TO: Senator Gary Winfield, Co-Chair, Representative Seven Stafstrom, Co-Chair, Senator Alex Kasser, Vice Chair, Representative Matt Blumenthal, Vice Chair, and Honorable Ranking Members, and Members of the Joint Judiciary Committee

FROM: Danielle Pollack, Ambassador for Family Court Reform, CHILD USA; Marci Hamilton, CEO & Legal Director, CHILD USA; Professor, University of Pennsylvania and Kathryn Robb, Executive Director, CHILD USAdvocacy

RE: SB 1060 – Jennifer's Law

DATE: March 24, 2021

Good morning Senator Winfield, Representative Stafstrom, Senator Kissel, Representative Fishbein and Judiciary Committee Ranking Members and Members.

Thank you for the opportunity to provide testimony on Senate Bill 1060, Jennifer's Law.

By way to introduction, my name is Danielle Pollack. I am an Ambassador for CHILD USA, a national, interdisciplinary think tank dedicated to the prevention of child abuse and neglect at the University of Pennsylvania, and I lead the organization's national Family Court Reform initiative.[i]

Marci Hamilton is the Founder, CEO, and Legal Director of CHILD USA, an interdisciplinary think tank dedicated to the prevention of child abuse and neglect at the University of Pennsylvania, where she is a Professor.

Kathryn Robb is the Executive Director of CHILD USAdvocacy, a 501(c)(4) advocacy organization dedicated to protecting children's civil liberties and keeping children safe from abuse and neglect. CHILD USAdvocacy draws on the combined expertise of the nation's leading experts and child advocates, specifically its sister organization, CHILD USA. Kathryn is also a survivor of child sexual abuse.

We support SB1060 with one minor suggested change outlined below. The most important aspects of SB1060 which we support are 1) the proposed addition of a definition for coercive control, an insidious pattern of abusive behaviors 2) for private custody, allowing for family courts to consider coercive control and, with a procedural change, more effectively prioritize child safety when abuse and safety concerns are raised.

Intimate Partner Violence and Child Safety Must Be Considered First in Child Custody
Many people, including some who work in family law, view contested custody principally as two angry parents fighting for control, not a matter of child safety and risk of abuse. The fact is that in approximately 70% of contested custody cases, of those which come before a judge, there is

an abuse component – either intimate partner violence (IPV) or adult on child violence or a combination of these. Multiple studies confirm this.[ii]

Our laws addressing family violence have historically developed in ways which attempt to address adult domestic violence and child abuse largely as two separate, siloed problems, and this has created a gap in child safety. This gap appears where private custody is litigated and in the ways which custody is decided. Survivors of domestic violence litigating custody are often either not believed or are viewed as being alienating rather than protective of their children.[iii] In the past decade over 100 children in the U.S. have been murdered by a dangerous divorcing or separating parent despite a safe parent raising safety concerns during custody litigation.[iv]

According to DHS data most substantiated child abuse is perpetrated by a parent. Looking to national DHS child fatality data, of all child murders 78% were perpetrated by a parent. As with IPV and femicide, the majority of severe and fatal child abuse is male perpetrated. Connecticut and national data confirm that male caregivers are more likely to be the perpetrators of fatal injuries to young children and that children are more at risk for fatal child abuse while in the care of an abusive father or male partner without the presence of the mother.[v] IPV victims sometimes endure years of abuse, including coercive control, before exiting an abusive home situation; commonly it is the will to protect her children which drives her to find the means and courage to exit.

The two places in our systems where it is decided how much or how little access an abusing parent will have to a subject child are our juvenile courts and our custody courts. If a family is experiencing abuse and the abuse is not addressed in the juvenile courts these cases often go to private custody, where a protective parent is left to defend the child against the abusing parent without the support of the state.

We cannot continue to view contested custody when abuse is alleged as simply two parents fighting and "using tactics" to win custody. It does not serve children. It is not meeting the "best interest of the child" standard we use in custody. Rather the way private custody law functions now in practice is overly focused on parental rights at the expense of children's human and civil rights.

What we know happens, and countless survivors can attest to, some you'll hear from today, is that risk of harm dramatically increases when a protective parent leaves an abusive situation with her children. Abuse is about exerting power over the victim or victims. When victims exit, most abusers feel a loss of control of this power and seek to reestablish it by any means. Very often, even if the abuser wasn't directly abusing children previous to the adult victim leaving, they will begin to hurt children. They often do this as a way to harm the adult, and they use the family courts as an extension of that abuse by litigating for custody and ongoing access to the children. But family courts commonly view child abuse claims first being raised AFTER a protector leaves, as suspicious and fabricated.

Importantly, SB1060 would require that when family abuse is alleged in these contested custody cases in a verified pleading, the court must address the abuse first with an evidentiary hearing restricted only to the abuse matter, before considering other best interest factors (beginning at

line 431). Why is this important? Because we know that if abuse is simultaneously considered by custody courts along with the other best interest factors, that the abuse gets lost, is given less weight overall than if it were to be considered on its own and resolved first. Instead, the abuse is minimized, sort of equalized. It becomes a he-said she-said case often resulting in children being divvied up between two parents, one abusing, one protective. When abuse is not addressed at the outset and children's safety is not prioritized as a result, these contested custody cases with abuse can drag on for years, clogging up court dockets, costing litigants' enormous sums, and most critically, endangering children and protectors.

Jennifer Dulos, attempting to protect her five children from her abusing ex experienced this exact thing. Jennifer Magnano also. You will hear later today from Ms. Magnano's surviving children on what this experience was like as subject children. I urge you to listen carefully to their testimony. There is no need to continue to subject children to such preventable harms.[vi]

While those resistant to reform may argue adding an upfront evidentiary hearing on *abuse only* will slow down already busy custody courts, our position is that **this procedural change to address and resolve abuse concerns first will both increase court efficiency and elevate child safety**. When such cases drag on, and safety concerns continually arise because courts did not properly recognize abuse early nor put safety measures in place – but instead awarded parenting time to an abuser - it can become a costly battle of the experts with dockets filling up and children *avoidably* put in harm's way, often forced to endure abuse and toxic stress for years.

Section 3 points to a need for the rules of evidence to be applied in family courts. Beginning at line 459, SB1060 adds much needed requirements for standards for expert testimony and court-appointed personnel. Because these are closed courts and there is little oversight, standards are oftentimes not upheld as they should be. SB1060 aims to ameliorate this, and we support this.

We heard from Evan Rachel Wood and many others on the importance of courts ability to hear the *history and pattern* of abuse they endured. Often litigants struggle to get such important information admitted into evidence during litigation. SB1060 allows for broader consideration of the history and patterns of abuse. The courts' ability to view abuse in this way is important both for adult victims seeking justice and for protective parents seeking safety for their children.

Recommendations –
Coercive Control Definition as an Addition Not a Replacement; Prioritize Child Safety
All of the provisions in SB1060 which state the "trigger allegations" for elevating consideration of abuse are phrased as "allegations of coercive control or child abuse", *excluding* domestic or intimate partner violence (IPV). While "coercive control" may include physical or sexual violence, for example, we recommend the definition for coercive control *accompany* rather than supplant any statutory definitions for domestic violence or abuse, intimate partner violence, or family violence. Not all domestic abusers are coercive controllers.

SB1060 and SB6 both include coercive control language, which we are pleased to see. We hope there is resolution of the different versions and coercive control language is adopted in CT law. We will note that "intent" has shown to be an incredibly difficult thing for victims to successfully prove in court.

Importantly, while SB6 does not include a child custody reform element, SB1060 does. We believe this is an essential difference. Children cannot be viewed as separate or secondary in family abuse scenarios. Domestic violence is not about adults first and children second. Children are uniquely vulnerable, and their safety must be central in any statutory reforms on domestic violence. With the suggested recommendations above, SB1060 best addresses this challenge, and we urge you to support it.

Sincerely,

Danielle Pollack
Ambassador, Family Court Reform
CHILD USA
3814 Walnut Street
Philadelphia, PA 19104
Tel: (646) 724-7211
dpollack@childusa.org

Marci A. Hamilton, Esq.
CEO & Legal Director, CHILD USA
Fels Institute of Government Professor of Practice
UNIVERSITY OF PENNSYLVANIA
3814 Walnut Street
Philadelphia, PA 19104
Tel: (215) 539-1906
marcih@sas.upenn.edu

Kathryn Robb
Executive Director
CHILD USAdvocacy
www.childusadvocacy.org

[i] *See* CHILD USA (last visited Mar. 24, 2021), available at https://childusa.org/familycourts/.

[ii] See generally, Jaffe, Zerwer & Poisson, *Access Denied: The Barriers of Violence & Poverty for Abused Women and their Children After Separation* (Dec. 16, 2002), available at https://safehavensonline.org/media/com_library/resources/46-access-denied-full.pdf (citing four studies, all of which found 70-75% of cases in litigation involved allegations of domestic violence).

[iii] Joan S. Meier & Sean Dickson, *Mapping Gender: Shedding Empirical Light on Family Courts' Treatment of Cases Involving Abuse and Alienation*, 35 LAW & INEQ. (2017).

[iv] Center for Judicial Excellence (last visited Ma. 2021), available at https://centerforjudicialexcellence.org/.

[v] *See generally* Dept. of Health and Human Serv.'s, *Male Perpetrators of Child Maltreatment: Findings From NCANDS* (Jan. 1, 2005), available at https://aspe.hhs.gov/basic-report/male-perpetrators-child-maltreatment-findings-ncands; State of Connecticut, Office of The Child Advocate, *Child Fatality Report: Children Birth to Three (2013)*, (July 30, 2014), available at https://cca-ct.org/wp-content/uploads/2012/06/2013-OCA-Infant-Toddler-Fatality-Report.pdf

[vi] Intimate Partner Violence: Definitions, CENTERS FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/violenceprevention/intimatepartnerviolence/definitions.html The CDC classifies domestic violence as a "serious, *preventable* public health problem that affects millions of Americans." (Emphasis added.)