third party relationships — Materials addressing custody or visitation by persons other than the child's parents, such as grandparents or siblings.

Where an article or report is available online, whether for purchase or free of charge, the web address is included.

Organizations

The Committee also identified organizations whose research or expertise may be of benefit to the Commission in exploring issues related to child custody. Those organizations are identified in Appendix A.

Topic Index

Appendix B identifies materials by topic.

A

Ahrons, C. (2007). Family ties after divorce: Long-term implications for children. *Family Process, 46(1)*, 53-65.

Adults who were children of divorce were interviewed 20 years after their parents' divorce in an effort to answer two questions: (1) what impact does the relationship between the parents have on their children 20 years after the divorce; and (2) how does a parent's remarriage or cohabitation impact a child's sense of family. The continuing relationship between the parents was the factor that most affected the child's reports of well-being. If the parents were cooperative, the children reported better relationships with parents, grandparents, stepparents and siblings. If the parents had on-going hostilities, the children reported continued conflicts. The author's recommendations for therapists working with divorced families include that the therapist assist the parents in taking a long view of their relationship with their children and the other parent, and to consider that "it is never too late to improve their relationship and have a good divorce." It is also recommended that therapists provide information to both parents concerning the child's need for the father's continued contact and involvement.

***Topics*:** Child development; father involvement.

Available at:
familieslink.co.uk/download/sept07/Family%20Ties%20After%20Divorce%20LongTerm%20Implications.pdf

Allen, S., & Daly, K. (2007). The effects of father involvement: An updated research summary of the evidence. *Father Involvement Research Alliance*. Guelph, Ontario: University of Guelph.

This article compiles and summarizes research on father involvement and children's developmental outcomes. Topics include: child's cognitive development, emotional development and well-being, social development and physical health; decrease in negative child development outcomes; the effects of father absence on child development outcomes; the benefits of father involvement for the father; co-parenting relationships; non-residential fathers; the effects of family income on child development outcomes; and measuring father involvement. Among the referenced conclusions from

the cited research are the positive correlations between father involvement and the child's emotional well-being

Topics: Child development; father involvement.

Available at: http://www.fira.ca/cms/documents/29/Effects_of_Father_Involvement.pdf

Amato, P. R., Kane, J. B., & James, S. (2011). Reconsidering the "good divorce". *Family Relations, 60(5)*, 511-524.

The authors studied the assertion that a "good divorce" - a divorce, or a disruption of a non-marital union, in which children maintain close ties with both parents and there is a cooperative relationship between the parents - limits the negative consequences of parental separation/marital dissolution on children. The authors identified three distinct groups which they labeled "cooperative coparenting" (which most resembled the "good divorce"), "parallel parenting" (where there was moderate contact between the child and nonresident parent, and moderate conflict between the parents) and "single parenting" (where the nonresident parent rarely saw the child, and had little or no influence in their children's lives and communication with the resident parent). Children exhibited the smallest number of behavior problems (and had the closest ties to fathers) in the cooperative coparenting group. However, outcomes for children in this group were not significantly better than children in the parallel parenting and single parenting groups. The authors found only modest support for the benefits of a "good divorce". Among the implications for policy and practice of this finding are that having a good divorce alone is not sufficient to mitigate the potential harmful effects of a divorce. For example, the authors suggest that court-connected interventions for children, not the parents, could be offered.

***Topics*:** Child development; father involvement; never married parents; parenting arrangements.

Available at: ncbi.nlm.nih.gov/pmc/articles/PMC3223936/?report=classic

American Psychiatric Association (2013). *Diagnostic and statistical manual of mental disorders, fifth edition*. Washington, DC: American Psychiatric Press.

The Diagnostic and Statistical Manual (DSM) is the standard classification of mental disorders used in the United States and much of the rest of the world. Since its original issuance in 1952, the DSM has been periodically reviewed and updated. The fifth edition (the *DSM-5*) contains two disorders that relate to attachment: reactive attachment disorder and disinhibited social engagement disorder. The disorders are not based on classic attachment theory, but are focused on behavioral responses of the child to caregivers and others. Anyone involved in custody matters should be clear about the distinct difference between attachment theory and attachment disorder as a mental diagnosis.

***Topics*:** Attachment; child development.

Available at: psychiatry.org/practice/dsm

American Psychological Association. (2012*). Guidelines for assessment of and intervention with persons with disabilities.* Washington, DC: APA.

These *Guidelines* are based on the work of the APA's Task Force on Guidelines for Assessment and Treatment of Persons with Disabilities and were adopted by APA Council of Representatives on February 18, 2011. As set forth in the introduction, the Guidelines' goal is "to help psychologists conceptualize and implement more effective, fair and ethical psychological assessments and interventions with persons with disabilities." The 22 Guidelines "provide suggestions on ways psychologists can make their practices more accessible and disability-sensitive, . . . how they might enhance their working relationships with clients with disabilities, . . . [and] provide information on how psychologists can obtain more education, training and experience with disability-related matters." Guidelines 13 through 17 address testing and assessment.

Topics: Child custody evaluation; disabilities.

Available at: http://www.apa.org/pi/disability/resources/assessment-disabilities.aspx

American Psychological Association. (2012). Guidelines for the practice of parent coordination. *American Psychologist*. *67(1)*, 63-71.

These *Guidelines* define "parenting coordination" as a "nonadversarial dispute resolution process that is court ordered or agreed on by divorced and separated parents who have an ongoing pattern of high conflict and/or litigation about their children." The Guidelines were adopted by the APA's Council of Representatives in February 2011. They are intended to provide "best practices" for the conduct of psychologists providing parenting coordination. They are aspirational, not mandatory. These are the second set of guidelines published by a professional organization concerning parenting coordination; the Association of Family and Conciliation Courts (AFCC) *Guidelines for Parenting Coordination* (addressed below) were published in 2005. As with the AFCC Guidelines, the APA Guidelines directly apply only to APA members but are also considered a community standard.

Topics: ADR.

Available at: apa.org/practice/guidelines/parenting-coordination.pdf

Association of Family and Conciliation Courts. (2005). *Guidelines for Parenting Coordination.* Published by: Association of Family and Conciliation Courts.

These are the first professional guidelines for the practice of parenting coordination, defined as "a child-focused alternative dispute resolution process in which a mental health or legal professional with mediation training and experience assists high conflict parents to implement their parenting plan by facilitating the resolution of their disputes in a timely manner, educating parents about children's needs, and with prior approval of the parties and/or the court, making decisions within the scope of the court order or appointment contract." These guidelines directly apply only to AFCC members but are also considered a community standard. As with the APA *Guidelines for the Practice of Parent Coordination* (addressed above) these guidelines are aspirational, offering guidance concerning best practices, ethics, qualifications and the establishment of parenting coordination programs.

Topics: ADR.

Available at: afccnet.org/Portals/0/AFCCGuidelinesforParentingcoordinationnew.pdf

Association of Family and Conciliation Courts. (2006). *Model standards of practice for child custody evaluation.* Published by: Association of Family and Conciliation Courts.

These standards were developed as a guide for custody evaluators. They address: training, education and competency; knowledge of law; record keeping and release of information; communication with litigants, attorney and the courts; data gathering; use of formal assessment instruments; the team approach; role conflict and dual role issues; interviewing children; observational – interactional assessment; the use of collateral source information; and presentation and interpretation of data.

***Topics*:** Child custody evaluation.

Available at: afccnet.org/Portals/0/ModelStdsChildCustodyEvalSept2006.pdf

Atkinson, J. (2013). Shifts in the law regarding the rights of third parties to seek visitation and custody of children. *Family Law Quarterly, 47(1)*, 1-19.

The author provides an overview of the history of the law of third-party visitation, describes changes in the law following the Supreme Court's decision in *Troxel v. Granville*, 530 U.S. 57 (2000), and analyzes the major differences between states' approaches to third party visitation and custody issues. The author concludes that the law that has developed since 2000 is generally appropriate, giving initial deference to the decisions of fit parents and placing a heightened burden of persuasion on the third party. The author is critical of the standard applied in some states requiring that grandparent visitation not adversely interfere with the parent-child relationship. An analysis of whether the interference is justified is recommended instead. The article also calls for laws that deal with third parties generally rather than having separate provisions for different categories of people who may seek visitation, *e.g*. grandparents, stepparents, siblings, while noting that granting increased rights to seek custody or visitation to third parties can pose complications, particularly if multiple persons have served as de facto parents of a child. The article also includes the "Model Third-Party Child Custody and Visitation Act", for which the author served as reporter, and a chart providing information about grandparent and third-party statutes in all 50 states and the District of Columbia.

***Topics*:** Statutory review; third party relationship.

Available at:
americanbar.org/publications/family_law_quarterly_home/family_law_quarterly_archive/4701_spring2013.html

B

Bauserman, R. (2002). Child adjustment in joint-custody versus sole-custody arrangements: A meta-analytic review. *Journal of Family Psychology*, *16*, 91–102.

The author reviewed experimental studies addressing the impact on children of joint versus sole custody arrangements. The research suggests that children in joint physical or joint legal circumstances have better outcomes than those in sole custody. The author states that parents engaged in joint parenting reported less current and historical parental conflict, as compared to the parents engaged in sole custody. The author posits that joint custody is not the cause of the child's better adjustment, but that children in joint custody situations tended to spend more time with parent who did not have physical custody than did children in sole custody arrangements.

Topics: Parenting arrangements.

Available at: canadiancrc.com/Fatherlessness/fam16191.pdf

Beck, C., & Raghahn, C. (2010). Intimate partner abuse screening in custody mediation: The importance of assessing coercive control. *Family Court Review*, *48(3)*, 555-565.

The authors posit that measuring physical violence alone is not adequate in ascertaining violence in a relationship. Coercive control – whose critical elements include an ongoing strategy of isolation from family and friends, control of access to resources (*e.g.*, transportation, money and friends) and control of access to education and employment) – must also be assessed.

Topics: ADR; domestic violence.

Available at: onlinelibrary.wiley.com/doi/10.1111/j.1744-1617.2010.01329.x/abstract?deniedAccessCustomisedMessage=&userIsAuthenticated=false

Berk, L. E. (2012). Child development, ninth edition. Pearson International.

This textbook can be helpful to attorneys, judges and mental health professionals who need to develop a basic understanding of standard child development processes. The book uses an integrated approach to presenting development in the physical, cognitive, emotional, and social domains with emphasis on the connections between heredity, environment, and culture.

Topics: Child development; diverse populations.

Bow, J. N., Quinnell, F. A., Zaroff, M., & Assemany, A. (2002). Assessment of sexual abuse allegations in child custody cases, *Professional Psychology: Research and Practice*, *33(6)*, 566-575.

A seminal article that defined procedures and standardized measures used in custody evaluations where sexual abuse is alleged. The authors point out that such evaluations are complex and require knowledge of techniques used in sexual abuse investigations and sex offender evaluations, as well as knowledge of child custody practices. The study findings are from a national survey of 84 psychologists. The findings showed that custody evaluators generally adhere to the child custody guidelines of the American Psychological Association. Few of the evaluators followed formal models, protocols, or guidelines when evaluating alleged victims or alleged perpetrators of sexual abuse in conjunction with child custody disputes. Implications for practice in this area are discussed, along with a proposed comprehensive model for assessing sexual abuse allegations in child custody cases.

***Topics*:** Child custody evaluation; child maltreatment;

Available at: drjamesbow.com/publications/CCE.Sex.abuse.article.pdf

Bowlby, J. (1983). *A secure base: Parent-child bonding and healthy human development*. New York: Basic Books.

This is the classic book on attachment theory by the chief author of the theory. It is a brief book that is easy to understand.

Topics: Attachment; child development.

Bowles, J.J., Christian, K.K., Drew, M. B., & Yetter, K. L. (2008). *A judicial guide to child safety in custody cases*. Reno, NV: National Council of Juvenile and Family Court Judges.

A working group of judges, lawyers, psychologists, domestic violence professionals and others advised the authors of this guide. It consists of bench cards which summarize the main concepts and a more detailed discussion that follows the process of a custody or visitation proceedings. The guide is written from the viewpoint that while custody and visitation issues can be among the most difficult for a judge, familiarity with the dynamics of abuse and the tactic of coercive control can assist the judge in making child-centered orders that are consistent with the child's safety.

Topics: Child maltreatment; judicial interviews of children.

Available at: ncjfcj.org/sites/default/files/judicial%20guide_0_0.pdf

Boyarin, Y. (2012). Court-connected ADR - A time of crisis, a time of change. *Marquette Law Review,* 95(3), 993-1041.

The author reports the results of a conference convened by the Association of Family and Conciliation Courts (AFCC), Marquette University School of Law and Resolution System Institute. The conference's goal was to shape an agenda for the future of family and civil court alternative dispute resolution (ADR). The conference concluded that the primary barriers to broad implementation of ADR are lack of funds, lack of clarity in defining goals and an investment in maintaining the status quo. National and local steps that could be taken to address these barriers are identified. One local suggestion is for jurisdictions to create local committees to study and then work towards expanding ADR within that jurisdiction.

Topics: ADR.

Available at:
scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=5120&context=mulr

Breeden, C., Olkin, R., & Taube, D. J. (2008). Child custody evaluations when one divorcing parent has a physical disability. *Rehabilitation Psychology*, *53(4)*, 445-455.

The authors studied: (1) whether, and if so how, a parent's physical disability might affect a divorce-related child custody evaluation and the court's custody decision, and

(2) the level of training received by psychologists concerning assessing parents with physical disabilities and psychologists' general understanding that testing people with physical disabilities requires specialized knowledge. Results included that the majority of participating psychologists do not seek specialized knowledge, consultation or supervision when performing child custody evaluations on parents with disabilities. This.is true even though they commonly perform evaluations of parents with physical disabilities.

Topics: Child custody evaluation; disabilities.

Available at: psycnet.apa.org/journals/rep/53/4/445/

Brinig, M. F., Drozd, L. M., & Frederick, L. M. (2014). Perspectives on joint custody presumptions as applied to domestic violence cases. *Family Court Review*, 52(2), 271–281.

The authors examine presumptions involving joint custody and domestic violence. They recommend an individualized approach to each case in which all family court practitioners would all be educated on domestic violence and would be alert to signs that domestic violence may be an issue. Considerations most relevant to the nature and extent of domestic violence in a particular family are identified, for example, whether either parent threatens any family members' safety, security or well-being. The authors suggest that negative answers to the considerations should lead a practitioner to "doubt the efficacy" of shared care and to instead structure a parenting arrangement that: ensures safety for child and victim parent, promotes the victim's autonomy, encourages accountability by the abuser, and "allows for the kind of relationship between child and parent(s) the facts in the individual case indicate."

Topics: Domestic violence; parenting arrangements.

Available at:
/onlinelibrary.wiley.com/doi/10.1111/fcre.12090/abstract;jsessionid=774A8845E1B8A9E4DB1F4646D721C11D.f01t02?deniedAccessCustomisedMessage=&userIsAuthenticated=false

Brown, S. (2007). Why daddy loses. *Journal of Contemporary Legal Issues, 16*, 177-180.

This article provides a brief overview of the progression of standards for child custody awards from paternal preference to maternal preference to best interests of the child to

evidence that mother still is the favored custodial parent. Even under the best interest standard, the primary caretaker doctrine is biased against fathers in practice because the mothers are usually the parent who spends the significant amount of time with the children prior to divorce and subsequently is the favored custodial parent. The author suggests that the legal system bias will not change unless society revises its concept of proper parenting and accepts the attributes of both parents equally.

***Topics*:** Father involvement; parenting arrangements.

Available at:
heinonline.org/HOL/Page?handle=hein.journals/contli16&div=28&g_sent=1&collection=journals

Buchanan, C. M., & Jahromi, P. L. (2008). A psychological perspective on shared custody arrangements. *Wake Forest Law Review, 43*, 419-439.

The authors conclude that while joint (legal and physical) custody is positive for children where parents are in agreement and experience low levels of conflict, the results are different where the parents are in conflict. The authors found that data on joint custody is based on the small number of cases in which parents are relatively cooperative and committed to joint custody. They conclude that neither a presumption in favor of joint physical custody nor pressure for joint physical custody are appropriate, as most cases involved families with high levels of conflict and hostility who cannot work together with the cooperativeness needed for successful joint custody. They recommend the use of alternative dispute resolution and predictable court outcomes, such as use of the approximation rule.

Topics: ADR; domestic violence; parenting arrangements.

Available at:
heinonline.org/HOL/Page?handle=hein.journals/wflr43&div=16&g_sent=1&collection=journals

C

Cabrera, N. J., Tamis-LeMonda, C. S., Bradley, R. H., Hofferth, S., & Lamb, M. E. (2000). Fatherhood in the twenty-first century. *Child Development*, *71(1)*, 127-136.

The authors suggest that 20th America saw four social trends that fundamentally changed the social-cultural context in which children develop: (1) women's increased labor force participation; (2) increased absence of nonresidential fathers from their children's lives; (3) increased involvement of fathers in intact families; and (4) increased cultural diversity. The authors discuss how these trends are changing father involvement, family life, and children's and fathers' life courses. The authors end by considering the effect these changes will have on the way children are parented in the 21st century.

Topics: Child development; diverse populations; father involvement.

Available at:
faculty.mwsu.edu/psychology/dave.carlston/Writing%20in%20Psychology/Fathering/cabrera.pdf

Carlson, M., McClanahan, S., & Brooks-Gunn, J. (2008). Coparenting and nonresident fathers' involvement with young children after nonmarital birth. *Demography*, *45*, 2, 461-488.

The authors explored two questions: (1) what is the level of involvement of nonresident, unmarried fathers with their children; and (2) what effect does a high-quality coparenting relationship with the mother have on the father's involvement. The authors found that many unmarried fathers were involved with their children while the children were very young, a positive finding since research indicates that high-quality, positive involvement by a non-custodial father increases his children's well-being. Half of unmarried parents living together at the time of child's birth will not be living together by the child's third birthday. Many of the noncustodial fathers will not be in regular contact even in early stages of their children's development. Positive coparenting is a strong predictor of a nonresident father's future involvement with his children.

Topics: Father involvement; never married parents; parenting arrangements.

Carlson, M. J. (2006). Family structure, father involvement, and adolescent behavioral outcomes. *Journal of Marriage and Family*, *68(1)*, 137-154.

The author used data from the 1979 National Longitudinal Survey of Youth to study whether a biological father's involvement would ameliorate the negative association between father absence and health adolescent development. As with other studies, the authors found significant differences in the level of behavioral problems between adolescents who lived with their continuously married biological parents and adolescents in all other family structures. Father involvement partially mediated the effects of the family structure on the adolescent behavior.

***Topics*:** Father involvement.

Available at: onlinelibrary.wiley.com/doi/10.1111/j.1741-3737.2006.00239.x/abstract?deniedAccessCustomisedMessage=&userIsAuthenticated=false

Cassidy, J., & Shaver, P. R. (2008). *Handbook of attachment: Theory, research, and clinical applications* (2nd Ed.). New York: Guilford.

This book is the definitive textbook on attachment theory and intervention. It is a large volume of edited papers that are very academic, but contains many basic principles of the theory that can be the focus in some custody proceedings.

***Topics*:** Attachment; child development.

Chew, P. K., & Kelley, R. E. (2008). Myth of the color-blind judge: An empirical analysis of racial harassment cases. *Washington University Law Review*, *86*, 1117-1166.

The authors studied the relationship between judges' race and outcomes in cases involving racial harassment in the workplace under Title VII of the Civil Rights Act of 1964. They concluded that the judge's race made a significant different in the decision, even taking into account the judge's political affiliation. If an African-American judge presided, for example, the plaintiff was almost as likely to win as to lose (45.8%). If the judge was Hispanic, the plaintiff was least likely to prevail (19%). The success rate if the judge was White was similar (20.6%). The authors suggest that the explanation for the difference is that race affects a judge's ability to appreciate the perspective of a plaintiff or of another race.

Topic: Diverse populations.

Available at:
americanbar.org/content/dam/aba/migrated/divisions/Judicial/PublicDocuments/WiseLatina_Chew.authcheckdam.pdf

Chin, W. Y. (2004). Multiple cultures, one criminal justice system: The need for a "cultural ombudsman" in the courtroom. *Drake Law Review, 53*, 651-665.

The author proposes that a "cultural ombudsman" is needed, and may be constitutionally required, for criminal defendants from minority cultures. The author defines the cultural ombudsman as someone who protects the individual rights of the minority defendant against biases within the criminal justice system including by advocating for that defendant. The cultural ombudsman is needed including because societal cultural diversity leads to cultural clashes in the courtroom and a cultural ombudsman can provide cultural expertise and guidance when other courtroom participants cannot. A cultural ombudsman may be constitutionally required as a minority defendant is denied a fair trial if cultural barriers prevent that person from understanding the court proceedings or participating in her/his own defense.

Topics: Bias; disabilities; diverse populations.

Available at:
heinonline.org/HOL/Page?handle=hein.journals/drklr53&div=25&g_sent=1&collection=journals

Coates, C. A., Deutsch, R., Starnes, H., Sullivan, M. J., & Sydlik, B. (2003). Parenting coordination for high-conflict families. *Family Court Review, 41*, 1-17.

This article is an early discussion of the benefits of parent coordination and some of the legal challenges to its implementation.

Topics: ADR.

Available at: californiaparentingcoordinator.com/wp-content/uploads/2008/02/fcr-404.pdf

Czapanskiy, K. (1993). Domestic violence, the family, and the lawyering process: Lessons from studies on gender bias in the courts. *Family Law Quarterly*, *27*, 247-277.

This article was published in the aftermath of the Maryland Gender Bias Task Force Study and other jurisdictional studies on gender bias. It explores gender bias on the bench and how it effects decisions in domestic violence cases. Both judges and lawyers discriminate on gender grounds in that they do not believe credible evidence of domestic violence such as the testimony of the female victim. In addition, gender bias affects judicial perception of the credibility of women lawyers and that can negatively affect the woman client of that female lawyer. As a result, women victims of domestic violence often do not receive the remedy to which the evidence entitles them. The article also points out that gender bias often is exacerbated by racial bias.

***Topics*:** Bias; diverse populations; domestic violence.

Available at:
digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1263&context=fac_pubs

D

DiFonzo, J. H. (2014). From the rule of one to shared parenting: Custody presumptions in law and policy. *Family Court Review*, *52(2)*, 213-239.

The author posits that child custody law is moving from the norm of the "rule of one", *i.e.*, the view that only one parent could be awarded custody, to a norm of shared custody, where both parents have frequent and continuing contact with the child. The author examines joint custody/decision-making, including conceptual and practical problems associated with such awards. The author suggests core elements for shared parenting legislation including options related to decision-making and parenting time.

Topics: Parenting arrangements.

Available at:
onlinelibrary.wiley.com/doi/10.1111/fcre.12086/abstract?deniedAccessCustomisedMessage=&userIsAuthenticated=false

DiFonzo, J. H., & Stern, R. C. (2013). Breaking the mold and picking up the pieces: Rights of parenthood and parentage in non-traditional families, *Family Court Review*, *51(1)*, 104-118.

This article explores the changes in ways families look today and how law and the courts respond to these new family constellations. Legal and cultural recognition of nontraditional forms of parenthood is often hampered by the tendency to view such parenthood through the lens of nuclear family norms. The conventional two-parent paradigm dominates and marginalizes other family forms. The authors explore the notion and acceptance of the de facto parent (who may be the one who shapes the child's daily routine and addresses his or her development needs), including cultural traditions and practices, stepfamilies, and families created through reproductive technology.

Topics: Diverse populations.

Available at: onlinelibrary.wiley.com/doi/10.1111/fcre.12012/abstract

Dillon, D. (2000). Child custody and the developmentally disabled parent. *Wisconsin Law Review*, *2000*, 127-156.

The authors considered whether, and if so how, a parent's developmental disability should be considered in making a custody or placement decision. Although focused on Wisconsin law, the article is useful for other jurisdictions. The discussion includes the ways in which bias against a developmentally disabled parent can affect decision-making in custody cases. A court may, for example, rely on expert testimony while discounting the parent's own testimony or conduct. Most developmentally disabled parents are poor which may make them unable to hire experts or effective legal counsel. Further, developmentally disabled parents may be assessed against values of intelligence, economic independence and self-sufficiency which may result in the parent being considered inadequate because of the disability. The authors offer suggestions for addressing identified issues. They recommend use of parenting agreements that address and consider how the developmentally disabled parent can remain an active parent.

Topics: Bias; disabilities; parenting plans.

Available at:
heinonline.org/HOL/Print?collection=journals&handle=hein.journals/wlr2000&id=165

Dotterweich, D., & McKinney, M. (2000). National attitudes regarding gender bias in child custody cases. *Family and Conciliation Courts Review*, *38(2)*, 208-223.

The authors examined surveys of 4,579 attorneys and judges from four states (Maryland, Texas, Minnesota and Washington) that had conducted gender bias studies to discover whether attorneys and judges perceive any favoritism toward mothers or fathers in awarding child custody. The authors found differences in perceptions between male and female attorneys and between attorneys and judges. More male attorneys (56%) than female attorneys (33.6%) responded "always or usual" when asked whether custody awards made based on the assumption that young children belong with their mothers. By contrast, 15% of judges responded "always or usually" to the same issue. When asked whether courts give fair consideration to fathers, 27.3% of male attorneys and 41.1% of female attorneys responded "always or usually", in contrast to 45.4% of judges. When asked whether courts favor the parent with financial standing, 4% of male attorneys and 10.7% of female attorneys responded "always or usually" in contrast to 3.2% of judges. Lastly, when asked whether custody is denied due to employment outside the home .6% of male attorneys, 3.2% of female attorneys and 1.3% of judges responded "always or usually". The authors' recommendations for a court seeking to modify attitudes concerning the presence of gender bias in child custody decision are: (1) routinely monitor the perceptions of judges and attorneys; (2) from the beginning of the case, judges should make it clear that they will serve in a neutral and impartial capacity; and (3) judges should be careful to provide a complete analysis and explanation for their custody decisions.

Topics: Bias; diverse populations.

Available at: communities.earthportal.org/files/43301_43400/43367/file_43367.pdf

Dubowitz, H., Black, M. M., Cox, C. E., Kerr, M. A., Litrownik, A. J., Radhakrishna, A., English, D. J., Schneider, M. W., & Runyan, D. K. (2001). Father involvement and children's functioning at age 6 years: A multisite study. *Child Maltreatment, 6(4)* 300-309.

The authors examined whether father or father figure presence or absence was associated with children's functioning at age 6. Their hypothesis was that children's reports of supportive father involvement would be associated with better child functioning and the findings supported that hypothesis. Father presence was associated with better cognitive development. For children with father figures, those who described more father support showed fewer depressive symptoms. These results did not change by child's race, ethnicity, gender or relationship to the father/father figure. The authors suggest that a priority for clinicians is to seek ways to encourage father figures to have positive involvement and support in children's lives.

***Topics*:** Child development; father involvement.

Available at: corwin.com/upm-data/2850_11cmt01.pdf#page=24

E

Eastin, A. L. (2004). Toward a multicultural family law. *Family Law Quarterly*, *38(3)*, 501-527.

This article discusses the issues posed for courts when disputes involve unfamiliar ethnic, religious and legal traditions. In family law cases courts struggle to understand and accommodate the tremendous cultural and religious diversity of America today within a legal framework established long ago.

Topics: Diverse populations; international child abduction.

Available at:
heinonline.org/HOL/Print?collection=journals&handle=hein.journals/famlq38&id=519

Eve, P. M., Byrne, M. K., & Gagliardi, C. R. (2014). What is good parenting? The perspectives of different professionals (2014). *Family Court Review*, *52(1)*, 114-127.

This research study explored the differences and similarities of opinions on what is good parenting held by magistrates, lawyers, social workers, and psychologists. Six areas of good parenting were identified: insight, willingness/ability, short term versus long-term

needs, child's needs before parent's needs, fostering attachment, and consistency and flexibility. No major differences were found across the four groups of professionals and there was general agreement on what constitutes good parenting. The authors reported that the generally held belief that legal professionals and mental health professionals hold differing views of good parenting criteria was not support in their research. Rather, legal and mental health professionals agree on the main aspects of good parenting.

***Topics*:** Child development.

Available at: http://onlinelibrary.wiley.com/doi/10.1111/fcre.12074/full

F

Farnfield, S., & Holmes, P. (Eds.). (2014). The Routledge handbook of attachment: assessment. Routledge.

This is one of three *Routledge Handbooks* which, together, address the full range of attachment studies. This book focuses on the tools used to assess attachment in individuals (children and adults) and in families. The first chapter provides a summary of attachment theory and attachment assessment. Chapter 2 reviews the most widely used assessments of parenting and attachment. The other two volumes address *Theory* and *Implications and Interventions*.

***Topics*:** Attachment.

Fidler, B. J., & Bala, N. (2010). Guest editors' introduction to special issue on alienated children in divorce and separation: Emerging approaches for families and courts. *Family Court Review* (Special Issue), *48(1)*, 1-245.

This issue of the *Family Court Review* updates and expands the 2001 special *Family Court Review* issue that focused on alienation, access and attachment. This note from the guest editors summarizes the articles. There is emphasis on parent-child relationships in high conflict families and issues surrounding child resistance and rejection of the parent. The entire issue is of value to judges, lawyers and mental health professionals.

***Topics*:** Attachment; child development.

Fidler, B., & Bala, N. (2010). Children resisting postseparation contact with a parent: Concepts, controversies and conundrums. *Family Court Review, 48(1)*, 10-47.

This overview written by well-known experts discusses the history of the concept of "alienation" and more recent thinking regarding the use of the term visitation resistance or visitation refusal. This article reviews the concepts and controversies regarding children who resist or refuse visitation with a parent. The article also includes some discussion of treatment options as well as recommendations for courts, judges and lawyers.

Topics: Parenting arrangements.

Fidler, B., & Bala, N. (2013). Definitions and debate. In *Children who resist post separation contact: A differential approach for legal and mental health professionals* (pp. 13-51). Oxford Press.

The authors present a comprehensive and well-accepted overview of the literature regarding families with children who resist and/or refuse access with a parent.

Topics: Child development; parenting arrangements.

Fidler, B., & Bala, N. (2013). Risk factors and indicators involved in alienation. In *Children who resist post separation contact: A differential approach for legal and mental health professionals* (pp. 53-75). Oxford Press.

This article reviews the parent, child, and family characteristics and factors which have been found to increase the risk for a child resisting or refusing access with a parent.

Topics: Child development; parenting arrangements.

Frantz, C. J. (2000). Eliminating consideration of parental wealth in post-divorce child custody disputes. *Michigan Law Review, 99*, 216-237.

The author suggests that in a child-centered approach to post-divorce child custody, parental wealth would not be a consideration. Judicial consideration of wealth may lead to decisions that are not in the child's best interests and biases concerning wealth may have a distorting effect. Focusing on wealth obscures the importance of child support as a way to meet a child's financial needs. The author addresses an exception that would allow consideration of wealth if a child's minimal economic subsistence is implicated.

***Topics*:** Bias.

Available at:
heinonline.org/HOL/Page?handle=hein.journals/mlr99&div=18&g_sent=1&collection=journals

G

George, C., Solomon, J., & McIntosh, J. (2011). Divorce in the nursery: On infants and overnight care. *Family Court Review, 49(3)*, 521-528.

The authors present what some consider a minority viewpoint. They discuss their research on young children and overnights and suggest no regular overnights for young children less than four years old based on child development (*i.e.,* attachment, consistency, self-regulatory mechanisms, stability, *etc*.).

Topics: Child development; parenting arrangements.

Available at:
rbup.no/CMS/kursbase.nsf/767E322F79DA5961C1257CB3002DF567/$file/DIVORCE%20IN%20THE%20NURSERY%20-%20ON%20INFANTS%20AND%20OVERNIGHT%20CARE.pdf

Gould, J. W., & Martindale, D. A. (2013). Cultural competency and child custody evaluations: An initial step. *Journal of the American Academy of Matrimonial Lawyers*, *26*, 1-233.

This article recognizes not only the importance of considering culture in custody determinations, but also the importance of considering the cultural competency and responsiveness of the custody evaluator. The authors suggest that custody evaluators must have an awareness of their attitudes, beliefs, values and expectations toward the culturally different people with whom they are conducting an assessment. Custody evaluators also must be also aware of culturally appropriate procedures to use when conducting the evaluation and understand the degree to which each parent has been influenced by culture in regards to childrearing practices.

***Topics*:** Child custody evaluation; diverse populations; parenting arrangements.

Available at: /litigation-essentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&doctype=cite

&docid=26+J.+Am.+Acad.+Matrimonial+Law.+1&srctype=smi&srcid=3B15&key=0104d4fce2dcf903fa3ac1ea49abcf40

Greenberg, L. R., & Sullivan, M. J. (2012). Parenting coordinator and therapist collaboration in high-conflict shared custody cases. *Journal of Child Custody, 9*, 85-107.

In this very well-written article by two well-respected parent coordinators, the authors discuss the risks, benefits and challenges of having both a therapist and a parent coordinator involved in a case, the importance of role clarification and role differentiation, and the need for ongoing close collaboration. They stress that the process either can create great synergy and help for the family or it can further stress the family and lead to greater chaos.

Topics: ADR

Available at: ylyngreenbergphd.com/wp-content/uploads/2012/03/PC_and_Therapist_Collaboration.pdf

Grossman, J. L., & Friedman, L. A. (2011). *Inside the castle: Law and the family in 20th century America.* Princeton NJ: Princeton University Press.

A comprehensive social history of twentieth-century family law in the United States. The authors review the "vast" changes in society that have reshaped and reconstituted the American family. There is documentation of the change in children's rights and women's rights and the emergence of novel forms of family life. The role of social movements in changing family functions and producing challenges for the family law are explored. There is content related to common-law marriage, cohabitation, same sex relationships, divorce, economic impact of divorce, outcomes for children of divorce, and adoption. The current legal and family issues involved in marriage, divorce and custody are discussed in historical and evolutionary contexts.

***Topics*:** Diverse populations.

H

Hita, L. C. & Braver, S.L. (2012). Never married parents in family court. In K. Kuehnle & L. Drozd (Eds.), *Parenting plan evaluations: Applied research for the family court* (pp. 479–499). New York, NY: Oxford University Press.

In this review of 20 studies, the authors examine and distinguish three populations: never-married parents who have never lived together, never-married parents who have cohabited, and legally divorcing parents. The authors found that never-married parents who have cohabited differ on a number of factors in degree (but not kind) from parents who have married and are separated. They further found that never-married parents who have co-habited different significantly from never-married parents who have never lived together on a number of factors including greater economic strain, less social support, greater instability in the physical environment including more relocations, and more family restructuring and transitions. The results suggest that non-married parents who have never lived together face considerably greater stresses than the other groups and that their children are at increased risk for poorer outcomes including higher rates of mental health problems. The research suggests possible entry points for professional involvement to decrease identified stressors and increase the likelihood of better outcomes for these children.

Topics: Diverse populations; never married parents; parenting arrangements; parenting plans.

Holtzworth-Munroe, A., Beck, C. J. A., & Applegate, A. G. (2010). The mediator's assessment of safety issues and concerns (MASIC): A screening interview for intimate partner violence and abuse available in the public domain. *Family Court Review*, *48(4)*, 646-662.

The authors developed the Mediator's Assessment of Safety Issues and Concerns (MASIC) as a tool to screen for intimate partner violence and/or abuse. The MASIC is behaviorally specific, assessing types of violence/abuse over the course of the relationship in general and the past year specifically. The MASIC is administered in an interview. In a final section, there are instructions to the mediator including methods of structuring mediation or the environment in which it is given, e.g., provide mediation in a secure location. The authors stated their desire that the MASIC be freely available to all mediators and researchers. The MASIC is in the Appendix.

***Topics*:** ADR; domestic violence.

Available at:
/bear.law.indiana.edu/lawlibrary/services/bibliography/documents/Holtzworth-MunroeApplegateBeckFCRarticleonMASIC.pdf

Hughes, D. A. (2009). Attachment focused parenting: Effective strategies to care for children. New York: Norton.

This book contains plain English explanations of attachment, methods to promote attachment and bonding, and strategies for adults to understand their own bonding based on how their parents bonded with them. This book can be helpful to judges, lawyers, mental health practitioners and parents.

***Topics*:** Attachment.

I

Insabella, G. M., Williams, T., & Pruett, M. K. (2003). Individual and coparenting differences between divorcing and unmarried fathers: Implications for family court services. *Family Court Review, 41(3)*, 290-306.

This study examines some of the differences between unmarried fathers and separating fathers and suggests possible areas for court involvement. The authors found that unmarried fathers tended to be younger, less well-educated, and more economically disadvantaged. There were no differences in the mental health of married vs. unmarried parents or the degree of conflict between the parents. Unmarried fathers do not start out less involved with their children than separated fathers, but do end up being less involved in their child's daily lives than previously married fathers. Possible areas for court intervention include early court case management of cases involving unmarried couples, early intervention to secure ongoing father involvement, and creative and flexible parenting plans to accommodate varying work arrangements.

Topics: Father involvement; never married parents; parenting plans.

Available at: onlinelibrary.wiley.com/doi/10.1111/j.174-1617.2003.tb00892.x/abstract

J

Jaffe, P. G., Johnston, J. R., Crooks, C. V., & Bala, N. (2008). Custody disputes involving allegations of domestic violence: Toward a differentiated approach to parenting plans. *Family Court Review*, 46(3), 500-522.

This article describes a model for developing parenting plans after separation when domestic violence is alleged. A method of assessing risk by screening for the potency, pattern, and primary perpetrator of the violence is proposed as a foundation for generating information about the type of violence, the potential for future violence and the parents' level of functioning. This method of screening for risk in cases where domestic violence is alleged provides guidance in identifying parenting arrangements that are appropriate for the specific child and family and, if confirmed by a more in-depth assessment, may be the basis for a long-term plan. A series of parenting plans are proposed, with criteria and guidelines for usage depending upon differential screening, ranging from highly restricted access arrangements (no contact with perpetrators of family violence and supervised access or monitored exchange) to relatively unrestricted ones (parallel parenting) and even co-parenting.

Topics: Domestic violence; parenting arrangements; parenting plans.

Available at:
tbla.on.ca/resources/Family%20Court%20Review%20Jul%202008%20p500-522%20Jaffe,%20P.G.%20et.al.%20Custody%20disputes...dv..pp.pdf

K

Kaspiew, R., Gray, M., Weston, R., Moloney, L., Hand, K., & Qu, L. (2009). The AIFS evaluation of the 2006 family law reforms: A summary. *Family Matters*, *86*, 8-18.

In 2006, Australia changed its family law system with a goal of moving from litigation and towards cooperative parenting. The government commissioned the Australian Institute of Family Studies (AUS) to evaluate the impact of those changes on the changes. One of the evaluation questions was the extent to which family violence and child abuse are considered in making arrangements related to parenting responsibility and care time. The report found that there was some improvement in the way the system identified families where there were concerns about family violence and child abuse. However,

the study also showed that families in which violence had occurred were no less likely to have shared care than families without violence. There was a similar finding for families with safety concerns. There were poorer reported outcomes for children whose mothers expressed safety concerns when the children were in shared care arrangements. These and other findings suggest a need for better identification of families where safety concerns need to inform decisions about care arrangements.

Topics: ADR; domestic violence; parenting arrangements.

Available at: http://aifs.gov.au/institute/pubs/fm2011/fm86/fm86b.pdf

Kaufman, R. L. & Lee, S. M. (Eds.). (2011). Special Issue: Forensic mental health consulting in family law: Part of the problem or part of the solution?. *Journal of Child Custody, 8(1-2),* 1-141.

This issue is a summary and exploration of emerging mental health consulting in family law related to the various roles of consultants and evaluators with special emphasis on custody matters. There is a review of changes in legal involvement of mental health professionals over the last 10 years. The authors explain the value of the mental health expert's role in legal matters and address ethical issues in this area as well as emerging models of mental health consultation and the law. The final article in the special issue is by Judge Dianna Gould-Saltman of the Superior Court of California. Judge Gould-Saltman has degrees in psychology and law, and she offers a comprehensive perspective and summary of issues and roles in custody cases.

Topics: Child custody evaluation.

Available at:
http://www.tandfonline.com/doi/abs/10.1080/15379418.2011.547750?journalCode=wjcc20

Kelly, J. B., & Lamb, M. E. (2000). Using child development research to make appropriate custody and access decisions for young children. *Family and Conciliation Court Review*, 38(3), 297-311.

This article describes research on attachment processes, separation from attachment figures, and the roles of mothers and fathers in promoting psychosocial adjustment. It includes a discussion of the implications for young children's parenting schedules. This

is one of the first articles to reset the field's focus on: (1) the critical importance of both parents' continued involvement in the child's life following separation and divorce; and (2) the importance of child development in the formulation of any parenting plan. The authors conclude that children's long-term outcomes are improved when both parents are regularly and consistently involved in the wide array of the child's care-taking behaviors.

Topics: Attachment; child development; parenting arrangements; parenting plans.

Available at:
rozmcallister.com/OhioFamilyRights/Newsletters/usingchilddevresearchcustodyyoungchild.pdf

Kelly, J. B., & Johnston, J. R. (2001). The alienated child: A reformulation of parental alienation syndrome. *Family Court Review,* 39(3), 249-266.

This seminal article, written by well-known authors in the field, reviews, refines and then redefines the concept of alienation.

Topics: Child development; parenting arrangements.

Available at:
researchgate.net/publication/227680682_THE_ALIENATED_CHILDA_Reformulation_of_Parental_Alienation_Syndrome/file/3deec52b1ef223248f.pdf

Kernic, M. A., Monary-Ernsdorff, D. J., Koepsell, J. K., & Holt, V. L. (2005). Children in the crossfire: Child custody determinations among couples with a history of intimate partner violence, *Violence Against Women*, *11(8)*, 991-1021.

The authors posit that although most states mandate considerations of intimate partner violence (IPV) in child custody proceedings, research has not identified whether a preexisting history of IPV is effectively presented to the courts in divorce cases and, when it is, what effect it has on the child custody or visitation order. After studying divorce cases in Seattle, Washington between January 1, 1998 and December 31, 1999, the authors identified two primary concerns: (1) a lack of identification of IPV even among cases with a documented, substantiated history; and (2) a lack of strong protections being ordered even in cases in which a history of IPV was known to exist.

Topics: Domestic violence; parenting arrangements.

Available at: vaw.sagepub.com/content/11/8/991.short

Kirshbaum, M., & Olkin, R. (2002). Parents with physical, systemic, or visual disabilities. *Sexuality and Disability*, *20(1)*, 65-80.

Despite the number of American families parented by at least one parent with a disability (11% according to a 1993 survey), there is little information on these parents. The authors focus on parents with physical, systemic or visual disabilities. They identify the main problems in prior research on parents with disabilities (including that research failed to distinguish between different disabilities and different levels of functioning). They then discuss research that comes from a disability culture, in particular the work done by Through the Looking Glass. The article closes with a summary of recurring themes.

Topics: Disabilities.

Available at: lookingglass.org/pdf/Parents-with-Physical-Systemic-Visual-Disabilities-TLG.pdf

Kirshbaum, M., Taube, D. O., & Baer, R. L. (2003). Issues facing family courts: Parents with disabilities: Problems in family court practice. *Journal of the Center for Families, Children and the Courts, 4*, 27-163.

The authors are staff of the National Resource Center for Parents with Disabilities. They argue that states vary considerably in their recognition of the rights of parents with disabilities and that even in those states that have recognized such rights, practice lags behind both court rulings and legislative intent. The authors identify the categories of barriers that exist in the family courts, including barriers to legal representation, lack of disability awareness, knowledge and skill, and barriers related to the training and skills of expert assessors. The authors propose changes including revising statutes, court rules and professional standards to explicitly address bias and methods of decreasing that bias. Additional legal resources for parents with disabilities, training (for judges, attorneys and evaluators) and changes in current practice (such as courts asking all parents with disabilities whether they need adaptations for an evaluation and then monitoring whether adaptations have been used) are also recommended.

Topics: Disabilities.

Available at: litigation-essentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&srctype=smi&srcid=3B15&doctype=cite&docid=4+J.+Center+for+Fam.+Child.+%26+Cts.+27&key=6fe648ff2af2e9cdab61faa29cf4e8c1

L

Lamb, M. E. (Ed.). (1999). *Parenting and child development in "nontraditional" families.* Mahwah, NJ: Lawrence Erlbaum Associates Publishers.

This classic book discusses how various "deviations" from traditional family styles affect childrearing practices and child development. Instead of focusing on the "deviance" of childrearing modes or styles, the authors describe the dynamic developmental processes that characterize parenting and child development in nontraditional contexts that do not reflect the demographic characteristics of the traditional families. Content includes dynamics and possible effects of dual-earner families, families with unusually involved fathers, families characterized by the occurrence of divorce, single parenthood, remarriage, poverty, adoption, reliance on nonparental childcare, ethnic membership (Black, Latino, or interracial), parents with lesbian or gay sexual orientations, as well as violent or neglectful parents. Each chapter provides answers to the question: How do these patterns of childcare affect children, their experiences, and their developmental processes?

Topics: Child development; diverse populations; parenting arrangements.

Lamb, M. E. (Ed.). (2010). *The role of the father in child development* (5th ed.). Hoboken, NJ: John Wiley and Sons, Inc.

This book reflects Lamb's extensive contribution to the literature of child development and positive and negative family functioning. The chapters, authored by an international group of experts, address topics including: how fathers influence children's development; fathers, children and divorce; fathers from low income families; gay fathers; and immigration.

Topics: Child development; disabilities; diverse populations; father involvement; third party relationships.

Lamb, M. E. (2012). Mothers, fathers, families, and circumstances: Factors affecting children's adjustment. *Applied Developmental Science, 16(2)*, 98–111.

The author has spent his career investigating factors that affect a child's long-term development and adjustment. In this article, the author summarizes the research in this area during the last fifty years. He concludes that the most important factors which predict a child's adjustment and psychological well-being are the quality of the relationship with the parents, the quality of the relationship between the parents (or significant adults), and socio-economic resources. Family structure factors (including the parents' gender, marital status and sexual orientation, whether both male and female role models are present in the home, or whether the parents are biologically related to the children) are found to be unrelated to the child's well-being and healthy development.

Topics: Child development; diverse populations.

Available at: tandfonline.com/doi/abs/10.1080/10888691.2012.667344#preview

Lamb, M. E. (2012). A wasted opportunity to engage with the literature on the implications of attachment research for family court professionals. *Family Court Review, 50(3)*, 481-485.

In this response to the July 2011 special issue of the *Family Court Review* addressing attachment theory, Lamb argues that the issue did not fully present the state of the research on attachment and child needs. He contends that most of the articles do not contain support for their opinions or conclusions, which makes it difficult for readers to discern evidence-based insights into the implications of attachment research for family court issues.

***Topics*:** Attachment; child development; parenting arrangements; parenting plans.

Available at:
ukfamilylawreform.co.uk/docs/lamb2012wastedopportunitytoengagewiththeliterature.pdf

Lee, S. M., Borelli, J. L. & West, J. L. (2011). Children's attachment relationships: Can attachment data be used in child custody evaluations? *Journal of Child Custody*, *8(3)*, 12-242.

Evaluating the quality of parent-child relationships is a central task of custody evaluators, but the field has not been well informed by the significant scientific knowledge base of attachment theory. Custody evaluators often use terminology and conclusions that are often not consistent with the findings from attachment research. This article provides an overview of the key concepts in attachment theory, describes standardized attachment assessment tools as well as their applicability to custody evaluations, and provides models for potential integration of attachment research in custody evaluations.

***Topics*:** Attachment; child custody evaluation.

Available at:
tandfonline.com/doi/abs/10.1080/15379418.2011.594736?journalCode=wjcc20

M

Mabry, C. R. (1998). African Americans "are not carbon copies" of White Americans - The role of African American culture in mediation of family disputes*. Ohio State Journal on Dispute Resolution*, *13(2)*, 405-460.

The author critiques mediation and implores mediators to be more sensitive to the ramifications of the participants' races and cultures. She explains how the mediation process may unfold in domestic relations cases and describes the advantages of mediation over litigation. She specifically addresses how culture affects mediation and how mediators should be cognizant of and more sensitive to culture.

***Topics*:** ADR; diverse populations.

Available at:
heinonline.org/HOL/Page?handle=hein.journals/ohjdpr13&div=23&g_sent=1&collection=journals#421

Mabry, C. R. (2009). The browning of America – Multicultural and bicultural families in conflict: making culture a customary factor for consideration in child custody disputes. *Washington and Lee Journal of Civil Rights and Social Justice*, *16(2)*, 413-443.

The author argues that culture plays a significant role in the dissolution of relationships and that judges, among others, need to be culturally competent. The author offers a good and workable definition of cultural competence: "The ability of individuals and systems to respond respectfully and effectively to people of all cultures, classes, races, ethnic backgrounds, sexual orientations, and faiths or religions in a manner that recognizes, affirms and values the worth of individuals, families, tribes and communities, and protects and preserves the dignity of each." The author posits that if the judges consider culture when evaluating custody cases, the evaluations will not be based on dominant middle-class standards. The article suggests related statutory reform. The article is also relevant to domestic violence among culturally diverse people.

***Topics*:** Diverse populations; domestic violence.

Available at:
scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=1306&context=crsj

Mabry, C. R. (2013). Blending cultures and religions: Effects that the changing makeup of families in our nation have on child custody determinations. *Journal of the American Academy of Matrimonial Lawyers, 26*, 31-233.

The author notes that many families today are bicultural or multicultural, or have parents who practice different religions. In light of this new reality, the author addresses whether culture and religion should be among the mandatory best interest criteria that judges and lawyers consider when evaluating parents for custody. The author suggests that the more distinctly a child's cultural inheritance varies from the dominant society, the more it must be taken into account. The author provides practice tips for lawyers and judges on addressing culture and religion even when not expressly addressed in a statute.

Topics: Diverse populations.

Available at: litigation-essentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&doctype=cite&docid=26+J.+Am.+Acad.+Matrimonial+Law.+31&srctype=smi&srcid=3B15&key=4b5442e327c766c9ce72ece318bd8ce2

McDevitt, T. M., & Ormrod, J. E. (2012). *Child development* (9th ed.). New York: Pearson.

This textbook merges theory and practice, for people who teach and care for infants, children, and adolescents. The focus is on how to apply developmental research and theory to everyday practice. It is good background reading for professionals and non-professionals who deal with custody issues especially in the area of education.

Topics: Child development.

McIntosh, J. E. (2009). Legislating for shared parenting: Exploring some underlying assumptions. *Family Court Review, 47(3)*, 389-400.

This article reviews twenty years of research on the impact of shared care arrangements on children and families as part of a study of 141 families (276 children) involved in child-involved mediation. Participants were assessed at the one and four year marks after mediation was completed. Based on the literature review and the study, the author found that 65% of families reverted from shared custody to one parent custody. The authors further found that:

- Shared care entered into voluntarily was 2.4 times more stable over time rather than shared care imposed by the courts.
- Nearly two times as many children in shared care arrangements wanted to change their arrangements compared to children in primary care arrangements. One third of the children in shared cared arrangements expressed the desire to see more of their mothers. One in ten expressed the desire to see more of their fathers and 45% of the children in shared care expressed the desire to change their arrangements. All but one of those children wanted more time with their mothers.
- Children in shared care reported sustained inter-parental conflict over the four-year period, while children in traditional/primary care reported significant decline in inter-parental conflict. Children in shared care also were significantly more likely to report feeling caught in the middle than children in primary care arrangements.
- Fathers in shared care arrangements reported higher levels of ongoing conflict over time than fathers in more traditional arrangements.

- Mediation that included direct input from children was significantly more likely to result in less than shared care arrangements.

Topics: Parenting arrangements.

Available at: onlinelibrary.wiley.com/doi/10.1111/j.1744-1617.2009.01263.x/abstract?deniedAccessCustomisedMessage=&userIsAuthenticated=false

McIntosh, J. E., Pruett, M. K., & Kelly, J. B. (2014). Parental separation and overnight care of young children, part II: Putting theory into practice. *Family Court Review*, *52(2)*, 256–262.

This is the second of two articles by the same authors which attempt to arrive at a consensus view among three well-known psychologists. Pruett is the lead author of Part I (see below). The first part provided a conceptual overview of some of the conflicting issues in the area of overnights and young children. This second part presents eight specific factors to be considered when developing access schedules for young children. The authors recommend that post-separation overnights with a parent begin only when the child and parent have established a stable and physically and emotionally safe relationship. They caution that the age of the child should be considered when considering the number of post-separation overnights and that children aged eighteen months and younger typically should have no more than one post-separation overnight per week.

Topics: Parenting arrangements.

/onlinelibrary.wiley.com/doi/10.1111/fcre.12088/abstract?deniedAccessCustomisedMessage=&userIsAuthenticated=false

Maldonado, S. (2014). Shared parenting and never-married families. *Family Court Review*, *52(4)*, 632-638.

This article is an invited commentary on the Association of Family and Conciliation Courts (AFCC) “Think Tank Report” that focused on ”how to maximize the likelihood that children will have meaningful relationships with both parents post separation while protecting them from physical and emotional harm.” The author discusses the position of the AFCC group favoring a presumption of joint decision-making but rejected a

presumption of shared parenting time. This issue is discussed by the author concerning never married parents, low income families, African American families, and Latino families.

Topics: Diverse populations; never married parents; parenting arrangements.

Available at: onlinelibrary.wiley.com/doi/10.1111/fcre.12113/abstract

Martin, J. A., Reinkensmeyer, M., Mundell, B. R., & Guillen, J. O. (2008). Becoming a culturally competent court. *The Court Manager*, *22(4)*, 5-23.

This article describes the efforts of the Maricopa County (Arizona) Superior Court and Imperial County (California) Superior Court to become culturally competent. The authors discuss why culture matters and why it is essential for courts to become culturally competent. They also provide a process for becoming culturally competent. The steps involve: (1) building cultural competency teams; (2) collectively learning about culture; (3) identifying where, when and how, culture matters in the court and the community; (4) assessing court processes, programs and services; (5) developing culturally appropriate processes, programs and services; and (6) performance monitoring.

***Topics*:** Diverse populations.

Available at: https://nacmnet.org/sites/default/files/images/CulturallyCompetent.pdf

Meara, K. (2014). What's in a name? Defining and granting a legal status to grandparents who are informal primary caregivers of their grandchildren, *Family Court Review,* 52(1), 128-141.

The authors address issues faces by grandparents who are primary caregivers for their grandchildren but are not the legal custodian or guardian. The authors identify problems resulting from a lack of legal status, such as the trauma experienced by the child if the parent takes the child away and problems in making medical and educational decisions while the grandparent is the primary caregiver. The authors propose legislation that would permit the court to give legal status to the grandparent who is the primary caregiver for a grandchild when: (1) the grandparent is the child's primary caregiver or primary financial caregiver; (2) there is a parent-like bond between child and grandparent; (3) the child resides with the grandparent in the grandparent's household; (4) if under age 3, the child resided with the grandparent for at least six months or, if 3 or

older, the child resided with the grandparent for at least one year. A grandparent who has such legal status awarded would be able to make medical and educational decisions for the child. In addition, such legal status would permit the grandparent to rebut the presumption that the child's custody should belong to the child's parent. The authors argue that the proposed legislation would be constitutional under the Supreme Court's decision in *Troxel v. Granville*, 530 U.S. 57 (2000).

***Topics*:** Third party relationships.

Available at: http://onlinelibrary.wiley.com/enhanced/doi/10.1111/fcre.12075/

Mederos, F. (2004). Domestic violence and culture: Moving toward more sophisticated encounters. *Presented at Melissa Institute's 8th annual conference on family violence*. South Miami, FL.

The author provides suggestions for engaging African American and Hispanic domestic violence abusers and victims. He identifies cultural filters and misunderstandings, and offers practical applications of understanding cultural differences. For example, concerning women of color who do not follow through after reporting domestic violence, the author suggests that it may be helpful to understand that many of these women are not acculturated to accept violence but are culturally responsible for keeping their families together. He offers that a way to address this cultural misunderstanding is to be flexible in the remedies used to address the violence.

***Topics*:** Diverse populations; domestic violence.

Available at: melissainstitute.org/documents/eighth/domestic_violence_culture.pdf

Mikulincer, M. & Shaver, P. R. (2007). Attachment in adulthood: Structure, dynamics, and change. New York: Guilford.

The authors provide a synthesis of attachment theory, adult-attachment research, and attachment-style research. They use a comprehensive conceptual model of how attachment orientations affect adult relationships. The book contains an extensive literature review. This volume would be helpful in situations in which one or both parents have attachment styles that impacted the child-parent relationship or the relationship of the parents. The appendices contain seven attachment related scales including the Adult Attachment Scale (AAS) and Attachment Style Questionnaire (ASQ).

***Topics*:** Attachment.

Millar, P., & Kruk, E. (2014). Maternal attachment, paternal overnight contact, and very young children's adjustment: Comment on Tornello et al. (2013). *Journal of Marriage and Family*, *76(1)*, 232-236.

In a study, Tornello (2013) concluded that frequent overnight visits between infants and their nonresident fathers were significantly associated with attachment insecurity in the infants. This article evaluates the findings from that study. The authors disagree with the arguments concerning infant attachment and adjustment, and with statements about the appropriate burden of proof, and assert that the measurement tools selected for the research had inadequacies.

***Topics*:** Attachment; parenting arrangements.

Available at: onlinelibrary.wiley.com/doi/10.1111/jomf.12071/pdf

Moran, J. A., & Weinstock, D. K., (2011). Assessing parenting skills for family court. *Journal of Child Custody*, *8(3)*, 166-188.

Research has found a correlation between core parenting skills (*e.g.*, nurturing, teaching and co-parenting) and children's healthy development. The authors review existing models for assessing parenting competence. Parenting assessment areas described are interviewing children, observing parent-child interactions, use of standardized measures, documenting data about the parents. There is review of attachment theory, use of parenting training programs, and co-parenting skills. Methods are described for assessing parenting skills across seven domains of data typically used in assessments for family court evaluations.

***Topics*:** Child development.

Available at:
tandfonline.com/doi/abs/10.1080/15379418.2011.594726?journalCode=wjcc20

N

National Council on Disabilities (2012). *Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and their Children.* Published by: National Council on Disabilities.

The National Council on Disabilities (NCD) is an independent federal agency charged with advising the President, Congress and federal agencies regarding policies, programs and laws that affect people with disabilities. This report is a comprehensive policy study that examines the discrimination faced by parents with disabilities who are raising their families. Laws most frequently do not require that there be a demonstrated nexus between a parent's disability and any adverse consequences to a child. Instead, the status of "disability" frequently carries an unfounded assumption of an inability to properly parent. Parents with disabilities are likely to encounter disparate treatment in the family law system based on other people's perception of their disability and its impact on parenting. This discrimination is compounded by the amorphous "best interest of the child" standard. The NCD recommends that in disputes based on the best interest of the child, a parent's status as a person with a disability should be irrelevant to the analysis absent an evidentiary showing of a nexus between the parental disability and a detrimental impact on the child.

***Topics*:** Disabilities; statutory review.

Available at: http://www.ncd.gov/publications/2012/Sep272012/.

Nicholson, J., Biebel, K., Hinden, B., Henry, A., & Stier, L. (2001). *Critical issues for parents with mental illness and their families*, University of Massachusetts, Department of Psychiatry, Center for Mental Health Services.

A comprehensive study on extent of mental illness in families with children. There is discussion of the needs of parents with mental illness and the barriers to treatment as well as barriers to other services. There is analysis of the impact of parental mental illness for children in these families and the significantly increased risk of negative outcomes for the children. The article includes recommendations for assisting the parents and children in these families.

***Topics*:** Disabilities.

Available at:
umassmed.edu/uploadedFiles/cmhsr/Products_and_Publications/reports_papers_manuals/critical_isues.pdf

Nielsen, L. (2013). Shared residential custody: Review of the research (Part I of II). ***American Journal of Family Law,*** **61(1), 61-71.**

Nielsen, L. (2013). Shared residential custody: Review of the research (Part II of II). ***American Journal of Family Law,*** **27(2), 123-137.**

This two-part review of the literature and research addresses shared parenting plans. As a general statement, the literature and research show that children benefit when both parents are actively involved in their lives and consistently participate in the entire spectrum of parenting activities. Part I addresses major concerns about shared parenting, the child's perspective on fathering time, and conflict and cooperation. Part II examines the important role of the father, national and international studies, and children's outcomes in shared parenting plans.

Topics: Parenting arrangements; parenting plans.

Part I available at:
static.squarespace.com/static/5154a075e4b08f050dc20996/t/517abc5fe4b0bf1bde36fe02/1366998111465/Nielsen_2013_ajfl+published.pdf

Part II available at:
static.squarespace.com/static/5154a075e4b08f050dc20996/t/525566d0e4b0843ea38af876/1381328592419/AJFL+part+2.pdf

Nielsen, L. (2014). Parenting plans for infants, toddlers and preschoolers: Research and issues. ***Journal of Divorce & Remarriage, 55(4)*****, 315-333.**

The author studied research addressing whether very young children should spend overnights with their fathers, away from their mothers. Eight studies compared outcomes to children in shared parenting families to children in primary care families, and included children under age six. Three other studies looked at these young children in shared parenting families, but did not compare them to children in primary care. The author concludes that the studies offer different views of children's outcomes in shared custody arrangements but that the differences in research design and specific samples contribute to the different research results. When the studies are examined a group, some patterns emerge. Overnights in and of themselves are not problematic, offer few

to no negative outcomes for young children, and do not contribute to problems with attachment. When the research seemed to suggest that overnights for young children caused problems for the children, these results were related to issues within the sample, not the issue of overnights.

Topics: Attachment; parenting arrangements; parenting plans.

Available at: tandfonline.com/doi/abs/10.1080/10502556.2014.901857

O

Oppenheim, D. & Goldsmith, D. F. (Eds.). (2011). *Attachment theory in clinical work with children: Bridging the gap between research and practice*, New York: Guilford.

This book reviews attachment theory and translates it into practical guidelines for therapeutic work. Strategies are presented for assessing and intervening in parent–child relationship problems and helping young children recover from maltreatment or trauma. Note this is a reprint edition of the 2007 issue of this book.

***Topics*:** Attachment.

Oregon Statewide Family Law Advisory Committee. (2002). Oregon's integrated family court of the future, *Family Court Review*, *40(4)*, 474-487.

The Futures Subcommittee of the Oregon Statewide Family Law Advisory Committee was tasked with visioning the ideal Oregon family court system in 2020. Their vision includes how culture will shape the courts of the future. It acknowledges that the population will continue to grow through birth, increased longevity and immigration. Diverse family units will be defined by their private agreements and common living arrangements and not by traditional marriage. The article address that as the families become more diverse, the courts will need to relate to all of these family forms.

***Topics*:** Diverse populations.

Available at: onlinelibrary.wiley.com/doi/10.1111/j.174-1617.2002.tb00857.x/abstract

Oregon Statewide Family Law Advisory Committee. (2011). Custody and parenting time: Summary of current information and research: A report of the Parental Involvement Workgroup, A subcommittee of the State Family Law Advisory Committee.

A multi-disciplinary group was established to examine factors that support specific types of parenting time schedules and decision-making arrangements focused on identifying developmental requirements for children, particularly those at risk for harm or maladjustment due to their family circumstances. The group found that social science research strongly supports the conclusion that legal custody and parenting time arrangements premised on the needs and attributes of a given family, rather than statutory presumptions, are most desirable. While joint legal and physical custody is optimal for some families, it is unsuitable and detrimental to others. The workgroup found that a legislative solution requiring presumptive joint legal and physical custodial arrangements is not supported by empirical evidence. No state has a presumption that mandates joint physical custody reaching the level of shared care. Of the eight states and District of Columbia that do have presumptions regarding joint custody, none require more than a "significant" amount of parenting time for each parent, let alone equal time. Statutes in these states effectively create a presumption for joint legal custody. Presumptions or preferences for joint legal custody are often easily overcome (for example, by a finding of domestic violence, by a finding that joint custody is not in the best interests of the child, or when parents do not agree). There is no evidence that the absence of presumptions in the other forty-one states create any kind of barrier to parents arriving at joint legal custody. There has not been a legislative trend toward joint custody presumptions. Instead most jurisdictions avoid "one size fits all" presumptions and encourage custom-tailored arrangements that accurately correspond with a child's best interests.

Topics: Child development; domestic violence; parenting arrangements; statutory review.

Available at:
courts.oregon.gov/ojd/docs/osca/cpsd/courtimprovement/familylaw/custodyptr.pdf

P

Parness, J. A. (2013). Federal constitutional childcare interests and superior parental rights in Illinois. *Northern Illinois University Law Review*, *33*, 305-342.

This article examines parentage definitions and nonparent standing in Illinois childcare disputes following the Supreme Court's decision in *Troxel v. Granville*, 530 U.S. 57 (2000) and subsequent Illinois legislation. The author advocates for statutes that promote custody and visitation rights for those who have cared for children. He suggests that child care interests should be recognized, and custody and visitation rights afforded, at least when the legal parent(s) facilitated familial bonds with a caregiver and when preserving that bond furthers the child's best interests

Topics: Child development; parenting arrangements; statutory review; third party relationships.

Available at: heinonline.org/HOL/Page?handle=hein.journals/niulr33&div=15&g_sent=1&collection=journals

Peresie, J. L. (2005). Female judges matter: Gender and collegial decisionmaking in the federal appellate courts. *The Yale Law Journal*, *114*, 1759-1790.

The author analyzed 556 federal appellate cases decided between 1999 and 2001 to determine whether, and if so, how, the presence of female judges on three judge panels affected decision-making in cases alleging sexual harassment or sex discrimination in violation of Title VII of the Civil Rights Act of 1964. The author concluded that gender mattered. While plaintiffs generally lost in the studied, they were twice as likely to prevail if there was a female judge. The author proposes four possible explanations for this result: the influence of female judges in deliberations; male judges deferring to female judges in these cases; logrolling or vote trading; and the presence of female judges may cause male judges to moderate anti-plaintiff preferences.

Topics: Diverse populations.

Available at: yalelawjournal.org/pdf/211_35ddrdm9.pdf

Pollet, S.I., & Lombreglia, M. (2008). A nationwide survey of mandatory parent education. *Family Court Review*, *46(2)*, 375-394.

The authors review the development of court-affiliated Parent Education Programs (PEPs), including research on particular programs. They also discuss use of PEPs in cases involving domestic violence and suggest future directions for program development and research. The research suggests that: (1) parents like PEPs and recommend participation; (2) separated parent education programs result in reduced conflict between ex-spouses and reduced exposure to conflict by children; (3) PEPs improve parental communication and increase cooperation; (4) rates of return to court to relitigate issues are most impacted when PEPs are engaged early in the process; (5) benefits are maintained better with skill-based programs, but are highly dependent on the trainer; and (6) a focus on fewer topic areas is more effective than reviewing numerous issues for shorter lengths of time. Appendix A presents the results of the nationwide survey of PEPs.

***Topics*:** ADR; domestic violence; parent education programs; statutory review.

Available at: http://onlinelibrary.wiley.com/doi/10.1111/j.1744-1617.2008.00207.x/abstract?deniedAccessCustomisedMessage=&userIsAuthenticated=false

Preston, P. (2010). Parents with disabilities. In J.H. Stone & M. Blouin (Eds.), *International Encyclopedia of Rehabilitation*. Center for International Rehabilitation Research Information and Exchange (CIRRIE).

The author addresses parents with disabilities throughout the world. Topics covered are: population estimates and demographics; social and historical perspectives; the impact of disability of parenting; children of parents with disabilities; and implications for future research and policy. The author concludes that parents with disabilities, and their families, are invisible, discriminated against and significantly underserved. The author notes that parents with disabilities and their families have called for non-pathologic research and for policies that normalize the experience of having a disability.

***Topics*:** Disabilities; diverse populations.

Available online: http://cirrie.buffalo.edu/encyclopedia/en/article/36/

Pruett, M. K., & DiFonzo, J. H. (2014). Closing the gap: Research, policy, practice, and shared parenting. *Family Court Review*, *52(2)*, 152-174.

The Association of Family and Conciliation Courts (AFCC) convened 32 family law experts to examine the issues surrounding shared parenting. These experts concluded, among other things, that most children benefit from the involvement of both parents, but the necessity for individualized decisionmaking renders inadvisable a presumption in favor of shared parenting.

***Topics*:** Parenting arrangements.

Available at: afccnet.org/Portals/0/PDF/Final%20Think%20Tank%20Report.pdf

Pruett, M. K., Ebling, R., & Insabella, G. (2004). Critical aspects of parenting plans for young children: Interjecting data into the debate about overnights. *Family Court Review*, *42(1)*, 39–59.

The authors report on a long-term study of overnights. They conclude that overnights, in and of themselves, are not problematic as long as the frequency of the overnights is developmentally appropriate. They also conclude that a significant factor in a child's adjustment to an access schedule is the consistency and stability of the schedule.

Topics: Parenting arrangements; parenting plans.

Pruett, M. K., McIntosh, J. E., & Kelly, J. B. (2014). Parental separation and overnight care of young children, part I: Consensus through theoretical and empirical integration. *Family Court Review*, *52(2)*, 240-255.

This is the first of two articles by the same authors which attempt to arrive at a consensus view among three well-known psychologists. McIntosh is the lead author of Part II (see above). The first part provided a conceptual overview of some of the conflicting issues in the area of overnights and young children. The second part presents eight specific factors to be considered when developing access schedules for young children. The authors recommend that post-separation overnights with a parent begin only when the child and parent have established a stable and physically and emotionally safe relationship. They caution that the age of the child should be considered when considering the number of post-separation overnights and that children

aged eighteen months and younger typically should have no more than one post-separation overnight per week.

Topics: Parenting arrangements.

Available at: onlinelibrary.wiley.com/doi/10.1111/fcre.12087/abstract?deniedAccessCustomisedMessage=&userIsAuthenticated=false

R

Raj, A., & Silverman, J. (2002). Violence Against Immigrant Women The Roles of Culture, Context, and Legal Immigrant Status on Intimate Partner Violence. *Violence Against Women*, *8(3)*, 367-398.

The authors reviewed legal, medical and social science research literature to concerning interpersonal violence (IPV) against immigrant women. The authors note that culture, context and immigration status can increase a victim's vulnerability. They may be used by the batterer to control and the immigrant women and create barriers to her seeking help. Among the authors' recommendations are that state court judges be required to be trained in IPV.

***Topics*:** Diverse populations; domestic violence.

Available at: vaw.sagepub.com/content/8/3/367.short

Riviera, E., Zeoli, A., & Sullivan, C. (2012). Abused mothers' safety concerns and court mediators' custody recommendations. *Journal of Family Violence, 27*, 4, 321-332.

The researchers reviewed 2006-2008 court files and interviewed 19 female abuse victims with the goal of assessing the mediation experiences of victims of family violence who sought divorce from abusive partners. The results demonstrated that mediators rarely considered abuse when making custody recommendations. This was particularly true when: (1) the abusive partner did not have a criminal history, was not subject to an order of protection or was not belligerent in the mediation sessions; (2) the victim parent requested joint custody; or (3) the abusive partner does not want (or cannot physically have) custody of the children. The researchers further found that a woman's allegations and testimony of abuse (alone or with an court order of protection) was not considered

significant evidence to order full or physical custody with her. The researchers concluded that if abuse was considered by mediators at all when making custody recommendations, consideration correlated with the evidence of physical abuse the victim parent could present. Mediators' recommendations were congruent with the victim mother's custody request only in those cases where abusive father did not want or could not have custody, the mother requested joint custody, or the father acted inappropriately, and angrily, in the mediation sessions. If further appeared to the researchers that the most important factor for mediators in this study might be the father's actions during mediation.

***Topics*:** ADR; domestic violence.

Available at: ncbi.nlm.nih.gov/pmc/articles/PMC3491813/

S

Salem, P. (2009). The emergence of triage in family court services: The beginning of the end for mandatory mediation?, *Family Court Review, 47(3)*, 371-388.

The author examines the debate between those who support mediation for all divorcing/separating parents and those who recommend triage or differentiated case management (in which the most appropriate service or approach is identified at the front end). Recognizing that one problem for mediation is the failure of states and localities to fully fund such services, the author suggests that triage services have the potential to deliver more effective services.

Topics: ADR.

Available at: law.marquette.edu/courtadr/wp-content/uploads/2011/07/salem-triage.pdf

Saunders, D. G. (2007). *Child Custody and Visitation Decisions in Domestic Violence Cases: Legal Trends, Risk Factors, and Safety Concerns.* Harrisburg, PA: VAWnet, a project of the National Resource Center on Domestic Violence.

The author presents the major legal and social trends concerning custody and visitation decisions, as well as the social science research supporting the need to consider

domestic violence when making custody and visitation decisions. Among the findings from the literature are that:

- States have increasingly provided protections for battered women in the divorce process, for example exempting them from mandated mediation, protecting them from charges of "child abandonment" if they flee for safety without their children, and making it easier for them to relocate if in danger.
- Use of trained parenting coordinators, special masters, mental health or legal professionals who focus on the children's needs can help the parents resolve disputes.
- Half the men who batter wives also abuse their children (and at a rate twice as high as that of battered women). This includes psychological abuse resulting from exposure to domestic violence.
- Parental separation does not prevent abuse to children or their mothers; physical abuse, harassment, and stalking of women continue at high rates after separation and divorce and the risk of homicide increases as do attempts to undermine the mothers' authority and to disparage her in front of the children also increase.
- Successful completion of abuser intervention programs does not reduce risk of re- abuse.
- Allegations of domestic violence are not generally more common in disputed custody cases. When allegations are made, one study found that mothers are more likely to have their abuse allegations substantiated than fathers.

The author's recommendations include that visitation should be granted to the perpetrator only if adequate safety provisions for the child and adult victim exist. Orders of visitation can specify the exchange of the child in a protected setting, supervised visitation by a specific person or agency, and completion of an intervention program for perpetrators. Visitation should be suspended if repeated violations of the terms of visitation occur, the child is severely distressed in response to visitation, or there are indications the violent parent has threatened to harm or flee with the child.

Topics: Child maltreatment; domestic violence.

Available at: vawnet.org/applied-research-papers/print-document.php?doc_id=1134

Sbarra, D. A., & Emery, R. E. (2005). Coparenting conflict, nonacceptance, and depression among divorced adults: results from a 12-year follow-up study of child custody mediation using multiple imputation. *American Journal of Orthopsychiatry*, *75(1)*, 63-75

The authors studied continued post-divorce difficulties in highly conflicted adults in an effect to understand potential long-term differences between parents who litigated and those who mediated their divorce. While the majority of parents reported that they adjusted well to the end of their marriage, a subset reported continued hostilities 12 years later. Parents who mediated custody disputes were more likely not to accept the end of the marriage than did those who litigated. Fathers who reported less conflict also reported greater non-acceptance. The authors suggest that an unanticipated consequence of successful divorce mediation may be that it keeps parents attached in a way that is not beneficial to their psychological health.

***Topics*:** ADR; child development; parenting arrangements.

Available at: ncbi.nlm.nih.gov/pmc/articles/PMC2964496/

Schore, A., & McIntosh, J. (2011). Family law and the neuroscience of attachment, Part 1. *Family Court Review, 49(3)*, 501-512.

The authors approach the issue of overnights from an attachment and neurobiological perspective. They focus on the rapidly developing brain during an infant's first three years, the need for consistency and stability, the impact of the primary caretaker on the child's attachment, and the long-term negative impact of stress, including overnights. The authors express the opinion that overnights must be approached cautiously and that inappropriately early overnights will lead to long terms problems managing stress, problems with attachment, and even impact intellectual development. Dr. Schore concludes by reminding the reader that when parents are in conflict, what is best for the parent may be at odds with what is best for the child's development. Infants cannot communicate verbally and need the family law system to understand and protect their needs.

Topics: Parenting arrangements.

Available at:
lifespanlearn.org/documents/Schore%20Family%20Court%20Rev%2011.pdf

Shade, D. (1998). Empowerment for the pursuit of happiness: Parents with disabilities and the Americans with Disabilities Act. *Law and Inequality: A Journal of Theory and Practice*, *16*, 153-218.

The author examines the effect of the Americans with Disabilities Act of 1990 on parents with disabilities. He argues that the Act can be applied to provide protections for parents, for example when the parent is threatened with state action such as a termination of parental rights. The author's reasoning has relevance for custody and visitation proceedings.

***Topics*:** Disabilities; diverse populations.

Available at:
heinonline.org/HOL/Page?handle=hein.journals/lieq16&div=8&g_sent=1&collection=journals#159

Shear, L. E. (2013). Guest editor's note. *Journal of Child Custody*, *10(3-4)*, 207-208.

This special issue of the *Journal of Child Custody* focused on international child abduction (ICA) cases and custody issues. It is of value to judges, lawyers and mental health professionals. ICA cases are being tried in state courts instead of federal courts for a variety of reasons. One reason is state courts have more experience in dealing with child welfare and custody cases. However, state courts generally do not have experience with the international legal issues under the Hague convention that guide decision-making in ICA cases. The special issue covers many topics of importance in ICA cases in the United States, for example: foreign law and custody determinations: the role of mental health professionals; unique aspects of child custody evaluations in ICA cases; remedies in United States' courts; and contrasting the Islamic family law and American family law systems. This guest editor's note summarizes the issue's articles. Increasingly

Topics: International child abduction.

Available at: tandfonline.com/doi/abs/10.1080/15379418.2013.859944

Shemmings, D., & Shemmings, Y. (2014). *Assessing disorganized attachment behavior in children: An evidence-based model for understanding and supporting families.* London, UK: Jessica Kingsley.

The authors identify key indicators and explanatory mechanisms of disorganized attachment in the child and explanations of parental contributing factors. The book covers assessment of children and parents where disorganized attachment is suspected as well as intervention strategies.

Topics: Attachment.

Silverman, J. G., Mesh, C. M., Cuthbert, C. V., Slote, K., & Bancroft, L. (2004). Child custody determinations in cases involving intimate partner violence: A human rights analysis. *American Journal of Public Health*, *94(6)*, 951-957.

The authors examine domestic violence and child abuse from a combined health and human rights analysis. They argue that human rights laws obligate governments to prevent the violation of rights by state actors (including judges and state-appointed child custody evaluators) and non-state actors, and is of particular value when looking at protecting victims of domestic violence and child abuse. The authors used this approach to study the experiences of women in Massachusetts family court who experienced domestic violence and were engaged in custody litigation with the abusive ex-partner. Themes emerged that the authors describe as consistent with potential human rights violations by state actors against the women and their children, for example, failing to accept or consider documentation of domestic violence as relevant evidence in disputed child custody cases.

***Topics*:** Child maltreatment; domestic violence.

Available at: ncbi.nlm.nih.gov/pmc/articles/PMC1448371/

Smith, S., Wilkinson, M. W., & Wagoner, L. C. (1914). A summary of the laws of the several states governing: (I) Marriage and divorce of the feebleminded, the epileptic and the insane, (II) Asexualization, (III) Institutional commitment and discharge of the feebleminded and the epileptic. *The Bulletin of the University of Washington, 82* (reprint).

This summary of the laws of the then-48 United States show the pervasiveness of laws designed to prevent persons with disabilities and others from becoming parents. Maryland, for example, provided that a “marriage was a nullity” if “preceded by epilepsy

or insanity". Maryland did not have a law related to "asexualization". As an example of such a law, Kansas established a process for court-ordered sterilization of "habitual criminals, idiots, epileptics, imbeciles and [the] insane". Maryland did not have an institution for epileptics, but the Rosewood State Training school for the Feebleminded existed for State residents and non-residents. Adults could be "retained and controlled" at Rosewood "upon the certification of a judge that such disposition would be beneficial."

Topics: Disabilities; diverse populations; statutory review.

Available at:
archive.org/stream/summaryoflawsofs00smit/summaryoflawsofs00smit_djvu.txt

Solomon, J., & George, C. (Eds.). (2011). *Disorganized attachment and caregiving*. New York: Guilford.

This updated version of the classic book on disorganized attachment describes the attachment type and reviews interventions.

Topics: Attachment.

Stahl, P. M. (2010). *Conducting child custody evaluations: From basic to complex issues.* Thousand Oaks, CA: Sage.

A comprehensive guide to conducting child custody evaluations by an established scholar in the child custody field. The author covers key topics such as the best interests of the child, custody and time-sharing, the impact of divorce on children, and children's developmental needs. The book is written in a style that makes it helpful to novice and experienced professionals as well as individuals involved in child custody litigation.

Topics: Child custody evaluation.

Stahl, P. M., & Drozd, L. M. (Eds.). (2013). *Relocation issues in child custody cases*. Routledge.

This volume is the book version of a special issue of the *Journal of Child Custody*. Chapters address: (1) the best interest standard in relocation cases; (2) risk factors for children in relocation cases when parent conflict and domestic violence are an issue;

(3) custody evaluations in relocation cases with including risk of bias; and
(4) development of long-distance parenting plans. There is focus on investigation methods, predictions, and recommendations through analysis of relevant evidence. Note that the publication date is for electronic version. The journal publication date was 2006.

Topics: Child custody evaluation; domestic violence; parenting plans.

Stahl, P. M., & Simon, R.A. (2014). *Forensic psychology consultation in child custody litigation: A handbook for work product review, case preparation, and expert testimony.* Washington, DC: American Bar Association.

This book is a comprehensive examination of the role of forensic psychologists in consulting and expert witness testimony in child custody litigation. The book is designed to assist attorneys, but can be useful to others involved in child custody work. The authors provide understanding of the psychological dynamics in child custody cases as well as guidance in using a forensic consultant and testifying expert in complex litigation. The book includes case examples related to issues such as the developmental needs of children, relocation, domestic violence, and the alienated child. The authors provide a logical process to aid in reviewing evaluation reports. Other topics include the differences between forensic and clinical mental health professionals; evidentiary standards; consultation and testifying roles; development of a case theory; strategies for constructing questions in testimony; potential biases; and ethics issues.

Topics: Child custody evaluation; child development; domestic violence.

Sullivan, M. J. (2008). Coparenting and the coordination process. *Journal of Child Custody*, *5(1/2)*, 4-24.

The author of this well-written article is one of the most experienced parent coordinators in the United States. The author explains concepts, the process, potential conflicts, and the need for research to assess best practices.

Topics: ADR.

Available at: californiaparentingcoordinator.com/wp-content/uploads/2008/07/coparentingjcc.pdf

Symons, D. (2010). A review of the practice and science of child custody and access assessment in the United States and Canada. *Professional Psychology: Research and Practice, 41(3)*, 267-*273.*

The author provides an overview of the guidelines, assessment process and empirical basis for child custody and access assessment. He suggests that psychologists who perform such assessments must remain up to date on relevant legislative issues, policies, and trends within the judicial system. The ultimate goal of the assessment includes identifying the child's needs, and the strengths and weaknesses of various living and access arrangements. The psychologist also must be attentive to research on the ultimate effectiveness and impact of these assessments.

***Topics*:** Child custody evaluation; child development.

Available at: psycnet.apa.org/journals/pro/41/3/267/

T

Tornello, S. L., Emery, R., Rowen, J., Potter, D., Ocker, B., & Xu, Y. (2013). Overnight custody arrangements, attachment, and adjustment among very young children. *Journal of Marriage & the Family*, *75(4)*, 871-885.

This study initially was reported to be applicable to a wide range of families and showed that overnights for young children led to attachment problems with their parents. Further research led to the conclusion that the findings are specific to the sample used in the research. The sample was taken from the Fragile Families database. The parents lived in the inner city of the twenty largest cities in the United States. Sixty percent of the parents lived below the poverty level, 65% had no high school degree, 85% were not married, and 50% of the fathers and 10% of the mothers were incarcerated before the child's fifth birthday. Other researchers have found that some of the findings differ from findings in studies by other researchers. See the research article cited above in Millar, P., & Kruk, E. (2014).

Topics: Child development; parenting arrangements.

Available at:
academia.edu/4094554/Overnight_custody_arrangements_and_the_attachment_and_adjustment_of_very_young_children

U

U.S. Commission on Civil Rights. (1983). *Accommodating the spectrum of individual abilities.* Published by: U.S. Commission on Civil Rights.

This landmark study is an early analysis of disability discrimination. It was instrumental in bringing the concept of "spectrum of abilities" into the mainstream. This concept recognizes that there is a spectrum of physical and mental abilities that range from superlative to minimal or nonfunctional. The report found that discrimination against handicapped persons was a serious and pervasive social problem in areas including education, employment, institutionalization, medical treatment, involuntary sterilization, architectural barriers and transportation.

***Topics*:** Disabilities.

Available at: law.umaryland.edu/marshall/usccr/documents/cr11081.pdf

V

Vasquez, M. J. T. (2003). *Troxel v. Granville*: Impact on ethnic minority families. *Family Court Review*, *41(1)*, 54-59.

This article is a critique of the Supreme Court's decision in *Troxel v. Granville*, 120 S. Ct. 2054 (2000), which held that a Washington State statute permitting any person to petition for visitation rights and authorized the court to grant visitation if it may serve a child's best interests violated the parent's Constitutionally protected right to rear their children. The author proposes that the decision is based on a "narrow Eurocentric family model" that does not reflect the extended family model of other groups. She specifically looks at Latinos/as, American Indians, Asian Americans and African American families. The author suggests that when decisions such as *Troxel v. Granville* establish policy contrary to the lifestyles and values of ethnic minority populations, "negative and insidious messages" are sent about those groups' values. She suggests that courts should apply the best interests standard and that especially with ethnic minority families, use mental health experts with cultural experience to determine the child's best interests in the context of the families cultural values regarding extended family support.

***Topics*:** Diverse populations.

Available at: litigation-essentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&srctype=smi&srcid=3B15&doctype=cite&docid=41+Fam.+Ct.+Rev.+54&key=7ae6733154922c4d1e5326c5ab57d757

Ver Steegh, N. (2008). Family court reform and ADR: Shifting values and expectations transform the divorce process. *Family Law Quarterly*, *42(3)*, 659-671.

The author examines the effect that changes in societal values and expectations concerning divorce and parenting have had on the divorce process and particularly the use of alternative dispute resolution (ADR). Types of ADR (parent education programs, mediation, early neutral evaluation and parenting coordination) are reviewed briefly and concerns about using such methods in domestic violence situation is addressed. The author notes that use of ADR has caused changes in the roles of lawyers and in the court's case management. The author notes the declining resources in the court system and addresses the effect that may have on ADR and family court reform, suggesting that the result could be that ADR will only be available for families who can afford to pay.

***Topics*:** ADR; domestic violence.

Available at: .jstor.org/discover/10.2307/25740675?uid=3739704&uid=2129&uid=2&uid=70&uid=4&uid=3739256&sid=21105295703563

W

Walker, A. G., Kenniston, J., & Inada, S. S. (2013). *Handbook on questioning children: A linguistic perspective*. Washington, DC: American Bar Association, Center on Children and the Law.

Walker is a forensic linguist who trains judges and lawyers on questioning child victims/witnesses. This reissue of the original 1999 book addresses the child's understanding of adult questions, problems to look out for in interviewing children, and language-related reasons for inconsistencies in children's testimony. Practical advice includes a checklist and suggestions for interviewing and questioning children, and sentence-building principles for talking to children. The new edition adds a chapter on cross-cultural issues affecting questioning of children.

Topics: Diverse populations; judicial interviews of children.

Waller, M. R. & Emory, A. D. (2104). Parents apart: Differences between unmarried and divorcing parents in separated families, *Family Court Review*, *52(4)*, 686-703.

This article analyzes data from the Fragile Families and Child Wellbeing Study. The authors compare factors for parents who are unmarried and living apart five years after having a child and previously married parents. Unmarried parents tend to be younger, have fewer children in common, are more likely to have children with other partners, and to have been incarcerated than previously married parents. Unmarried parents who did not have a close relationship at the time of the child's birth had the weakest connection five years later. The fathers had less contact with the child and a lower quality relationship with the child than previously married parents. The article also summarizes a number of other characteristics of the two groups of parents.

***Topics*:** Father involvement; never married parents.

Available at: onlinelibrary.wiley.com/doi/10.1111/fcre.12121/abstract?deniedAccessCustomisedMessage=&userIsAuthenticated=false

Warrier, S. (2008). "It's in their culture": Fairness and cultural considerations in domestic violence. *Family Court Review*, *46(3)*, 537-542.

This article presents a sophisticated and comprehensive explanation of culture within the framework of domestic violence. Culture is multifaceted, complex and changing. It is broader than race and ethnicity: culture also includes class, sexual orientation, immigration status, *etc*. The author suggests that an understanding of culture is not complete without understanding the influence of historic and current oppression. The author concludes that it is imperative to work toward cultural competence and understanding to enhance equal access, impartiality and safety for domestic violence victims.

***Topics*:** Diverse populations; domestic violence.

Available at: onlinelibrary.wiley.com/doi/10.1111/j.1744-1617.2008.00219.x/abstract?deniedAccessCustomisedMessage=&userIsAuthenticated=false

Warshak, R. A. (2011). Parenting by the clock: The best-interest-of-the-child standard, judicial discretion, and the American Law Institute's "approximation rule". *University of Baltimore Law Review*, *41*, 83-163.

The American Law Institute proposes that in contested physical custody cases, the court should follow the "approximation rule", *i.e.*, allocate to each parent a proportion of the child's time that approximates the proportion of time each spent performing caretaking functions in the past. The author compares the approximation rule to the best-interest standard and suggests that it is not an improvement. He argues that the approximation rule is difficult to apply, creates a new focus for disputing parents, renders a poor estimate of parents' contributions to their child's best interest, and overlooks parents' intangible, yet significant, contributions to their child's well-being. The author suggests that a best-interests standard that retains the benefits to children of individualized decision-making is preferable.

Topics: Child development; parenting arrangements.

Available at:
heinonline.org/HOL/Page?handle=hein.journals/ublr41&div=5&g_sent=1&collection=journals

Warshak, R. A. (2014). Social science and parenting plans for young children: A consensus report. *Psychology, Public Policy, and Law, 20(1)*, 46-67.

The article provides an overview of the research on shared parenting plans, overnights and young children. The author concludes that the vast majority of children benefit from shared parenting plans and that the majority of young children benefit from frequent and consistent involvement with both parents including overnight access. A specific division of time should not be imposed on each family. The author indicates that 110 researchers and practitioners reviewed, edited and commented on the article.

Topics: Attachment; child development; parenting arrangements; parenting plans.

Available at: bettinaarndt.com.au/wp-content/uploads/Warshak-Social-Science-and-Parenting-Plans-for-Young-Children.pdf

Weller, S., Martin, J. A., & Lederach, J. P. (2001). Fostering culturally responsive courts: The case of family dispute resolution for Latinos. *Family Court Review*, *39(2)*, 185-202.

Written from the perspective that a challenge for the courts will be to deal fairly and effectively with litigants from different cultures, this article examines the experiences of Latinos in custody and visitation cases. The authors conclude that: (1) courts and court staff need to increase their understanding of different cultures to better understand the needs of specific families; (2) there needs to be recognition that courts and the justice system reflects the dominant Anglo-European culture; (3) understanding the nuances of a particular culture can help the court to shape appropriate responses; (4) a goal of cross-cultural understanding should be to accommodate a culture and not merely impose the values of the dominant culture; and (5) individual practitioners and the justice system both need to develop cultural competency including through infrastructure changes.

Topics: ADR; diverse populations.

Available at: onlinelibrary.wiley.com/doi/10.1111/j.174-1617.2001.tb00603.x/abstract

Willemsen, E., & Marcel, K. (1996). Attachment 101 for attorneys: Implications for infant placement decisions. *Santa Clara Law Review, 36*, 439-475.

This comprehensive discussion of attachment is written in understandable language. The authors discuss attachment from infancy through adulthood and addresses critical issues such as: disruption, whether children can have more than one attachment figure, and the importance of early attachment figures. The authors discuss attachment as a public policy issue and advocate for an attachment-based judicial approach to placing children and infants. They recommend four principles for consideration: (1) Time is of the Essence; (2) Decision Makers Must be Educated About Aspects of Child Development Discussed in this Paper; (3) Respect for the Personhood of the Very Young Child; and (4) Best Interest and Detriment Issues.

Topics: Attachment.

Available at:
heinonline.org/HOL/Page?handle=hein.journals/saclr36&div=27&g_sent=1&collection=journals

Women's Law Center of Maryland, Inc. (2004). *Custody and financial distribution in Maryland: An empirical study of custody and divorce cases filed in Maryland during fiscal year 1999.* Towson, MD: Women's Law Center of Maryland, Inc.

This report presents the results of a large-scale statistical study of custody and the financial outcomes of divorce in Maryland. Among the findings were that women requested and received sole custody more often than did men and that parents were sharing some form of decision-making in nearly half of all cases. The report's four recommendations include opposition to a joint custody presumption and an increase in alternative dispute resolution.

Topics: ADR; diverse populations.

Available at: wlcmd.org/wp-content/uploads/2013/06/Custody-and-Financial-Distribution-in-Maryland.pdf

Women's Law Center of Maryland, Inc. (2006). *Families in transition: A follow-up study exploring family law issues in Maryland.* Towson, MD: Women's Law Center of Maryland, Inc.

This follow-up to the 2004 report examined 2003 family law cases to identify changes to the landscape. Among their findings were that 55% of parents shared decision-making about their children, up from 48% in 1999. Seventy percent of women and 33% of fathers requested sole custody to themselves. The report's four recommendations include increasing access to counsel for litigants seeking custody, especially when the other party has counsel, and monitoring and implementing the existing Statewide protocols and tools for screening cases for domestic violence issues.

Topics: Diverse populations; domestic violence.

Available at: wlcmd.org/wp-content/uploads/2013/06/Families-in-Transition.pdf.

Wright, R., & Thomas, W. (2003). Disproportionate representation: Communities of color in the domestic violence, juvenile justice, and child welfare systems. *Juvenile and Family Court Journal*, *54*, 87-95.

The authors posit that people of color, particularly African Americans, are disproportionately impacted by many of the institutions that respond to intimate partner violence (*e.g.,* juvenile delinquency and child maltreatment) and identify examples of racially biased policies, practice and decision-making. Suggestions for judges on

providing victim safety and batter accountability, while also ensuring impartial and unbiased practices in the courtroom and within the court system, include having a culturally competent staff and making the court system user friendly to pro se defendants.

Topics: Diverse populations; domestic violence.

Available at:
heinonline.org/HOL/Page?handle=hein.journals/juvfc54&div=35&g_sent=1&collection=journals

Relevant Organizations
Appendix A

The following are organizations who have done work in areas relevant to child custody. The descriptions are taken from the organizations' websites.

American Academy of Child and Adolescent Psychiatry	The organization's mission is to promote the healthy development of children, adolescents, and families through research, training, prevention, comprehensive diagnosis and treatment and to meet the professional needs of child and adolescent psychiatrists throughout their careers. aacap.org
American Bar Association Center on Children and the Law	A full-service technical assistance, training and research program addressing a broad spectrum of law and court-related topics affecting children. americanbar.org/groups/child_law.html
The American Professional Society on the Abuse of Children (APSAC)	A national organization supporting professionals who serve children and families affected by child maltreatment and violence. APSAC achieves its mission including through expert training and educational activities, policy leadership and collaboration, and consultation that emphasizes theoretically sound, evidence-based principles. apsca.org
American Psychological Association (APA)	An organization of doctoral level psychologists whose mission is to advance the creation, communication and application

	of psychological knowledge to benefit society and improve people's lives. www.apa.org
International Academy of Collaborative Professionals (IACP)	A global resource for learning about and promoting Collaborative Practice. Membership is open to anyone. Most members are legal, mental health or financial professionals; members not in these fields join to support the vision of the collaborative practice movement. collaborativepractice.com
National Center for Parents with Disabilities and their Families	The organization's mission is to empower parents and potential parents with disabilities by disseminating disability-appropriate information regarding parenting to parents, disability advocates, and legal, medical, intervention and social services providers. The overall goal is to increase information and support more disability-appropriate resources for parents with disabilities and their children throughout the U.S. www.loogingclass.org/services/national-services
National Organization of Forensic Social Work (NOFSW)	The organization's mission is to support members' professional development by constructing and maintaining forensic standards and best practices, producing quality materials for interdisciplinary forensic education and practice, conducting and disseminating forensic research and

	scholarship, and advocating for court-involved children, youth, adults and families. NOFSW endeavors to advance social justice through the inter-professional collaboration of human service and legal systems. www.nofsw.org
On Our Own of Maryland, Inc.	A Statewide mental health consumer education and advocacy group that promotes equality in all aspects of society for people who receive mental health services and develops alternative, recovery-based mental health initiatives. www.onourownmd.org
People on the Go	A Statewide self-advocacy group whose members are local self-advocacy groups from around the State. www.pogmd.org
Through the Looking Glass (TLG)	A nationally recognized Center that provides research, training and services for families in which a child, parent or grandparent has a disability. TLG operates the National Center for Parents with Disabilities and their Children. Its mission is to create, demonstrate and encourage non-pathological and empowering resources, and to model early intervention services which integrate expertise derived from personal disability experience and disability culture. lookingglass.org

Topic Index
Appendix B

ADR (Alternative Dispute Resolution)

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Women's Law Center of Maryland, Inc. (2004).

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MARYLAND GENERAL ASSEMBLY

COMMISSION ON CHILD CUSTODY DECISION-MAKING

APPENDIX E — Alternative Dispute Resolution (ADR) Committee Report

Commission on Child Custody Decision-Making

Report from the Alternative Dispute Resolution Committee
September 1, 2014

Members of the Committee
The Honorable Cynthia Callahan, Commission Chair
Susan K. McComas, Maryland House of Delegates
Kathleen Nardella, Esq., LCSW-C, Mental Health
Richard Abbott, Family Division Administrator, Baltimore County
Mary Atwater, Psy.D, Licensed Psychologist, Private Mediator
Thomas Burns, Esq.
Lorig Charkoudian, Ph.D., Executive Director Community Mediation Maryland
Sandra Coles-Bell, Executive Director, The Collaborative Project of Maryland
Kate Cullen, MSW, Community Mediator
Suzy Eckstein, Esq., ADR Section Counsel incoming Chair, Maryland State Bar Association
Roberta Eisen, LPC, Mental Health
Barry Evans, Towson University
Colby Hall, Esq.
Lou Geiszl, Maryland Administrative Office of the Courts
T. Sue German, Family Law Administrator, Circuit Court for Baltimore City
Martin Kranitz, MA, Private Mediator
Craig Little, Esq., Family Law Section Counsel, Maryland State Bar Association
Amy Mazer, LCSW-C, Mental Health/Collaborative/Mediator
Luanne McKenna, Esq.
Robert C. Mueller, Esq., ADR Section Chair, Maryland State Bar Association
Wendy Sawyer, Director, Office of Family Mediation
Jana Singer, Professor, University Of Maryland School of Law
Steve Weisbaum, Esq., Maryland Collaborative Practice Council
Powel Welliver, Family Law Administrator, Circuit Court for Carroll County

Staff: Connie Kratovil-Lavelle, Esq.
Director, Department of Family Administration
Administrative Office of the Courts

Introduction
The Alternative Dispute Resolution Committee (hereinafter, "the ADR Committee") of the Commission on Child Custody Decision-Making (hereinafter, "the Commission") believes that parents should make their own decisions about their children's future in family cases. The ADR Committee agrees that separating and divorcing parents should be provided with the tools and support they need to make decisions together for their children. The ADR Committee

supports the involvement of both parents in their children's lives to the fullest extent possible given the particular facts and circumstances of each family case.

Tasks Pursuant to the Legislative Mandate

The ADR Committee was assigned the following tasks in relation to the mandate for the Commission under HB 687:

> (4) study how to reduce litigation in child custody proceedings.
> (5) study and consider the adverse effects of child custody litigation and ways the court system can minimize those effects.
> (6) study how to promote and ensure that children have ongoing relationships with each parent.
> (7) study how to maximize the involvement of both parents in each child's life.

ADR Committee Meetings

The ADR Committee met at The Judiciary Education and Conference Center, 2011D Commerce Park Drive, Annapolis, Maryland, 21401 from 6:00 p.m. to 8:00 p.m on April 10, June 2, July 7, and August 4, 2014.

ADR Committee Structure

At the June 2, 2014 meeting, three work groups were established based upon the discussion at the first two meetings and the tasks assigned to this Committee pursuant to the legislative mandate:

> • Education/Public Awareness
> Barry Evans, Chair
> Suzy Eckstein, Esq.; Lou Geiszl, Administrative Office of the Courts; T. Sue German, Family Administrator; Amy Mazer, LCSW-C; Powel Welliver, Family Administrator
>
> • Family Court/Court Process
> Richard Abbott, Family Administrator, Chair
> Mary Atwater, Psy.D.; Thomas Burns, Esq.; Colby Hall, Esq.; Craig Little, Esq.
>
> • Parenting Plans
> Jana Singer, Professor, Chair
> Lorig Charkoudian, Ph.D.; Kathleen A. Nardella, Esq., LCSW-C; Steve Weisbaum, Esq.

At the July 7, 2014 meeting of the ADR Committee, a fourth work group was established:

> • Domestic Violence
> Luanne McKenna, Esq., Chair
> Lorig Charkoudian, Ph.D.; Kate Cullen, MSW; Kathleen A. Nardella, Esq., LCSW-C, Wendy Sawyer; Powel Welliver, Family Administrator

Report from the ADR Committee Meetings

Alternative Dispute Resolution (hereinafter, "ADR")[1] was broadly defined by the ADR Committee to include approaches where the parents themselves control the decision-making process. The release of the report entitled "Alternative Dispute Resolution Landscape: An Overview of ADR in the Maryland Court System" (hereinafter, "the ADR Landscape Report")[2] in the Spring of 2014 provided timely information and informed discussions at the ADR Committee meetings (Administrative Office of the Courts, 2014). The ADR Committee devoted significant time to discussing how ADR currently occurs in family cases in the various jurisdictions, focusing mainly upon mediation,[3] collaborative law,[4] settlement conferences,[5] facilitation sessions,[6] and Early Neutral Evaluation.[7] The ADR Committee considered how awareness of, access to, and participation in these ADR approaches, in particular, might be modified to attract more separating and divorcing parents to these alternative pathways to partial or full settlement in family cases.

There was consensus on the ADR Committee that improved tracking of referrals to ADR and the results of these referrals would enable the Maryland Administrative Office of the Courts (hereinafter, "AOC") to make more informed decisions about the use of these alternative approaches to family cases. The ADR Committee understands that ADRESS (ADR Evaluation and Support System) is one tracking system that might be considered for this purpose. The ADR Committee also recommends creation of a form detailing the use of ADR approaches to be filed with the court in each jurisdiction prior to entry of the Final Order in the case. The ADR Committee suggests that one person be designated in each jurisdiction to manage the data received on these forms and assume responsibility for tracking the use of ADR in family cases for that particular court.

Mediation

According to the ADR Landscape Report (Administrative Office of the Courts, 2014), mediation is currently the most common ADR process in the Maryland court system. The

[1] Alternative Dispute Resolution includes a variety of processes used to resolve disputes rather than litigating these issues in court (Maryland Judiciary, 2014).

[2] Available at http://www.marylandadrresearch.org/landscape.

[3] Mediation is a confidential process during which the parents reach their own agreement regarding their disputes in the presence of a neutral third party who neither provides advice nor makes decisions (Maryland Judiciary, 2014).

[4] Collaborative law is a voluntary dispute resolution process in which parents, their respective attorneys, as well as mental health and/or financial professionals work as a team, through face-to-face meeting(s) and pursuant to a joint agreement to proceed outside the court system, in order to resolve the case in a manner that benefits both the parents and the children (The Collaborative Project of Maryland, 2014).

[5] A settlement conference is a scheduled court event at which the parents and their attorneys meet with an impartial third party prior to an approaching trial date in an effort to resolve the issues in dispute. A settlement conference may include neutral case evaluation and neutral fact-finding. Additionally, the impartial person presiding at the settlement conference may recommend the terms of an agreement (Maryland Judiciary, 2014).

[6] A facilitation session is a court event at which the parents and their attorneys meet with an impartial third party to discuss the issues in the case in an effort to reach resolution (Circuit Court for Howard County, 2013).

[7] Early Neutral Evaluation (ENE) is a confidential, settlement-oriented and accelerated alternative dispute resolution technique for resolving child custody and parenting time issues in family cases (Baumann, Darcy, & DeVries, 2006).

ADR Landscape Report describes a range of models of mediation that are currently in use in the various jurisdictions. The ADR Committee recognizes that some of the differences in the way mediation is handled stem from the range in the sizes of the jurisdictions. Notwithstanding this fact, in the interest of fairness, the ADR Committee advocates that the jurisdictions strive to implement a more uniform model of referral to and case management of mediation in Maryland.

The ADR Committee agrees that parents should be required to participate in mediation prior to trial unless a professional who is trained in domestic violence and mediation determines, through an in person interview, that a particular case is not appropriate for mediation. The majority of the members of the ADR Committee also support a requirement that parents be required to demonstrate a good faith effort to mediate in "emergency" situations before the merits of these issues are considered by a judge or master.

The ADR Committee recognizes that implementing a more uniform model of referral to and case management of mediation in Maryland may require some jurisdictions to alter current procedures for staffing court-ordered mediations.

The ADR Committee advocates setting a standard for mediation training. In mediation, mediators can engage with parents in a way that assumes parents can make their own decisions, by seeking to understand parents' values and asking them about their ideas for possible outcomes. Alternatively, mediators can engage in a way that assumes parents need the mediators' ideas and suggestions and can offer these throughout the process. Research found that when mediators use strategies that seek to understand parents and elicit parents' ideas, it empowers parents to believe they can work together and make decisions for their family. The mediator strategies of eliciting parents' ideas are also the only strategies positively associated with reaching an agreement and consent order. Therefore, the Committee recommends that the courts' training standards and quality assurance mechanism support mediation strategies that seek to understand parents' values and support parents to make their own decisions.

The ADR Committee also observes that, if parents are required to mediate, fees should be reasonable and should be assessed on a sliding scale basis, with community mediation centers presented as an option. The ADR Committee also supports making fee waivers available for cases in which the cost of mediation would otherwise be financially burdensome.

The ADR Committee agrees that a date for mediation should be established at the time of the scheduling conference together with the dates for all of the other court events in the case. In this way, the Maryland courts would accord equal status to mediation and litigation as pathways to resolution of family cases. Additionally, when parents agree to mediate future disputes, or this requirement is included in a Final Order, the ADR Committee advocates that parents be required to demonstrate, at a minimum, a good faith effort to mediate as a prerequisite to receiving hearing dates on a court calendar.

Collaborative Law

The ADR Committee notes that the AOC has already made a substantial investment in collaborative law by offering free training for professionals and supporting The Collaborative Project of Maryland (hereinafter, "The Collaborative Project") (Administrative Office of the Courts, 2013). The Collaborative Project is already expanding public awareness of collaborative law by offering individuals and families of modest means an opportunity to utilize this process to resolve disputes (The Collaborative Project of Maryland, 2014).

The ADR Committee believes that the AOC could do even more to educate separating and divorcing parents about collaborative law and demonstrate that Maryland courts consider this ADR process to be on equal footing with litigation and mediation as a viable pathway for resolving family cases. For example, collaborative law should be referenced on all court forms that list ADR options, such as the Case Information Form. Collaborative law should be included in any educational materials provided by the Maryland courts to separating and divorcing parents, including electronic sources such as the AOC website. Lastly, the Maryland Rules should be revised to include reference to collaborative law as a form of ADR.

The ADR Committee agrees that there should be an ongoing interface between collaborative cases and the court system when a stay has been entered in the litigation in order to permit a case to proceed collaboratively. The ADR Committee advocates the use of status conferences at least every six months until either the case has settled or the attorneys representing the parents motion the Court to lift the stay so that litigation can proceed.

Settlement Conferences and Facilitation Sessions

The court system currently utilizes settlement conferences and facilitation sessions to varying degrees in each of the jurisdictions[8]. In some instances, judges and masters preside over these court events. In other jurisdictions, selected attorneys from the local community assume these roles. The ADR Committee advocates that the jurisdictions strive for consistency throughout the State, to the fullest extent possible, with regard to the manner in which settlement conferences and facilitation sessions are conducted. The ADR Committee also believes that these ADR approaches could be better utilized as additional opportunities to educate separating and divorcing parents about the benefits of ADR as contrasted with the negative impact of litigation upon families.

Early Neutral Evaluation

The ADR Committee considered the potential use of Early Neutral Evaluation in family cases. Early Neutral Evaluation has an assessment component like a custody evaluation, but it is utilized earlier in the litigation process and is confidential. Early Neutral Evaluation also produces information for use by and for the benefit of the parents, rather than the court. One study in Minnesota showed that Early Neutral Evaluation resulted in more than 60% of cases reaching either a full or partial settlement (Pearson, 2006). For all of these reasons, the ADR Committee suggests that a pilot Early Neutral Evaluation program be considered by the AOC and, if implemented, be formally assessed from the onset for effectiveness as an ADR approach to family cases in Maryland.

[8] Available at http://www.marylandadrresearch.org/landscape

Report from the ADR Committee Work Groups

Education/Public Awareness

The ADR Committee observes that most parents enter into the process of separation and divorce with little understanding of the time, money, energy, and resources that even "simple" litigation will require of them. The ADR Committee believes that many parents also mistakenly believe that a judge can make decisions that will enable them to avoid having to see or interact with each other.

There is also consensus in the ADR Committee that the general public lacks awareness and knowledge regarding ADR. The ADR Committee believes that investing time and money in educating parents regarding these less costly alternatives to litigation now will ultimately reduce the number of family cases in the court system in the future.

Towards this end, the ADR Committee supports the revival of an earlier effort to educate the general public about ADR (Bell, 1999; Maryland Judiciary, 2014). This renewed campaign would make use of current technologies such as the internet and smart phone apps. The ADR Committee also suggests videos and informational materials be made available to the general public in courthouse waiting areas and on court websites to improve parent awareness of ADR approaches.

Additionally, the ADR Committee observes that the court system and all of its players must assume a leadership role in informing parents about ADR alternatives to litigation since many separating and divorcing parents head to court first. In particular, the ADR Committee suggests training court personnel, particularly masters and judges, to become advocates for all ADR options, but particularly mediation and collaborative law. The ADR Committee further proposes that each jurisdiction have a designated professional to provide information to pro se parties regarding ADR alternatives such as mediation, collaborative law, settlement conferences, facilitation sessions, and possibly Early Neutral Evaluation.

Family Court/Court Process

Several of the ADR Committee Members advanced the proposal that Maryland establish a Family Court. A work group was created within the ADR Committee to consider the viability of this concept. This work group came to understand that the current Family Divisions are intended to accomplish many of the same goals as a separate Family Court, at a fraction of the cost.

Statistics from the AOC were considered with regard to the current functioning of the existing Family Divisions under Maryland Rule 16-204[9]. Upon considering this data, the ADR Committee concludes that supervised visitation programs should be added to the list of required family support services in each of the existing Family Divisions.

The ADR Committee also believes that attendance at co-parenting classes should be increased, particularly since there is research suggesting that these classes help to reduce litigation in

[9] Available at http://www.marylandadrresearch.org/landscape.

family cases (Administrative Office of the Courts, 2014; Ellis & Anderson, 2003; Fackrell, Hawkins & Kay, 2011; Pollet & Lombreglia, 2008; Salem, Sandler & Wolchik, 2013; Sigal, Sandler, et. al., 2001). The ADR Committee proposes that parents be court-ordered to attend co-parenting classes prior to the scheduling conference. The ADR Committee also advocates that ADR approaches such as mediation, collaborative law, settlement conferences, facilitation and possibly Early Neutral Evaluation be presented as viable, court-sanctioned alternatives to litigation during the required co-parenting classes.

Parenting Plans

The Interim Report of the Commission references testimony at the public hearings concerning a perception that the court system is focused "only on the money" in family cases (Callahan, 2013). This perception seems to stem from the fact that, under Maryland Rule 9-202, the Court currently requires that a financial statement be filed with the initial pleading in family cases in which spousal support is requested, but does not seek any information beyond the pleadings relating to child custody and access.

The ADR Committee considered what other states have done with respect to parenting plans. Currently at least eight (8) states require that parties file parenting plans in all custody cases.[10] An additional five (5) states require parents to submit a written parenting plan before a court may order joint physical responsibility for a child.[11] A number of these states require that a parenting plan be filed with the initial pleading in family cases. Other states require the filing of a parenting plan, but do not specify that these plans be filed with the initial pleading. In addition, judges in a number of other states have the capacity to exercise discretion in requiring parties to file a parenting plan in family cases.[12]

With this national lens in mind, the ADR Committee considered whether Maryland should require parties in family cases to file parenting plans and, if so, at which stage of the litigation this requirement should be imposed. The majority of the members of the ADR Committee agree that instituting this requirement in Maryland would help keep the focus of court proceedings upon the needs of the child and would be consistent with the ADR Committee's overall philosophy that parents, rather than courts, are better able to make decisions about children's future.

The ADR Committee agrees that requiring parents to file a parenting plan with the initial pleading would risk polarizing parents, rather than encouraging them to work together to make decisions for their children's best interest. ADR Committee members are also concerned that requiring parents to submit a parenting plan at the onset of litigation could undermine any future use of ADR approaches to the issues in the case. For these reasons, the ADR Committee

[10] Ariz. Rev. Stat. Ann. §25-403.02; Fla. Stat. Ann. §61.06; Fla. Fam. L.R.P. Form 12.995(a); Ga. Code Ann. §19-9-1; Haw. Rev. Stat. §571-46.5; Mo. Ann. Stat. §452.310; Mont. Code Ann. §40-4-234(1); Tenn. Code Ann. § 36-6-404; Wash. Rev. Code Ann. §26.09.181(1).
[11] 750 Ill. Comp. Stat. 5/602.1; Mass. Gen. Laws Ch. 208, § 31; N.M. Stat. Ann §40-4-9.1(F); Ohio Rev. Code Ann. § 3109.04(G); Okla. Stat. tit.43, §109(C).
[12] *See* Cal. Fam. Code § 3040(a)(1); Kan. Stat. Ann. §23-3211; Nev. Rev. Stat. Ann. §125.520; N.J. Rev. Stat. §9.2-4(e); 23 Pa. Cons. Stat. §5331; D.C. Code Ann. §16-16-914).

would not support a requirement that parenting plans be filed with the initial pleadings or prior to any use of ADR.

The ADR Committee does, however, support a requirement that parents in family cases be required to file a general statement describing their children's existing custody and access arrangements together with the initial pleadings. The ADR Committee also endorses a requirement that parents who have demonstrated an inability to resolve their custody and access disputes through ADR be required to file parenting plans, possibly with the pretrial statement.

A majority of the members of the ADR Committee agree that, if Maryland implements a requirement that parties submit parenting plans in family cases, the AOC should provide materials to equip parents with the necessary tools. Some members of the ADR Committee are concerned that, by providing templates rather than lists of topics for parents to consider, some opportunity to personalize parenting plans to meet the needs of individual families could be lost. While remaining mindful of this concern, the majority of the ADR Committee members find the materials online in Arizona, Florida, and Missouri, in particular, to be good models for Maryland to consider.[13]

Domestic Violence

The ADR Committee devoted significant discussion to the current lack of mediation in cases where a history of domestic violence is reported by one or both of the parents. Members of the Domestic Violence work group on the ADR Committee (hereinafter, "the DV work group") attempted to collaborate with the members of the Domestic Violence Committee of the Commission (hereinafter, "the DV Committee") to agree upon criteria that would permit mediation in at least some of these cases. Various screening tools and models were reviewed by the DV work group.

The DV Committee offered that mediation might be permissible where: (1) both parties agreed to mediate despite the reported history of domestic violence and (2) both parties were represented by counsel. However, members of the DV work group felt it would be unjust to permit only victims of domestic violence who can afford to hire counsel to have access to mediation. There was some discussion in the DV work group regarding soliciting pro bono or student attorneys to provide representation to domestic violence victims who could not afford to retain counsel but still desired to mediate. However, the DV work group concluded that making a special effort to assure representation for domestic violence victims would be prejudicial to other family litigants who cannot afford to pay an attorney to represent them. As a result of these concerns, the DV work group was unable to accept the criteria proposed by the DV Committee.

<u>Conclusion</u>

[13] These materials may be found at www.azcourts.gov; http://www.azcourts.gov (Planning for Parenting Time); www.flacourts.org (Instructions for Florida Supreme Court Approved Parenting Plan) and www.courts.mo.gov (Parenting Plan Guidelines).

The following list is a summary of the recommendations of the majority of the members of the ADR Committee based upon discussions as a full Committee and in the four work groups:

- A formal system should be utilized by the AOC across the State of Maryland to track referrals to ADR and the results of these referrals.
- One person should be designated in each jurisdiction to manage data pertaining to referrals to ADR and the results of these referrals.
- A form detailing the use of ADR approaches should be required to be filed by parents prior to entry of the Final Order in family cases.
- A uniform model for referral to and case management of mediation should be utilized across the State of Maryland to the extent possible given the range in the sizes of the jurisdictions.
- Mediation should be required in family cases prior to trial unless a professional who is trained in domestic violence and mediation determines, through an in person interview, that a particular case is not appropriate for mediation.
- Parents should be required to demonstrate, at a minimum, a good faith effort to mediate "emergency" situations in family cases before the merits of these issues are considered by a judge or master.
- Standards for mediation training should be established and only staff or contractual mediators who have completed this training should be utilized for court-ordered mediations in family cases.
- Fees for mediation should be reasonable and should be assessed on a sliding scale basis with community mediation centers presented as an option.
- Fee waivers should be available for court-ordered mediations in those cases where the cost of mediation would otherwise be financially burdensome.
- The date for the required mediation in a family case should be established at the time of the scheduling conference.
- When parents agree to mediate future disputes, or the Court has included this requirement in a Final Order, parents should be required, at a minimum, to demonstrate a good faith effort to mediate before receiving hearing dates on a court calendar.
- The Maryland Rules should be revised to include reference to collaborative law as a form of ADR.
- Collaborative law should be referenced on all court forms that list ADR options, such as the Case Information Form.
- Collaborative law should be described on all educational materials provided by the Court to separating and divorcing parents.
- There should be status conferences at least every six months for all family cases in which a stay is entered to permit a collaborative law process.
- There should be more consistency in the manner in which settlement conferences and facilitation sessions are conducted across the State of Maryland.
- The AOC should consider implementing a pilot Early Neutral Evaluation program in family cases and assessing the effectiveness of this ADR approach formally from the onset.
- Settlement conferences, facilitation sessions and co-parenting classes should be utilized to educate parents about the benefits of ADR approaches.
- A media campaign using current technology, such as the internet and smartphone apps, should be undertaken to educate the public about ADR alternatives to litigation including, but not limited to, mediation, collaborative law, settlement conferences, facilitation sessions and possibly Early Neutral Evaluation.

• Court waiting areas and websites should be utilized to educate the public about ADR approaches through videos and informational brochures.
• Judges, masters and other court personnel should receive training that equips them to become advocates for the broader use of ADR, particularly mediation and collaborative law.
• Each jurisdiction should have a designated professional who provides information to pro se parties regarding ADR alternatives such as mediation, collaborative law, settlement conferences, facilitation sessions and possibly Early Neutral Evaluation.
• Supervised visitation should be added to the list of services that the Family Divisions are required to provide under Maryland Rule 16-204.
• Parents should be required to attend co-parenting classes prior to the scheduling conference in all family cases.
• At the onset of litigation, parents should be required to file a statement describing their children's existing custody and access arrangements.
• Maryland should require parents to file parenting plans after ADR has proved unsuccessful, possibly with the pretrial statement.
• The AOC website should provide educational materials to assist pro se parties with the drafting of parenting plans.

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MARYLAND GENERAL ASSEMBLY

COMMISSION ON CHILD CUSTODY DECISION-MAKING

APPENDIX F —
Domestic Violence Committee Report

DOMESTIC VIOLENCE COMMITTEE
Maryland Commission on Child Custody Decision Making
Executive Summary
August 28, 2014

The Domestic Violence Committee of the Maryland Commission on Child Custody Decision Making consisted of the following members:

Dorothy Lennig, Esq, chair
Honorable Cynthia Callahan, CCCDM chair
Honorable Shannon Avery
Todd Bennett, Esq
Kertisha Dixon, Esq
Magistrate Paul Eason
Senator Jennie Forehand
Walter Herbert, Jr., Esq
Ann Koshy, Esq
James Milko, Esq
Ann Potthast, Esq
Charvette Rush
Gwendolyn Tate, Esq
Ashley Ward, Esq
Jer Welter, Esq
Judith Wolfer, Esq
Jeanne Yeager

Gerald Loiacono, staff
David Shultie, staff
Adam Wheeler, staff

The Domestic Violence Committee agreed to divide into three subcommittees, each charged with addressing a particular issue arising from incidents of domestic violence and its effect in custody disputes. The three subcommittees were (1) Issues Related to Custody in Protective Order Cases, (2) Problems Domestic Violence Litigants Face in Circuit Court Custody Cases, and (3) Creation of an Expedited Custody Procedure in Matters Arising from Protective Order Proceedings.

The following is a brief summary of each subcommittee's report. The full subcommittee reports are attached. The full Committee reviewed and approved each subcommittee report.

Issues Related to Custody in Protective Order Cases

This subcommittee focused on issues related to child custody in protective order cases and looked at challenges faced by litigants seeking protective orders where custody is an issue. The subcommittee identified 7 challenges or problems and 7 potential solutions.

Challenges/problems

1. Lack of judicial education on the issues relevant to child custody decisions in protective order cases. This includes:
    a. District Court judges, in particular, need training about the factors related to the best interest of the child standard used for determining custody
    b. Understanding the traumatic impact on children who witness (sight, hearing or observing impact of) domestic violence.
    c. Understanding the dynamics of domestic violence including risk factors, why victims stay in abusive relationships, etc.
    d. Knowledge and understanding of lethality factor
    e. Knowledge and understanding about the impact of substance abuse and addiction on children

2. Judicial reluctance to address child custody in protective order proceedings. Some judges refuse to address custody at the protective order hearing as a matter of course and not based on the merits of the case. Such situations can result in chaotic consequences, including heightened tensions, the possibility of interaction and confrontation during time with the children, withholding of the minor children by one of the parties, etc.

3. Joint custody is almost never appropriate in a domestic violence case. Joint custody only works where the parties can safely work together to make decisions about the child. That is not the case when there is domestic violence in the relationship.

4. Protective order litigants face safety concerns throughout the protective order process. If victims of domestic violence are to view the courts as sources of relief and protection, the first challenge is to ensure victims feel, and are safe, within the courthouse.

5. Mediation is not appropriate in protective order cases. Effective mediation depends on a relatively equal balance of power between the parties and on the ability and willingness of each party to mediate. When one party has used violence and coercion against the other, there is a large disparity in power.

6. Unrepresented litigants, both petitioners and respondents, face severe challenges in protective order proceedings where child custody is an issue. Unrepresented litigants lack knowledge and understanding about the protective order statute, due process, their rights and remedies, and the factors judges use to determine child custody. Unrepresented respondents may be unaware of the consequences of testifying if they have a companion criminal case or if there are immigration issues. Unrepresented petitioners may not be successful advocates for themselves because they are responding to fear or manipulation by the respondent.

7. Most jurisdictions lack appropriate supervised visitation and monitored exchange center options.

Potential Solutions

1. Judicial Training Should be Mandatory and Ongoing
    a. Training about factors related to the best interest of the child standard
    b. Training about the traumatic impact on children who witness domestic violence
    c. Training about the dynamics of domestic violence
    d. Training to recognize the factors of lethality assessment, but NOT using as a threshold test for the granting of a protective order
    e. Training about the impact of substance abuse and addiction by parents on children

2. Judges should order all appropriate relief to protect the petitioner, including child custody.

3. Create gradual and safe ways to reintroduce children to an abusive parent in protective order litigation. Let judges know that it is appropriate to order:

    a. Counseling for children and the abusive parent (abuser intervention programs)
    b. Judges can and should provide for appropriate and safe third-party supervision
    c. Supervised exchange facilities
    d. Graduated access schedules for abusive parents

4. Add a section to the Maryland Rules for Domestic Violence and Protective Orders

5. Create a comprehensive, statewide resource listings/provide representation for pro se litigants

6. Develop ways to provide information about the protective order process to unrepresented litigants (e.g. Judges should develop a way to provide appropriate information to unrepresented litigants without providing legal advice, brochures, videos)

7. Consider a "Civil Gideon" Rule requiring counsel be available for low income parties in protective order proceedings where custody is an issue.

Problems Domestic Violence Litigants Face in Circuit Court Custody Cases

This subcommittee identified 5 issues faced by litigants in circuit court custody cases where there has been domestic violence.

1. Judges and court personnel need training on identifying domestic violence in family law cases. As family law cases are filed with the circuit court, they must be screened by trained, competent individuals to identify and address issues of domestic violence to

ensure that the litigants receive appropriate services. Judges must also be trained to identify domestic violence for the same reasons.

2. Domestic violence victims are inappropriately sent to mediation or facilitation. This subcommittee identified Maryland Rule 9-205 as indicating that mediation is inappropriate in domestic violence custody cases but recognized that some cases continue to be referred to mediation. The subcommittee recommended better training and improved screening to prevent the referrals.

3. Custody evaluators do not have a working understanding/knowledge of the dynamics of domestic violence. The subcommittee recommended that custody evaluators should have a minimum of 3 – 5 years of experience working in the field of domestic violence and/or education/continuing education or training on the subject as well as a requirement of 20 hours every two years of training on the subject of domestic violence.

4. Joint custody not appropriate in cases where there has been domestic violence. Even a single instance of domestic violence erodes the safety and trust necessary for parents to effectively and equally share decision-making and co-parenting authority. Where there has been repeated domestic violence, it is highly unlikely that safety and trust can ever be re-established between the parents.

5. Create a mechanism to incorporate a child's voice into the custody proceeding in a less onerous way than appointing a BIA. In some domestic violence custody cases, one or both of the litigants want the judge to hear from the child. This is particularly true when children have witnessed acts of domestic violence. In many of these cases, the litigant cannot afford to have a BIA appointed to express the child's concerns and opinions. Many judges are reluctant to speak directly to the children. This subcommittee created a list of questions for judges to use as appropriate, if they want to speak to the children.

Creation of an Expedited Custody procedure in Matters Arising from Protective Order Proceedings

By their nature, protective order hearings typically involve quickly scheduled and quickly conducted hearings which focus primarily on determining whether the respondent has committed an act of abuse and protecting the petitioner. While the court uses a best interest of the child standard to determine custody, the hearing does not have the breadth and scope of a circuit court custody hearing. Protective order litigants who want a more thorough custody hearing often have to wait 3 – 5 months to get a pendente lite custody hearing. During that period, the protective order custody award may become the longer term status quo.

The subcommittee recommends that an expedited procedural process be made available at the circuit court level within 30 days of filing. This remedy would be available to either party by filing the request within a 10 day period. Please see the subcommittee report for all of the specifics.

The Committee is ***in no way suggesting*** that Judges in Protective Order proceedings should refrain from making custody and visitation determinations in domestic violence proceedings on the grounds that another jurist may be more equipped to do so in a subsequent, expedited custody proceeding. First, this would assume that the parties to the Protective Order proceeding will actually avail themselves of the expedited custody procedure – which may well not actually be the case. Second and more importantly, this type of improper judicial abdication would only compound the types of concerns and issues discussed in the subcommittee's report. The expedited custody procedure recommended essentially provides for a procedural check regarding child custody determinations made in Protective Order proceedings, *as opposed to* a replacement for such determinations.

COMMISSION ON CHILD CUSTODY DECISION MAKING
DOMESTIC VIOLENCE COMMITTEE
ISSUES RELATED TO CUSTODY IN PROTECTIVE ORDER CASES

This subcommittee focused on problems and challenges faced by litigants in protective order cases where custody was an issue. The following report identifies these problems as well as suggests potential solutions. Where possible, the subcommittee has included testimony and anecdotal evidence to illustrate the problems presented. This subcommittee was chaired by The Honorable Shannon Avery. The subcommittee members were Kertisha Dixon, Ann Potthast, and Jeanne Yeager. Dorothy Lennig also participated with the subcommittee. A special thanks to Judge Avery's intern, Carisa Hatfield, who listened to all of the public testimony and compiled the anecdotal evidence.

PROBLEMS AND CHALLENGES LITIGANTS FACE IN PROTECTIVE ORDER CASES WHERE CUSTODY IS AN ISSUE

1. Lack of judicial education on the issues relevant to child custody decisions in protective order cases.

a. Currently, the standard for determining custody in Maryland is the best interest of the child. It is the recommendation of this Committee that Maryland should maintain its standard of seeking the best interest of the child for determining child custody. The subcommittee recognizes that many district court judges have not been trained about and therefore lack an understanding and knowledge of factors related to the best interest of the child standard for determining custody.

b. Many judges also lack an understanding of the traumatic impact on children who witness domestic violence even when the child has not him/herself been physically harmed. This includes children who see, hear, or sense the domestic violence.

(1) **Describing children who witness domestic violence, a child and family therapist from the House of Ruth testified**[1]: "These are children who have seen a parent beaten, choked, raped, stabbed, spit at, threatened, cursed at, belittled or humiliated by their other parent. They have seen guns and knives brandished. They have watched their protective parent cower in fear.

These children are confused and conflicted. They want a relationship with their parent, but seeing him or her reminds the child about how terrified they were when that parent beat, choked, raped, stabbed, spit at, threatened, cursed at, belittled or humiliated their protective parent.

These children are understandably fearful of the abusive parent, and have adopted a variety of ways to stay safe. They may also be struggling with PTSD that may

[1] The Commission on Child Custody Decision Making held public hearings on October 10, 2013; November 7, 2013; November 14, 2013; November 21, 2013; and December 11, 2013.

interfere with their ability to function in school or report accurately when questioned by a stranger about abuse allegations. These children are already at risk of a whole range of negative consequences simply because they were exposed to domestic violence.

...They deserve a court system that treats them as individuals, that works to provide them with a healing environment, and protects them from abuse and manipulation." –**Elizabeth Gordon, Child and Family Therapist, House of Ruth Maryland**; December 11, 2013, Prince George's County public hearing

(2) "A large and growing body of scientific research indicates that during childhood, when the brain is still developing fundamental systems and pathways, trauma such as domestic violence actually alters the physical structure of a young child's brain, retarding the ability to develop many essential skills such as the ability to concentrate and to reason." –**Court Watch Montgomery**[2], page 6 (citing Whitfield, C., R.F. Anda et al. Violent Childhood Experiences and the risk of intimate partner violence in adults; assessment in a large health maintenance organization. *Journal of Interpersonal Violence*. 18(2): 166-185. 2003.

c. A lack of judicial understanding and knowledge about the dynamics of domestic violence (risk factors, why victims stay, etc.)

From a court monitor's notes of a protective order proceeding in Montgomery County: "The petitioner cited past abuse to explain why she feared and believed her partner's current threats. The judge denied the request, saying 'you stayed.'" – **Court Watch Montgomery**, page 41.

d. A lack of judicial understanding and knowledge about lethality factors

e. A lack of judicial understanding and knowledge about the impact of substance abuse and addiction on children

In a Montgomery County case, "The husband had terrorized the family with his drinking and violence. The petitioner told the judge she had to lock the kids in at night for fear of what her husband might do. At one point the 4 and 8 year old drank from a water bottle the respondent had filled with alcohol. The judge granted her order for no contact with her, and ordered the respondent to offender and alcohol counseling but set no hearings to check compliance. The judge then announced he was ordering 'reasonable visitation that is mutually agreeable to both the petitioner and respondent.'" –**Court Watch Montgomery**, page 26

2. Judicial reluctance to address child custody in protective order proceedings.

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[2] Duker, Laurie and Judy Whiton. Circuit Court Protective Order Practices in Domestic Violence Cases: In the Best Interest of the Child? Published by Court Watch Montgomery, May 2014.

a. Some judges refuse to address custody at the protective order hearing as a matter of course and not based on the merits of the case. Judicial reluctance to address custody in protective order proceedings can lead to an unsafe situation for the petitioner and the petitioner's children. The Committee felt strongly that judges should, when appropriate, address custody in each and every protective order case.

> Judge Clyburn sent a letter to all District Court judges citing this as a problem identified by domestic violence advocates. "Judges who state that they never order custody, visitation, emergency family maintenance, or a vacate and tell the petitioner the s/he has to go to circuit court for that kind of relief. This sometimes occurs even when both parties agree to include the relief as part of a consent order. …I believe Katsenelenbogen states that the court must order all of the relief that is necessary."
>
> Describing this issue at the public hearings, "[m]y client was not married to the Respondent, but the two shared a minor child and had lived together for at least 90 days within the last year. I had a judge issue a Final Protective Order (PO) in favor of my client, ordering the respondent not to abuse, threaten to abuse, or harass her.
>
> The judge found by clear and convincing evidence that the Respondent had violated the PO statute by placing my client in fear of serious imminent harm. However, the judge refused to address custody of the parties' small child, relief requested in my client's petition for a PO. I explained on the record that not addressing custody was placing the Petitioner in danger because there was a chance the Respondent could take the child and not return the child to the Petitioner, with whom the child had been residing. Despite refusing to address custody, the judge tried to force my client to create an "access schedule," aka visitation schedule, within the Protective Order. Luckily the Respondent was upset about losing the PO and told the judge he didn't want any access to the child. However, had the Respondent wanted access to the child, he could have taken the child and not returned the child because there would have been no order in place regarding who had custody of the child." –**Kertisha Dixon, Staff Attorney, House of Ruth Maryland**[3]

3. Some judges are inclined to award joint custody in protective order cases but joint custody is almost never appropriate in a domestic violence case.

a. Joint custody is inappropriate in domestic violence cases. Joint custody only works where the parties can safely work together to make decisions about the child. That is not the case in domestic violence cases. Successful joint custody presumes that parents have the ability to work together cooperatively and have equal negotiating power in the relationship. The opposite is true in cases involving domestic violence. Joint custody orders allow physical abuse and emotional intimidation to continue by forcing victims to

[3] Unless followed by a public hearing date, anecdotes appearing in this report were provided by members of the Subcommittee on Issues Related to Custody in Protective Order Cases from their work for this report.

negotiate and compromise with their batterers. Many batterers will use joint custody, not as a way to co-parent, but as a way to gain continued and ongoing access to the victim. Batterers use this order of joint custody as a way to continue to control and dominate their victims. These are the very reasons the victim sought to end the relationship. Joint custody orders place victims in danger of further violence, burden the courts with post-judgment proceedings, and can cause mental harm to children who witness abuse. When there is a finding of abuse the approach to custody should not emphasize a co-parenting model, but rather a boundary-setting and accountability approach.

> **Describing custodial proceedings allowing abusers continued access to their victims, "**Victims of domestic violence being awarded joint custody with their abusers in a protective order…allows abusers to continue to have significant access to their victim. Research shows that a victim of domestic violence is in the most danger immediately after leaving an abusive relationship. Therefore, this would result in many situations where an abuser would have increased access to a victim right at the moment when the violent relationship becomes the most lethal." –**Britt Harlow, Staff Attorney, House of Ruth Maryland**; given on November 14, 2013 at Baltimore City public hearing
>
> **Describing problems with a presumption of joint custody**: "…due to the fact that protective order cases usually reach a final hearing within a week of a victim filing for the order, there is very limited time for a victim of domestic violence to seek assistance of an attorney before the final hearing, resulting in the majority of protective order cases going forward with unrepresented parties. I think the reality is that most litigants can't afford an attorney. Many judges will grant a postponement if the respondent wants to get an attorney but I don't think that happens in most cases.
>
> A presumption of joint custody would present many problems in the protective order arena. Most unrepresented victims will have no knowledge of the existence of a presumption of joint custody, much less what testimony or evidence they may need to present at trial to overcome the presumption. Of course, ignorance of the law is not an excuse, but it is a reality. Additionally, given the nature of protective order cases, a victim of domestic violence may not feel safe disclosing the full extent of the violence toward them and the impact on the children which is relevant to overcoming such a presumption." –**Britt Harlow, Staff Attorney, House of Ruth Maryland**; given on November 14, 2013 at Baltimore City

4. **Protective order litigants face safety concerns in the Commissioner's Office, District Court, and Circuit Court when filing for a protective order, appearing in court for the protective order hearing, and waiting to receive a copy of their protective order.**

> According to the Montgomery County Court Watch, "(i)f victims of domestic violence are to view the courts as sources of relief and protection, the first challenge is to ensure victims feel, and are safe, within the courthouse. The court process needs to ensure victims are safe before their hearings start, during the

hearings, and as they leave the courthouse. Right now, this is not always the case. Court Watch Montgomery identified six points that create potentially threatening situations for victims: (1)When a victim must wait for the courtroom to open without bailiff protection in the hallway; (2)When a judge directs the victim to go out into the hall and discuss some aspect of her order with her abuser; (3)When a victim tells the judge she wants to drop her order - since she may be doing so as a result of coercion, fear, or lack of understanding about her legal options; (4)When a judge sends intimate partners to the Alternative Dispute Resolution Program, which is considered by the Maryland Administrative Office of the Courts, Family Division to be inappropriate if one party has physically harmed the other; (5)When a victim must wait for copies of protective or peace orders in or near the clerk's office without bailiff protection; and (6)When an abuser is allowed to leave the courtroom and courthouse at the same time as the victim." **Montgomery Court Watch**, page 17

5. **Mediation is not appropriate in protective order cases.** Effective mediation depends on a relatively equal balance of power between the parties and on the ability and willingness of each party to mediate. When one party has used violence and coercion against the other, there is a large disparity in power. Furthermore, fear of abuse diminishes the victim's ability to adequately represent her/his own interests.

6. **Unrepresented litigants, both petitioners and respondents, face severe challenges in protective order proceedings where child custody is an issue.**

a. Unrepresented litigants lack knowledge and understanding about the protective order statute, due process, their rights and remedies. These are serious cases with serious consequences.
b. A lack of knowledge and understanding about the factors judges use to determine child custody
c. Litigants may not be aware of the consequences of testifying in a protective order case if there is a companion criminal case.
d. Respondents may not be aware of the benefit of consenting to the entry of a protective order under certain circumstances.
e. Unrepresented litigants are not properly advised of the immigration consequences resulting from protective orders.
f. A petitioner may not be aware of all of the remedies available to help protect her/him such as emergency family maintenance or many of the stay away provisions.
g. Victims of abuse appear in court for a protective order hearing without counsel, the abusive dynamic may prevent the victim from effectively advocating for her/himself and he/his children. S/he may respond to fear, the tactics of manipulation by the abuser, and/or sympathy for the abuser.

7. **Most jurisdictions lack appropriate supervised visitation and monitored exchange center options**

"Our clients are very afraid of what the respondent will say or do with the children during a visitation required in a protective order. Clients have described children accusing them of 'breaking up the family' after they have had visitation." **Jeanne Yeager, Executive Director, Mid-Shore Council on Family Violence**

"When the victim is ordered to allow unsupervised visits and feels the situation is unsafe, she often faces enormous pressure to return to the offender so that she can better protect her children by watching the offender's interactions with the children and attempting to diffuse incidents." –**Montgomery Court Watch**, p. 25

"Judges have virtually nowhere they can refer families for affordable supervised visits unless the parties have already been involved in lengthy custody proceedings." –**Montgomery Court Watch**, page 32

"Visitation with a violent father—whether or not he has directly abused the children—creates a long list of significant risks to children. Visitation arrangements sometimes provide opportunities for an abuser to renew threats or attempt to maintain power and control over both the victim and the children." – **Montgomery Court Watch**, page 21 (citing Jaffe, Peter and Nancy Lemon, Samantha Poisson. Child custody and domestic violence: A call for safety and accountability. Sage Publications 2003)

a. In many protective order cases, neither party can identify an appropriate third party supervisor for visitation.

Describing an appropriate analysis of the selection of appropriate third party supervisors: "I represented a mother in a protective order case where the respondent made threats to himself and had threatened and assaulted the mother. The parties have three young children (4, 6 and 10). At the final hearing, the judge allowed both parties to testify at length about custody and visitation issues. The respondent had an opportunity to tell the judge about doctors and therapists he was seeing on a regular basis. The respondent's sister testified about her observations of the respondent interacting with the children and commented on his daily progress. The judge issued limited contact between the parties (only in reference to the children) and put in place a graduated access schedule for the respondent, with his sister helping to facilitate the visits. Such a detailed order that does not force the parties to have extensive contact and that implements a specific access schedule is exactly the type of analysis needed in custody determinations, especially when domestic violence victims are involved." –**Shaoli Sarkar, Managing Attorney, House of Ruth Maryland**; given November 14, 2013 at Baltimore City public hearing

b. There is a lack of appropriate monitored exchange programs in Maryland

"Judges arrange transfers by third parties, usually relatives, about half the time and slightly less than half the time ordered parents to directly exchange the

children in public places such as police stations, fast food restaurants and more. Yet numerous petitioners described unwanted confrontations with offenders in parking lots before they reached the relative safety or the restaurant or other facility." –**Montgomery Court Watch**, page 31]

POTENTIAL SOLUTIONS FOR CHALLENGES AND PROBLEMS FACED BY LITIGANTS IN PROTECTIVE ORDER CASES WHERE CUSTODY IS AN ISSUE

1. Judicial Training Should be Mandatory and Ongoing

a. Training about factors related to the best interest of the child standard
b) Training about the traumatic impact on children who witness domestic violence
c) Training about the dynamics of domestic violence
d) Training to recognize the factors of lethality assessment, but NOT using as a threshold test for the granting of a protective order
e) Training about the impact of substance abuse and addiction by parents on children

2. Judges should order all appropriate relief to protect the petitioner, including child custody.

"About two weeks ago, I appeared before a Circuit Court judge who insisted the parties maintain joint legal custody which would mean the parties would have to communicate, despite the fact that there was a PO in place. Obviously, forcing a Petitioner to communicate with a person he/she has a domestic violence PO against is problematic on many levels. In the majority of my cases, where the parties are not married, but have children, I have to fight really hard to explain to a judge why it's not a good idea for the parties to share joint legal custody of a child or children, unless there are clear limitations on how the parties will communicate, or if one parent will have tie-breaking authority. Most judges are fierce advocates for the presumption that parties share joint legal custody under the law, if no custody order exists. This is a recurring problem." –**Kertisha Dixon, Staff Attorney, House of Ruth Maryland**

3. Create gradual and safe ways to reintroduce children to an abusive parent in protective order litigation. Let judges know that it is appropriate to order:

a. Counseling for children and abusive parent (abuser intervention programs)
b. Supervised visitation
c. Supervised visitation facilities
d. Judges can and should provide for appropriate and safe third-party supervision
e. Graduated access schedules for abusive parents

Describing the use of a graduated access schedule by the judiciary, a managing attorney at House of Ruth testified: "I recently represented another client in a protective order case against the father of the parties' two children. The

House of Ruth had previously helped the mother obtain a final protective order against the same respondent three years ago. During the most recent incident of abuse, the children had witnessed the father punch and choke the mother. At the final protective order hearing, the judge heard from the parties, the attorneys, and a child protective services worker. The judge issued supervised visitation to the respondent for part of the order and set in another hearing a few weeks later to reassess the access schedule. The judge also ordered the children into counseling. At the second hearing, the judge received updated information from the social worker and the parties and modified the visitation to grant the respondent more time with the children. The judge took time to carefully consider the progress of the parties and the children in the weeks following the domestic violence incident and used the information to craft a custody and visitation schedule that granted safe, graduated access. If the judge had used the joint custody presumption, she may not have given this case the time and analysis needed." –**Shaoli Sarkar, Managing Attorney, House of Ruth Maryland;** November 14, 2013, Baltimore City public hearing

4. **Add a section to the Maryland Rules for Domestic Violence and Protective Orders**

5. **Create a comprehensive, statewide resource listings/provide representation for pro se litigants**

6. **Develop ways to provide information about the protective order process to unrepresented litigants**

    a. Create a brochure describing the scope of a protective order case including that the custody and emergency family maintenance provisions end when the order ends.
    b. Create a video describing the scope of a protective order, relief available, helpful evidence, etc.
    c. Judges should develop ways to provide appropriate information to unrepresented litigants without providing legal advice.

7. **Consider a "Civil Gideon" Rule requiring counsel be available for low income parties in protective order proceedings where custody is an issue.**

    ABA policy urges federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low income persons in certain adversarial proceedings where basic human needs are at stake, including safety and child custody. **ABA House of Delegates, 2006, Annual Meeting, Resol. 112A**[4]

[4] Quoted by Babb, Barbara and Gloria Danzinger. Families Matter: Recommendations to Improve Outcomes for Children and Families in Court. June 2014

COMMISSION ON CHILD CUSTODY DECISION MAKING
DOMESTIC VIOLENCE COMMITTEE

PROBLEMS DOMESTIC VIOLENCE LITIGANTS FACE IN CIRCUIT COURT CUSTODY CASES

This subcommittee focused on problems litigants face in circuit court custody cases when domestic violence is an issue. The subcommittee was chaired by Magistrate Paul Eason. The subcommittee members were Walter A. Herbert, Jr., Ashley Ward, Charvette Rush and Patricia E. Gindlesberger.

1. **Judges and court personnel need training on identifying domestic violence.**

Domestic violence is unfortunately an endemic and pervasive problem in our society. When petitioners/victims turn to our Courts for protection, the vast majority file their Petitions for Relief from Domestic Violence in the District Court or during times when the Courthouse is not open, with the Commissioner. Of the 18,977 Final Protective Orders entered in Maryland Courts in 2013, 15,574 were entered by the District Court in comparison with 3,403 by our Circuit Courts! Clearly, for many reasons not germane to this subcommittee's charge, the District Court is the overwhelming venue of choice for D.V. Petitioners. But as domestic violence involves Circuit Court Custody cases, it is self-evident that additional training in the detection of domestic violence involving parents and especially children is paramount.

When a garden variety "Family Law" Complaint for Divorce requesting custody/access or a Complaint for Custody is filed in our Circuit Courts; that Court's specific Differentiated Case Management (DCM) protocols will dictate the time standards and procedures that will be utilized throughout the litigation. As a general rule though, we have one year from the filing of the Complaint to try the matter and "close the case for statistical purposes." With that said, in some jurisdictions, cases involving allegations of domestic violence are not screened prior to a Scheduling Conference. Ergo, if the case is taken by default, there is no Scheduling Conference and the matter is placed on the "uncontested docket." Some jurisdictions screen the pleadings upon the filing of a Complaint specifically looking for credible allegations of domestic violence and child abuse, so in the event that no Answer is filed and no Scheduling Conference is set, appropriate services can be directed to the petitioner and children.

Prince George's County (where this Magistrate is employed) has started a Pilot Program where all Family Law cases filed by Self Represented Litigants are set in for a Status Conference upon the *filing of the Complaint.* This Pilot Program was specifically developed to address the phenomena that in Prince George's County over 90% of all Family Law cases had NO lawyer or only one lawyer! As a result, many *pro se* Complaints filed were left languishing due to lack of service or insufficient service or a failure to seek an Order of Default. As a consequence, by the time cases became "at issue" there was insufficient time to provide services before the expiration of the time standards.

Accordingly, it is the recommendation of this subcommittee that all cases requesting a custody award be screened by trained, competent individuals upon the filing of the Complaint so as to identify and address allegations of domestic violence, and that preferably all custody cases involving allegations of domestic violence be set in for a Status/ Scheduling Conference where professional clinicians can be involved upfront.

2. **Domestic Violence victims inappropriately sent to mediation or facilitation.**

Maryland Rule 9-205 requires the court to determine whether, "mediation of the dispute as to custody or visitation is appropriate and likely would be beneficial to the parties or the child;" The Rule goes on to state that, "[i]f a party or a child represents to the court in good faith that there is a genuine issue of abuse, as defined in Code, Family Law Article, Sec.4-501 , of the party or child, and that, as a result, mediation would be inappropriate, the court *may* not order mediation." (Emphasis added.)

This concern was discussed extensively by the Committee as a whole and to the extent that litigants with a history of domestic violence are being inappropriately referred to child custody mediation, additional safeguards should be developed consisting of better training and improved screening tools to prevent it. Of particular concern was forcing victims to relive their trauma as a part of a screening process or during the mediation itself. Also of note is the phenomenon of victims being hesitant or fearful of disclosing incidents of domestic violence, or not identifying themselves as "victims" of domestic violence. Even more alarming, are lawyers who advise their clients not to express any fear of the perpetrator, because that will potentially result in a mandatory screening and larger fees arising from having to spend more time in the Courthouse. Finally, in addition to screening for "violence" clinicians should also be on the lookout for evidence of domination and control. In this regard, many abusers express a willingness to mediate precisely because it affords them new opportunities to control and dominate the victim. All of the above demonstrate the need for early screening, by professionals and ongoing training into the dynamics of domestic violence for Masters/Magistrates, Judges and staff.

In the Prince George's County Circuit Court, we have multiple layers of screening to ensure the cases which are referred to mediation are appropriate. This being said, as part of the Scheduling Conferences, parties are given a Mediation Intake Form which has five screening questions which is designed to flag cases where there is history of domestic violence, child abuse, criminal charges against the other party, substance abuse or intimidation. **Here are the questions / statements:**

- Within the past five years have there been domestic violence issues between the parties in this case that were filed with the court and/or resulted in a protective order?
- I am intimidated or fearful of the other party due to past or current physical or emotional abuse, and I feel this would affect my ability to mediate with the other party in this case.
- There have been allegations of child abuse or neglect, and/or Child Protective Services has been involved with the children in this case.

- There are or have been criminal proceedings between the parties in this case.
- There are or have been drug/alcohol issues with any party in this case.

If either party answers "yes" to any of these questions they are brought to the Family Support Services Unit where they are further screened/ interviewed individually for appropriateness for mediation. The screenings are completed in person by a seasoned clinician i.e. Master's level clinicians, one of which is our Court Mediator and two are our DV Clinicians. It is not uncommon for a party to indicate they are comfortable with mediation but exhibit body language which appears to be incongruent. When this occurs, the clinician will determine that the case is inappropriate for mediation, thereby relieving the "intimidated" party of "vetoing" the mediation without going into great detail and placing the intimidated party at risk. It is well documented that one of many times which are high risk for a victim of domestic violence is when they are trying to leave the relationship and during the custody process. Additionally, in the off chance that a case does make it through screening and is not flagged or parties are not sent FSS for screening as none of the five triage questions are answered in the positive, our Court Mediator will review the court jacket for anything which would render a case inappropriate for mediation and will follow up with a possible telephone screening to determine if mediation is appropriate. Finally, several years ago, the Maryland Judiciary developed an in- person screening tool to be used by mediators to further screen for domestic violence which provides for additional screening

3. **Custody Evaluators do not have a working understanding/knowledge of the dynamics of domestic violence.**

As part of developing a standard of qualifications for custody evaluators throughout the State of Maryland, there should be a minimum requirement of three to five years of experience working in the field of domestic violence and/or education/continuing education or training on the subject as part of the hiring process, as well as a requirement of 20 hours every two years (which is the licensing period for Social Workers in the State of Maryland) of training on the subject of domestic violence. The Maryland Judiciary should provide training every year on domestic violence specifically as it relates to custody, as the potential for risk is very high and many opportunities present themselves naturally throughout the custody process. This training would not only cover new staff hired it would also provide the ongoing training for Custody Evaluators, Magistrates, and Judges required by the State of Maryland.

4. **Joint Custody is not appropriate in cases of domestic violence or intimation.**

Where there has been domestic violence in a family, the Committee finds that an order of joint custody is almost never in the best interests of a child. Even a single instance of domestic violence erodes the safety and trust necessary for parents to effectively and equally share decision-making and co-parenting authority. Where there has been repeated domestic violence, it is highly unlikely that safety and trust can ever be re-established between the parents. The non-violent parent will always be forced to weigh

the possibility that any disagreement with the violent parent might become the catalyst for a violent incident.

Because of this finding, the Committee strongly opposes any presumption of joint custody in domestic violence cases. Instead, the Committee recommends that, in cases where the court has found that domestic violence has occurred between the parties, there be a presumption against an award of joint custody unless the court makes specific factual findings that overcome the presumption against joint custody.

The Committee recommends the addition of the following language to the Family Law Article:

§ 9-101.1.

(d) In a custody or visitation proceeding, if the court finds that a party has committed abuse against the other parent, the court shall deny a request for joint physical or legal custody unless the court makes specific factual findings on the record why an award of joint physical or legal custody is in the best interests of the minor child and why a joint custody arrangement will not endanger the non-violent parent.

5. **Create a mechanism to incorporate a child's view that is less onerous than appointing a BIA.**

In some domestic violence custody cases, one or both of the litigants want the judge to hear from the child. This is particularly true when children have witnessed acts of domestic violence. In many of these cases, the litigant cannot afford to have a BIA appointed to express the child's concerns and opinions. Many judges are reluctant to speak directly to the children. This subcommittee believes that a careful examination of the facts is critical to a custody decision, including, where appropriate, an in camera interview with a minor child.

An in camera interview should take place after the close of testimony; each party's case in chief may resolve the matter without the need to interview the child. It should be obvious that the Court's approach will depend upon the child's age and maturity. Care should also be taken to ascertain the child's "status:" is the child presented as a purported victim of the violence or as an "occurrence witness?" Additional examination of a youthful victim of violence may result in additional emotional trauma and requires extreme sensitivity; the Court should not hesitate to use its authority to avail itself of further professional/mental health assistance. This subcommittee created a list of questions for judges to use as appropriate, if they want to speak to the children.

A child must be placed at ease early in the meeting and ground rules established.

"Do you know why you are here today?"

"Who told you that you were coming to court today? Did they talk about what you should tell me?"

"If I ask you a question and you don't know the answer, just say "I don't know."

"If I ask you a question and you don't understand, just say 'I don't understand,' and I will ask you in a different way."

"I don't know what happened and I need you to tell me."

The court must determine the ability of a child to distinguish between truth and game-playing. Children under ten (10) years, in particular, do not perceive reality as would older children and teens.

"It's important that you tell me the truth. Do you know the difference between telling the truth and telling a lie? (holding a red pen) If I said this pen was green would I be telling the truth?"

Although it is difficult to un-learn the rapid fire question and answer techniques of trial practice, in fact children are often more forthcoming when presented the opportunity to respond with a narrative. During this phase questions that encourage a simple Yes/No response are to be avoided.

"Tell me about things that you like."

At some point the Court will direct the interview to the allegations raised in prior testimony.

"I heard that you saw (blank)…tell me what you saw?"

"What happened next?" or "Tell me more."

"How did you feel about that?"

The Court should be alert to brainwashing/programming by either party. Evidence of such conduct may be a child providing an adult response to the Court's inquiries, indicating memorization, or responses that closely track the prior testimony of a party.

REPORT
THE DOMESTIC VIOLENCE COMMITTEE
Subcommittee for the Creation of an Expedited Custody Procedure
In Matters Arising From Protective Order Proceedings

Explanatory Comments

For purposes of the instant Report, the term "Commission" refers to the Maryland Commission on Child Custody Decision Making, The Honorable Cynthia Callahan, Chair. The term "Committee" refers to The Domestic Violence Committee, Dorothy Lennig, Chair, of the aforementioned Commission. Unless otherwise indicated, the terms "domestic violence proceeding", "Protective Order action", and various iterations thereof refers to Petitions and litigation filed under Article 4-501 *et seq.* of the Maryland Family Law Code.

I. ISSUES FOR CONSIDERATION

During public hearings before the Commission in late 2013, various witnesses testified regarding alleged misuse of Maryland's civil domestic violence laws for purposes relating to custody. More specifically, various witnesses asserted that petitioners misuse civil Protective Order actions as a type of 'first-strike' in custody disputes. While various factual iterations on this subject were advanced at the Commission hearings, the central theme of the complaints focused on the following, generic allegation: *Petitioner makes allegations (false or otherwise) in a domestic violence proceeding and obtains a one-year Final Protective Order awarding sole custody (among other relief) to Petitioner, with limited or curtailed rights of visitation/access by Respondent. At some point thereafter, custody litigation commences between the parties in a Circuit Court domestic relations case. However, by the time any custody trial occurs, the Petitioner in the prior domestic violence proceeding has been greatly advantaged, and the Respondent has been seriously prejudiced, by the significant length of time that the Petitioner has exercised sole custody under the Final Protective Order (and, relatedly, by the length of time that the Respondent's access rights have been curtailed).*

The Committee did not attempt to determine what amount, if any, of Protective Order petitions filed in Maryland are either untruthful or utilized in an attempt to gain a 'leg up' in related custody/visitation litigation. Such an analysis is not feasible or even possible. However, the Committee recognizes that such tactics have probably occurred in domestic violence cases. Certainly, not all litigants are truthful, and some misuse the legal system. History demonstrates that abuse of process and wrong outcomes can occur in virtually any type of legal proceeding – be it criminal, civil, family, or other litigation. Domestic Violence litigation is not insulated from such problems. It would be naïve to conclude that no Petitioner has ever spuriously used the Domestic Violence statute for an ulterior purpose.

That said, the Committee also recognizes that domestic violence is a serious problem in Maryland and throughout the United States. The civil Domestic Violence statute has been of great import in affording protection to victims of abuse and domestic violence – men, women, and children included – throughout Maryland since its inception some twenty years ago. The Committee does not recommend or believe that it would be appropriate to in any way limit the scope or remedies afforded under Section 4-501 *et seq.* of the Maryland Family Law Article.

As the Committee came to this initial determination, discussion began to focus upon what the Committee believes to be a central issue: By their nature, protective order proceedings typically involve quickly scheduled and quickly conducted hearings at which the primary focus of the Court is whether the Respondent committed an act(s) that gives cause for relief under the statute. Litigants have very little time to prepare either their case-in-chief or defense regarding the alleged abuse issue, let alone a carefully thought-out custody or visitation presentation. Much of this litigation takes place at the District Court level[1] in crowded courtrooms before Judges who may not have the same level of family law training as their Circuit Court counterparts.

In any event, custody/visitation issues tend not to be the central focus of the Protective Order proceeding. Typically, there is no in-depth 'best interests' hearing at which each party has opportunity to present witnesses and evidence regarding the specific arrangement that would be optimal for the minor child. Instead, the custody/visitation component of the Final Protective Order is more of a 'Band-Aid' that is issued ancillary to the central focus of the proceeding.[2] Moreover, due to the fact that a Respondent's removal from the family home as part of a Protective Order is often sudden (and unplanned by the parties at the time of the proceeding), the exact circumstances upon which a child custody schedule might be implemented may not even be known at the time of the Final Protective Order hearing.

This above-referenced situation might not be problematic if Protective Order litigants who desired a more thorough custody/visitation best-interests examination had quick access to a *pendente lite* hearing in a family law proceeding. However, family law practitioners almost universally report that the path to a *pendente lite* custody hearing in many jurisdictions is not a quick one. Despite the aspirations of various domestic case management plans, in many Maryland jurisdictions as many as 3-5 months can elapse between the filing of a case and the

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[1] Per data collected by _____, 15,574 of the 18,977 total Final Protective Order hearings in Maryland in 2013 occurred in the District Court

[2] In making this statement, the Committee in no way suggests that District and Circuit Court judges are unconcerned with a child's 'best interests' in fashioning a Protective Order custody/visitation award. Instead, the Committee simply observes that the nature of the custody/visitation inquiry at a domestic violence proceeding differs in scope and breath from the examination that may occur in a Circuit Court family law *pendente* lite proceeding.

conducting of a *pendente lite* hearing. During that period, the custody award in the Protective Order case becomes more of a long-term status quo than a 'Band-Aid'. The Committee acknowledges that this situation can become prejudicial to one or both of the parties.

Thus, a main point of inquiry for the Committee was identified: In appropriate circumstances, can the time period between (1) a Final Protective Order containing an award of custody/visitation, and (2) a *pendente lite* custody/visitation hearing in a Circuit Court family law case, be shortened?

During the course of this examination, Committee members identified other, related problems that members believe -- based upon their own practice experience -- occur with some frequency in domestic violence proceedings, including the following:

- In some Protective Order cases, after the final evidentiary hearing, the Court issues a Final Protective Order that includes the removal of the Respondent from the family home and/or the issuance of 'no contact' provisions. However, despite that the parties have minor children in common, the Court declines to make any award of custody/visitation at all. [Sometimes, this is done under the premise that this issue can be addressed, if necessary, by the parties in a Circuit Court custody proceeding, or can be otherwise determined by the parties.] Unfortunately, the absence of any protocols for child access in the 'no contact' Protective Order leads to potential, unintended consequences, including: unintended interactions between the parties related to the children's schedules, heightened tensions and conflict between the parties, withholding of the children by one or both of the parties, etc.; and

- Similarly, in other scenarios, after the final evidentiary hearing, the Court issues a Final Protective Order that includes the removal of the Respondent from the family home and/or the issuance of 'no contact' provisions. However, the Court simply orders that custody "shall remain joint" (again leaving the parties to determine the exact protocols either between themselves or through domestic relations litigation). This scenario can lead to the same, chaotic consequences outlined in the preceding scenario.

To the extent that the issues identified in this Section are occurring in the context of Maryland Protective Order cases, there is a dearth of empirical data available to determine the frequency or extent of such occurrences. The question of whether these issues are a widespread problem in Maryland domestic violence litigation, or in the alternative, whether they are simply isolated occurrences -- or, for that matter, whether they fall on a spectrum somewhere between those two

extremes -- is not easily answerable. The Committee is aware of no statistical data that is maintained that would enable empirical examination of the issue.

What *is* clear from the available statistical data is that custody and visitation issues are in fact a common component of domestic violence litigation in Maryland.[3] For example, in the calendar year 2013, the Circuit and District Courts of Maryland granted 7,357 Final Protective Orders.[4] In 2,596 of these Orders, the Court granted an award of custody. Thus, more than one in three Final Protective Orders issued in Maryland in 2013 included an award of custody.[5] Of further note, approximately 73% of these 'custody' Orders were issued by the District Court (which, of course, does not have jurisdiction over custody issues in normal domestic relations litigation).

The significance of these figures should not be overstated, as the numbers do not tell the whole story. For example, there is no data to indicate how many of the proceedings were resolved via consent of the parties, as opposed to a judicial determination rendered after the taking of testimony and evidence. Furthermore, there is no data by which to ascertain things such as whether custody in any of these particular cases was truly in dispute; whether both parties appeared for the Final Protective Order hearing; or whether the alleged victim in these cases was actually the child himself/herself. Additionally, of the judicially rendered Protective Orders that contained awards of custody/visitation, there is no follow-up data that sheds light on their aftermath – including how many of such cases involved situations in which the same parties and children later became involved in Circuit Court family law (custody and visitation) cases.

Presumably, some or even many of the litigants in the Protective Order cases referenced above never became involved in further custody litigation at the Circuit Court level.[6] In many circumstances, after the resolution of the Protective Order case, the parties simply 'walk away' without any further contact with the system. Moreover, of the Protective Order cases whereby there is future custody litigation involving the same parties and children, surely many of these situations involve circumstances in which the resolution of the custody/visitation issues at the Protective Order level was without any real dispute in that it was (1) entirely

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[3] The following figures are taken from _____.

[4] Six-thousand and ninety-three (6,093) or 82.8% of the total number of Final Protective Orders were issued by the District Court; the other 1,264 or 17.2% were issued by the Circuit Court.

[5] Approximately 60% -- or 1,490 – of the Final Protective Orders also contained some award of visitation.

[6] Although, to play devil's advocate, that does not necessarily mean that the litigants were satisfied with the custody/visitation determinations in their Protective Order cases, and that they would not have availed themselves to the procedures recommended below in this Report if said procedures had been available.

appropriate given the testimony and evidence, and/or (2) otherwise satisfactory to both parents.

However, taken at its most basic face value, the available data *does* reveal that custody and visitation relief is a common component of domestic violence litigation in Maryland. Thus, there is certainly an actual procedural and litigation context in which the anecdotal complaints heard by the Commission must be viewed.

It is the belief of the Domestic Violence Committee that some of the issues identified in SECTION I of this Report are indeed cause for concern. The Committee acknowledges that some of the anecdotal complaints that the Commission has heard regarding the interplay between custody issues in Protective Order and Circuit Court family law cases may likely be based in fact. Whether such problems are the isolated exception or are the norm is not an easy question to answer.

However, regardless of the actual volume of Protective Order cases in which the aforementioned problems have occurred, there is no question that there is *a perception* among both litigants and legal practitioners that such issues exist. This perception is of concern to the Committee. There is not one member of the Committee that does not believe that a strong and carefully crafted Domestic Violence Statute is absolutely essential to the protection and safeguard of men, women, and children who are victims of domestic violence and abuse in the state of Maryland. The Committee believes that the creation of a framework to address the issues identified herein – but that maintains the integrity and scope of the protections afforded by the Domestic Violence statute – is necessary.

Accordingly, the Domestic Violence Committee makes the following Recommendations:

II. RECOMMENDATIONS

Initial Introduction and Summary

The common characteristic of all of the issues identified in Section I of this Report is the amount of ***time*** that can elapse between the (1) issuance of a civil Final Protective Order that grants and/or denies custody, and (2) a litigant's attempt to secure a more thorough, 'best interests' custody/visitation hearing in a Circuit Court domestic relations case. The Committee believes that the solution to this dilemma need not involve any wholesale change to the existing civil Domestic Violence statute. Instead, the Committee's recommendations focus upon shortening the potential time gap between a Final Protective Order involving custody, and a *pendente lite* custody hearing in a Circuit Court family law case.

The Committee therefore recommends that an expedited procedural process be made available at the Circuit Court level in a family law case -- as opposed to

further litigation in the Protective Order action -- to litigants that have been parties to a Domestic Violence action in which (1) a Final Protective Order issued, and (2) custody and/or visitation was pled in the domestic violence case.

The process outlined herein is not intended as an 'emergency' procedure, and the right to exercise the procedure is not contingent upon the existence of any 'emergency' in the sense that this term is typically employed in custody litigation (*i.e.* – conditions in which the immediate physical safety or welfare of the minor child is threatened). Instead, the process would be available to litigants as a matter of right.

Accordingly, the Committee recommends that the following procedural mechanism be implemented via statutory and/or Rule change:

A. ***The Right to an Expedited Custody Hearing***

- Litigants in a Protective Order action in which custody/visitation is at issue shall have the right to an **expedited custody hearing** before the Circuit Court in a family law action under any of the following three circumstances:

1. When, in a Protective Order action, the Court issues a Final Protective Order after a contested hearing and includes an award of custody or visitation in the Order;

2. When, in a Protective Order action in which an award of custody/visitation is pled, the parties to the action (1) enter into a Final Protective Order by consent, and (2) one of the parties expressly reserves the right to pursue an expedited custody hearing under the process herein; or

3. When, in a Protective Order action in which an award of custody/visitation is pled, the Court issues a Final Protective Order but declines to award relief regarding custody/visitation.

COMMENT 1: The provisions of (1) and (2) above seek to address the situation in which a custody determination in a Protective Order case that is intended as a 'Band-Aid' becomes something far more significant due to the status quo created by virtue of the significant passage of time that may occur between the custody determination in the Protective Order case and any *pendente lite* custody/visitation hearing that may later be held in a family law case between the parties. Comparatively, the provisions of (3) above addresses the situation in which the matter is serious enough for a Final Protective Order to issue, but in which the parties are left to fend for themselves to determine a protocol for custody and/or visitation. Such situations can result in chaotic consequences, including heightened tensions, the possibility of interaction and confrontation during time with the children, withholding of the minor children by one of the parties, *etc.* As a matter of

public policy, the expedited custody process outlined herein should be made available to litigants in these situations as well.

COMMENT 2: Provision (2) above seeks to accomplish a balance between two goals. On the one hand, litigants in Protective Order cases should have the ability to attempt to resolve issues in the protective order action by consent without being forced to waive the right to the expedited procedure outlined herein. Preclusion of the right to the expedited process in cases of Consent Protective Order might have the unintended consequence of discouraging parties from reaching otherwise attainable consent agreements. On the other hand, a litigant in a Protective Order case should not be in a position of believing they are entering into a long-term child access plan via a negotiation, only for the other party to have 'buyer's remorse' and attempt to undo the consent custody/visitation agreement by triggering the expedited process herein. Thus, the Committee recommends that the expedited custody process only be available with respect to Consent Protective Orders when the right to the expedited process is expressly reserved at the time of the consent agreement. Indeed, in theory, this proviso could result in settlement of a greater number of Protective Order cases by consent, as there might be increased likelihood of reaching agreements in domestic violence cases in which the primary area of dispute is not the 'protection' aspects of the Order, but instead the terms of any custody arrangement.

COMMENT 3: The expedited custody process herein would <u>not</u> be available in circumstances in which no Final Protective Order is issued (either because the Court denies such relief, or because the Petition for the Protective Order is withdrawn). In such cases, the potential circumstances that (1), (2), and (3) above seek to remedy would not apply. [Of course, nothing would preclude either party in the Protective Order action from filing a custody action in the Circuit Court under normal, procedural Rules.] Additionally, the expedited process would <u>not</u> be available in domestic violence cases in which a Final Protective Order is granted, but in which no underlying request for custody/visitation was pled. Simply put, the process would not confer procedural rights regarding custody in cases wherein the actual, substantive relief was never requested.

B. ***<u>Who Can Request an Expedited Hearing?</u>***

- Either a Petitioner or a Respondent can request an expedited custody hearing, as long as one of the conditions in IIA above exists.

COMMENT: The potential issues that the Committee's recommendations seek to alleviate can apply equally to, and affect both, Petitioners and Respondents in Protective Order cases. Accordingly, the procedural mechanism herein should be available to either party.

C. ***<u>How and When Can the Expedited Hearing Process Be Triggered</u>***

- The following procedural mechanism would govern the expedited custody hearing process:

1. Time for filing: After proper notice to the litigants regarding the right to the expedited custody hearing process, in a Protective Order action in which one of the circumstances outlined in IIA1(1), (2) or (3) exists, either the Petitioner or Respondent in the Protective Order case may request an expedited custody hearing within ten (10) days of the issuance of the Final Protective Order per the requirements set out below.

COMMENT: Litigation in Domestic Violence cases is inherently stressful to all participants. The very nature and circumstances of domestic violence allegations involves matters of profound gravity and import to the participants on a uniquely personal level. Moreover, the speed at which Protective Order actions can go from initial filing to final hearing often is measured in only a handful of days. The rapidity of the process can be intimidating to the litigants. Finally, as with other domestic relations litigation, increasing numbers of litigants in domestic violence proceedings represent themselves on a *pro se* basis. Understandably, such individuals are not as informed and sophisticated as professional legal counsel in matters of substantive and procedural law.

The procedural mechanism outlined herein will be meaningless if the participants in such cases are unaware of the right to the process. Accordingly, the expedited process should be explained to the parties at the Protective Order proceeding when the right to the process is triggered. Ideally, this notice would be provided in at least two forms: First, express oral notice would be given from the Bench at the conclusion of the Court's ruling. This could be accomplished in much the same manner as the Court explains appellate rights to the parties. Second, a written explanation regarding the specifics of the expedited custody process would be given to both Petitioner and Respondent during the Protective Order proceedings.

2. Filing with the Court: An eligible party may request an expedited custody hearing within the 10-day period by (1) filing a Notice of Expedited Hearing in the Protective Order action; (2) filing a Complaint in a Circuit Court domestic relations action that seeks an award of custody/visitation (copies of the Notice of Expedited Hearing and the Final Protective Order shall be included with the filing of the complaint in the Circuit Court action); and (3) filing a Certification in the Circuit Court case that the Plaintiff has transmitted copies of both the Notice and the Complaint to the Defendant's mailing address as identified in the Protective Order action. A copy of that address shall be included in the Certification.

COMMENT: The process outlined herein would not serve to limit the scope of the relief that a petitioner may request when filing the family law action in the Circuit Court. For example, the Circuit Court complaint might also include a request for divorce, limited divorce, alimony, child support, counsel fees, *etc.* However, at

minimum, the complaint must include a request for custody and/or visitation for the expedited custody hearing to be scheduled. As outlined elsewhere below, only issues of custody/visitation would be addressed at the expedited hearing. Comments regarding notice to the other party are also included below.

3. Notice to the Other Party: Simultaneous with the filing of the Notice of Expedited Hearing and the Circuit Court complaint, a party requesting an expedited custody hearing shall mail complete copies of both pleadings to the other party's mailing address as identified in the Protective Order proceedings.

COMMENT: As part of the Protective Order proceedings, upon entry of a Final Protective Order each party would be charged with designating an address for receipt of further process from the Court. In situations in which the Petitioner's address is Confidential, the Petitioner could designate an alternative address – other than the Petitioner's residential address – for purposes of receiving legal pleadings from the other party or the Court.

4. Duties of Clerk: Upon the filing of the Complaint, a copy of the Notice of Expedited Hearing, and the Certification by an eligible party, the Circuit Court Clerk shall immediately issue a Notice of Expedited, *Pendente Lite* Custody/Visitation Hearing to the parties by first-class mail. Per the Court's Notice, the expedited custody hearing shall be scheduled before a Judge for a date no more than thirty (30) days from the initial filing by Plaintiff.

COMMENT: Per the normal Circuit Court Civil Procedure Rules, a Summons for the complaint would still be issued in the normal course, and that Summons would eventually have to be served upon the Defendant. The Defendant would have to file an Answer within the time provided by the Rules. However, the conducting of the expedited custody hearing would not be contingent upon an Answer already having been filed by Defendant (or, for that matter, the Summons having been served upon the Defendant as of the date of the expedited hearing). While the scheduling of the expedited hearing in this manner may seem unorthodox, this procedure is actually no different than that utilized by many Maryland Circuit Courts when hearing emergency matters in Circuit Court custody/visitation cases.

As should be clear from the provisions above, the expedited custody hearing is held in the Circuit Court domestic relations case (as opposed to the Protective Order action). The Committee envisions that expedited custody hearings be conducted specifically before Judges, as opposed to Magistrates. If such hearings are scheduled before Magistrates, either party could file Exceptions. In some cases, the time for an Exceptions hearing to be scheduled and heard takes multiple months. The delay associated with potential Exceptions would defeat the purpose of this Committee's recommendations.

5. Scope of Expedited Custody Hearing: The scope of the expedited custody hearing shall be limited to issues of custody and/or visitation. Any relief ordered by the Court shall be *pendente lite* in nature. Any provisions of the Final Protective Order that are not specifically altered by the Circuit Court's ruling shall remain in full force and effect.

COMMENT 1: The expedited custody hearing process does not preclude a party from requesting, or a Court from awarding, *pendente lite* relief regarding other issues in the litigation, including child support, alimony, counsel fees, *etc.* However, those issues would not be addressed at the expedited custody hearing, and would instead be heard in the normal course of the litigation.

COMMENT 2: Additionally, a litigant's decision not to avail himself/herself of the expedited custody hearing process under the mechanism provided herein would not preclude the litigant from seeking *pendente lite* relief regarding custody/visitation in the normal course of a domestic relations case. However, the expedited process set out here would not be available. [That said, the Court would not be precluded from addressing custody/visitation on some other manner of expedited basis if the Court were to determine that some type of emergency or exigency existed. Those matters, however, are outside the scope of this Committee's recommendations.]

D. ***Process for Conducting the Expedited Custody Hearing in Cases Where an Appeal is Taken from a Final Protective Order issued by the District Court***

- In the event that (1) a Final Protective Order is issued by the District Court, (2) an eligible party timely files for an expedited custody hearing pursuant to the process outlined herein, and (3) one of the parties files timely notice of a *de novo* appeal of the Final Protective Order, the following procedural process shall apply:

1. A consolidated, bifurcated hearing shall be scheduled by the Circuit Court within thirty (30) days of the filing of the Notice of Expedited Hearing and Complaint for custody. At the bifurcated hearing, the issue of the Protective Order appeal shall be heard first by the Circuit Court.

    a. In the event that a Protective Order is issued/affirmed by the Circuit Court, then the Court shall proceed to the second stage of the bifurcated hearing – *i.e.* the expedited custody hearing;
    b. In the event that the Circuit Court denies the Petition for Protective Order, then no expedited custody hearing shall occur, and any *pendente lite* custody/visitation relief requested in the Circuit Court shall be scheduled in the normal course.

E. ***Process for Conducting the Expedited Custody Hearing in Cases Where an Appeal is Taken from a Final Protective Order issued by the Circuit Court***

- In the event that (1) a Final Protective Order is issued by the Circuit Court, (2) an eligible party timely files for an expedited custody hearing pursuant to the process outlined herein, and (3) one of the parties files a timely Notice of Appeal of the Final Protective Order to the Court of Special Appeals, the expedited custody hearing procedures outlined herein shall apply unless either the trial or the appellate court stays the Protective Order pending appeal.

III. CONCLUSION AND COMMENTS

After careful examination, discussion, and consideration, the Committee recommends implementing the foregoing procedural mechanism to address the concerns outlined in Section I of this Report.

During its examination of the issues, the Domestic Violence Committee considered other, alternative solutions than expedited custody hearing procedures. It may be helpful for the Commission to have information regarding at least two other options considered by the Committee.

Limiting Certain Domestic Violence Filings to Circuit Court

First, the Committee considered and rejected the idea of requiring that all Protective Order petitions in which an award of custody or visitation is requested be filed in the Circuit Court. The obvious utility of such a requirement would be based on the premise that – because the Circuit Court is the tribunal that regularly hears custody cases – Circuit Court judges are better equipped to deal with the custody and/or visitation aspects of a Protective Order case.

Regardless of whether this premise is accurate, the Committee believes that the negative consequences of limiting the filing of domestic violence petitions (in which an award of custody is requested) to the Circuit Court would outweigh the positive benefits. Specifically, one of the insidious aspects of domestic violence – particularly within families – is that victims are often reluctant to come forward to seek protection or assistance. An analysis of the sociological, psychological, economic, and other factors behind this phenomena could likely fill a book.

The Committee does not attempt to provide an answer for that issue here. Instead, the Committee merely recognizes that the sudden elimination of the District Court as a location for the filing of a great number of Protective Order Petitions throughout the State would not be a good thing. In many of Maryland's most populated areas – including Baltimore City, Baltimore County, Prince George's County, and Anne Arundel County – the District Court sits in multiple locations

throughout the county or geographic area. Many of these locations are not in the immediate vicinity of the Circuit Court.

The Committee fears that the elimination of the District Court as a location for filing certain domestic violence actions would have a 'chilling effect' upon abuse victims who might be inclined to seek the protection of the Court. For example, take the case of a domestic violence victim that has been fearful and reluctant to come forward during years of ongoing abuse. After significant time, the individual finally summons the courage to go to the District Court to possibly file a Petition for Protection. Upon being told by the clerk that he/she will instead have to travel across the county to file at a different location, the victim instead goes back home. For those who frequently represent and work with abused persons, this hypothetical is not far-fetched.

Domestic violence is, without question, a serious societal problem. The issues outlined in Section I of this Report are also serious matters that require consideration. The Committee believes that a suggestion to limit remedies available under the Domestic Violence Act to cases filed only in the Circuit Court would constitute an effort to address the latter issues at the expense of the former problem. There is a better solution. The Committee believes that the procedural process recommended in this Report would help alleviate the issues outlined in Section I of this Report, while at the same time maintaining the integrity and scope of the Domestic Violence Act.

A Dedicated, Maryland Family Court

Finally, while the Committee was undertaking its work, the subject of a dedicated Family Court in the State of Maryland repeatedly came up during Committee discussions. The Committee understands that consideration of the merits and nature of a dedicated Family Court is well outside the scope of this Committee's charge. That said, the topic frequently recurred, as many individual members of the Committee opined that the creation of a dedicated Maryland Family Court might improve various aspects of Maryland family law procedures and practice, including some of the domestic violence/custody issues that this Committee examined.

Specifically, Committee members envisioned a dedicated, county-by-county Maryland Family Court – staffed by Judges that have both the aptitude and desire to hear family law matters – that would have jurisdiction over both domestic relations and domestic violence litigation. In such a Court, the same, assigned Judge would hear all matters in a case(s), as well as all related matters involving the same parties or children, from beginning to end. Accordingly, under such a framework, the same jurist who presides over a Protective Order proceeding between two parties would also be the one to follow the parties through any future custody/visitation litigation. As domestic violence litigation and custody/visitation litigation between the same parties are intrinsically related, the benefits of such a framework would likely be

immeasurable. To a significant degree, the existence of this type of Family Court in Maryland would alleviate the types of issues outlined in the first section of this Report.

As this Committee was not charged with examining the issue of a dedicated Family Court, it did not address that subject any further. However, the Committee does desire that the Commission be aware that this was a topic that frequently and organically arose during various Committee meetings. The Committee believes that the topic of a dedicated Family Court is worthy of discussion and consideration at a broader level.

In conclusion, the Committee thanks the Commission for its important work. We hope that the efforts and recommendations herein are helpful.

Subcommittee Members:
James D. Milko, Subcommittee Chair
E. Todd Bennett
Gwendolyn S. Tate
Jer Welter
Judith A. Wolfer

MARYLAND GENERAL ASSEMBLY

COMMISSION ON CHILD CUSTODY DECISION-MAKING

APPENDIX G —
Identifying & Eliminating Bias Committee Report

IDENTIFYING & ELIMINATING BIAS COMMITTEE

COMMISSION ON CHILD CUSTODY DECISION-MAKING

Members of the Committee

Vernon E. Wallace, Jr., Co-Chair
Lauren Young, Esq., Co-Chair
Honorable Cynthia Callahan, CCCDM Chair
L. Tracy Brown, Esq.
Tiffany D. Brunson
Michael Bullis
Professor Karen Czapanskiy
Twan Herold
Emily Hoffman
Caridad Morales Nussa
Staff: Sarah R. Kaplan
Department of Family Administration

Introduction

The Identifying and Eliminating Bias Committee (Committee) of the Commission on Child Custody Decision-Making (Commission) was formed by the Commission to study and develop recommendations concerning perceived and actual bias in custody proceedings. The Committee was co-chaired by Vernon Wallace, Jr., and Lauren Young, Esq., who also are members of the Commission. The diverse Committee membership included attorneys and non-attorney representatives from organizations that serve persons with disabilities and other underserved populations. The membership list is Attachment A.

1. Committee Tasks

The Commission assigned the Literature Review Committee the following tasks from HB 687, Section 1(f):

(9) study whether or not there is any gender discrimination in custody decisions in Maryland and, if so, how to address such discrimination;

(17) study standardization of the language used by courts in making child custody determinations for clarity and to eliminate exclusionary or discriminatory terms;

(18) study how to ensure that child custody determinations involving parents with mental health issues or sensory or physical disabilities are handled in a fair and even manner based on actual evidence and not presumed limitations;

2. Subcommittees

To better study the issues and make recommendations, the Committee broke into two Subcommittees:

- Disability Bias and Neutral-Language Subcommittee
- Gender Bias, Economic Issues and Neutral Language Subcommittee

Both subcommittees prepared reports (see Part 4, below).

3. Recommendations

The Committee adopted the following recommendations:

A. Recommendations concerning Statutory Language and Bias.

Recommendation 1. Maryland statute, Md. Code Ann. Family-Law § 9-107, uses offensive language to describe people with disabilities and may contribute to bias against parents with disabilities. The statutory language should be rewritten to define "disability" in a manner consistent with the federal Americans with Disabilities Act , as follows:

> "disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual, a record of such impairment, or being regarded as having such an impairment.

This definition must be broadly interpreted, consistent with the ADA Amendments Act of 2008[1].

Recommendation 2. Maryland statute should more clearly define the nexus between parental disability and best interests of the child, and codify the burden of proof in order to prevent bias from being a determinant in child custody decisions.

The statute should clarify that in order to consider a parent's disability as a factor in deciding the best interest of the child, the court must find by clear and convincing evidence that the parent's disability poses a substantial risk of harm to the health or safety of the child, and such

[1] To be added.

determination must be reflected in the court's findings of fact and conclusions of law. If another parent asserts that a person's disability renders them incapable of providing for the best interests of the child, that party bears the burden of proof. The same standard should apply to third party caregivers.

B. Recommendations concerning Appointment of Counsel.

Recommendation 1. Provide for appointment of counsel, including representation paid for by the state, pro bono services and limited representation, when an unrepresented individual with a disability is financially unable to retain counsel in a custody matter; and is opposed by a party who has counsel.

Recommendation 2. Sanction a reasonable accommodations process to enable the court to appoint counsel, as needed, for a person whose disability interferes with their ability to have meaningful access to the court process. The court may request that the individual provide documentation from a health care professional justifying the need for counsel based on their knowledge of the individual and the individual's disability

C. Recommendations concerning Training.

Recommendation 1. All family court professionals should receive training on a regular basis on parents with disabilities and their children. Such training should be provided by persons with disabilities and technical expertise in this area such as professionals from Centers for Independent Living, On Our Own, People On the Go or Through the Looking Glass (TLG), a nationally recognized center that has provides research, training, and services for families in which a child, parent or grandparent has a disability. TLG operates the National Center for Parents with Disabilities and their Children, funded by the U.S. Department of Education. Training should include research and study related to disability based bias in family law and include a body of research studies demonstrating that parents with disabilities are effective parents.

Recommendation 2. When a custody evaluation is ordered and one of the parents has a disability, the evaluation must include supporting evidence from the evaluator that the specific tools and methods utilized comply with standard or best practice for assessing any specific

disability related issue. One method of ensuring appropriate practice is for the evaluator to certify that they comply with the 2012 American Psychological Associations Guidelines for Assessment of and Intervention with Persons with Disabilities.

D. Recommendations concerning Gender Bias.

Recommendation 1. If a comprehensive custody statute is proposed by the Commission, the statute should provide that the sex of the parent and the child are irrelevant to the determination of custody.

Recommendation 2. Since many litigants in custody matters appear to believe that trial judges make custody decisions in a way that reflects gender bias, judicial education should address explicit and implicit bias

E. Recommendations concerning Joint Legal Custody and Shared Physical Custody.

Recommendation 1. Judicial education is needed to assist judges in identifying the cases in which joint legal or physical custody may be indicated and those in which joint custody is not indicated.

Recommendation 2. Parents should have more access to alternative dispute resolution and mediation to resolve custody disputes, where appropriate.

Recommendation 3. Community education should be encouraged about the importance to children of having both parents involved in their lives.

Recommendation 4. No change should be made in current Maryland law regarding the ability of courts to order joint legal and physical custody.

F. Recommendations concerning Economic Bias.

Recommendation 1. The statute should reflect that where the parents have disparate incomes and economic resources, custody should not be determined solely on the basis of the economic superiority of one parent.

Recommendation 2. Where the parents have disparate incomes and economic resources, courts should make adequate and predictable awards of attorney's fees to the lower-income parent. This recommendation could be accomplished either through statutory or rule change.

Recommendation 3. Where an attorney is appointed for the child (known as a BIA, or Best Interests Advocate), courts should not require a parent to pay the fees without an assessment of the ability of the parent to pay the fee.

Recommendation 4. The downward adjustment of child support in cases of shared physical custody needs to be reconsidered, particularly in cases where the child's principal household lacks adequate resources.

Recommendation 5. The legal community needs to address means for providing counsel for unrepresented parents in custody matters, including providing counsel paid for by the state, pro bono services, limited representation and alternative dispute resolution.

Recommendation 6. Child Support guidelines should be reassessed to provide a sufficient self-support set-aside for each parent.

Recommendation 7. Child Support administrative practices, including imputation of income, should be evaluated to ensure that low-income parents are not required to pay more child support than is reasonable.

4. Subcommittees

A. Disability Bias and Neutral-Language Subcommittee

The Disability Bias and Neutral-Language Subcommittee studied how to ensure that child custody determinations involving parents with mental health issues or sensory or physical

disabilities are handled in a fair and even manner based on actual evidence and not presumed limitations. Based on its study, the Subcommittee concluded:

- Bias exists in custody determinations involving parents with disabilities.
- Maryland law can better ensure that child custody determinations involving parents with mental health issues or sensory or physical disabilities are handled in a fair and even manner based on actual evidence and not presumed limitations.

The Subcommittee recommended, and the Committee adopted, recommendations addressing:

- Statutory language and bias.
- Appointment of counsel.
- Training.

The Disability Bias and Neutral-Language Subcommittee's report is Appendix A.

B. Gender Bias, Economic Issues and Neutral Language Subcommittee

The Gender Bias, Economic Issues and Neutral Language Subcommittee studied the effects of gender, economic status and language in custody proceedings.

The Subcommittee recommended, and the Committee adopted, recommendations addressing:

- Gender bias.
- Joint legal custody and shared physical custody.
- Economic bias.

The Gender Bias, Economic Issues and Neutral Language Subcommittee's report is Appendix B.

Appendix A

Report of the Disability Bias and Neutral-Language Subcommittee

The Disability Bias and Neutral-Language Subcommittee studied how to ensure that child custody determinations involving parents with mental health issues or sensory or physical disabilities are handled in a fair and even manner based on actual evidence and not presumed limitations.

Subcommittee members are Lauren Young, Vernon Wallis, Michael Bullis and Caridad Morales Nussa.

Based on its study, the Subcommittee concluded:

- Bias exists in custody determinations involving parents with disabilities.
- Maryland law can better ensure that child custody determinations involving parents with mental health issues or sensory or physical disabilities are handled in a fair and even manner based on actual evidence and not presumed limitations.

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- Statutory language and bias.
- Appointment of counsel.
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A. Statutory Language and Bias.

Recommendation 1. Maryland statute, Md. Code Ann. Family-Law § 9-107, uses offensive language to describe people with disabilities and may contribute to bias against parents with disabilities. The statutory language should be rewritten to define "disability" in a manner consistent with the federal Americans with Disabilities Act, as follows:

> "disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual, a record of such impairment, or being regarded as having such an impairment.

This definition must be broadly interpreted, consistent with the ADA Amendments Act of 2008.

Recommendation 2. Maryland statute should more clearly define the nexus between parental disability and best interests of the child, and codify the burden of proof in order to prevent bias from being a determinant in child custody decisions.

The statute should clarify that in order to consider a parent's disability as a factor in deciding the best interest of the child, the court must find by clear and convincing evidence that the parent's disability poses a substantial risk of harm to the health or safety of the child, and such determination must be reflected in the court's findings of fact and conclusions of law. If another parent asserts that a person's disability renders them incapable of providing for the best interests of the child, that party bears the burden of proof. The same standard should apply to third party caregivers.

1. Discussion - Historical Context of Bias and Discrimination.

To understand why bias may exist regarding parents with disabilities, the disparate treatment of people with disabilities must be acknowledged. Americans with disabilities have endured "a 'lengthy and tragic history' of segregation and discrimination that can only be called grotesque."[2] That history includes ridicule, segregation from the general population, forced sterilization, torture, and imprisonment.[3] Nowhere was this perspective more apparent than in the systematic interference with the family relationships of people with disabilities, believed to be "the begetters of numerous degenerate children."[4] These "defects" of society were not regarded as possessing the "rights and liberties of normal people."[5]

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2 *City of Cleburne*, *Texas v*. *Cleburne Living Center*, *Inc*., 473 U.S. 432, 461 (1985) (Marshall, J., concurring) (citation omitted).

3 *See* U.S. Comm'n on Civil Rights, *Accommodating the Spectrum of Individual Abilities* 18 n.5 (1983) ("*Accommodating the Spectrum*").

4 C.S. Yoakum, *Care of the Feebleminded and Insane in Texas*, Bull. U. Tex., No. 369 (Humanistic Ser. No. 16 Nov. 5, 1914).

5 S.D. Comm'n for Segregation and Control of the Feeble-Minded, Biennial Report 3 (1932).

For example, in 1922, Harry H. Laughlin, a well-known proponent of eugenics working with the Psychopathic Laboratory of the Municipal Court of Chicago, declared that it "may be safely stated that the experimental period for eugenical sterilization legislation has been passed so that it is now possible to enact a just and eugenically effective statute on this subject."[6] To that end, Mr. Laughlin proposed in his Model Eugenical Sterilization Law that the "socially inadequate classes" subject to forced sterilization should include, among others, "Epileptics," the "Diseased (including the tuberculous, the syphilitic, the leprous, and others with chronic, infectious and legally segregable diseases)," the "Blind (including those with seriously impaired vision)," the "Deaf (including those with seriously impaired hearing)," the "Deformed (including the crippled)" and the "Dependent (including orphans, ne'er-do-wells, the homeless, tramps and paupers)."[7]

By the early 1930s, more than thirty (30) states had followed Mr. Laughlin's suggestion and enacted laws permitting the involuntary sterilization of people with disabilities.[8] Between 1907 and 1963, those laws were used to sterilize at least 60,000 people.[9] This mass sterilization of people with disabilities against their will occurred with the approval of the federal courts. In *Buck v*. *Bell*, the U.S. Supreme Court upheld a Virginia law that authorized forced sterilization of people with disabilities.[10] The Court's reasoning reflected a classic eugenic viewpoint that people with disabilities were "a menace" who "sap the strength of the state."[11] As recently as 1983, fifteen (15) states continued to have compulsory sterilization laws.[12]

By 1914, thirty-seven (37) states and the District of Columbia had laws restricting marriage for people who were "epileptic," "diseased," or "alcoholics," among others.[13] Although society and

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6 Harry H. Laughlin, *Eugenical Sterilization in the United States*, Ch. XV, Model Eugenical Sterilization Law, Part A (1922).

7 Harry H. Laughlin, Model Eugenical Sterilization Law § 2(b) (1922).

8 *See* Phillip R. Reilly, *The Surgical Solution: A History of Involuntary Sterilization in the United States* 45-55 (1991).

9 *Id*. at 94.

10 274 U.S. 200 (1927).

11 *Id*. at 207.

12 *See Accommodating the Spectrum* 37; *see also* P. Reilly, *The Surgical Solution* 2 & 148 (1991).

13 Stevenson Smith *et al*., *A Summary of the Laws of the Several States Governing (I) Marriage and Divorce of the Feebleminded*, *the Epileptic and the Insane*, *(II) Asexualization*, *(III) Institutional*

the law have progressed since the days of mass institutionalization and forced sterilization, subtler disability misconceptions persist. People with disabilities continue to suffer "widespread and persisting deprivation of [their] constitutional rights."[14] This is especially true of the fundamental constitutional right to raise children.

2. Discussion - Findings of Discrimination

In passing the Americans with Disabilities Act of 1990[15] (the "ADA") Congress specifically found that people with disabilities have encountered "the discriminatory effects of . . . exclusionary qualification standards and criteria" "resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals . . . ."[16] Congress has also concluded that "discriminatory policies and practices affect people with disabilities in every aspect of their lives . . . [including] securing custody of their children."[17]

One examination of state legislation found evidence of a persistent misconception that parents with disabilities are innately unfit.[18] A national survey of 1,200 parents with disabilities, conducted in 1997, found that about fifteen (15) percent of parents with disabilities reported having defended against attempts to remove their children.[19] More recent research indicates that forty to sixty (40 to 60) percent of parents with an intellectual disability have had their children removed from their care at some point in time.[20] (The number of mothers and fathers with a disability is estimated to be over four million.)

Commitment and Discharge of the Feebleminded and the Epileptic, 82 Bull. U. Wash. 5-15 (May 1914).

14 *Florida Prepaid*, 527 U.S. at 645.

15 To be added

16 *Id*. §§ 12101(a)(5) & 12101(a)(7).

17 H.R. Rep. No. 485, Pt. 3, at 25.

18 Bruce Dennis Sales, *et al*., *Disabled Persons and the Law: State Legislative Issues* 16-20 (Plenum Press 1980).

19 T. Barker & V. Maralani, *Challenges and Strategies of Disabled Parents: Findings from a National Survey of Parents with Disabilities* (1997).

20 *See* David McConnell & Gwynnyth Llewellyn, *Stereotypes*, *Parents with Intellectual Disabilities and Child Protection*, 24 J. Soc. Welfare & Fam. L. 297, 299-300 (2002).

In 2012, the National Council on Disabilities (NCD) released the report, *Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and their Children* ("Report") available at http://www.ncd.gov/publications/2012/Sep272012/. NCD is an independent federal agency established by Congress and charged with advising the President, Congress, and other federal agencies regarding policies that affect people with disabilities.[21] The Report is a comprehensive policy study that examines the discrimination faced by parents with disabilities who are raising their families. The Report examines the scope of the problem and available research, and makes recommendations.

The Report documents that our laws most frequently do not require that a nexus be demonstrated between a parent's disability and any adverse consequences to a child, which nexus would help protect against disparate treatment of parents with disabilities. Instead, the status of 'disability'[22] frequently carries an unfounded assumption of an inability to properly parent. In transmitting its Report to the President, NCD wrote:

> Clearly, the legal system is not protecting the rights of parents with disabilities and their children. Fully two-thirds of dependency statutes allow the court to reach the determination that a parent is unfit (a determination necessary to terminate parental rights) on the basis of the parent's disability. In every state, disability may be considered when determining the best interest of a child for purposes of a custody determination in family or dependency court. [23]

The NCD Report finds that, while current research is limited, the research that does exist demonstrates that disability does not necessarily have a negative effect on parenting. The

[21] NCD was statutorily created in 1978 through amendment to the Rehabilitation Act of 1973 (29 U.S.C. 780 et seq.).

[22] To be added

[23] Letter from National Council on Disabilities Chairman Jonathan Young to the President, dated September 27, 2010, accompanying the transmission of "Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children" (2012), a publication of the National Council on Disabilities.

Report also found that "[d]espite the disability civil rights movement, attitudinal bias in family law proceedings regarding disability is still prevalent."[24] Unfortunately,

> legal, medical, and mental health professionals are not immune to these biases. Negativity and a lack of cultural competence about disability are reflected in language appearing in unpublished court documents and evaluations, such as 'afflicted with dwarfism,' 'wheelchair bound,' 'suffers from physical disability.[25]

Other studies indicate that disability alone is not a predictor of problems or difficulties in children and that predictors of problem parenting are often found to be the same for disabled and nondisabled parents.[26] The Report references other articles[27] concluding that, "The available evidence suggests that although parents with disabilities may have a very different approach to parenting, the presence of a disability (physical or mental) is a poor correlate of long-term maladjustment in children. …Thus, although the data are far from clear, it seems safe to conclude that many parents with disabilities previously thought unable to raise a child at all may actually be able to do so, and that many more parents with disabilities may succeed in raising their children if provided appropriate support services."[28] The Report also cites Paul Preston, Director of the National Center for Parents with Disabilities at Through the Looking Glass: "The implications of being raised by a disabled parent have been the source of numerous studies, public conjectures and professional scrutiny – all of which touch upon the fundamental rights of disabled people to be parents as well as the fundamental rights of children to be raised in an environment conducive to maximal development. Despite the lack of appropriate resources for most disabled parents and their children as well as persistent negative assumptions about these

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[24] NCD Report citing Megan Kirshbaum, Daniel Taube, and Rosalind Lasian Baer, "Parents with Disabilities: Problems in Family Court Practice," *Journal of the Center for Families, Children and the Courts* 4 (2003).

[25] *Id.* at 37–38.

[26] Megan Kirshbaum and Rhoda Olkin, "Parents with Physical, Systemic, or Visual Disabilities," *Sexuality and Disabilities* 20(1) (2002): 66-67.

[27] To be added

[28] Dave Shade, "Empowerment for the Pursuit of Happiness: Parents with Disabilities and the Americans with Disabilities Act," *Law and Inequality* 16 (1998): 160-161.

families, the vast majority of children of disabled parents have been shown to have typical development and functioning and often enhanced life perspectives and skills."[29]

The NCD Report notes that the "best interest of the child standard" has been criticized for giving too much discretion to trial courts and for allowing judicial bias to affect custody and visitation decisions, which often has significant and detrimental consequences for parents with disabilities and their children.[30] A study referenced in the Report by Breeden, Olkin, and Taube, concludes that the "best interest of the child standard" is too vague and offers little guidance to courts and evaluators.[31] The authors" research demonstrates that cases frequently reflect underlying presumptions that it is not in a child's best interest to live with — or in some cases even visit — a parent with a disability[32]; and that custody and visitation decisions reflect patterns of increased attitudinal bias regarding certain disabilities[33]. Another study noted, by Kirshbaum, Taube, and Baer, found that "negative speculations about the future are common and often seem to be based on stereotypes rather than on evidence."[34] This later study noted that courts often assume that children will be forced to provide care to their parents with physical disabilities, which is in stark contrast to what researchers have consistently found.[35] The full Report offers many examples of bias and research findings related to discrimination of parents with disabilities in child welfare and custody matters.[36]

In sum, the NCD Report found that parents with disabilities are likely to encounter disparate treatment in the family law system on the basis of other people's perception of their disability

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[29] Paul Preston, "Parents with Disabilities," International Encyclopedia of Rehabilitation, edited by J.H. Stone and M. Blouin (2011), http://cirrie.buffalo.edu/encyclopedia/en/article/36

[30] Duffy Dillon, "Child Custody and the Developmentally Disabled Parent," *Wisconsin Law Review* 2000 (2000): 130–131.

[31] Christine Breeden, Rhoda Olkin, and Daniel Taube, "Child Custody Evaluations When One Divorcing Parent has a Physical Disability," *Rehabilitation Psychology* 53(4) (2008): 445.

[32] Megan Kirshbaum, Daniel Taube, and Rosalind Lasian Baer, "Parents with Disabilities: Problems in Family Court Practice," *Journal of the Center for Families, Children and the Courts* 4 (2003).

[33] Id.

[34] Id.

[35] Id. 40

[36] To be added

and its impact on parenting. The Report found this discrimination is compounded by the amorphous "best interest of the child" standard and recommended statutory changes to combat disability discrimination in custody cases.

The NCD recommended that in disputes based on the best interest of the child, a parent's status as a person with a disability should be irrelevant to the analysis absent an evidentiary showing of a nexus between the parental disability and a detrimental impact on the child. Such a statutory change will help to ensure that child custody determinations involving parents with mental health issues or sensory or physical disabilities are handled in a fair and even manner based on actual evidence and not presumed limitation.

There is evidence that Maryland family law does not sufficiently protect against bias towards parents with disabilities. A review of Maryland cases and statutes reveal that there is bias against persons with disabilities and that there are ways our laws could be improved to help ensure that cases involving parents with disabilities are handled in a fairer and even manner based on actual evidence and not presumed limitations.

The Maryland Court of Appeals has addressed disability bias in child welfare proceedings, finding that "[w]hen courts allow presumptions of inadequacy to replace individual inquiry, they erect insurmountable hurdles for parents labeled . . . disabled . . . ."[37] [38]*In Re Adoption J9610436 & J9711031*, 368 Md. 666 (2002), the trial court terminated parental rights of a father with a disability based on assertions and speculations about a father's mental capabilities. The Court reversed the decision of the trial court noting the scant evidentiary basis of the extent of the father's disability and any adverse effects upon his children, and the uncontroverted evidence that the father had made extensive efforts to be a capable parent. Similarly, in *In re: Barry E.,* 107 Md.App. 206, 667 A.2d 931 (1995), the Court of Special Appeals noted that emotional or mental difficulties experienced by a parent are not sufficient reason for removing a child except in more extreme cases.[39]

[37] *In re Adoption/Guardianship Nos*. *J9610436 and J9711031*, 368 Md.666 at 674-675 (2002).

[38] To be added

[39] *In re: Barry E.,* 107 Md.App. 206, 667 A.2d 931 (1995).

However, evidence of disability bias in Maryland court proceedings exists. *In re Yve S*., 373 Md. 551(2003), the trial court determined that the children should not be with their biological mother despite evidence that: the mother's psychiatric condition had remained stable and she had stayed on her medications for over two years; the mother's treating psychiatrist testified that her prognosis was good and that she was capable of taking care of any child: the mother had secured housing and financial means to support herself and child, and had completed successfully all requirements demanded by agency, and all allowed visitations had gone well. On appeal, the Court held that the fact that a parent has a mental illness does not provide a "compelling reason" to deny reunification and instead adopt a permanency plan of long-term foster care and holding otherwise would mean that citizens coping with emotional or mental difficulties could be faced with discrimination.[40] [41]

The court's concern that parents coping with mental difficulties can face discrimination was prescient; case law suggests that bias continues to play a role in custody decisions. In *B.G. v M.R*., a trial court determined B.G. to be an unfit father based on occasional hospitalization and lapses in taking medication for his HIV status; but without demonstrating any adverse impact on his children. The trial court cited B.G.'s prior hospitalizations as evidence of an unstable and uncertain future for his children if left in his care. The speculative reasoning by the court (which could be a reason for removing children from any parent with a chronic illness or other disability), was used to transfer custody to a third party.

Clearer statutory directive about how disability properly does and does not factor into child custody cases would help deter "presumptions of inadequacy" that lead to discrimination, as noted by our Court. Clearer statutory directive about how disability properly does and does not factor into child custody cases would help deter "presumptions of inadequacy" that lead to discrimination, as noted by our Court. The legislature amended the family law statute to provide

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[40] *In re Yve S*., 373 Md. 551(2003). On appeal court stated that the best interests of the child standard embraces a strong presumption that the child's best interests are served by maintaining parental rights. See *In Re: Adoption/Guardianship Nos. J9610436 & J9711031*, 368 Md. 666, 692–93, 796 A.2d 778, 793 (2002). If it were otherwise, the most disadvantaged of our adult citizens always would be at greater risk of losing custody of their children than those more fortunate. *Id.* 368 Md. at 673–74, 699–700, 796 A.2d at 782–83, 797–98.

[41] To be added.

that in a custody or visitation proceeding, a disability of a party is relevant only to the extent that the court finds, based on evidence in the record, that the disability affects the best interest of the child. The amended statute, Md. Code Ann. Family-Law § 9-107(b)[42], does not overcome disability bias as it states that disability is relevant to the best interests of the child to the 'extent' that it affects the best interest of the child. The statute establishes disability as a negative factor that is only relevant to a "certain extent" and can lead to circular reasoning by defining disability relevant to the best interest of the child when it affects the best interest of the child. The full text of Md. Code Ann. Family-Law § 9-107(b) appears in Appendix A.

Without clearer language, disability will continued to be used negatively. Given our case law, our discriminatory history, and research findings related to bias against parents with disabilities, stronger language is warranted to protect against bias.[43] For example, currently no written findings are required regarding the court's determination that a parental disability adversely affects the child; no standards for the weight of evidence are provided, and; no burden of proof is established. Moreover, the definition of "disability" in the Maryland statute is broad, facially offensive, not related to any functional limitation, and inconsistent with federal law definitions. Maryland uses an archaic definition of disability that focus on specific conditions, to include, "disfigurement and defect"…" any decree of amputation"…" reliance on any remedial device"… intellectual disability includes any mental impairment or "deficiency" that may have necessitated remedial or special education or related services. Such a definition encompasses biases by determining that anyone with epilepsy or a birth defect or bodily disfigurement has a disability condition that can be relevant to the best interests of their child for purposes of custody proceedings.

Discrimination against parents with disabilities historically has been, and continues to be today, a serious problem. Parents with disabilities lose custody of their children in legal proceedings at a disproportionate rate. Absent a showing of harm to children, parents with disabilities are no

[42] The legislative history indicates that this was new language, not an amendment to existing language. Other definitions of disability were amended, not this one.

[43] The National Center for State Courts described its implicit bias project in the manner: Everyone, judges and other court professionals included, harbors attitudes and stereotypes that influence how he or she perceives and interacts with the social world. Because these cognitive processes can operate implicitly, or at a level below conscious awareness, they can bias judgment and behavior in ways that go unnoticed by the individual.

less able than other parents to act in the best interests of their children.[44] This is not to suggest that every parent with an illness or disability should win custody in every case. But all parents, including those with disabilities, are entitled to the evenhanded application of child custody laws in a manner that discerns genuine parental capabilities on an individual-by-individual basis, free from overt and subliminal prejudices. A less than vigilant analysis might wrongly focus on a parent's disability status rather than that parent's conduct.

The State of Tennessee proposed amending its law relative to custody determination involving parents with disabilities and is proposed as a model. The text of the proposal appears in Appendix C[45]

As stated in the NCD Report, until state laws are harmonized with clearer allocation of evidentiary burdens and enforcement of nexus provisions, parents with disabilities will continue to face discriminatory treatment.

B. Appointment of Counsel.

> Recommendation 1: Provide for appointment of counsel, including representation paid for by the state, pro bono services and limited representation, when an unrepresented individual with a disability is financially unable to retain counsel in a custody matter; and is opposed by a party who has counsel.

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[44] *In re Adoption/Guardianship Nos*. *J9610436 & J9711031*, 368 Md. 666, 668 (2002) (explaining that the right to maintain a parent-child relationship is "the same where parents . . . are alleged to be disabled").

[45] In the last decade, states including Idaho, Utah and Vermont have added language to their child welfare statutes to protect parents with disabilities, including psychiatric disabilities. The Utah law states "A court may not remove a child from the parent's or guardian's custody on the basis of...mental illness," Missouri's legislature adjusted the child welfare laws to recognize the rights of disabled parents. The change came after news broke of a blind couple whose baby had been removed over concerns that their disabilities impaired their ability to raise a child. The measure affirmed that nothing in the state's laws should "be construed to permit discrimination on the basis of disability or disease." Children cannot be removed, nor can parental rights be terminated, the bill maintained, "without a specific showing that there is a causal relation between the disability or disease and harm to the child." Judge Richard Teitelman sits on the Supreme Court of Missouri. Speaking broadly about such cases, he has stated: "given the number of people in this world who are bipolar, or have some mental illness and who raise children very effectively,it would not seem to me that it should be a status thing—that anyone can say, if you're mentally ill you can't be a parent, you can't have a child. That does not seem to comport with today's reality." http://www.propublica.org/article/should-a-mental-illness-mean-you-lose-your-kid. The proposed Tennessee legislation has not passed.

Recommendation 2: Sanction a reasonable accommodations process to enable the court to appoint counsel, as needed, for a person whose disability interferes with their ability to have meaningful access to the court process. The court may request that the individual provide documentation from a health care professional justifying the need for counsel based on their knowledge of the individual and the individual's disability.

Discussion - Appointment of Counsel.

While lack of counsel in legal proceedings can be disadvantageous for anyone, it can be especially detrimental for individuals with disabilities who combat a history of disability based discrimination. Research substantiates the continued existence of bias against persons with disabilities in family law matters. Additionally, some individuals with disabilities will need assistance to ensure that they can meaningfully participate and have full access to the justice system.[46]

Title II of the ADA, applicable to state and local governments, prohibits discrimination against people with disabilities in receipt of or participation in government and public services. State courts, as public entities, must comply with Title II of the ADA by ensuring that all of their services, programs, and activities are available to qualified individuals with disabilities.[47] Most people understand why clients with physical disabilities may need accommodations such as ramps to get in the courthouse door and to participate meaningfully in the justice system.

Similarly some individuals who are deaf are denied access to justice through a denial of a sign-language interpreter in the courtroom. A person with impaired vision may be unable to read

[46] See, "Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children," National Council on Disability (2012) available at http://www.ncd.gov/publications/2012/Sep272012/.

[47] The ADA provides three ways to prove that a litigant is a "qualified individual with a disability." A "person with a disability" is defined as someone who has "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment. .Once a litigant proves a disability, they must prove that the disability excluded them from participating in or denied her the benefits of the court's services, programs, or activities and request an accommodation, or service, that would make the court process accessible for them. A defense to denying a proper request for an accommodation or support to ensure equal access, is that provision of such service would result in "undue financial or administrative burdens" or a "fundamental alteration" in the program.

critical court documents and exhibits without accommodations such as Brailled materials, large-printed court documents, or human readers. Without these accommodations, civil litigants[48] with these conditions would lose their day in court because they would not be able to communicate with the court or to understand fully the case and its consequences.[49]

The U.S. Supreme Court recognizes that mental disabilities may make it impossible for a criminal defendant to represent himself, stating: "'[d]isorganized thinking, deficits in sustaining attention and concentration, impaired expressive abilities, anxiety, and other common symptoms of severe mental illnesses can impair the defendant's ability to play the significantly expanded role required for self-representation even if he can play the lesser role of represented defendant.' " *Indiana v. Edwards*, 128 S. Ct. 2379, 2387 (2008) (quoting Brief for APA et al. as *Amici Curiae* at 26).

Clearly, disabilities can make it uniquely difficult for a civil litigant to proceed pro se. Nonetheless, apart from some particular identified civil proceedings (for example concerning guardianship or involuntary admission into a state hospital for treatment) the existence of a disability precluding self-representation does not automatically give rise to the right to counsel in custody proceedings.[50] Maryland courts have a very limited provision for providing counsel for persons with disabilities which was adopted forty years ago. The Maryland Court Rules of Civil Procedure, Rule 2-202(d) provides that in a suit against an individual under disability, the guardian or other like fiduciary, if any, shall defend the action. The Rule states that the court shall order any guardian or other fiduciary in its jurisdiction who fails to comply with the Rule to defend the individual as required. If there is no such guardian or other fiduciary, the court shall appoint an attorney to represent and defend the individual.

Maryland Rule 2-202(d) is applied infrequently, in part, because the legislative history of the Rule supports that it is intended for those cases where a person with a disability has a court

[48] To be added

[49] To be added

[50] Federal district courts have broad discretion under 28 U.S.C. § 1915 to request an attorney to represent any person unable to afford counsel. It has been found to be an abuse of discretion to decline to appoint counsel where an indigent plaintiff presents a colorable claim but lacks the capacity to present it and in circumstances where the plaintiff was uneducated generally and uneducated in legal matters and is unable to leave prison to interview witnesses. Courts review the totality of the circumstances to determine the fundamental fairness of proceeding without counsel. *Gordon v Leeke*, 574 F.2d 1147 (4th Circ. 1978); *Whisenant v. Yuam* 739 F. 2d 160 (4th Cir. 1984).

appointed guardian or fiduciary.[51] Expecting a guardian or fiduciary to represent or provide for representation of a person with a disability in family law matters is simply not realistic. Indeed, many times a state agency is appointed as a guardian of the person with a disability and the local Departments of Social Services and Area Offices on Aging are not equipped to absorb representation of persons with disabilities in other than the particular guardianship matter in which they are appointed. Moreover, the law provides that courts grant a guardian only those powers necessary to provide for the demonstrated need of the person such that the court may appoint a guardian for the limited purpose of making one or more decisions related to the health care of that person or only to manage an individual's property or finances. In such cases, the court appointed guardian is not in a position to provide or arrange for legal representation of the person in a custody matter. Moreover, the law requires that less restrictive interventions be attempted prior to filing a petition for guardianship (such as surrogate decision making or health care power of attorney, financial power of attorney) such that persons who would otherwise qualify for appointment of counsel under the Maryland Rule, may not be provided counsel in a family law matter because they do not have a court appointed guardian, even though they meet the standard to qualify for such an appointment.

In sum, tying the identification of persons who need court appointed counsel to a prior court determination related to guardianship captures only a sub-set of those persons with disabilities who need court appointed counsel in order to meaningfully participate in a court proceeding. Thus, Rule 2-202(d) is not significant for most cases where persons with disabilities are involved in custody disputes and need assistance of representation to have equal access to justice.

In September, 2007, Washington State became the first state to explicitly provide by court rule that counsel may be appointed as a reasonable accommodation for a litigant with a disability. The Rule is based on the Americans with Disabilities Act and is intended to ensure full access and meaningful participation to people with disabilities. The Rule requires each court in the state to accept requests for an accommodation, and for the court to "make its decision on an individual- and case-specific basis with due regard to the nature of the applicant's disability and the feasibility of the requested accommodation," and to consider as an accommodation "as to otherwise unrepresented parties to the proceedings, representation by counsel, as appropriate or necessary to making each service, program, or activity, when viewed in its entirety, readily accessible to and usable by a qualified person with a disability." , in addition to a reasonable

[51] Md. Ann. Code Estates and Trusts Article §§ 13-201(c)(1) and 13-705(b); Rule 10-103(b).

accommodation provision to allow appointment of counsel in cases where it is necessary to provide the individual with disabilities meaningful access to court, it would promote justice to appoint counsel for individuals with disabilities in cases where one party is represented by counsel and the opposing party has a disability and is not able, due to financial circumstances, to obtain counsel.[52]

The right to counsel is essential to fair, equal, and meaningful access to justice.[53] Most states have established a right to counsel by statute, court rule, and/or constitutional decision for civil cases involving child welfare or restrictions on physical liberty (such as institutional commitment for mental illness). States generally do not guarantee counsel for civil cases involving basic human needs such as child custody, although several states have undertaken pilot processes to provide such representation. The rationale for court appointed representation is especially compelling when necessary to provide meaningful access for persons whose disabilities provide barriers to such access.[54] Parents with disabilities all too frequently face significant barriers to retaining effective and affordable legal representation as well as meaningful participation in the family law system. At the same time, because of discrimination, their participation and involvement are crucial to securing a reasoned and nonbiased outcome in their child custody case.[55]

C. Training.

[52] To be added

[53] Internationally, 47 countries in Europe, as well as Canada, Australia, New Zealand, Zambia, Brazil, Madagascar, and South Africa, have statutes or a constitutional provision that ensure free civil counsel for indigent people. The United Kingdom has guaranteed the right to counsel in civil cases for over five centuries.

[54] Access to court by persons with disabilities raises issues related to prejudice and fairness when one person is represented and other is not; fairness and access to justice appears compromised.(See, National Council on Disabilities report, “Rocking the Cradle: Ensuring the Rights of Parents with disabilities and Their Children” (2012)).

[55] See, National Council on Disabilities, “Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children” (2012).

Recommendation 1: All family court professionals should receive training on a regular basis on parents with disabilities and their children. Such training should be provided by persons with disabilities and technical expertise in this area such as professionals from Centers for Independent Living, On Our Own, People On the Go or Through the Looking Glass (TLG), a nationally recognized center that has provides research, training, and services for families in which a child, parent or grandparent has a disability. TLG operates the National Center for Parents with Disabilities and their Children, funded by the U.S. Department of Education. Training should include research and study related to disability based bias in family law and include a body of research studies demonstrating that parents with disabilities are effective parents.

Recommendation 2. When a custody evaluation is ordered and one of the parents has a disability, the evaluation must include supporting evidence from the evaluator that the specific tools and methods utilized comply with standard or best practice for assessing any specific disability related issue . One method of ensuring appropriate practice is for the evaluator to certify that they comply with the 2012 American Psychological Associations Guidelines for Assessment of and Intervention with Persons with Disabilities.

Discussion - Training Issues to Ensure Fairness and that Custody Determinations are Based on Actual Evidence

The Report of National Council on Disability (NCD), "Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children", 312pp.(2012), provides a comprehensive review of the barriers people with diverse disabilities experience when exercising their right to create families. The Report describes, "the persistent, systemic, and pervasive discrimination against parents with disabilities." (Letter of Transmittal from NCD Chairman Jonathan Young to the President dated September 27, 2010 @ 2). Barriers include: a system grounded in bias; laws that do not protect them from unsupported allegations that they are not fit or will have a detrimental impact on their children on the basis of presumption or speculation regarding disability; and a lack of expertise regarding parents with disabilities and their children.

The research study conducted by NCD led to the finding that parents with disabilities involved in family law proceedings regularly face evidence regarding their parental fitness that is developed using inappropriate and unadapted parenting assessments. The National Council on Disabilities study recommends that evaluators comply with the 2012 American Psychological Associations Guidelines for Assessment of and Intervention with Persons with Disabilities. NCD further recommends that such assessments require observations in the natural environment, in a parent's modified home setting for example. Evaluators, according to findings and conclusions of the Report, must be required to use tools that have been developed specifically to assess the capabilities and needs of parents with disabilities and should consider what supports the parents have or that are available. NCD recommends that state legislatures mandate training for custody evaluators to teach them the skills needed to conduct competent disability-related custody evaluations. Such training must include valid methods that directly evaluate parenting knowledge and skills, and should consider the role of adaptations or environmental factors that can impede or support positive outcomes. Psychiatrists and psychologists must ensure that the measures they administer are intended for use with the disability population of which the parent is a member. The NCD Report noted that evaluators especially need training in assessments of persons with intellectual or developmental disabilities.

The recommendations of the NCD Report appear well developed for application in Maryland. In re Adoption[56] J9610436 & J9711031, 368 Md. 666 (2002), the Court of Appeals held that the trial court inappropriately relied on the report and testimony of a psychiatric examiner in view of the examiner's failure to administer tests for measuring intelligence quotient and adaptability levels, and his speculative answer as to father's ability to be a fit parent. The Court determined the trial court's reliance on the expert to support an assessment of the father's mental capacities was inappropriate given the restricted basis, conjecture and speculation reflected in the record.

In sum, several issues are of special significance:

1. Speculation and global diagnostic or disability labels must not be grounds for limiting custody or visitation and must not be part of court ordered assessment or evaluation.

[56] To be added

2. Assessment tools must be used that have been specifically tested and developed to assess the capabilities of parents with specific disabilities. When applicable, an assessment should include the person's existing supports.

3. Regular training must be provided to family court professionals by persons with disabilities and by experts with technical expertise.

Attachment A

Maryland Code, Family Law Article, § 9-107

§ 9-107. Disability of party to custody or visitation proceedings

Disability defined

(a)(1) In this section, "disability" means:

(i) a physical disability, infirmity, malformation, or disfigurement that is caused by bodily injury, birth defect, or illness, including epilepsy;

(ii) a mental impairment or deficiency;

(iii) a record of having a physical or mental impairment as defined under this subsection; or

(iv) being regarded as having a physical or mental impairment as defined under this subsection.

(2) "Disability" includes:

(i) any degree of paralysis or amputation;

(ii) blindness or visual impairment;

(iii) deafness or hearing impairment;

(iv) muteness or speech impediment;

(v) physical reliance on a service animal or a wheelchair or other remedial appliance or device; and

(vi) intellectual disability, as defined in § 7-101 of the Health--General **Article**, and any other mental impairment or deficiency that may have necessitated remedial or special education and related services.

Relevance of disability

(b) In any custody or visitation proceeding, a disability of a party is relevant only to the extent that the court finds, based on evidence in the record, that the disability affects the best interest of the child.

Added by Acts 2009, c. 567, § 1, eff. Oct. 1, 2009; Acts 2009, c. 568, § 1, eff. Oct. 1, 2009.

Attachment B

Tennessee Proposed Bill

AN ACT to amend Tennessee Code Annotated, Title 33; Title 36 and Title 37, relative to custody determinations involving disabled parents.

WHEREAS, the Tennessee General Assembly finds that thousands of Tennesseans are disabled as the result of disease, accident, injuries sustained in the service of our country, genetic causes, or congenital defects; and

WHEREAS, the General Assembly further finds that Tennesseans with disabilities have contributed in no small manner to the prosperity and welfare of the State of Tennessee in the practice of various professions, in the arts, in business, in the sciences, as teachers andinstructors, and as parents and caregivers to countless children in this State; and

WHEREAS, the General Assembly further finds and concludes that strong and healthy families are the foundation of an orderly and prosperous society; and

WHEREAS, it is the policy of the State of Tennessee to foster the growth and preservation of strong and healthy families in Tennessee; and

WHEREAS, the General Assembly finds that Tennesseans with disabilities have suffered invidious discrimination in child welfare and custody proceedings throughout this State on account of such disability; and

WHEREAS, it is the policy of the State of Tennessee that no citizen of this State shall suffer discrimination from any child welfare agency or in any custody proceeding solely because of such person's disability; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:
SECTION 1. Tennessee Code Annotated, Title 36, Chapter 6, Part 1, is amended by adding the following as a new section:
36-6-115.

(a) (1) In any suit for divorce, or for legal separation, or in any other proceeding requiring the court to make a custody determination regarding a minor child, or in any proceeding where the issue before the court is the modification of a prior decree pertaining to custody or the modification of a permanent parenting plan, and where at least one (1) parent suffers from a disability, the party asserting or claiming that a parent's disability renders the parent unfit or otherwise incapable of satisfying the physical, emotional, educational or psychological needs of the minor child must establish by clear and convincing evidence that the disability of that parent poses a substantial risk of harm to the health or safety of the minor child at issue.

(2) Should the court find by clear and convincing evidence that the disabled parent's disability poses a substantial risk of harm to the health or safety of the minor child, the court shall make specific findings of fact and conclusions of law in support of such finding.

(b) (1) For purposes of this section, the term "disability" means, with respect to an individual, any mental or physical impairment which substantially limits one (1) or more major life activities of the individual, including, but not limited to, seeing, hearing, walking, speaking, learning, working, self-care or manual tasks; or a record of such an impairment; or being regarded or perceived by others as having such an impairment. The term "disability" shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism or other sexual behavior disorders, any substance use or alcohol use disorder, any compulsive gambling disorder; kleptomania or pyromania. Sexual preference or sexual orientation shall not be deemed an impairment or disability.

(2) The determination as to whether or not an impairment substantially limits one (1) or more major life activities shall be made without consideration of the effect of corrective or mitigating measures used to reduce the effect of the impairment.

(c) All child protective service investigators, family service workers and case managers employed with the department of children's services; all judges and referees, whether part-time or full-time, with family law, domestic or juvenile jurisdiction; and all Rule 31 Listed Family Mediators shall receive annual training which addresses the issues and concerns of disabled parents. Further, at least one half (1/2) of this annual training shall be conducted by disabled parents.

SECTION 2. Tennessee Code Annotated, Section 36-6-106(a)(5), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(5) The mental and physical health of the parents or caregivers; provided, that a parent's disability shall be considered pursuant to § 36-6-115;

SECTION 3. This act shall take effect July 1, 2013, the public welfare requiring it, and shall apply to all custody determinations made on or after such date.

Appendix B

Gender Bias, Economic Issues and Neutral Language Subcommittee

The Gender Bias, Economic Issues and Neutral Language Subcommittee studied the effects of gender, economic status and language in custody proceedings.

Subcommittee members are Tracy Brown and Karen Czapanskiy.

The Subcommittee recommended, and the Committee adopted, recommendations concerning:

- Gender bias.
- Joint legal custody and shared physical custody.
- Economic bias.

A. Gender Bias

Recommendation 1. If a comprehensive custody statute is proposed by the Commission, the statute should provide that the sex of the parent and the child are irrelevant to the determination of custody.

Recommendation 2. Since many litigants in custody matters appear to believe that trial judges make custody decisions in a way that reflects gender bias, judicial education should address explicit and implicit bias.

Background

1. Recommendation 1 does not change the current law.

a. For at least the last 30 years, the Court of Appeals and the Court of Special Appeals have consistently held that the sex of the parent is irrelevant to the determination of custody. *See Elza v. Elza*, 300 Md. 51 (1984); *McAndrew v. McAndrew*, 39 Md. App. 1 (1978).

b. The Court of Appeals has also held that the sex of the child is irrelevant to the determination of custody. *See Griffin v. Crane*, 351 Md. 133 (1998).

2. Perceived and real gender bias falls into many categories and needs to be acknowledged.

a. Mothers report that concerns about their safety and the safety of their children are given little weight by some judges who give greater credibility to the denials by fathers of violent, threatening or initimidating behaviors.

b. Fathers report that their desire to be more actively involved in the lives of their children are given little weight by some judges.

c. Mothers who move to a new location because of an employment opportunity are viewed as putting job above family, while fathers who move for the same reason are viewed as doing the right thing.

d. Fathers who seek custody of a young child may be viewed as incapable of providing adequate care

3. Because judges have broad discretion in custody decisions, it is typically impossible to determine whether a judge's decision is grounded in gender bias or in the judge's unbiased decision that custody in one parent or the other is in the best interests of the child.

4. Gender bias, whether perceived or real, can have a negative impact on the public's trust in the judiciary and the legal system.

B. Joint Legal Custody and Shared Physical Custody

Recommendation 1. Judicial education is needed to assist judges in identifying the cases in which joint legal or physical custody may be indicated and those in which joint custody is not indicated.

Recommendation 2. Parents should have more access to alternative dispute resolution and mediation to resolve custody disputes, where appropriate.

Recommendation 3. Community education should be encouraged about the importance to children of having both parents involved in their lives.

Recommendation 4. No change should be made in current Maryland law regarding the ability of courts to order joint legal and physical custody.

Background

1. Maryland law provides that courts may award joint legal (that is, decision-making authority) and joint physical custody (that is, residential responsibility) if doing so is in the best interests of the child and regardless of whether both parents agree. See, *Taylor v. Taylor*, 306 Md. 290 (1985); *McCarty v. McCarty*, 147 Md.App. 268 (2002).

2. Under Maryland law, no presumption exists in favor of either sole custody or joint custody.

3. Maryland's child support guidelines encourage both parents to be involved in the care of the child by providing for a downward adjustment of child support when the parents have a shared custody arrangement and the child spends more than 35% of overnights with each parent. Md. Fam. Law Art., §§ 12-201(m), 12-204(f), (m).

4. Some people believe gender bias is the basis for custody decisions in which the child spends more time with the mother and/or legal custody to the mother. Some advocate for a change in the law to presume that the best interests of the child is served by an award of shared physical custody and/or joint legal custody.

5. Arguments in favor of adopting a presumption in favor of joint legal and physical custody fail for a variety of reasons.

a. The current rule entrusts judges with broad discretion to determine what is in the best interests of the particular child. If a presumption were adopted, the scope of judicial discretion would decrease with possible detriment to the best interests of the particular child. Courts are charged with *parens patriae* power to protect children and restrictions on the exercise of that power in custody disputes is inconsistent with that long-standing mandate.

b. As a practical matter, adopting a presumption is unnecessary because, in recent years, an increasing percentage of custody cases result in joint legal and/or physical custody decrees.

Resources.

- Women's Law Center, Families in Transition, http://www.wlcmd.org/wp-content/uploads/2013/06/Families-in-Transition.pdf..

- Maria Cancian & Daniel R. Meyer & Patricia R. Brown & Steven T. Cook, *Who Gets Custody Now? Dramatic Changes in Children's Living Arrangements After Divorce*, DEMOGRAPHY. 2014 May 9. [Epub ahead of print], DOI 10.1007/s13524-014-0307-8]("in 2008, equal shared [physical] custody increased from 5% [in 1988] to 27% of all cases, and unequal shared [physical] custody increased from 3% [in 1988] to 18% in all cases.").

c. If a presumption in favor of joint legal and physical custody is adopted, more parents will be sharing custody over their objection. Family researchers have tried to answer the question of whether the best interests of children are served where the court orders joint physical custody over the objection of a parent. The research does not provide a definitive answer, but the weight of the studies appears to favor the current Maryland approach, under which joint physical custody would be ordered in fewer cases over the objection of a parent.

Resources. Below is a sample of relevant studies and summaries of studies.

- Christy M. Buchanan & Parissa L. Jahromi, *A Psychological Perspective On Shared Custody Arrangements,* 43 Wake Forest L. Rev. 419, 427-28 (2008)(while joint custody, both legal and physical, is positive for children where parents are in agreement and experience low levels of conflict, "custody in situations of high interparental conflict is likely to mean that children are exposed to more conflict, which is likely to interfere with their well-being. Thus, imposing joint physical custody on families who are litigating, particularly if litigation is protracted, is highly unlikely to promote the best interests of children and may in fact do them harm.")

- Marsha Kline Pruett, J. Herbie DiFonzo, *AFCC Think Tank Final Report: Closing The Gap: Research, Policy, Practice, And Shared Parenting*, 52 FAM. CT. REV. 152 (2014)(think tank of 32 family law experts from practice and academia convened by the Association of Family and Conciliation Courts (AFCC) to examine the issues surrounding shared parenting concluded that, among other things, most children benefit from the involvement of both parents but the necessity for individualized decisionmaking renders inadvisable a presumption in favor of shared parenting)

- Richard A. Warshak, *Social Science and Parenting Plans for Young Children: A Consensus Report*, 20 PSYCH., PUB. POL. & LAW 46 (2014)(while spending substantial time, including frequent overnights, in the homes of both parents is beneficial for young children, "because of the relatively few studies currently available, the limitations of these studies, and the predominance of results that indicate no direct benefit or drawback for overnights per se outside the context of other factors, we stop short of concluding that the current state of evidence supports a blanket policy or legal presumption regarding overnights.")

d. There is broad agreement among social scientists that some categories of cases are not suitable for joint physical custody. If a presumption is adopted, therefore, the statute should identify with care the cases to which the presumption should not apply.

Resources. Below is a sample of relevant studies and summaries of studies about cases in which joint custody is inappropriate.

- Peter G. Jaffe, Janet R. Johnston, Claire V. Crooks, Nicholas Bala, *Custody Disputes Involving Allegations of Domestic Violence: Toward a Differentiated Approach to Parenting Plans*, 46 FAM. CT. REV. 500 (2008) (coparenting involving either joint decision-making or joint caretaking not appropriate in cases involving domestic violence generally).

- Linda D. Elrod & Milford D. Dale, *Paradigm Shifts and Pendulum Swings in Child Custody: The Interests of Children in the Balance*, 42 FAM. L. Q. 381, 394–95 (2008) (noting that, in all states, evidence of violence against one parent by the other is

relevant in custody disputes and twenty-four states have rebuttable presumption against custody in the abusive partner).

- Katharine T. Bartlett, *U.S. Custody Law and Trends in the Context of the ALI Principles of the Law of Family Dissolution*, 10 VA. J. SOC. POL'Y & L. 5, 26 (2002) ("The most significant development in custody law in the past five to ten years is an increasing legal protection for parents and their children from domestic violence.").

- Christy M. Buchanan & Parissa L. Jahromi, *A Psychological Perspective On Shared Custody Arrangements,* 43 Wake Forest L. Rev. 419, 427-28 (2008) (shared custody should not be ordered where parents are in high conflict with one another).

- Richard A. Warshak, *Social Science and Parenting Plans for Young Children: A Consensus Report*, 20 PSYCH., PUB. POL. & LAW 46 (2014) ("Our recommendations [favoring joint physical custody of young children, but not a presumption] apply in normal circumstances, for most children with most parents. The existence of parents with major deficits in how they care for their children, such as parents who neglect or abuse their children, and those from whom children would need protection and distance even in intact families, should not dictate policy for the majority of children being raised by parents who live apart from each other. Also, our recommendations apply to children who have relationships with both parents. If a child has a relationship with one parent and no prior relationship with the other parent, or a peripheral, at best, relationship, different plans will serve the goal of building the relationship versus strengthening and maintaining an existing relationship.").

e. Assuming that a presumption in favor of joint physical custody is adopted and that certain categories of cases are exempted from the application of the presumption, the judicial system will need to ensure that the presumption is applied only in the proper cases. Empirical studies, however, indicate that administering the system to ensure that the presumption is applied only in appropriate cases is rather difficult.

Resources.

- Robert H. Mnookin & Eleanor Maccoby, Facing the Dilemmas of Child Custody, 10 Va. J. Soc. Pol'y & L. 54 (2002)("Our most disturbing finding with respect to legal conflict concerns the frequency with which joint physical custody decrees are being used by high-conflict families to resolve disputes. About a third of the 166 cases in our study in which the decree provided for joint custody involved substantial or intense legal conflict. In about half of these cases, the children in fact resided with the mother — the legal label did not reflect the social reality. Nevertheless, we did find some 25 joint physical custody cases in which the children were in fact dividing their residential time fairly equally between parents who had substantial legal conflict. Moreover, we found a strong relationship between the intensity of legal conflict and the ability of parents to develop cooperative co-parental relations following the divorce: a much higher proportion of those families with substantial or intense legal conflict had conflicted co-parenting styles, and many fewer were able to develop cooperative co-parenting relationships.)

- Peter G. Jaffe, Janet R. Johnston, Claire V. Crooks, Nicholas Bala, *Custody Disputes Involving Allegations of Domestic Violence: Toward a Differentiated Approach to Parenting Plans*, 46 FAM. CT. REV. 500 (2008) (differentiating situations where allegations of domestic violence should and should not be basis for limitations on joint custody very difficult, requiring fine distinctions and extensive factual investigation; likely to consume extensive court time).

- Margaret F. Brinig, Loretta M. Frederick, and Leslie M. Drozd, *Perspectives on Joint Custody Presumptions as Applied to Domestic Violence Cases*, 52 FAM. CT. REV. 272, 277 (2014)(despite importance of avoiding joint physical custody in cases involving domestic violence, "[e]xceptions for domestic violence cases do not, however, actually prevent the inappropriate application of the presumption to many families for whom domestic violence is a significant issue. Operationalizing an exception is difficult for several reasons: abuse is often not detected by the system, victims have problems proving that the abuse occurred, and many practitioners are disinclined to believe that the abuse occurred.").

C. Economic Bias.

Recommendation 1. The statute should reflect that where the parents have disparate incomes and economic resources, custody should not be determined solely on the basis of the economic superiority of one parent.

Recommendation 2. Where the parents have disparate incomes and economic resources, courts should make adequate and predictable awards of attorney's fees to the lower-income parent. This recommendation could be accomplished either through statutory or rule change.

Recommendation 3. Where an attorney is appointed for the child (known as a BIA, or Best Interests Advocate), courts should not require a parent to pay the fees without an assessment of the ability of the parent to pay the fee.

Recommendation 4. The downward adjustment of child support in cases of shared physical custody needs to be reconsidered, particularly in cases where the child's principal household lacks adequate resources.

Recommendation 5. The legal community needs to address means for providing counsel for unrepresented parents in custody matters, including providing counsel paid for by the state, pro bono services, limited representation and alternative dispute resolution.

Recommendation 6. Child Support guidelines should be reassessed to provide a sufficient self-support set-aside for each parent.

Recommendation 7. Child Support administrative practices, including imputation of income, should be evaluated to ensure that low-income parents are not required to pay more child support than is reasonable.

Background

1. Maryland law does not protect the lower-income parent from being denied custody solely on the basis that the other parent can provide greater economic resources. Several other states protect lower-income parents from this form of economic bias. See, e.g., *Burchard v. Garay*,

229 Cal. Rptr. 800, 724 P.2d 486 (CA 1986)("The trial court's decision referred to William's better economic position, and to matters such as homeownership and ability to provide a more "wholesome environment" which reflect economic advantage. But comparative income or economic advantage is not a permissible basis for a custody award. … If in fact the custodial parent's income is insufficient to provide proper care for the child, the remedy is to award child support, not to take away custody."); *Malawey v. Malawey*, 137 S.W.3d 518 (Mo. App. 2004)(custody determinations cannot be made based on economic superiority of one parent; parent awarded custody here was economically superior, but court found that custody decision was not based on bias toward that parent).

Resources.

- Carolyn J. Frantz, Note, *Eliminating Consideration of Parental Wealth in Post-Divorce Child Custody Disputes*, 99 MICH. L. REV. 216 (2000) ("Despite the strength of the intuition that wealth must be relevant to children's interests, this Note recommends eliminating consideration of financial factors in child custody determinations, except when one parent cannot, even with child support payments, provide for the child in a minimally adequate manner. This position is consistent with recent statutory developments in Missouri and Oregon, as well as a well-established common law rule in Pennsylvania, which courts in other states have adopted. States may eliminate consideration of wealth through either the statutory or common law route.").

2. When a party to a custody dispute cannot afford counsel and the other party can, the unrepresented party can be at a disadvantage. While the Maryland Court of Appeals has so far declined to order the appointment of counsel in civil matters involving custody claims (*see Frase v. Barnhart*, 379 Md. 100 (2003)), numerous groups have investigated the issue and found that a significant need for counsel in civil matters, including custody.

MARYLAND GENERAL ASSEMBLY

COMMISSION ON CHILD CUSTODY DECISION-MAKING

APPENDIX H —
Court Process Committee Report

Report of the Court Process Committee to the Commission on Child Custody Decision-Making

Chair Master Richard Sandy, Frederick County

Submitted September 8, 2014

Members of the Committee

Master Richard Sandy - Chair
Judge Cynthia Callahan- Chair CCCDM
Brehm, Tobey
Cassel, Jennifer
Conroy, Aindrea M.
Craig, Amy
Duckworth, Robert
Dumais, Del. Kathleen
Dunn, Master William
Early, Kim
Gold, Sally
Hutchins, Holly
Kelly, Jr., Paul
Kirby, Nolanda
Kramer, Master Mary
Levy, David
Loiacono, Gerald - DFA Staff
Marcoux, Benjamin
Mastracci, Michael
McLeod, Gwendolen
Parvis, Lindsay
Poole, Travis
Rismiller, Donna
Ruth, Laure Anne
Segel, Master Lisa Stearman
Shoop, Darcy
Thurtle, Master Timothy
Tipton, Master Hope
Welter, Jer
Wherthey, Kathleen

Introduction

The Court Process Committee of the Commission on Child Custody Decision-Making was formed by the Commission to study and make recommendations for improvement to the court process for separating families. The Committee was chaired by Master Richard Sandy, also a member of the Commission. The Committee membership represented a cross section of those involved in the process including court staff and private and public attorneys operating in a multitude of jurisdictions in the state.

The Committee members echoed many of the concerns raised by the public during Commission's hearings. The diversity in geography and experience of the Committee membership allowed for a more thorough study of the issues and created practical suggestions for improvement.

Committee Tasks

The Commission assigned the Court Process Committee the following tasks from HB487:

> (12) study case management systems for family law cases in Maryland and other states and study how to improve timely access to the court for temporary, pendente lite custody disputes, initial custody determinations, custody modification proceedings, and emergency proceedings, and how to expedite denial of visitation proceedings;

(15) study the training programs currently available to Maryland judges regarding child custody decision making and assess how to improve the training, including making it more culturally sensitive and diverse, and how to make the training more available to all judges on a consistent, ongoing basis;

Subcommittees

To better study the issues and make recommendations, the Committee broke into six subcommittees:

- Unmarried Couples
- Judicial Training
- CINA/Custody Overlap
- Emergency Process
- Enforcement of Orders
- *Sumpter* Issues

Unmarried Couples Subcommittee

The Unmarried Couples Subcommittee was formed in acknowledgment that while the custody process was originally developed in the context of divorce, many separating parents were never married or in any kind of long term relationship. The Subcommittee focused on improving the process for these families.

The Subcommittee examined the pathways unmarried couples with children entered the judicial custody process. In the hearings held around the state in the fall and winter of 2013, the Commission heard that for many, the child support enforcement process was their first exposure to the court process.[1]

The Subcommittee considered efforts that could be made as part of the support enforcement process to aid parents. This included a survey of the different practices around the State and in other states. They found that for those who enter the system through administrative action of the Office of Child Support Enforcement, judicial access does not always follow.

The full Subcommittee report is attached. In brief, the Subcommittee recommended:

1) **Increased Co-Parenting Support from the Office of Child Support Enforcement and the Court.** The court and the OCSE support families by making information and assistance available. The subcommittee would like the court and OSCE to promote alternative dispute resolution in the process as well as the development of parenting plans
2) **Improved Case Coordination, Particularly in Cases Involving Paternity and Child Support Issues**

[1]The Committee recognized that the protective order process was also a pathway into court for unmarried couples. The Subcommittee believed that this was best addressed by the Domestic Violence Committee of the CCCDM, but did provide feedback to that Committee.

The court should consolidate, or at a minimum better coordinate the handling of multiple family law cases involving the same family. Furthermore, the subcommittee suggests that lawmakers revisit some of the legal provisions surrounding paternity and the separation of families through mechanisms other than divorce.

3) **Updated Laws Concerning Adoption**
   Lawmakers should consider issues surrounding adoption for same sex never married couples, including second parent adoptions.
4) **Updated Laws Concerning Paternity in Modern Family Arrangements**
   That laws and processes surrounding the establishment of paternity be revised to account for modern family arrangements, including artificial conception and collaborative reproduction.
5) **Creation of a Court-Based Co-Parenting Pilot Project**
   The court should create a pilot project aimed at encouraging co-parenting and reaching sustainable agreements between the parties. Other jurisdictions have successful programs aimed at creating sustainable parenting agreements for families in the child support enforcement process.

Judicial Training Subcommittee

The Judicial Training Subcommittee studied the training available for judges and masters in Maryland. The Committee is concerned that training offered to Judges and Masters keep pace with modern concerns of the people before the court.

The Subcommittee found that training for judges and masters in the current system is required to contain many of the elements spelled out in HB 687. The Subcommittee noted that accountability would help the Judiciary meet these goals. The Judiciary could require that Judges submit an annual statement of trainings attended similar to the required ethics and financial disclosures. The Subcommittee also supported the creation of a program similar to court watch that would periodically attend and observe proceedings to monitor judicial conduct in line with principles emphasized during orientation and training.

CINA/Custody Overlap Subcommittee

The CINA/Custody Overlap Subcommittee looked at the problems that may arise when custody is awarded at the conclusion of a child in need of supervision (CINA) case. The Committee was concerned that an individual with a CINA order of custody would have difficulty enforcing the order in subsequent civil proceedings. Specifically, the Committee was concerned that an individual, including the individual whose custody was ended by the juvenile court, could seek custody, after the CINA case was closed, in a different jurisdiction without the court's knowledge of the earlier CINA order. The Subcommittee developed a civil order for the court to enter at the conclusion of a CINA case with an award of custody. This would allow the court, and others, to have access to the order on casesearch or other electronic case records repositories. A copy of the proposed order is included in the Subcommittee documents.

Enforcement of Orders and Emergency Process

The subcommittees working on enforcement of orders and a process for emergency relief developed concurrent recommendations at the final Committee meeting:

The Committee recognizes first that courts must be able to quickly and competently respond to the needs of children in separating families. The court must be able to prioritize the decisions that affect the lives of children. Time is of the essence when an unnecessary delay could endanger a child or permanently damage the relationship of a child and a parent. The challenge facing lawmakers will be to balance this need against the limitations in court resources.

The Committee believes the balancing point to be at 7 and 30 day response requirements.

In cases of emergency, the court should provide a hearing within seven days. In the case of non-emergency cases where lack of action from the court may result in damage to the parent child relationship or eventual harm to the child, the court should provide a hearing within 30 days.

Standard for Emergency Relief

Matters appropriate for emergency relief should include cases where there is a "substantial risk of imminent harm to a child", approximating the standard set in *Kalman v. Fuste*. This harm should have occurred or will happen 14 days within the time of filing the petition. Matters appropriate for emergency relief could include:

- Serious physical, emotional or harm to the child[2]
- Removal of financial support that causes actual harm to a child (ie: disconnection of utilities)
- Imminent removal of a child from the court's jurisdiction
- Other matters the court finds appropriate

Standard for Non-Emergency Expedited Relief

The Committee is concerned that there is no uniform process for addressing cases where there is no imminent risk of harm, but harm is nonetheless probable. These are the types of cases that the Commission heard in the public hearings that frustrated the parties and the court.

The Committee believes that addressing these cases in a regular and predictable way would make the process better for parties and the court.

[2] The Committee notes that the proposed emergency process is not intended to supplant the relief available to families via the protective order or DSS investigative processes. If relief via those means is appropriate, parties should utilize it.

Matters appropriate for expedited relief may include:

- Complete denial of access to minor children
- Complete cessation of financial support to a dependent spouse or minor child
- Imminent and major disruption of continued compulsory education for a minor child (which may include a transfer of the minor child to a new school without consent of both parents)
- Non-imminent removal of a minor child from the state
- Other matters the court finds appropriate [3]

Process for Seeking Expedited Relief

Petitioners seeking expedited pendent lite relief must file a form, under oath. The request must be made as part of an underlying complaint for custody. The form should be developed by the Judiciary and be uniform statewide.

Once filed, the request will be reviewed by a judge or master.

The judge or master can make a decision based on the facts presented or schedule a hearing on the matter. The court should respond to the petitioner as soon as possible with an answer to the petition.

Ex Parte Relief

The Committee recognizes that some jurisdictions allow for, and are equipped to provide ex parte relief in custody matters. If the court grants ex parte relief, the provisions in Rules 1-204 and 1-351 should control. The petitioning party must attempt to notify the other party.

Availability of DCM Plans

The Committee recognizes that courts will have different mechanisms for providing a response to a petitioner and the timing of the hearing, if any, within the 7/30 day framework.

Each court should integrate their specific process for expedited relief into DCM plans. These plans should be available on the court website and available for inspection in the clerk's office. The process adopted by each court should be fully explained in the plan. This could aid self-represented litigants and practitioners who appear in multiple jurisdictions.

The Committee discussed the practice in some jurisdictions to hold expedited hearings on certain days of the month.

[3] The Court Process Committee is aware of the recommendation from the DV Committee allowing for expedited custody relief following a request for custody as part of final protective order. While this recommended process would fit into the process recommended here, the Committee takes no position on the recommendation.

Sumpter Issues Subcommittee

The *Sumpter* issues subcommittee was tasked with studying the process by which custody evaluations are prepared and reported to the court. The subcommittee was most concerned with ensuring that the process was timely and fair for represented and pro se litigants, the primary issues in *Sumpter* v. *Sumpter* for which the Subcommittee was named

The subcommittee noted that the Rules Committee is currently considering a Rule that would address many of the issues raised in *Sumpter*.

Work Not Assigned to Subcommittees

The Committee also considered issues as a full committee without assignment to a specific subcommittee

Parenting Plans

The Committee recommends that a parenting plan form be adopted statewide. Parties in a custody case should be required to file a parenting plan as part of a pretrial statement if an agreement has not been reached through other means.

Mediation following custody evaluation report

The Committee recommends that mediation be made available to parties following the presentation of a custody evaluation report. Several courts in Maryland have mediation available on the same day. This practice must be monitored to ensure that the mediation is no coercive.

Implementation of Recommendations

Many of the recommendations contained in the report may be implemented immediately by the courts through directives to judges and court staff. The remainder of the recommendations must be implemented as part of a change to rule or statute.

The Committee noted multiple times that the structure of the Family Divisions or Family Service Programs makes implementation difficult. The Committee ultimately believes that Maryland should have a standalone and unified Family Court for the uniform delivery of services and effective case management. The Committee pointed to the creation through statute and function of Maryland's District Court or Family Courts in other states as examples. This top down approach would allow the court to better address the unique needs of Maryland families.

MARYLAND GENERAL ASSEMBLY

COMMISSION ON CHILD CUSTODY DECISION-MAKING

APPENDIX I —
Statutory Considerations Committee Report

Commission on Child Custody Decision- Making

Report of the Statutory Considerations Committee

Committee Members:

Keith N. Schiszik, Esq., Chair, Attorney, Day & Schiszik

Honorable Cynthia Callahan, Chair - CCCDM

Reneé Bronfein Ades, Esq., Law Offices of Reneé Bronfein Ades, LLC

Robert Alderson, Esq., Skidmore, Alderson & Duncan, PA

Barbara Babb, Assoc. Professor, Director, Sayra and Neil Meyerhoff Center for Families, Children and the Courts

Alisa G. Cummins, Esq., Attorney

Risa Garon, LSCSW-C, National Family Resiliency Center, Inc.

Michelle Harris, Esq., The Law Offices of Michele R. Harris, LLC

Sharon M. Iannacone, LCSW,C, Director, Office of Family Court Services

David L. Levy, Esq., Children's Rights Fund, Inc.

Margaret Maupin, Maryland Legal Aid, Southern Maryland

Master Julia A. Minner, Domestic Relations Master, Frederick Co.

Christopher Nicholson, Esq., Turnbull, Nicholson & Sanders, P.A.

Mary Sanders, Esq., Turnbull, Nicholson & Sanders, P.A.

Justin Sasser, Esq., Attorney

Jana Singer, University of Maryland, School of Law

Donna Van Scoy, Esq., Attorney

Stephen C. Wilkinson, Esq., Attorney

Staff:

Connie Kratovil-Lavelle, Esq., Executive Director, Department of Family Administration

Gerald Loiacono, Legal Resource Coordinator, Department of Family Administration

Adam Wheeler, Family Law Research Specialist, Department of Family Administration

Introduction

The Statutory Considerations committee was charged with addressing the following Commission tasks:

- 1: Study the practice, principles, and process for child custody decision-making in Maryland;
- 3: Study how to make the establishment and modification of child custody orders more uniform, fair, and equitable;
- 8: Study the advantages and disadvantages of joint physical custody and the impact of joint physical custody on the health and well–being of children;
- 10: Study statutes from other states used for child custody determinations and assess whether those statutes improve the quality of decisions in child custody cases; and
- 11: Study whether the Annotated Code of Maryland should contain a statute regarding child custody decision making that would include definitions and factors for consideration in such decisions.

In addressing these tasks, the Committee divided into three working groups.

1. Statutory Factors;
2. Parentage; and
3. Presumptions of Joint Legal Custody and Joint Physical Custody.

Statutory Factors working group

The first task of this group was to research statutory custody enactments in the 50 states and the District of Columbia (DC) (hereinafter "jurisdictions"). Charts[1] were developed to demonstrate which jurisdictions have statutes, whether and which factors each statute considers, and how the statute is used in the process of custody decision-making.

All but seven jurisdictions have a statutory custody decision-making enactment that includes factors. Those seven which do not are Alabama, Maryland, Mississippi, New York, Rhode Island, North Dakota and South Dakota. In the other 44 jurisdictions, the structure and factors listed varies, although a core group of factors was identified as those most frequently considered.[2]

The subcommittee unanimously determined that a statutory enactment was needed as a guide for Maryland courts and parties navigating the process of custody decision-making. 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.

An in-depth review of factors was undertaken. The working group distinguished factors focused on the needs of the child from factors focused on the abilities of the parents, considered whether specific factors related to modification were necessary for inclusion, and selected factors recommended for inclusion in a Maryland custody decision-making statute.

The structure of the factors analysis is divided into two categories: those the court must consider, and those the court may consider. The proposed statute requires

[1] Those charts are in this Appendix.

[2] See "Incidence of Child Custody Factors in the 51 Jurisdictions" chart.

that a court articulate those factors on the record or in writing, based on the evidence in the case. The proposal substitutes the phrase "parenting time and responsibility" for physical custody, and "legal decision-making authority" for legal custody.

The working group also drafted a "preamble" to articulate the goals of the proposed statute. The goals include providing an "expeditious, thoughtful and consistent" court process for custody decision-making, assuring that children have "frequent, regular and continuing" contact with their parents, encouraging parents to share in the "rights and responsibilities of rearing their children," and to "foster a child's relationships siblings and significant adults."

Parentage working group

The Parentage working group was tasked with identifying jurisdictions where third party access or visitation statutes have been enacted in compliance with the U.S. Supreme Court's ruling in *Troxel v. Granville*.[3] The review led to consideration of statutes in several jurisdictions, and an analysis of how best to protect children's relationships with siblings and significant others.

The working group concluded that the best approach was to define "child-parent" and "ongoing" relationships in the statute. This approach was viewed as protecting parental decision-making and distinguishing between individuals who have functioned as parents and other adults while also protecting the child's relationships.

The working group drafted proposed statutory language, which is incorporated in the draft decision-making statute.

Presumptions of Joint Legal Custody and Joint Physical Custody working group

The Presumptions of Joint Legal Custody and Joint Physical Custody working group (hereafter "Presumptions working group"), with input from the Literature Review

[3] *Troxel v. Granville*, 530 U.S. 57 (2000). Also reviewed were two seminal Maryland cases in this area, *Koshko v. Haining*, 938 Md. 404, 921 A.2d 171 (2007) and *In re Victoria C.*, 88 A. 3d 749, 437 Md. 567 (2014).

Committee, took the lead on obtaining information from laws in the 50 states and the District of Columbia. Their research revealed that while the statutes of six jurisdictions state a preference for joint *legal* custody only, fewer than ten jurisdictions have a presumed schedule of access. The Presumptions working group concluded that only seven jurisdictions[4] have an arguable "presumption of joint physical custody" in the absence of joint agreement by the parents.[5] Three of those jurisdictions articulate "substantial time," "frequent and continuing time," and "significant well defined periods."[6] Detailed analyses of those state statutes were undertaken. Also noted was the 2014 presumption of joint custody referendum in North Dakota was defeated by the voters of by a margin of 62% - 38%. The Presumptions working group concluded that the vast majority of U. S. jurisdictions do not presume joint custody.

The Literature Review Committee examined the psychological research on parenting plans and parenting time arrangements, and provided a summary of the research on this topic. In summary, social scientists have reached consensus on the factors which affect children and adolescents' long-term adjustment when the parents do not reside together, and that these factors affect a child's long-term adjustment whether they are from traditional or non-traditional families and whether their parents were married or never married. A child's adjustment and healthy development is enhanced when they have high-quality relationships with both parents, and when both parents are actively involved in their children's lives and participate in a wide range of everyday activities and routine parenting tasks. These include but are not limited to bed time, morning wake up, transitions to and from school, recreational activities, and mealtimes. Other relevant factors include the quality (cooperation versus conflict) of the relationship between the parents or parenting figures, the quality of the parenting, the

[4] They are Arkansas (joint physical custody "favored"), District of Columbia, Iowa, Idaho, Louisiana, New Mexico, and Texas.

[5] The "joint agreement" states are Alabama, California, Connecticut, Mississippi, and Tennessee.

[6] Louisiana, Idaho, and New Mexico, respectively.

parents' psychological adjustment, the developmental needs of the child, the availability of adequate resources, and the child's loss of significant relationships.

The Presumptions working group found that it is the parents with "special circumstances" who are most often unable to reach any agreement which focuses on the needs of their children, and results in caustic litigation which was the subject of much testimony at the public hearings throughout the state. While those who testified had concerns about the Court system, or their lawyers, or their inability to adequately represent themselves without a lawyer, one common thread was that they and the other parent had been – and in many cases remain – unable to reach agreement about their child's best interests. A presumption in favor of joint custody would not resolve the inherent hostilities present between parents who live apart, and will not shield the children from parental "bad behaviors."

Regarding the "bad behaviors," the Presumptions working group agreed that the Literature Review Committee's research revealed an emerging consensus among social scientists regarding the amount of time needed to promote and maintain a high-quality relationship between a child and their parents or parent figures. As a general rule, a minimum of 30 to 33 percent time with each parent is optimal in promoting and maintaining high-quality child-parent relationships when both parents are emotionally healthy and focused on the needs of their child. However, the specific parenting plan and distribution of parenting time, must also be based on the child's developmental age. As a result of the above, the Presumptions working group concluded that ***the majority of current researchers align against a simplistic approach which provides alternating weekend access as a "standard" or "typical" time arrangement.***

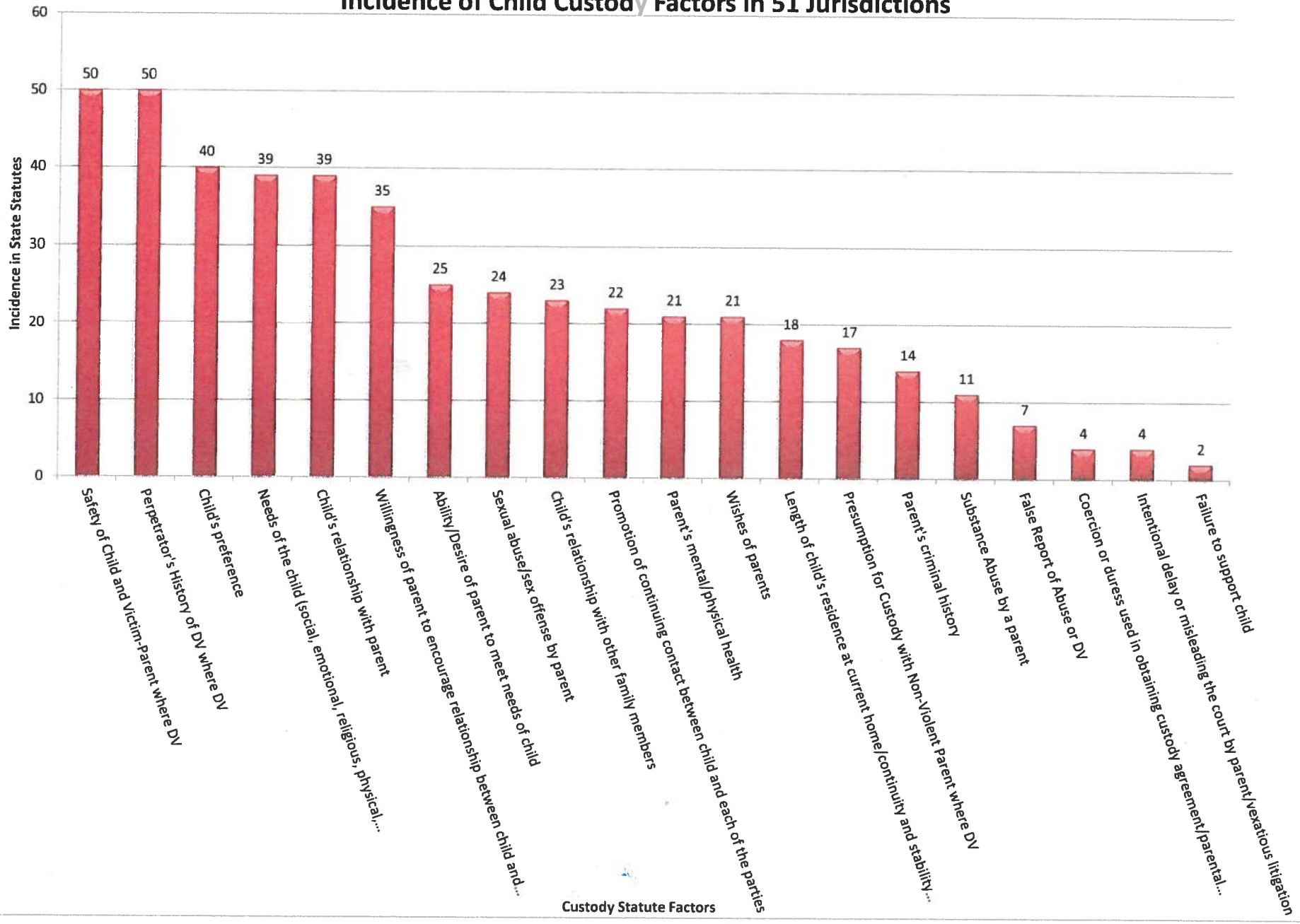
In summary, research clearly shows that a child's long-term adjustment is established by a number of factors, including the quality of the child's relationship with their parents, the quality of the parenting, the quality of the relationship between the parents (parent figures), and the availability of adequate resources. The quality of a child's relationship with the majority of parents is best supported when they spend a minimum of 30 to 33 percent time with each parent. It is also true that limited parenting time can negatively impact the quality of the relationship. Maintaining extended family

relationships after separation, such as with grandparents, uncles, aunts, and siblings, will also help children cope when parents live apart.

Ultimately the Presumptions working group was unanimous that there should be no presumed schedule of any kind, but that a statute on custody decision-making should incorporate the factors outlined in the Presumption working group's findings, including the reliance on the Literature committees' research including as a guiding principle that a Child's long-term adjustment is enhanced by a number of factors, including the quality of the child's relationship with each parent, which is best supported when there is a minimum of thirty (30) to thirty-three (33) percent time with each parent, the quality of the parenting, the developmental needs of the child, the quality (conflict or not) of the relationship between the parents or parent figures, the parents' psychological adjustment, and the loss of significant relationships.

Summary

The SCC has incorporated the results of its research and deliberations into the draft statute.


Incidence of Child Custody Factors in 51 Jurisdictions
Incidence in State Statutes
60
50
40
30
20
10
0
50
50
40
39
39
35
25
24
23
22
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21
18
17
14
11
7
4
4
2
Safety of Child and Victim-Parent where DV
Perpetrator's History of DV where DV
Child's preference
Needs of the child (social, emotional, religious, physical,...
Child's relationship with parent
Willingness of parent to encourage relationship between child and...
Ability/Desire of parent to meet needs of child
Sexual abuse/sex offense by parent
Child's relationship with other family members
Promotion of continuing contact between child and each of the parties
Parent's mental/physical health
Wishes of parents
Length of child's residence at current home/continuity and stability...
Presumption for Custody with Non-Violent Parent where DV
Parent's criminal history
Substance Abuse by a parent
False Report of Abuse or DV
Coercion or duress used in obtaining custody agreement/parental...
Intentional delay or misleading the court by parent/vexatious litigation
Failure to support child
Custody Statute Factors

States	False Report of Abuse or DV	Safety of Child and Victim-Parent where DV	Perpetrator's History of DV where DV	Presumption for Custody with Non-Violent Parent where DV	Substance Abuse by a parent	Parent's criminal history	Sexual abuse/sex offense by parent	Parent's mental/physical health	Needs of the child (social, emotional, religious, physical, mental)/child's adjustment	Ability/Desire of parent to meet needs of child	Wishes of parents	Child's preference
Alabama		X	X	X								
Alaska		X	X		X				X	X		X
Arizona	X	X	X						X			X
Arkansas		X	X	X			X					X
California		X	X	X	X		X		X			X
Colorado		X	X		X		X		X		X	X
Connecticut		X	X						X	X	X	X
Delaware		X	X			X			X		X	X
District of Columbia		X	X						X			
Florida	X	X	X		X		X		X	X	X	X
Georgia		X	X		X	X	X	X	X	X		X (if over 14, presumption)
Hawaii	X	X	X	X	X		X	X	X	X		X
Idaho		X	X						X		X	X
Illinois		X	X				X	X	X		X	X
Indiana		X	X					X	X		X	X
Iowa		X	X	X			X		X	X	X	X
Kansas		X	X	X		X	X		X		X	X
Kentucky		X	X					X	X		X	X
Louisiana								X	X	X		X
Maine	X	X	X				X		X			X
Maryland		X	X	X		X						
Massachusetts		X	X	X	X				X	X		
Michigan		X	X					X	X	X		X
Minnesota	X	X	X	X				X	X	X	X	X
Mississippi		X	X	X								
Missouri		X	X			X	X	X	X	X	X	X
Montana		X	X		X			X	X		X	X
Nebraska		X	X				X		X			X
Nevada		X	X	X				X	X	X	X	X
New Hampshire		X	X			X	X		X	X		X
New Jersey		X	X						X	X		X
New Mexico		X	X				X	X	X		X	X
New York		X	X			X						
North Carolina		X	X			X						
North Dakota	X	X	X					X	X	X		X
Ohio		X	X		X	X	X	X	X		X	X
Oklahoma	X	X	X	X	X		X					X
Oregon		X	X	X						X	X	
Pennsylvania		X	X		X	X	X	X	X	X		X
Rhode Island		X	X				X					
South Carolina		X	X				X	X	X	X	X	X
South Dakota		X	X	X		X					X	X
Tennessee		X	X	X		X	X	X	X	X		X
Texas		X	X	X			X		X	X		X
Utah		X	X			X		X		X		
Vermont		X	X						X	X		
Virginia		X	X				X	X	X			X
Washington		X	X				X		X		X	X
West Virginia		X	X						X			X
Wisconsin		X	X	X		X	X	X	X	X	X	X
Wyoming		X	X					X		X		

States	Child's relationship with other family members	Child's relationship with parent	Length of child's residence at current home/continuity and stability of care	Willingness of parent to encourage relationship between child and other parent	Promotion of continuing contact between child and each of the parties	Coercion or duress used in obtaining custody agreement/parental alienation	Failure to support child	Intentional delay or misleading the court by parent/vexatious litigation	Catchall language	Notes
Alabama										No statutory factors
Alaska		X	X	X					"other factors the court considers pertinent"	
Arizona		X	X	X		X		X		
Arkansas										
California		X		X						
Colorado		X		X	X					
Connecticut		X	X	X		X		X		
Delaware		X			X					
District of Columbia		X		X	X					
Florida		X	X	X	X					
Georgia	X	X		X	X					
Hawaii	X	X		X	X					
Idaho	X	X			X					
Illinois	X	X		X						
Indiana	X	X	X							
Iowa				X	X					
Kansas	X	X		X						
Kentucky	X	X								
Louisiana		X	X	X						
Maine	X	X	X	X					"All other factors having a resonable bearing on the physical and psychological well-being of the child"	
Maryland										No statutory factors
Massachusetts		X	X	X						
Michigan		X	X		X				"Any other factor considered by the court to be relevant to a particular child custody dispute"	
Minnesota	X	X	X	X						
Mississippi										No statutory factors
Missouri	X	X		X	X					
Montana	X	X	X		X		X	X		
Nebraska		X								
Nevada	X	X		X	X					
New Hampshire		X		X					"Any other additional factors the court deems relevant."	
New Jersey	X	X	X	X	X					A few other strangely worded factors that didn't fit into the categorization; consult statute
New Mexico	X	X								
New York										No statutory factors; best interests determined through caselaw
North Carolina										No statutory factors
North Dakota		X	X	X						
Ohio	X	X		X	X		X			
Oklahoma				X	X					
Oregon	X	X		X	X					
Pennsylvania	X		X	X		X			"Any other relevant factor."	
Rhode Island										No statutory factors
South Carolina	X	X	X	X		X			"Other factors as the court considers necessary."	
South Dakota										No statutory factors
Tennessee		X	X	X				X		

States	Child's relationship with other family members	Child's relationship with parent	Length of child's residence at current home/continuity and stability of care	Willingness of parent to encourage relationship between child and other parent	Promotion of continuing contact between child and each of the parties	Coercion or duress used in obtaining custody agreement/parental alienation	Failure to support child	Intentional delay or misleading the court by parent/vexatious litigation	Catchall language	Notes
Texas				X					"Any other relevant factor."	Custody is referred to as conservatorship
Utah		X		X						
Vermont	X	X		X	X					
Virginia	X	X		X	X				"Such other factors as the court deems necessary and proper to the determination."	
Washington	X	X		X	X					Weirdly worded.
West Virginia	X	X	X	X	X					Uses the approximation standard
Wisconsin	X	X	X	X	X				"Such other factors as the court may in each individual case determine to be relevant."	
Wyoming		X		X	X				"Any other factors the court deems necessary and relevant."	

States	Needs of the Child	Stability of each parent's home environment	Education of child	Advantages of keeping child in current residence	Optimal time for child to spend with each parent	Findings of neutral mediator	DV, abuse, or neglect	Substance abuse history	Catch-all language
Alabama									
Alaska	X	X	X	X	X	X	X	X	"Other factors the court considers pertinent"
Arizona									
Arkansas									
California									
Colorado									
Connecticut									
Delaware									
District of Columbia									
Florida									
Georgia									
Hawaii									
Idaho									
Illinois		X							"all other factors which may be relevant to the best interest of the child"
Indiana		X							
Iowa									
Kansas									
Kentucky									
Louisiana									
Maine									
Maryland									
Massachusetts									
Michigan	X				X		X		
Minnesota							X		
Mississippi									
Missouri									
Montana									
Nebraska									
Nevada									
New Hampshire									
New Jersey									
New Mexico	X				X		X		
New York									
North Carolina									
North Dakota									

States	Needs of the Child	Stability of each parent's home environment	Education of child	Advantages of keeping child in current residence	Optimal time for child to spend with each parent	Findings of neutral mediator	DV, abuse, or neglect	Substance abuse history	Catch-all language
Ohio					X	X	X		
Oklahoma									
Oregon									
Pennsylvania									
Rhode Island									
South Carolina									
South Dakota			X	X	X				
Tennessee									
Texas									
Utah	X			X			X		"Any other factors the court finds relevant."
Vermont									
Virginia									
Washington									
West Virginia									
Wisconsin									
Wyoming									

States	Joint Legal Custody Presumption	Joint Custody Preference	Joint Custody Explicitly Permitted	Separate/Additional Joint Custody Factors	Agreement or lack thereof by parents/ability to cooperate	Child's Preference
Alabama	If requested by both parents	X	X			
Alaska			X	X		X
Arizona			X	X	X	
Arkansas		X	X			
California	"Where the parents have agreed to joint custody or so agree in open court"		X			
Colorado		X	X			
Connecticut	"Where the parents have agreed to an award of joint custody or so agree in open court"		X			
Delaware			X			
District of Columbia	X (unless DV, child abuse, kidnapping)		X			
Florida		X	X			
Georgia		X	X			
Hawaii			X			
Idaho	X (unless parent is habitual perp of DV)		X			
Illinois			X	X	X	
Indiana			X	X	X	X
Iowa		X	X			
Kansas		X	X			
Kentucky			X			
Louisiana			X			
Maine		X	X			
Maryland			X			
Massachusetts		X	X			
Michigan			X	X	X	
Minnesota	X (upon request by either or both parties for JC; only if no DV)		X	X	X	
Mississippi	"Where both parents have agreed to an award of joint custody"		X			
Missouri		X	X			
Montana			X			
Nebraska			X			

States	Joint Legal Custody Presumption	Joint Custody Preference	Joint Custody Explicitly Permitted	Separate/Additional Joint Custody Factors	Agreement or lack thereof by parents/ability to cooperate	Child's Preference
Nevada	"If the parents have agreed to an award of joint custody"	X	X			
New Hampshire		X	X			
New Jersey		X	X			
New Mexico	X		X	X	X	
New York						
North Carolina			X			
North Dakota						
Ohio			X	X	X	
Oklahoma			X			
Oregon		X	X			
Pennsylvania			X			
Rhode Island						
South Carolina			X			
South Dakota			X	X	X	
Tennessee	"where the parents have agreed to joint custody"		X			
Texas		X	X			
Utah	X (unless DV, special needs or distance)		X	X	X	X
Vermont	"Any agreement betweenthe parents which divides or shares parental rights or responsibilities shall be presumed to be in the best interests of the child."	X	X			
Virginia		X	X			
Washington		X	X			
West Virginia						
Wisconsin	X		X	X	X	
Wyoming			X			