



TO: Chairman Gardner, Vice Chairman Cooke, and Honorable Members of the Senate Judiciary Committee

FROM: Marci Hamilton, CEO & Legal Director, CHILD USA; Robert A. Fox Professor of Practice, University of Pennsylvania and Kathryn Robb, Executive Director, CHILD USA Advocacy

RE: HB 1228, requiring domestic violence and child abuse training for family court personnel

DATE: May 17, 2021

Dear Chairman Gardner, Vice Chairman Cooke, and Members of the Senate Judiciary Committee,

Thank you for allowing us, Professor Marci Hamilton of CHILD USA and Kathryn Robb of CHILD US Advocacy, to submit testimony regarding HB 1228, which would require domestic violence and child abuse training for court personnel who are regularly involved in cases related to domestic matters in Colorado. If passed, this legislation will better equip Colorado's family courts to protect children from domestic violence.

By way of introduction, Professor Marci Hamilton is the Founder and CEO of CHILD USA, a national, interdisciplinary think tank dedicated to the prevention of child abuse and neglect at the University of Pennsylvania, where she is the Fels Institute of Government Professor of Practice. She is the author of *Justice Denied: What America Must Do to Protect Its Children* (Cambridge University Press 2008, 2012), which makes the case for statute of limitations (SOL) reform in the child sex abuse arena, and the leading expert on the history and constitutionality of SOL reform. Maralee McLean is an ambassador for CHILD USA's Family Court Reform Initiative and serves as the Executive Director for Moms Fight Back.¹

Kathryn Robb is the Executive Director of CHILD USA Advocacy, a 501(c)(4) advocacy organization dedicated to protecting children's civil liberties and keeping children safe from abuse and neglect. CHILD USA Advocacy 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 commend you and the Committee for taking up HB 1228, which will require necessary training for family court personnel. If passed, this law would enable judges, investigators, and children's legal representatives to make more informed evaluations and decisions when determining how to best protect Colorado's children in custody litigation.

I. Child Abuse by a Parent/Caregiver Is a National and State Problem

¹ <https://www.momsfightback.org/>



Family violence is alleged in most contested custody cases (75%), and this legislation will better prepare court personnel to protect children at risk of being subject to ongoing family violence.² The goal of custody decisions is to ensure that the best interests of the child are protected, while maintaining safety. Often, contested custody cases focus on parents' rights, which can subjugate the child's rights to the litigating parents' demands.³ Research shows approximately 58,000 children in the US annually are court-ordered into the care of an abusing parent by our family courts.⁴ Family courts strive to award some form of shared or equal custody to both parents often above all else, even when safety risks are present.⁵ One of the reasons for these unfortunate decisions is that family court personnel are often untrained on the most important facts regarding trauma and the indicators of childhood sexual abuse.

Child abuse and neglect occurs more frequently within the family than in any other context, and, therefore, family court personnel need evidence-based training to ensure they can fully understand what is before them. This is particularly true with respect to fatalities: "80% of child fatalities due to abuse or neglect occur within the first 3 years of life and almost always at the hands of an adult responsible for their care."⁶ Family violence is often carried out behind closed doors, and thus without outside witnesses to provide corroboration. Due to the concealed nature of family violence, it is essential that those charged with identifying family dynamics and determining how to best serve a child's interests are extensively trained to identify signs of abuse and domestic violence. HB 1228 would require this training, rendering Colorado's family court system a safer place for children enmeshed in the custody system.

II. Family Violence Is Present in the Majority of Contested Custody Cases

This training is particularly needed for family court personnel, because they see a disproportionate number of divorce cases that implicate family violence. The overwhelming majority of custody agreements (90%) are decided privately between parents with no court intervention or decision making.⁷ Most divorcing/separating families do not have a family violence component; however, the majority of those who do litigate custody involve family

² See generally, Jaffe, Zerwer & Poisson, *Access Denied: The Barriers of Violence & Poverty for Abused Women and their Children After Separation* (citing four studies, all of which found 70-75% of cases in litigation involved allegations of domestic violence).

³ Dickson & Meier, Mapping Gender: Shedding Empirical Light 011 Family Courts' Treatment of Cases Involving Abuse and Alienation, 35 *Law and Inequality: A Journal of Theory and Practice* 311, 313 (2017).

⁴ The Leadership Council on Child Abuse and Interpersonal Violence, *How Many Children Are Court -Ordered Into Unsupervised Contact With an Abusive Parent After Divorce?* (September 2008).

<http://www.leadershipcouncil.org/l/med/PR3.html>

⁵ Dickson & Meier, *supra* note 2. This national study found that fathers accused of abuse who counter-accused the mother of "alienation" took custody from the protective mother at a greater rate (72%) than fathers who were not accused of abuse (67%). **Being accused of child sexual abuse by the mother increased fathers' win rate to 81 %, despite the fact that fabricated child sex abuse (CSA) allegations are empirically confirmed to be very rare (2%-6%).** (Everson & Boat, False A/legations of Sexual Abuse by Children and Adolescents, 28 *Journal of the American Academy of Child & Adolescent Psychiatry* 230-235 (1989)). Mothers accused of alienation lost custody in approximately half of all cases, regardless of whether or not they had accused the father of abuse.

⁶ Report of the Attorney General's National Task Force on Children Exposed to Domestic Violence (2012). <https://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>

⁷ Ollendick, White & White, *The Oxford Handbook of Clinical Child and Adolescent Psychology*, 499 (2018).

violence. Numerous studies show that 75% of contested custody litigants report a history of domestic violence.⁸ Only 10% of the total number of divorcing/separating parents litigate custody, and those are the families who will be better served by this law.

Training of family court personnel is an important step toward creating a safer future for the children involved in custody disputes, particularly where there is an element of family violence involved. We know that "children exposed to intimate partner violence (IPV) often experience a sense of terror and dread that they will lose an essential caregiver through permanent injury or death,"⁹ and that the individual impact for children abused themselves is disastrous.¹⁰ Passing HB 1228 and arming those tasked with evaluating children's best interests with education regarding domestic violence is an important means to diminish these risks.

Please do not hesitate to reach out if either of us can provide any further helpful information, data, or research on this or other child protection topics.

Sincerely,



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⁸ Jaffe, Zerwer & Poisson, *Access Denied: The Barriers of Violence & Poverty for Abused Women and their Children After Separation*.

⁹ Report of the Attorney General's National Task Force on Children Exposed to Domestic Violence (2012).
<https://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>

¹⁰ Felitti et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study*, 56 *American Journal of Preventive Medicine* 774-786 (2019) (finding that people abused in childhood are more likely to develop potentially deadly conditions such as heart disease and cancer).