

Cover story

Lawmakers, experts weigh changes to Maryland's child custody court process

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Special to The Daily Record

Lawmakers, advocates and attorneys statewide are hoping to better protect children in custody cases involving abuse or neglect by implementing more training for judges and custody evaluators and by amending current family law rules.

Many of the proposed changes stem from a work group established by Gov. Larry Hogan to analyze how child custody proceedings involving abuse have affected children statewide; the group has offered 21 recommendations to the state legislature.

A major recommendation would require special training requirements for judges, custody evaluators and attorneys when dealing with cases involving abuse or neglect.

The work group proposed at least 20 hours of training for judges presiding over cases with a child abuse allegation, with an additional 10 hours of training every two years. The same training requirement would extend to custody evaluators.

Evaluators can play an influential role in the court's decision, but some say there's a divide in the tools available to court-appointed and private custody evaluators. Licensing varies, and not all court-appointed custody evaluators have a master's degree. Many private evaluators have more resources available to utilize psychological testing or the licensing to administer certain written tests.

"If the custody evaluator is asked to make a final recommendation to the court, then that custody evaluator has to have the proper training to weigh in," said Dr. Jennifer Shaw, a founding partner of Gil Institute for Trauma Recovery and Education and a member of the work group.



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'The combination of making child abuse allegations and having an alienation defense come back at them puts mothers at the highest risk of losing custody,' says Joan Meier, a professor at the George Washington University Law School.

But evaluators can cost upwards of \$30,000, depending on the county, said Tracey Coates, who co-chairs Paley Rothman's family law practice. There's also no standardized process for where evaluators are getting their information, Shaw added.

"Unless you have the money you can't protect your kids and that is obviously a very disturbing part of this," said Anne Hoyer, director of the Safe at Home Address Confidentiality Program and a member of the work group.

"Grace" is a Maryland mother who said she learned her husband had abused her son nearly five years ago. The Daily Record has agreed not to use her real name because of the legal sensitivities of the case.

Grace said she has spent nearly \$1 million to get her case to trial and still lost custody of her children. Her parents are currently paying back \$6,000 a month in loans and \$1,000 is garnished from her wages every month.

Grace said training custody evaluators and others to recognize signs of neglect or abuse is critical to reforming the custody process.

Children manifest abuse differently, including non-verbally, Shaw said. Training should offer an understanding of the different stages of trauma or distress, which can manifest differently in protective parents, and also offer background on alienation, when a parent pits the child against the other parent, she said.

Some lawyers question the feasibility of implementing additional training. In areas with limited resources or counties with few circuit court judges, sending one away for hours of training could prove problematic, said Del. Kathleen Dumais, D-Montgomery, a family law attorney who has served as vice chair of the House Judiciary Committee and chair of its family law subcommittee.

Evidence suggests that protective parents are often not seen as credible when reporting abuse amid a custody proceeding.

Research conducted by Joan Meier, a professor at the George Washington University Law School, which analyzed thousands of electronically filed judicial opinions nationwide found that the courts are twice as likely to disbelieve a mother's claim of abuse when the father accuses her of alienation.

Once courts believe the mother is an alienator, they lose custody on average 73% of the time, including some cases where the father is recognized as an abuser, the study found.

"The combination of making child abuse allegations and having an alienation defense come back at them puts mothers at the highest risk of losing custody," Meier said.

Even when there isn't a definitive finding of abuse, parents can be penalized for bringing the claim to light and lose credibility in the court, added Coates.

A bill proposed earlier this year by Sen. Susan C. Lee, D-Montgomery, and recommended for approval by the work

group, also seeks to amend a section of family law Article 9-101. If passed, the measure would require judges to state their reasoning when they find there's no further threat of abuse or neglect; the bill also would require a neutral and physically present supervisor in cases where the court approves a supervised visitation.

"We think it's really important for the judge to explicitly articulate why they have decided to give a parent who previously abused a child custody," Lee said.

Although the pandemic shut down the 2020 legislative session earlier, preventing the bill from reaching a vote, Lee hopes to reintroduce the bill during the upcoming session. The pandemic has left many children confined with their abuser, intensifying the need for reform, she said.

But requiring a neutral and physically present supervisor, however, prevents the possibility of using a family member who might be able to properly supervise in some cases, Dumais cautioned.

"The language in the proposed statute creates a hard-and-fast rule that may not be in a child's best interest, she said. "Finding supervision programs in some of the small counties can be challenging and may mean visitation just does not occur."

Cost of outside supervision can also be expensive and inaccessible to some families, preventing visitation from occurring altogether, she added.



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One draft recommendation of the work group, which aims to establish a rebuttable presumption, could encourage individuals to strategically file an illegitimate claim, says Carlos Lastra, co-chair of Paley Rothman's family law practice.

Another draft recommendation, which aims to establish a rebuttable presumption, could create space for individuals to strategically file an illegitimate claim, said Carlos Lastra, co-chair of Paley Rothman's family law practice.

"The unintended consequence is that it will clog the system and actually take away judicial resources from legitimate cases," he said.

Although other states are looking into legislative changes surrounding custody rules, few have gone to the same lengths as Maryland, Meier added.

"There are places that are looking at changing their statutes, but I haven't seen any other in-depth working group like there is in Maryland," she said.