

HOUSE OF PENNSYLVANIA

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CUSTODY, DOMESTIC VIOLENCE, THE COURTS AND CHILDREN

Testimony of

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The Support Center for Child Advocates is Philadelphia's lawyer pro bono program for abused and neglected children. We offer the skills and dedication of lawyer-social worker teams, and we represent more than 500 children each year. Our work is focused on four Core Programs: Abuse and Neglect, Medically Needy Children, Kinship Care, and Adoptions. For more than 20 years, we have served as a resource to this Legislature and its staff, and I thank you for the invitation to serve in this role once again. When asked, we attempt to offer to you a balanced, candid and constructive assessment of how we are all doing for our kids.

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I would like to address three areas of need in our courts today: first, children and violence, then representation of children in custody cases, and finally the concept of unified courts.

One of our experienced child advocate lawyers commented recently that "custody court looks much like dependency court these days." I would like to call attention to the children in domestic relations cases: custody, divorce and Protection from Abuse or PFA.

In particular, we need to examine the connection between child abuse and domestic violence. Child victims of domestic violence and child abuse remain an invisible population in our community, a population needing recognition, protection and service. They face physical and emotional risks from living in violent homes. They are served by a polarized professional community, as people in the same families are served by professionals who do not talk to each other. Their needs are frequently addressed inappropriately or not at all.

Two recent Support Center cases demonstrate the range of problems these children face:

In a domestic disturbance, husband Robert struck mother Susan in her face and head. Susan obtained a temporary protection order and eviction of Robert. Two weeks later, while three-year-old Christopher was being seen at a local community mental health center, he acted out severely. Following a psychiatric exam, this young child was admitted to a psychiatric hospital, where he remained for more than one week without any contact by child welfare authorities. The hospital psychologist observed that Christopher spoke of violence in his home, an indication that he was responding to conditions at home. The family has a history of violence, with father slapping the child, as well as Protection from Abuse Orders against one or both parents since 1992. Hospital staff attempted to find a more appropriate, less restrictive setting, but more than thirty referrals were rejected! A request for specialized Family Preservation Services was dismissed with "That's a custody case." Eventually, a Child Advocate from the Support Center pressed hard to obtain wrap-around services

from the community mental health system for the child and family, and Christopher was discharged from the hospital to his mother's care.

A couple became embroiled in the latest of a series of fights. Angry at her boyfriend Rocco, Maribel began to strike his car with a baseball bat. Seeing this, Rocco took the bat and began to beat Maribel. Maribel's 12-year-old son Vincent came to the protection of his mother, and Rocco began to hit the boy. Rocco was arrested, and both mother and child were treated at a hospital and released. Over the next two months, Maribel and Vincent failed to come to successive preliminary hearings. Yet no one notified DHS or the police child abuse unit, and the case was dismissed.

Informed professionals tell us that the number of these cases is staggering. The bottom line is that we desperately need both a symbolic metaphor and a model of service that TREATS THE LINKAGE between domestic violence and child abuse.

The American Bar Association has estimated that 87% of the children in homes with domestic violence witness that abuse (1994). In our own work in Philadelphia, we see what experts have seen in other locales: child witnesses of domestic violence develop a variety of behavioral, affective and cognitive problems, and this exposure to violence can be psychologically abusive. "A consensus is emerging among clinicians involved in dealing with violence against women that children who witness violence are not only more disturbed in their interpersonal relationships than other children but are at significant risk to repeat the dysfunctional relationship patterns that they have learned in their family of origin with their future spouses. They are confused about themselves as young persons and show a number of inappropriate attitudes towards members of their own sex and those of the opposite sex." (Jaffe; cf. McKay). "They are more aggressive and antisocial, ... experienc[ing] more anxiety, aggression, depression and temperamental problems...[t]hey act fearful, with inhibited behaviors and lower social competence." (Schechter and Edleson).

Most troubling, perhaps, because the violence is often hidden, is that the origins of the child's problems are not always apparent. Unlike the typical victim of child abuse, these children often display no physical injuries. Their injuries and scars are harder to detect and last significantly longer. Cultural differences and the confusing dynamics of abusive families complicate the child's experiences and the advocates' intervention efforts.

[Professionally, there is frequent tension between approaches to adult victims/survivors of domestic violence (i.e. towards empowerment and self-help) and child victims of abuse (i.e. protection and treatment). "Several factors appear to hamper the ability of organizations to cooperate more fully. These include the fact that the respective movements are at different historical points in their development, they abide by different philosophies, sometimes seek different outcomes, use different professional terminologies, and sometimes compete for funding and recognition." (Schechter and Edleson).]

Across the state, we have failed to bridge this gap! For example, when a child is involved in a domestic violence case, the only way for him or her to obtain the protection of the court is to be the subject of physical violence or threat *and* to be identified as such in the court petition. Child welfare officials are rarely informed by domestic relations intake workers or court staff of instances of domestic violence in the home not directed specifically at the child. If, for example, a county

children and youth agency is notified, current solutions will likely be limited to removing the child and separating him or her from family members, or ensuring that the perpetrator of violence is at least temporarily out of the home, and subsequently closing the case for lack of risk. In both extremes, the lasting effects and deep-seated causes of the abuse are left untreated.

We should be responsibly addressing the connection between domestic violence and child abuse and neglect. In Philadelphia we are making some strides forward. The professional child welfare community -- children and youth, law enforcement, treatment personnel, child advocates -- and the domestic violence community -- PFA lawyers, women's advocacy and support groups, have been engaged in a fruitful dialogue for several years.

What should you do? We join the ABA in recommending that domestic violence laws require police and the courts to adequately protect children. You should support enhanced education, treatment and awareness efforts related to domestic violence and children, including providing specialized mental health services for appropriate children. Prohibit firearms purchases and possession for all perpetrators of domestic violence and child abuse. You can ensure, through legislation, that domestic violence is properly considered in all domestic relations actions involving custody and visitation. For example, you might include presumptions that custody not be awarded to a parent with a history of inflicting domestic violence, that visitation be awarded to such a parent only if the safety and well-being of the abused parent and children can be protected, and that all awards of visitation incorporate explicit protections for the child and the abused parent. The legislature, courts and bar should establish or support the formation of community-based supervised visitation centers with a range of supervision and security. [For more details, see ABA Report].

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Some comments about the REPRESENTATION OF CHILDREN . While abused and neglected children often lack effective advocacy in their best interests, the legally unrepresented or underrepresented children whose caregivers are involved in domestic violence most often "fall through the cracks" of the system. The need for lawyer service to children is well summarized by the recent report of the American Bar Association entitled **America's Children at Risk: A National Agenda for Legal Action:**

Children, simply by virtue of being children, are denied legal rights that adults take for granted. Many children routinely appear in court without benefit of legal counsel in situations where any adult who had the resources or know-how would retain a lawyer. Many children involved in legal proceedings concerning child abuse and neglect, custody, visitation disputes, status offenses, delinquency and other important matters are **unrepresented from the beginning to the end of their cases. The lack of legal counsel is particularly devastating to children, who often cannot express their own views and may not fully understand the choice they are making.**

**ABA Presidential Working Group on the Unmet
Legal Needs of Children and Their Families**

I hope you will support the development of resources to provide for representation of children in custody and other domestic relations cases. I recommend at least three grounds for the appointment of representatives for children in these cases:

First, **when the failure to make such an appointment would impede the judge's capacity to decide the case properly.** For a variety of reasons, however, there will be custody and visitation cases in which a court's capacity to decide the case properly will be jeopardized without a more child-focused framing of the issues, or without the opportunity for additional information concerning the child's best interests. For example, conflicts between the parties may work to impede the court's opportunity to learn about important issues or to obtain needed information about the child. Because of the adversarial process, parents are entitled to act in their own interests and to have their lawyers zealously advocate those ends, sometimes in detriment the child and in ways that may never be revealed to the court. In such cases, one valuable procedural device available to the court is to appoint a representative for the child who is charged with the responsibility of ensuring that material information about the case be presented to the court in order to place the court in the strongest position to decide the case based on complete information.

Second, **when the failure to make such an appointment would risk harm to the child.** It is imperative that children are not harmed by the very process of deciding a case. The representative may also serve to reduce tensions between parents, thereby increasing a child's sense of security and safety. Many custody cases should or could be child welfare cases but the parties, court and child welfare system decline to transfer case. There is a consensus that child welfare issues such as abuse, neglect or other risks to the child create the *need* for lawyers or other representatives to protect the interests of children. Some of the factors that judges should consider are the acrimony of the parties towards each other, the length or fierceness or bitterness with which the case is being litigated, allegations of child abuse or neglect, special physical and mental health needs of a child, or when a child expresses a strong desire to make his or her opinions known to the judge.

Third, **when the child's voice should become a more prominent part of the case --** this is clearly the case for older children.

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UNIFIED FAMILY COURTS are not a new concept, as courts have been taking such an approach since at least 1914 in Cincinnati, Ohio. There are different models now in practice around the country and the state. According to the ABA:

A unified family court system combines all the essential elements of traditional family and juvenile courts into one entity. It also contains other resources critical to the resolution of a family's problems. The physical plant of the unified family court reflects its comprehensive approach to helping families in crisis. Administrative, legal, counseling, and enforcement services are available in or near the court building so that a family's interrelated needs can be served easily and quickly. The environment is comfortable, cheerful and user-friendly, allowing litigants to locate the services they seek and to wait in comfort when they must.

[ABA Policy on Unified Courts]. In Philadelphia, for example, the Family Court Division of the Court of Common Pleas is organized under one Administrative Judge, with branches for juvenile, domestic relations and adoptions. In domestic relations, all computer information is tied together through the PARENTS data system, so that a child support master can be informed about PFA actions or custody orders. Other locales use a one judge-one family approach for different but related cases.

At the same time, however, there is rarely connection between the domestic relations cases and the delinquency or dependency cases that involve the same child or family. When domestic violence or child abuse appears in a custody case, there is not clear mechanism to share information, let alone unify the adjudication of the two sets of issues. Small counties unify their approach to some cases simply because the judges and masters get to know the families; however, a family still has to return to court numerous times for each of the separate proceedings.

We refer you to the recommendations of the American Bar Association as follows:

First, intake processes should be improved so that families will be initially assisted and expeditiously directed to the appropriate entity in the court system to meet their needs.

Second, ensure the provision and/or integration of comprehensive services and other assistance for children and families in court. Appropriate services can include representation, alternative dispute resolution, guardians ad litem, mental health services, substance abuse counseling, interpreters and emergency financial and housing assistance. A unified children and family court must have all the authority which it supported by its constitutional, statutory and equitable powers to order other government agencies, e.g., housing authorities, mental health agencies, etc., to provide services to families.

Third, provide and encourage alternative dispute resolution techniques such as mediation, where appropriate.

Fourth, develop and enforce time standards for cases involving the custody or out-of-home placement of children, for example, foster care placement, adoption, etc. to prevent prolonged uncertainty that may adversely affect family members, particularly young children. To ensure speedy resolution of all cases in the children and family courts, sufficient resources should be provided to allow judges and social workers to devote adequate time to each case, including sufficient support personnel so that judges can devote their time to adjudicating adversarial issues while trained court staff review uncontested decrees, perform case management and so forth.

Fifth, call for the implementation of integrated management information systems for all cases in the division, to enable a one-judge-one family approach or at least so that all judges presiding over matters affecting one family are made aware of other pending cases affecting that family.

Sixth, Assure that judges and court personnel who work with children and family courts are adequately prepared for and receive ongoing training in family court issues, including, among others, domestic violence, child psychology, and the value and methods of alternative dispute resolution.

Seventh, adequate oversight is needed subject to the needs of children and families for confidentiality and privacy. In general, little is known about what happens in family courts around the state, and this secrecy is both comforting and disquieting. We urge you to bring the light of day into these proceedings so that we can be sure that children and families are being well served.

Thank you for your interest in children.

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