

March 10, 2016

Kansas House Committee on Judiciary
Representative John Barker, Chair

RE: 2016 SB 393; Consideration of domestic abuse in determining the issue of custody, residency and parenting time of a child.

Hearing Date: March 10, 2016

TESTIMONY IN SUPPORT OF SB 393

Chairman Barker and Members of the Committee:

In 2007, convened by the National Council of Juvenile and Family Court Judges (NCJFCJ) and the Association of Family and Conciliation Courts (AFCC), a gathering of judges, mental health professionals, attorneys, legal educators, and advocates for victims of family violence met at the Wingspread Center to “examine interpersonal violence in families and its relationship to children’s well-being during and after parental separation.”¹ The resulting “white paper” summarized the agreements among the experts. The report “signaled a consensus for a proposed paradigm shift in the U.S. legal system: *the safety of children trumps the ‘custodial rights’ of abusive parents.*”²

I have been involved in litigation under the Kansas Family Law Code (FLC) for the last six-plus years of my life. My ex-husband’s and my only son, who is now almost eight-years-old, has been under the rule of this Code the majority of his life. During the course of this litigation, my ex-husband has been arrested and has pled guilty to three crimes against me. During the course of this litigation, our son has disclosed to three mental health professionals that his father has physically abused him on unsupervised visits, unsupervised visits that were ordered by the court. During the course of this litigation, I have been granted three Protection From Abuse orders in an effort to protect my son and myself.

I have been trying, for our son’s sake, to get my ex-husband into a treatment program for batterers for the past five years. To this day, the convicted offender has yet to be ordered into a Batterer Intervention Program (BIP). While treatment for batterers is now the standard in Kansas’ criminal courts, it is presently not even mentioned in the Kansas FLC. This special provision for batterers, in Kansas’ criminal courts, is necessarily critical in Kansas’ family courts because in family court, children are usually involved. My ex-husband has been on and off of supervised visitation throughout our son’s young life. There have been multiple incidents of abuse during the periods of unsupervised visitation. Unlike other states, and as recommended by

¹ Allen M. Bailey, *Prioritizing Child Safety as the Prime Best-Interest Factor*, 47 Fam. L.Q. 35, 53-54 (2013).

² *Id* at 54.

national legal and health organizations, Kansas has no requirement for treatment before restrictions on parenting time can be lifted by a court. The last time we were in court, four professionals in the field of domestic violence, two of them doctors, testified on our son's behalf. Testimony was presented regarding a father abusing his child. Testimony was presented on how a father had been recommended to attend a BIP and had failed to follow through with the treatment. The judge ignored the recommendations of the professionals, and using his discretion, ordered unsupervised visitation, again, without requiring any treatment to remedy the reason that he had ordered supervised visitation for the child's father in the first place, at two prior times. Because of the periods of unsupervised visitation that have been ordered by the court, our son has required therapy for a large portion of his young life to cope with the abuse and trauma inflicted on him during the unsupervised visitation. Because his father has not been required to seek treatment, the child has. For our family, the cycle of abuse continues.

Domestic abuse and violence and battering are incredibly complex issues with multifaceted dangers and harms. The dynamics involved are multipart and far reaching. All of these factors leave judges in an exceedingly difficult position to exercise their discretion. For all of these reasons, the majority of the states, including all of the states surrounding Kansas, have enacted provisions in their family law statutes to provide protections for child and adult victims and to provide treatment requirements for batterers in family law cases that involve domestic violence. This is also why numerous national legal and health organizations are calling for these provisions and have been advocating for them for years.³

The guiding principle in family court for a child's continuing relationship with both parents is an important and just policy. Judges are necessarily trying to provide children relationships with both parents to fulfill the policy. However, in cases that involve domestic abuse, this policy puts children in danger. Exceptions to this policy need to be in place when domestic abuse is a factor in the family dynamics. A child's right to be safe needs to come before a policy for continuing contact with a parent. Kansas is among a minority of states that have not enacted these protective exceptions into their family law statutes. Considering that "[r]ecent research shows that approximately seventy-five percent of the contested custody cases that require judicial intervention are cases in which there is a history of domestic violence..."⁴, and that "[s]ocial science researches in the past several years have published results of studies showing that abusive parents drive the majority of contested child-custody cases in the courts of the United States and Canada"⁵, the need for these safety provisions, becomes unmistakable. It is time that Kansas enact these provisions, for the safety of all of its children.

My son's and my experiences, over the last seven years, inspired me to apply to law school and I am currently in my third year. I believe that the experiences that we have lived through, the challenges that we have overcome, and the knowledge that I have obtained have become an opportunity for me to use my experiences and knowledge to try and help other families.

³ See Nat. Council of Juv. and Fam. Ct. Judges, Model Code on Domestic and Family Violence, Chapter 4 (1994); See A.P.A., Violence and the Family: Report of the American Psychological Association Presidential Taskforce on Violence and the Family (1996).

⁴ Bailey, *supra* note 1 at 47.

⁵ *Id* at 38.

In the Spring of 2015, I approached Senator Mary Pilcher-Cook with ideas to improve the Kansas FLC in response to my son's and my experiences. My ideas came from extensive research of family law codes across the country and especially the family law codes in the four states surrounding Kansas. The provisions in SB 393 are a product of what other states have already done to protect children in domestic cases that involve domestic abuse. The National Council of Juvenile and Family Court Judges have also called for the provisions in SB 393 for over twenty years. While other states have actually gone farther than SB 393 in their family law codes in protecting children, (approximately half of the states have implemented a presumption against batterers being awarded custody⁶), SB 393 will be a great start to prevent the exposure to harms that have happened to our family, from happening to others.

Rationale for SB 393:

Due to the loss of other methods of exerting control, batterers frequently use custody litigation as an avenue to try to continue to control and harass their victims. (As stated and cited previously, studies show that the majority of contested custody cases, involve domestic abuse.) The methods that abusive parents use also end up taxing the court system and it's resources and expending unnecessary judicial time. The provisions in SB 393 would be a great start to help to prevent batterers from manipulating the domestic court system and to stop the waste of court resources and valuable judicial time.

SB 393 updates the factors considered in determinations of custody, residency, and parenting time by replacing "spousal" abuse with domestic abuse and adds a clear definition of domestic abuse. This provision fixes the problem that exists in the current Kansas family law code that provides no guidance to courts on what domestic abuse is. SB 393 also provides an exception to the "friendly parent" factor to fix the problem that allows abusive parents to manipulate the friendly parent factor when non-offending parents are trying to protect children from witnessing abuse or from being abused.

SB 393 also inserts Batterer Intervention Programs (BIP), for assessment and treatment, into the Kansas Family Law Code. (BIPs are already in use in the Kansas Criminal Code.) This provision, for treatment, is crucial, not only to give children in Kansas a chance at a future with a healthy and safe parent, but also for the offending parent themselves to have a chance at rehabilitation and a life free from abusive behaviors. (Without treatment, "[s]eventy to eighty-five percent of men who batter their partners do not change their abusive and controlling behaviors from one relationship to the next."⁷) In addition to BIPs for treatment, the assessment function of BIPs would also be an incredible resource for judges in determining whether domestic abuse is occurring or has occurred. Because of the incredibly complicated dynamics involved in domestic abuse, having professionals, trained in the dynamics, helping judges in these determinations, would save immeasurable court time and resources.

Further, BIP assessments could help to alleviate the concern that some hold that many false allegations of abuse are made in dissolution proceedings. (Research actually shows that

⁶ Nat. Council of Juv. and Fam. Ct. Judges, Rebuttable Presumption States, <http://www.ncjfcj.org/sites/default/files/chart-rebuttable-presumption.pdf> (last visited Mar. 9, 2016).

⁷ Bailey, *supra* note 1 at 43.

“...both clinical observation and empirical studies indicate that only a small number of unfounded child abuse allegation are due to deliberate or malicious fabrication,”⁸ and, “the making of false allegations of spousal abuse is much less common than the problem of genuine victims who fail to report abuse, and the widespread false denials and minimization of abuse by perpetrators.”⁹) Regardless of the research on the subject, if there were a false allegation, assessments by domestic violence professionals, would be the best way to detect it. Having BIPs as a resource for both assessment and treatment would be a great start to stop the ongoing and incredibly lengthy litigation, like our families, that is so common when domestic abuse is involved, thus stopping the waste of so much costly court time and resources.

The last, and very important, provision that SB 393 adds is the prioritization of domestic abuse as a factor in determinations of custody issues. This factor would be made primary after a court finds that domestic abuse has occurred. Approximately thirty states have already implemented similar provisions that prioritize domestic abuse.¹⁰ The necessity of making domestic abuse a primary factor is easily demonstrated by the mounds of social science and neuroscience research amassed over the last decades that evidence the many short and long-term damaging effects of battering and domestic abuse on children. In addition to the human costs to the individual child, the costs of domestic violence and battering to society are astronomical. The juvenile justice system has seen the effects of children exposed to violence as “...studies on pathways to delinquency have shown that young offenders are more likely to have been exposed to domestic violence...and to become involved in anti-social behavior, violent crime, substance abuse, further delinquency and adult criminality.”¹¹ “The vast majority of children involved in the juvenile justice system have survived exposure to violence and are living with the trauma of those experiences.”¹² Our healthcare system also has seen the effects of domestic violence as the cost of intimate partner violence exceeds \$5.8 billion per year with “nearly \$4.1 billion of which is for direct medical and mental health care services.”¹³ All of this also translates into a major threat to our country, “Seventy-five percent of young people ages 17-24 cannot get into the military because of poor literacy, health or prior incarceration.”¹⁴ While the other determination factors are also important, they are also necessarily affected by domestic abuse, if it is occurring in a family. In light of all of the documented harms on children and society,

⁸ Peter G. Jaffe, Janet R. Johnston, Claire V. Crooks, & Nicholas Bala, *Special Issue: Domestic Violence: Custody Disputes Involving Allegations of Domestic Violence: Toward a Differentiated Approach to Parenting Plans*, 46 Fam. Ct. Rev. 500, 508 (July 2008).

⁹ *Id.*

¹⁰ Nat. Council of Juv. and Fam. Ct. Judges, Domestic Violence as a Factor States, <http://www.ncjfcj.org/sites/default/files/chart-custody-dv-as-a-factor.pdf> (last visited Mar. 9, 2016).

¹¹ Lynn Hecht Schafran, *Domestic Violence, Developing Brains, and the Lifespan: New Knowledge from Neuroscience*, The Judges’ Journal, Volume 53 Number 3 32, 36 (Summer 2014).

¹² Report of the Attorney General’s National Task Force, *Children Exposed to Violence*, xvii, <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf> (last visited Nov. 29, 2015).

¹³ National Center for Injury Prevention and Control, *Costs of Intimate Partner Violence Against Women in the United States*, <http://www.cdc.gov/violenceprevention/pdf/IPVBook-a.pdf> (last visited Dec. 2, 2015).

¹⁴ Children’s Defense Fund, *The State of America’s Children 2014*, http://www.childrensdefense.org/library/state-of-americas-children/2014-soac.pdf?utm_source=2014-SOAC-PDF&utm_medium=link&utm_campaign=2014-SOAC (last visited Nov. 29, 2015).

making domestic abuse a primary factor in determinations of custody, residency, and parenting time, is an easy choice.

Impact of SB 393:

Anyone who has ever asked the question, “*Why don’t they just leave?*” does not understand the complicated dynamics of domestic violence and battering and anyone who has ever asked that question has not tried to navigate domestic court with a batterer on the other side. The provisions in this bill would put into effect the long-standing recommendations of numerous national legal and health organizations, thus helping to best protect children and adult victims in Kansas’ family courts. Knowing that they and their children will be kept safe, and the abuser will be held accountable, will, as a result, make it easier for a victim to leave. The provisions in this bill would extend batterer assessment and treatment into Kansas’ family courts, where it is critically necessary, for the future of the whole family. The provisions in this bill would help to reduce the exorbitant amount of court time and resources that cases involving battering and domestic abuse swallow up because of the manipulation of the system by batterers. While Kansas could go farther and implement a presumption against batterers being awarded custody, like approximately half of the states have done and the Model Code on Domestic and Family Violence calls for, SB 393 will be at least a great start to prevent the exposure to harms that have happened to our family, from happening to others. The provisions in this bill would grant protections to children and adult victims in Kansas that the majority of the states, including all of the states surrounding Kansas, already have; because children in Kansas should not be more at risk just because they live in Kansas and children in Kansas deserve to be just as safe as children in their neighboring states.

Conclusion:

“It is time for family courts that are charged with meeting the best interests of children to accept and implement the research that demonstrates that the *primary* interest of all children is to live a safe existence in the care of a loving and nonviolent parent.”¹⁵

“The future of any society depends on its ability to foster the health and wellbeing of the next generation. Stated simply, today’s children will become tomorrow’s citizens, workers, and parents. When we invest wisely in children and families, the next generation will pay that back through a lifetime of productivity and responsible citizenship. When we fail to provide children with what they need to build a strong foundation for healthy and productive lives, we put our future prosperity and security at risk.”¹⁶

I thank you for the opportunity to provide testimony in support of SB 393.

Sincerely,
Jill Rence

¹⁵ Bailey, *supra* note 1 at 64.

¹⁶ National Scientific Council on the Developing Child, *The Science of Early Childhood Development: Closing the Gap Between What We Know and What We Do*, pg. 1, http://developingchild.harvard.edu/wp-content/uploads/2015/05/Science_Early_Childhood_Development.pdf (last visited Nov. 28, 2015).