

**Testimony of the New York State Coalition Against Domestic Violence
to the Public Hearing of the Senate Committee on Judiciary
and the Assembly Committee on Children and Families
regarding New York State's Family Courts**

*Testimony Presented by
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The New York State Coalition Against Domestic Violence (NYSCADV) serves as the information clearinghouse, primary point of contact and resource center on domestic violence (DV) for the State of New York. Established more than 45 years ago, NYSCADV is a statewide non-profit membership organization representing New York's residential and non-residential domestic violence programs.

Despite the concerted efforts of domestic violence advocates, allies, New York's elected officials, and others, New York continues to have the highest demand for domestic violence services in the country. The DV Counts survey provides a one-day unduplicated count of adults and children seeking services from domestic violence programs in all states and the U.S. territories. Data from the most recent survey indicate that on one day alone in New York, 9,157 adult and child victims of domestic violence received services.¹ This represents a 38% increase from the year before. **More troubling, on any given day, nearly 1,000 DV victims and children do not receive the help they are seeking due to a lack of resources and staff.**

According to an analysis by New York State Comptroller Thomas P. DiNapoli, the number of domestic violence victims increased in 2022 by 8.5% in New York City and 8.7% in the rest of New York State when compared to 2019. Across the entire State, 80% of intimate partner victims were female.²

Many domestic violence survivors in New York are parents and turn to the State's Courts to resolve issues and keep them and their children safe. Time and time again, however, New York's Courts fall short in their effort to keep families safe. **In fact, New York's Family Courts frequently fail New York's children – particularly those children who live in households where violence occurs.**

Consider the facts:

- The National Center for State Courts conducted a study of court records and found documented evidence of domestic violence in 20%-55% of contested custody cases.³ Domestic violence may be the single major precursor to child abuse and neglect fatalities in this country. According to the U.S. Advisory Board on Child Abuse, studies show between 3.3 million and 10 million children are exposed to domestic violence every year.

¹ National Network to End Domestic Violence (2023). 17th Annual Domestic Violence Counts Report. Washington, DC.

<https://nnedv.org/resources-library/17th-annual-domestic-violence-counts-report-new-york-summary/>

² DiNapoli, Thomas P. (2023, October). Domestic Violence: Recent Trends in New York.

<https://www.osc.state.ny.us/files/reports/pdf/domestic-violence-recent-trends-10-23.pdf>

³ Battered Mothers, Child Custody, Court Abuse. (2011, January 28) *Children are our future? Then why do judges send them to live with abusers?* <https://batteredmotherscustody.blogspot.com/2011/01/children-are-our-future-then-why-do.html>

- Allegations of domestic violence have no demonstrated effect on the rate at which abusers are awarded custody of their children, nor do such allegations affect the rate at which abusers are ordered into supervised visitation. **Abusers win unsupervised custody and visitation at the same rate as non-abusers.**⁴ One study found as many as 70% of children see their abusive fathers frequently.⁵ Another study found that dozens of children have been forced into contact with fathers accused of abuse, even those who were convicted pedophiles.⁶
- There are approximately 100,000 contested child abuse cases each year in the United States. Abusive fathers are more than twice as likely to seek sole custody of their children than non-abusive fathers and they are successful 70% of the time.⁷
- According to researchers with the Center for Judicial Excellence, since 2008, there have been 969 cases reported of children being murdered by a divorcing or separating parent in the U.S.⁸ **In New York, according to media reports, there have been 43 children murdered by their own parent during a custody case, separation or divorce in the last 15 years.**⁹

For a number of reasons, domestic violence survivors who seek protection for themselves and children from New York's family/divorce court system face serious legal and psychological challenges. First, offenders use a variety of means in custody and visitation conflicts to obfuscate to the Court what is really happening within the family.

These tactics in Court include:

- Projecting a non-abusive image;
- Using a new partner as a character reference;
- Using the non-offending parent's anger and mistrust to discredit them;
- Defensive accusations;
- Making clear they are the party who is willing to communicate, not the non-offending parent;
- Manipulating mediation or dispute resolution efforts;
- Routinely filling litigation and subpoenas to continually torment the non-offending parent and counter their victim's prior claims;
- Using actions in one Court to their advantage in another; and,
- Involving their parents or friends to corroborate their view of events.

According to Sol Gothard, a retired 5th Circuit Court of Appeals Judge and former Chief Judge of the Louisiana Jefferson Parrish Juvenile Court, "Many batterers are successfully manipulating and deceiving some judges and court professionals with a false demeanor in court... Some judges and court professionals who are unfamiliar

⁴ Resource Center on Domestic Violence (2023 October 29) *Child Protection and Custody*.

<https://rcdvcpc.org/facts.html#:~:text=Abusive%20fathers%20are%20more%20than,perpetrated%20by%20a%20trusted%20adult.>

⁵ Hunter, E. C., & Graham-Bermann, S. A. (2013). Intimate partner violence and child adjustment: Moderation by father

contact? *Journal of Family Violence*, 28(5), 435–444. Retrieved from <https://psycnet.apa.org/doi/10.1007/s10896-013-9517-x>

⁶ Thomas, Ed. (2023, Sept. 4). Family Courts: Children forced into contact with fathers accused of abuse: *BBC*.

<https://www.bbc.com/news/uk-66531409>

⁷ Resource Center on Domestic Violence (2023 October 29) *Child Protection and Custody*.

<https://rcdvcpc.org/facts.html#:~:text=Abusive%20fathers%20are%20more%20than,perpetrated%20by%20a%20trusted%20adult.>

⁸ Center for Judicial Excellence. (2023, October 29) *US Child Homicide Data*. <https://centerforjudicialexcellence.org/cje-projects-initiatives/child-murder-data/>

⁹ Center for Judicial Excellence. (2023, October 29) *Children Killed By a Parent in the U.S. When Divorce, Separation, Custody, Visitation, Child Support, or Court-Involvement is Mentioned in News Coverage*.

<https://drive.google.com/file/d/1xy9qU5FocG8vpFgUF-5VnyTnDiuELGOe/view>

with abuser tactics fall victim to the batterer's charm, and unwittingly are placing the children in danger by granting sole custody to the perpetrator of abuse."¹⁰

Second, courts are reluctant to believe mothers and ignore family violence due to the mother's behavior, which may appear hostile, uncooperative, or mentally unstable. For example, she may refuse to disclose her address, or may resist unsupervised visitation, especially if she thinks her child is in danger.

Third, when a parent reports suspected abuse, the Courts all too often shift the paradigm by accusing the reporting parent of parental alienation (PA). PA purports to explain a child's estrangement from one parent or explain away allegations of abuse or sexual abuse of the child by blaming the non-offending parent. The non-offending parent is viewed as the "alienator" who has turned a vulnerable child against the estranged parent.

PA is not included in the Fifth Edition of the Diagnostic and Statistical Manual of Mental Disorders and has been widely discredited by legal and mental health experts. Three leading professional organizations — the American Bar Association, the National Council of Juvenile and Family Court Judges and the American Psychological Association — have stated unequivocally in their publications that PA is neither a scientifically valid nor a professionally recognized psychological syndrome, and as such, should not be admissible as evidence in a court of law.

Despite these findings, courts routinely give shared or sole custody to offending parents because they erroneously conclude non-offending parents are alienating the child from the other parent in an attempt to obtain full custody. They discount evidence of family violence, even when supported by a child's statements.

Joan S. Meier, a nationally recognized expert on domestic violence and a professor of clinical law at The George Washington University, completed a study that concluded **mothers who report abuse, particularly child abuse, are losing child custody at staggering rates.**

The study¹¹ – which was funded through a grant from the National Institute of Justice, the research, development and evaluation agency of the Justice Department – evaluated nearly 4,400 custody cases that were available online between 2005-2014. The authors sought to discover the extent to which courts were discrediting claims of abuse and removing custody from the parents claiming the abuse, and the role gender played in the findings. Professor Meier examined the impact of allegations in these cases that one parent was trying to "alienate" the child from the other parent.

Professor Meier concluded that the courts credited mothers' reports of fathers' abuse only 36% of time such reports were made. Further, in custody litigation, when mothers reported abuse, they lost custody 28% of the time. Conversely, when fathers alleged abuse by mothers, the fathers lost custody only 12% of the time. Even when a father's abuse was proved in court, the mothers that brought the abuse to the Courts' attention lost custody 13% of the time.

Professor Meier's study also found that when fathers claim alienation, Courts are more than twice as likely to disbelieve mothers' claims of abuse (either child abuse or abuse against the mother) than if the father made no alienation claim. For child sexual abuse, only one out of every 51 cases was believed when a father accused the mother of alienation. When fathers claim alienation, the rate at which mothers lose custody shoots up from 28% to 44%.

¹⁰ Center for Judicial Excellence (2023, October 29) *Judge Sol Gothard*. www.centerforjudicialexcellence.org/multimedia/kids-of-divorce-speak-out/judge-sol-gothard/

¹¹ Meier, J.S., Dickson, S, *Mapping Gender: Shedding Empirical Light on Family Courts' Treatment of Cases Involving Abuse and Alienation*, 35 Law & Ineq. 311 (2017). GWU Law School Public Law Research Paper No. 2017-43; GWU Legal Studies Research Paper No. 2017-43. Available at SSRN; <https://ssrn.com/abstract=2999906>

Fourth, courts regularly assume that victims make up claims of abuse against themselves and their children just to gain advantage in contested custody cases. Existing research, although limited, does not support the claim that false allegations of domestic violence are rampant in Family Court. Instead, research finds that there is confirming information or external corroboration of abuse in 63%-74% of cases where allegations of domestic violence are made in the context of family law proceedings. In the remaining one-quarter to one-third of cases, there is either insufficient information to confirm abuse, a mistaken belief that the allegation is true, or less frequently, a determination that the allegation is intentionally false.^{12,13}

Research has found that making false allegations of abuse is much less common than the problem of victims who fail to report abuse, and the widespread false denials and minimization of abuse by perpetrators. In the current climate, with many mothers losing custody after raising evidence of abuse and with Courts inclined to disbelief such allegations when raised, many domestic violence advocates and legal practitioners advise mothers who are abused and involved in child custody proceedings to not inform the Court of their offender's history of domestic violence. Put another way, **domestic violence victims are told not to discuss evidence of abuse inflicted by their partners with the Court because the Court won't believe them and, worse, will take punitive action against them (e.g., ordering sole custody to the abuser) for allegedly providing false information.**

National Progress to Improve Outcomes for DV Survivors and Their Children in Family Court

In a 2018 report titled "Practice Guides for Family Court Decision-Making in Domestic Abuse-Related Child Custody Matters,"¹⁴ the Battered Women's Justice Project (BWJP), the national resource center on civil and criminal justice responses to intimate partner violence, stressed the need for Family Courts to "systematically screen every adult who plays a parenting role" when determining issues related to child custody and/or visitation. If domestic violence is disclosed, court personnel should 1) obtain as much information as possible in order to fully understand the context and implications of the abuse, 2) conduct a thorough domestic abuse risk assessment or refer the person to a qualified risk assessment specialist, and 3) refer the individual to a qualified domestic abuse advocate for safety planning assistance. Because domestic abuse is not static, difficult to predict and can often escalate once violence has been disclosed or when parents separate, the report's authors urge Family Court practitioners to conduct domestic abuse screenings "periodically" over the course of the case.

BWJP recommends Family Courts screen all Family Court litigants for domestic violence and child abuse, by evaluating, at a minimum, whether:

- Either parent has concerns, fears or anxieties that the Court should be aware of;
- Both parents have access to their own resources, such as money, bank accounts, food, housing, transportation and healthcare;
- Either parent has concerns or fears about the safety of the child;
- Either parent ever used or threatened to use the children to manipulate, control or monitor the other;
- Either parent physically restrained the other, forbidden them from leaving, made them do things they didn't want to do, or punished them for defying their wishes;
- Either parent has shown up unannounced, contacted the other against their will or left something for them to find to scare or intimidate them;
- Either parent has pressured or forced the other to engage in sexual activity that they did not want to do or that made them feel scared, uncomfortable or ashamed;

¹² Shaffer, M., and N. Bala. (2003). Wife Abuse, Child Custody and Access in Canada. In R. Geffner, R. S. Ingelman, & J. Zellner (Eds.), *The effects of intimate partner violence on children* (pp. 253-276). New York: Haworth Maltreatment & Trauma Press.

¹³ Johnston, J. R., S. Lee, N.W. Olesen, and M.G. Walters. (2005). Allegations and Substantiations of Abuse in Custody-disputing Families. *Family Court Review*, 43: 283-294.

¹⁴ Battered Women's Justice Project (2018, May 17) *Practice Guides for Family Court Decision-Making in Domestic Abuse-Related Child Custody Matters*. <https://bwjp.org/assets/compiled-practice-guides-may-2018.pdf>

- Either parent has interfered with the other’s decisions about birth control, pregnancy and/or safe sex; and,
- Either parent has used the other’s image, or forced or pressured the other to use their own image, to engage in sexting or pornography.

As stated in the report, “Successful co-parenting requires safe parental involvement, secure parent-child relationships, low parental conflict, effective parental communication, and clear boundaries between partner and parental roles.” If any of these benchmarks are not met, judges should consider safeguards such as limiting or monitoring the abusive parent’s access to the child or survivor parent; limiting the abusive parent’s rulemaking or decision-making authority; monitoring their compliance with the parenting plan; enforcing the terms of the parenting plan; supporting the survivor parent’s efforts to protect the child; and, strengthening the child’s systems of support.¹⁵

In 2018, the U.S. Congress passed a resolution urging State Courts to “improve adjudications of custody where family violence is alleged.” The resolution¹⁶ set forth the following recommendations:

- “Child safety is the first priority of custody and parenting adjudications and courts should resolve safety risks and claims of family violence first, as a fundamental consideration, before assessing other best interest factors;
- “All evidence admitted in custody and parenting adjudications should be subject to evidentiary admissibility standards;
- “Evidence from court-affiliated or appointed fee-paid professionals regarding adult or child abuse allegations in custody cases should be admitted only when the professional possesses documented expertise and experience in the relevant types of abuse, trauma and the behaviors of victims and perpetrators; and,
- “States should define required standards of expertise and experience for appointed fee-paid professionals who provide evidence to the court on abuse, trauma and behaviors of victims and perpetrators, should specify requirements for the contents of such professional reports and should require courts to find that any appointed professionals meet those standards.”

In 2022, the National Council of Juvenile and Family Court Judges (NCJFCJ) revised its Model Code on Domestic and Family Violence, which was promulgated to promote consistency across state lines in how domestic violence is handled in the criminal and civil legal systems. Specifically, the NCJFCJ updated Chapter Four of the Model Code, which focuses on responding to custody matters involving family and domestic violence.¹⁷ The effort was initiated in recognition that “some children continue to be subjected to unsafe and unworkable court-ordered parenting arrangements, and many survivor parents still live with unrelenting harassment, threats and danger.” Possible factors leading to these “poor outcomes” include “the persistent disbelief that abuse allegations are true, a continuing perception that allegations of abuse are simply attempts to manipulate the family court system, inattention to or inadequate information on the full nature and context of the abuse, ignorance of the potential effects of domestic abuse on abused parents and children, and a failure to account for the belief system of a parent who is abusive and how it can shape parenting and harm children.” (Model Code, pages 9-10)

The Revised Model Code’s most notable findings and recommendations include:

¹⁵ BWJP, *Practice Guides*. Pages 55-57.

¹⁶ H.Con.Res.72-115th Congress. (2018, September 25) *Expressing the sense of Congress that child safety is the first priority of custody and visitation adjudications, and that State courts should improve adjudications of custody where family violence is alleged.* [www.congress.gov/bill/115th-congress/house-concurrent-resolution/72](https://www.congress.gov/bills/115/congressional-resolutions/72).

¹⁷ National Council of Juvenile and Family Court Judges. (2022) *Revised Chapter Four: Families and Children, Model Code on Domestic and Family Violence.* https://www.ncjfcj.org/wp-content/uploads/2012/03/modocode_fin_printable.pdf

- Courts must safely and ethically obtain adequate information to allow “for a comprehensive assessment of the context, nature and effects of domestic abuse on the abused parent and children who experienced abuse.” (Model Code, page 11)
- Courts must recognize that domestic abuse can “vary widely in its nature, context and effects on adult and child victims, including the level of risk of lethality, physical harm, and other types of danger.” Domestic violence can “co-occur with child abuse, can signal problematic parenting by the parent who is abusive, and can harm children by compromising the parenting of the parent who is abused.” (Model Code, page 11)
- Courts must “account for a range of abusive behaviors beyond the inflicted or attempted physical violence to which many statutory definitions of domestic violence... are limited,” including “coercive controlling domestic abuse” which “restricts the victim’s autonomy, entrapping them through such tactics as micromanagement of daily affairs or using cultural practices or beliefs to instill fear to maintain control over another.” (Model Code, page 12) The revised Model Code includes an inexhaustive list of behaviors that may constitute coercive control if they are part of a pattern of domestic violence. (Model Code, page 16).
- Courts must be “explicitly prohibited from adversely considering the actions of survivor parents that are intended to protect themselves or their children from the risk of harm posed by the other parent.” (Model Code, page 12)
- Courts must recognize that “a parent who is abused can look, on the face of things, like an ‘unfriendly parent’ or to be engaging in ‘alienating’ or ‘controlling’ behaviors, when in fact they are acting in a responsible and protective fashion.” (Model Code, page 17)
- When assessing best interest factors, courts must consider “the nature, context and effects of abuse on the child; the parenting behaviors and decisions of the parent perpetrating domestic abuse; the risk of harm to child or parent; and any abuse experienced by the child. This analysis must be done *before* the court moves to consider any other factors. (emphasis in original) (Model Code, page 18)
- Because domestic violence can “cast a shadow on many (non-domestic abuse) aspects of parenting and child-rearing... every best interest of the child factor [must] be evaluated in light of the domestic abuse, and the court must make findings to reflect that analysis.” Every state’s best interest list and analysis should include “how domestic abuse affects (1) the child’s historical and current relationships with each parent, (2) any protective behaviors of the parent who is being abused, (3) the child’s adjustment to changes in daily life, and (4) how each parent is meeting the child’s needs.” (Model Code, page 18)

Most recently, Reem Alsalem, UN Special Rapporteur on violence against women, its causes and consequences, issued a report¹⁸ to the Human Rights Council in June 2023, stating that “deeply embedded gender bias” pervades Family Court systems across the globe and “is placing women and children in situations of immense suffering and violence.”

A primary conclusion of the report address the reliance of parental alienation in custody proceedings:

“The report demonstrates how the discredited and unscientific pseudo-concept of parental alienation is used in family law proceedings by abusers as a tool to continue their abuse and coercion and to undermine and discredit allegations of domestic violence made by mothers who are trying to keep their children safe. It also shows how the standard of the best interest of the child is violated by imposing contact between a child and one or both parents and by prioritizing it, even where there is evidence of domestic violence. Predominantly as a result of the lack of training and gender bias and of access to legal support, the custody of children may be awarded to perpetrators of violence, despite evidence of a history of domestic and/or sexual abuse. The risks of such consequences are compounded for women from marginalized groups in society. The report elaborates on systemic issues that lead to additional barriers to justice. Judges and

¹⁸ Alsalem, Reem. (2023, April 13) *Report of the Special Rapporteur on violence against women and girls, its causes and consequences*. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G23/070/18/PDF/G2307018.pdf?OpenElement>

evaluators need to move away from focusing on the identification of behaviours that are contested within the discipline of psychology and towards a focus on the specific facts and contexts of each case.” (Rapporteur Report, page 18)

The report recommends, among other things:

- States “prohibit the use of parental alienation or related pseudo-concepts in family law cases.”
- States “ensure mandatory training of the judiciary and other justice system professionals on gender bias, the dynamics of domestic violence and the relationship between allegations of domestic abuse and of parental alienation and related pseudo-concepts.”
- “The use of “reunification camps” for children as part of any outcome in legal proceedings be prohibited.”
- “All agencies and elements of the justice system, statutory services and the domestic abuse sector work together rather than in silos and adequate coordination between the criminal, child protection and family law systems be ensured either by mandatory institutional cooperation mechanisms or the use of integrated court structures.”
- “Disaggregated data be collected, including on the prevalence of domestic abuse in family law cases and characteristics of applicants and respondents in such cases, including gender, race, sex, religion, disability and sexual orientation.”
- “States introduce monitoring mechanisms to assess the specific impact of policies and procedures relating to family justice on marginalized groups of women.” (Rapporteur Report, pages 18-19)

NYSCADV's Recommendations

NYSCADV is uniquely positioned to work with the New York State Legislature, the Governor and state agencies to improve New York's Family Court outcomes for domestic violence survivors and their children. For 45 years, we have engaged the more than 100 primary-purpose domestic violence service providers in New York State in comprehensive discussions regarding New York's Family Court system and decision-making authority regarding custody and child visitation in cases where domestic violence occurs. Over the years, we have conducted workshops, conference calls, webinars, training sessions and forums where we have reviewed, discussed and obtained significant feedback regarding system reform.

NYSCADV and domestic violence advocates across New York State have also met regularly throughout the years with staff of the New York State Office of Children and Family Services, the New York State Office for the Prevention of Domestic Violence, the New York State Office of Victim Services, the New York State Department of Health, the New York State Office of Temporary and Disability Assistance and the Office of Court Administration regarding New York's response and support for domestic violence survivors and their families.

Our primary goal is to better understand how the Courts are implementing the statutory provisions of Domestic Relations Law §240, which requires Courts to:

“consider the effect of domestic violence upon the best interests of the child, together with such other facts and circumstances as the court deems relevant... and to state on the record how such findings, facts and circumstances factored into the direction. If a parent makes a good faith allegation based on a reasonable belief supported by facts that the child is the victim of child abuse, child neglect, or the effects of domestic violence, and if that parent acts lawfully and in good faith in response to that reasonable belief to protect the child or seek treatment for the child, then that parent shall not be deprived of custody, visitation or contact with the child, or restricted in custody, visitation or contact, based solely on that belief or the reasonable actions taken based on that belief. If an allegation that a child is abused is supported by a preponderance of the evidence, then the court shall consider such evidence of abuse in determining the visitation arrangement that is in the best interest of the child, and the court shall not place a child in the

custody of a parent who presents a substantial risk of harm to that child, and shall state on the record how such findings were factored into the determination.”

Attorneys and advocates representing DV survivors in New York’s Family Courts report rampant violations of this existing statute. For example:

- Family Court judges do not consider the effect of domestic violence upon the best interests of the child.
- Family Court judges frequently do not record their findings as it relates to their decision-making.
- Parents who raise good faith allegations of child abuse or child neglect are deprived of custody, visitation or contact with the child.
- Family Court judges do not consider evidence of child abuse in determining visitation arrangements.
- Family Court judges place children in the custody of parents who present a substantial risk of harm to them.

Judges, attorneys, court professionals, domestic violence advocates and elected officials have been mulling these failures of New York’s Family Courts for years. Now is the time to act.

First and foremost, NYSCADV urges the Governor and Legislature to approve Kyra’s Law (S3170A/A3346A). This legislation implements several of the recommendations identified by the Battered Women’s Justice Project and the National Council of Juvenile and Family Court Judges, including:

- **Requiring all judges and court personnel to complete comprehensive training in the dynamics of domestic violence, coercive control, and the legal tactics offenders use to maintain control over their victims.** This training should also educate judges on how to provide trauma-informed support to victims in their courtrooms and assist them in referrals to supportive services, while holding offenders accountable for their conduct.
- **Requiring judges to conduct a review of any findings or allegations of child abuse, domestic violence, heightened danger and risk of lethality before issuing permanent or temporary orders of custody or visitation.** The bill includes a series of considerations that should be reviewed, including allegations of violence, a history of violence perpetrated by either parent, police reports and Domestic Incident Reports, a parent’s use or threats to use a weapon, the presence of coercive controlling behavior, etc.
- Ensuring judicial accountability by permitting expedited appeals of Family Court orders of custody or visitation or the conditions or restrictions contained within such orders.
- **In cases involving domestic violence or child abuse, prohibiting admissibility of allegations regarding parental alienation or friendly parent, and prohibiting considering such allegations when assessing a child’s best interests.** The bill also would prohibit the Court from ordering family members to a treatment program intended to reunite a child with a parent for whom that child is estranged, unless both parents and the attorney for the child consent.

New York State has the most complex court structure in the nation. Because offenders use the court system as a tool to abuse their victims, it is typical for domestic violence survivors to have multiple proceedings in several courts simultaneously. Judges routinely move in and out of Family Court for short assignments, causing frequent judicial changes throughout a proceeding. The Office of Court Administration has repeatedly stated that Family Court judges do not have time to fully assess a child’s safety during custody/visitation proceedings because their dockets are too full.

Recommendations:

1. *Ensure New York’s Family Courts operate in such a way to ensure a child’s life and safety is prioritized and fully considered. Assess why judges do not have time to fully consider a child’s safety and modify operations to ensure they do.*

2. *Reduce the number of court appearances for domestic violence survivors. Expand the number of Integrated DV Courts in the State.*
3. *End the rotation of untrained judges into Family Court.*
4. *Set an expedited timeframe for custody-related matters and hold judges accountable in meeting them.*
5. *Strengthen New York's vexatious litigation statute to ensure offenders are not wielding the courts to further abuse their victims.*
6. *Require training in domestic violence and child abuse for all pro bono attorneys assigned to represent domestic violence survivors in Family Court or Supreme Court and attorneys representing children in Family Court.*
7. *Require the Office of Court Administration to collect data about domestic violence survivors' experiences in court, including the timeliness and length of court proceedings, judicial decision-making and the intersection of bias, complaints lodged about judges and other court personnel, etc.*

One in four women and one in nine men experience severe intimate partner physical violence, sexual violence and/or stalking, according to the National Coalition Against Domestic Violence. As such, judges should assume that 25% of the women who appear before them are domestic violence survivors. Yet some Family Court judges believe all individuals who allege domestic violence are inventing the experiences to obtain full custody. These judges insult, berate and, on occasion, yell at domestic violence survivors, telling them their experiences are not "life or death situations" and they should "grow up." Comprehensive training is of course a must. But we must be holding Family Court judges accountable for their behavior in courtrooms.

Recommendations:

1. *Create an anonymous reporting mechanism to elevate instances of non-trauma informed behavior by judges and court personnel during custody proceedings. Ensure that these complaints are investigated when raised, rather than pushing them off until the conclusion of the case.*
2. *Whenever a party to a Family Court proceeding is seriously harmed or murdered by another party to that proceeding, conduct a thorough evaluation, including a root cause analysis, to prevent such events in the future.*
3. *Provide funding for Court Watch programs, which provide impartial assessments of the effectiveness of family courts in dealing with custody, visitation, support and property issues.*
4. *Permit photography, broadcasting, streaming or recording of any kind in all Family Courts, unless one of the parties can demonstrate that such coverage would place themselves or their child at significant risk.*

Domestic violence survivors do not feel safe in New York's family courthouses. They typically must wait in cramped waiting rooms, in very close proximity to their abusers, before their cases are called. There are rarely provisions for childcare. Those who are not native English speakers find it difficult to navigate the physical spaces and may not fully understand the court process. The Courts' use of virtual technology during the Pandemic enhanced safety for many domestic violence survivors, and enabled them to participate in proceedings without taking time off from work or having to find childcare or transportation to the courthouse. However, many Courts have since returned to in-person proceedings.

Recommendations:

1. *Create safe spaces in courtrooms with appropriate technology and services needed to sufficiently participate remotely.*
2. *Create separate waiting rooms so domestic violence survivors do not have to be in close proximity to their abusers for long periods of time.*
3. *Expand the ability of parties to participate in virtual court proceedings from their homes, workplace, attorney's office or other safe space. Create protocols and procedures for virtual proceedings and ensure judges are trained in the use of technology.*
4. *Provide funding to ensure security personnel are stationed in waiting rooms and courtrooms.*
5. *Provide funding for childcare services in all courthouses. If childcare is unavailable, create a safe space for children with age appropriate activities and technology to keep them occupied.*

6. Create information desks in courts to assist parties with referrals, services, vouchers, childcare and general information about the court process.
7. Post court signage and forms in multiple languages.
8. Collect data on the use of interpretation services during Family Court proceedings, by judge, to assess availability, accessibility and equity in provision.
9. Authorize court security personnel to accompany domestic violence survivors to their car or public transportation following a court proceeding.
10. Ensure Orders of Protection are valid and enforceable immediately after issuance.
11. Establish a 3-day timeframe for all Courts and/or law enforcement to execute service of Orders of Protection.

When Courts require additional information related to the needs of a family involved in a custody or visitation proceeding, they often order a forensic child custody evaluation intended to be an in-depth analysis from a mental health professional or social worker providing detailed psychological information about each member of the family as it relates to their respective roles in the parent/child relationship. As described in the 2021 Report of the Governor’s Blue-Ribbon Commission on Forensic Custody Evaluations¹⁹, forensic evaluation reports are often fraught with bias and inequalities. Custody evaluators frequently deny allegations of domestic violence or child abuse, electing instead to believe the parent making the allegations is attempting to manipulate or “alienate” the other party from the child. Dozens of domestic violence victims lose custody of their children each year because courts fail to believe their allegations of abuse.

Recommendations:

1. The Governor and Legislature should adopt A2750/S4149 to prohibit courts from using forensic custody evaluators or allowing a forensic custody evaluator report to be used as evidence in a custody/visitation proceeding.
2. The Governor and Legislature should adopt A3771 to ensure parents, their counsel, and the attorney for the child are provided copies of the report, the evaluator’s file and the underlying data. The legislation also makes forensic evaluator reports subject to cross-examination and the rules of evidence, ensuring the reports could be fully challenged and subject to the rigor required under the rules and laws of evidence.
3. The Governor and Legislature should adopt S2084 to restrict forensic evaluators who are terminated for cause from appearing as an expert witness.

Supervised visitation programs are a necessary resource for families who have experienced trauma or family violence. Family violence is present in a preponderance of circumstances that lead families to supervised visitation and safe exchange services, whether it was known to the referring entity (often the Court system) or not. As documented in the Report from The Working Group on the Future of Supervised Visitation in New York State, New York’s Family Courts, Integrated DV Courts and matrimonial parts have “experienced an ongoing, dangerous lack of resources for families in need of safe, supervised visitation and safe exchange programs that are sustainable and available to families in crisis.”²⁰ Twenty counties in New York State – or 32% -- do not have any supervised visitation programs for custody/access (non-abuse/neglect) matters that involve issues of domestic violence, addiction and/or mental health diagnosis. In counties with operating programs, resources are very limited.

Recommendations:

1. Mandate a supervised visitation program funded by New York State in all New York State counties.

¹⁹ Blue Ribbon Commission on Forensic Custody Evaluations. (2021) Report on the Blue-Ribbon Commission on Forensic Custody Evaluations. <https://ocfs.ny.gov/programs/cwcs/assets/docs/Blue-Ribbon-Commission-Report-2022.pdf>

²⁰ Working Group on the Future of Supervised Visitation. (2023, July) *Report from The Working Group on the Future of Supervised Visitation in New York State*.

2. *Adopt statewide protocols for all supervised visitation and safe exchange programs and establish minimum qualifications for supervisors incorporating the principles set forth in the Supervised Visitation and Safe Exchange Blueprint²¹ and the federal Office on Violence Against Women Guiding Principles of the Safe Havens: Supervised Visitation and Safe Exchange Grant Program²²*
3. *Increase the number of safe, supervised visitation spaces statewide.*
4. *Create a communications loop for community stakeholders to inform the Court if ordered supervised visitation is or is not successfully implemented.*
5. *Require the Office of Court Administration to record the number of court orders for supervised visitation in all matters involving custody.*

NYSCADV appreciates the State Legislature's focus on child custody and visitation issues and we stand ready to assist as you work to enforce current standards and seek much needed improvements. New York's domestic violence survivors and their families deserve your attention now before further harm occurs.

Sincerely,



Joan Gerhardt
Director of Public Policy and Advocacy

²¹ McNamara, B., Rose, J., & Fairchild, E., (2022) *Supervised Visitation and Safe Exchange Blueprint* https://static1.squarespace.com/static/5665d0a8b204d5e193b65ef4/t/63c5f9fb996e863eb460711c/1673918972962/InspireAction_SVSEBlueprint_FINAL.pdf

²² Mukasey, M., & Buchanan, M., (2007, December) *Guiding Principles, Safe Havens: Supervised Visitation and Safe Exchange Grant Program* <https://static1.squarespace.com/static/5665d0a8b204d5e193b65ef4/t/60dca51e56ff382fd2767bb5/1625072927415/OVW+SV+Guiding+Principles+Full+Document.pdf>