

MEMORANDUM OF SUPPORT

DUE PROCESS AND COURT ORDERED CHILD CUSTODY EVALUATIONS

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The New York State Coalition Against Domestic Violence (NYSCADV) urges the New York State Legislature to recognize the due process rights of domestic violence survivors by enabling parents and their attorneys to obtain copies of court-ordered child custody evaluations and the underlying information supporting the evaluation.

Custody evaluators are often appointed by courts in difficult custody and visitation proceedings, such as cases involving allegations of domestic violence or child abuse. Their evaluations are typically given significant weight by judges.

In New York State, custody evaluators are not required to have any training or expertise in the dynamics of domestic violence or child abuse. As a result, **custody evaluators often fail to identify domestic violence or they minimize or dismiss such allegations.** Custody evaluators frequently deny true claims of intimate partner or child abuse, electing instead to believe the parent making the allegations is attempting to manipulate the court or “alienate” the other party from the child (a debunked pseudo-scientific theory referred to as Parental Alienation or Parental Alienation Syndrome). Dozens of domestic violence victims lose custody of their children each year because courts fail to believe their allegations of abuse. Many more DV victims are required by courts to hand over their children to abusers for unsupervised visitation, which can lead to additional harm.

It is critical for parents to have copies of these evaluations when so much is at stake. Yet courts in New York are very inconsistent in their approach to providing access to the evaluations. Some judges do not permit litigants or attorneys to obtain copies. Some permit attorneys, but not litigants, to receive a copy, and others only permit attorneys to view the evaluations in court. Pro se litigants, those who are representing themselves in court, are sometimes permitted to read the evaluations in a court building, but rarely are able to obtain copies. It is critical for attorneys and litigants to have copies of these evaluations to be able to prepare for trial. Evaluations can be complex, so they must be read multiple times and thoroughly analyzed to identify errors, unwarranted conclusions and inadequate or biased investigations.

This legislation would also ensure attorneys and litigants obtain copies of the custody evaluator’s entire file, including the underlying data substantiating the evaluator’s conclusions. A comparison of the evaluation with the file often reveals significant differences. For example, positive information in the file about a disfavored litigant may not be included in the final evaluation or negative information in the file about a favored litigant may be excluded in the evaluation. Further, conclusions in the evaluation may not be supported by the information contained in the file. If a litigant is barred from receiving a copy of the report, or the supporting file, the litigant’s due process rights are denied.

NYSCADV also supports the bill’s requirement that admissibility into evidence of the custody evaluation must be subject to the rules of evidence and subject to cross-examination. Most reports contain hearsay, so it is critical that they be subject to cross-examination.

Opponents to this legislation cite a concern that some litigants, including DV offenders, may publicize, or threaten to publicize, aspects of a custody evaluation or show elements of the evaluation to children. It is true that DV

offenders will take every opportunity available to them to victimize their partners. This further justifies providing copies of the evaluation to DV victims so they can prepare to counter any inaccuracies or misinformation the court may rely on to make custody and visitation decisions. Arming DV victims with what they need to keep their children safe from abusers outweighs the risk offenders pose by potentially publicizing information. Further, the bill specifically provides that if the court has any concern a litigant will use the report inappropriately, the court may issue a protective order limiting or conditioning access to the evaluation or the underlying data. The court also is required to give notice to the parties and counsel on the record that a failure to comply with such a court order shall be contempt of court, which may include punishment of a fine and/or imprisonment.

New York State is not the first state to consider permitting parents/guardians to obtain copies of custody evaluations. In fact, at least four states (Louisiana, New Jersey, North Dakota and West Virginia) already permit such access. To the best of our knowledge, DV advocates in those states have not raised any concerns.

NYSCADV urges the Legislature to support S.753 to preserve the due process rights of DV survivors.

ABOUT NYSCADV:

Established in 1978, NYSCADV is designated by the U.S. Department of Health and Human Services as the information clearinghouse, primary point of contact, and resource center on domestic violence for the State of New York. NYSCADV is responsible for supporting the development of policies, protocol, and procedures to enhance domestic violence intervention and prevention and also provides education and technical assistance to the network of primary-purpose domestic violence service providers statewide.

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