



## Spring 2018 – Newsletter of the NOW Foundation Family Law Ad Hoc Advisory Committee

Dear Friends,

The purpose of the NOW Foundation Family Law Ad Hoc Advisory Committee Newsletter is to provide continuing education on family court issues to the general public and supporters of NOW Foundation. The newsletter contains current news and information regarding the ongoing crisis for mothers and children in family courts. As many of our readers are aware, protective parents – primarily mothers – are losing custody of minor children in court proceedings that often ignore evidence of battering or child abuse and grant custody or unsupervised visitation to the abusive parent.

We hope you find the information we share with you of value as you go about your work advocating for women and their children.

### **General Information**

A clearinghouse of materials the committee has compiled can be found at the NOW Foundation web site at this link, <http://now.org/now-foundation/crisis-in-family-courts/>. There are additional materials at the Chapters-only web site on the NOW website.

Family Law Advisory Committee Brochure is available at this link: <http://now.org/wp-content/uploads/2015/02/familylawbrochure7-08final.pdf>

### **#METOO**



## #METOO and How It Relates to Family Law

By Adele Guadalupe

What goes on in in family court is often obscured by press reports, lawyers and by opposing parties. Cases are usually complex and court personnel frequently fail to grasp or ignore who is really being harmed. A particular area of concern relates to sexual abuse affecting women in relationships who want out and are held hostage by their partners who use their children as bargaining chips in family court.

Here is an example: Jane wants to end her marriage to John. They have one child together. John is very wealthy and politically powerful. He doesn't want to live with Jane, but wants to still have a sexual relationship with her. In other words, he now wants her to be his sexual partner, but doesn't want a divorce. Jane no longer wants to be intimate with him, but is told by John that if she wants to see their child, he will bring the child to her, only on the condition that she has sex with him every time he visits.

When she refuses, he files a slew of lawsuits against her, hires private detectives to follow her 24 hours a day and refuses to help her in any way monetarily. This scenario has played out for many years. She is disabled and receives disability payments to help her scrape by. Nonetheless, John files proceedings against her for child support and alimony, in an effort to get her to either sell her home or have sex with him. Meanwhile, he deprives their child of being with his mother. This child is old enough to know what is going on, but he too won't cross his dad in fear of reprisal.

You might be wondering how the courts could allow this to happen. It happens all the time when Dad is wealthy and Mom is not. Many courts look favorably at the wealthy dad who can afford the best lawyers available and will allow one legal proceeding after another to come before a judge. The disabling emotional and physical harm this causes the mother is horrific. The last judge who presided over Jane's case was recently taken off the bench for taking bribes. Corruption, collusion and cronyism abound in many family courts.

This situation presents itself in many relationships. Mothers are afraid to leave the fathers because they fear losing their children. They put up with degrading and harmful actions imposed upon them by the father because they want to protect their children.

Is there any way to prevent this from happening? Aren't courts supposed to be fair and take the best interests of the child into consideration? Sure, but this isn't what happens to many mothers and children. The 'best interests of the child' might never even be brought up in the proceedings. Money and power take

precedence. Family Court has become one of the best money-making practices in the legal profession.

Many women around the world are faced with this “Sophie’s Choice” - either be raped or lose their child. #MeToo exists in family settings, in the workplace and everywhere else where men have opportunities to take advantage of fearful (with good reason) women or other men. It exists with the help of other men condoning these actions and not taking them seriously. Let’s hope that laws will be passed to address these issues and that victims will have the opportunity to present them to a panel of objective and unbiased people who can help stop them legally. Only then will some of this sexual abuse end.

## House Concurrent Resolution 72

By Renee Beeker

What is a concurrent resolution? This is a measure that has been introduced in both houses of the legislature. All resolutions, including concurrent ones, resolution lack the force of law and are intended to express “the sense of Congress” on a given matter.. Resolutions which are not legislative in character, are used primarily to express principles, facts, opinions, and to inform the public of a concern regarding a specific issue. Some types of resolutions do not require a presidential signature. States, municipalities, or communities are not required to make any suggested changes in law, but concurrent resolutions can often serve as a starting point for dialogue regarding critical issues.

In July of 1990 H. Con. Res. 172 was introduced by Rep. Connie Morella (R-Md.) and 83 co-sponsors in the U.S. House of Representatives, entitled, “Expressing the sense of the Congress that, for purposes of determining child custody, evidence of spousal abuse should create a statutory presumption that it is detrimental to the child to be placed in the custody of an abusive parent.” The ‘Whereas’ statements laid out what we know as common problems in divorce and child custody proceedings when domestic violence is a factor. The text of the resolution can be read here: <https://www.congress.gov/bill/101st-congress/house-concurrent-resolution/172/text>

The House adopted the resolution by voice vote on Sept. 27 and, with a revised title, sent the resolution to the Senate. It was agreed to without amendment and adopted by voice vote on October 25. H. Con. Res.72 may have spurred legislative and statutory changes resulting in presumptions against persons perpetrating domestic violence. While these changes were intended to improve child safety, states varied on how they applied these presumptions, and as a result, we are still trying to better protect children in custody determinations.

In July of 2017, Rep. Patrick Meehan (R-Penn.) introduced House Concurrent-Resolution 72 with the same concerns for child safety, and much more. The resolution can be found here: <https://www.congress.gov/bill/115th-congress/house-concurrent-resolution/72/text>.

The title repeats a similar message. “Con.Res.72 - 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.” The resolution has been referred to the House Judiciary Committee and has 33 co-sponsors and an extensive list of organizational supporters. The opening line – which is also the title – indicates that certain actions are required of legislatures and courts to address the issue of child safety in court proceedings.

The text refers to many of the critical issues which have been expressed by members of the legal, domestic violence and activist community for years. Included is mention of studies, such as the Adverse Childhood Experiences Study (ACE), to help understand the lifelong of exposure to domestic violence on children. Also noted is the use of unscientific theories such as parental alienation to deflect abuse issues and studies that continue to show that custody is often granted to abusers. The Resolved statements cite the need for standards that require expertise and experience of court officials, and express a concern for the cost to families who are often left bankrupt after a family court proceeding.

While a resolution does not change laws, the language in Con.Res.72 provides a platform for the start of a much needed national dialogue. This discussion should explore avenues for providing the legislative and statutory remedies for improving the judicial system and ensuring the safety of children.

Please take the time to read this resolution and contact members of your congressional delegation, no matter the party affiliation. Ask them to join the many co-sponsors and, if you are talking to a staff member in the Senate, there is still a need for a Senate sponsor. If you find a possible sponsor, please email Jan Erickson, Director of Programs, NOW Foundation at [govtrel@now.org](mailto:govtrel@now.org) or call 202-628-8669, Ext. 122.

As activists, you can engage in this dialogue with your local leaders about the need to protect those who are facing violence daily. Help them understand the importance of improving a system that often leaves families bankrupt. Help to change a judicial system which people no longer trust and which uses unsound theories that deny victims protection. Ask them to help change the focus of a judicial system that has the power to change the lives of families to truly serve the best interests of the children.

## **New Bill Aims to Close Loopholes in Reporting of Domestic Violence Crimes**

By Michael Smalz

On Sunday, November 5, 2017, Devin Kelley massacred 26 people at the First Baptist Church in Sutherland Springs, Texas. He had been previously court-martialed by the U.S. Air Force for assaulting his then-wife and small stepson, but he was still able to purchase firearms that were used in the First Baptist Church massacre. Although federal law – the Lautenberg Amendment – prohibits the purchase, acquisition, or possession of firearms by convicted domestic violence offenders, Kelly was still able to purchase firearms because the Air Force had failed to report his court-martial conviction.

Courts and federal agencies must report convictions of domestic violence to the F.B.I.'s national instant criminal background check system (NCIC). Many other criminal convictions (including all violent felonies) and any involuntary commitments of persons with mental illness must also be reported to the NCIC or other federal databases. According to the New York Times, the system has rejected more than 1 million would-be gun purchases since it was created. However, in many cases the military services have not reported domestic violence convictions of military personnel to the NCIC database. The Defense Department's inspector general is now investigating the Air Force's failure to report Kelley's conviction.

The problem of non-reporting of domestic violence convictions and other covered crimes goes back decades. According to a 1997 report by the Defense Department's inspector general, the Air Force, Army, and Navy failed to report the vast majority of criminal convictions to the FBI. Eighteen years later, in 2015, the Inspector General looked into the problem again and found that the Navy, Air Force, and Marine Corps failed to report convictions (and fingerprints) in 30% of their cases. Especially alarming in light of Devon Kelley's mass shooting in Texas, the Air Force did not report any data on convictions from August 2012 through January 2013 – a time period that coincides with Kelley's 2012 domestic violence sentencing.

The military services' failure to reliably report domestic violence convictions to the FBI is a systemic problem. The armed forces have failed to prioritize reporting of domestic violence convictions and there is a lack of accountability and oversight -- which is also complicated by a law that is confusing or poorly defined. For example, the Uniform Military Code lacks any defined charge for "domestic violence," and state and federal legal definitions of "domestic violence" vary. The Texas church mass shooting has finally spurred possible action by Congress. In early November, Senators Martin Heinrich (D- N. Mex.) and Jeff Flake (R-Ariz.) introduced a bill intended to increase the frequency and accuracy of the reporting of domestic violence convictions of members of the armed forces.

This bipartisan legislation, called the Domestic Violence Loophole Closure Act, S. 2094, sponsored by Sen. Jeff Flake (R-Ariz.) and H.R. 4365, sponsored by Rep. Scott Taylor (R-Va.), aims to prevent troops convicted of domestic violence from acquiring firearms by better defining the law, improving reporting procedures and providing greater oversight of reporting practices. It would also, in effect, prioritize reporting of domestic violence convictions by establishing strict reporting deadlines.

The new bill has several key elements. First, the military services must report domestic violence court-martial convictions involving spouses, former spouses, intimate partners or dependent children to the federal NCIC database no later than three days after the date of judgment or the acceptance of a plea agreement in a court-martial proceeding.

Second, the Secretary of Defense must, no later than February 15 of each year, submit to Congress a report describing and assessing the compliance of the armed services with the reporting requirements, including an assessment of the accuracy, completeness, and timeliness of the information submitted to the FBI database.

Third, the Secretary of Defense must, within 180 days after the enactment of this Act, submit a written plan to Congress describing the actions already taken, and planned to be taken, by the Secretary to ensure that the information in the instant criminal background check system on members and former members of the armed forces is complete and accurate.

Finally, the Uniform Code of Military Justice is amended to clarify that conviction by court-martial of any offense under the Code **that constitutes a crime of domestic violence under state law** (involving a spouse, former spouse, intimate partner, or a dependent child) triggers the reporting requirement. The fact that the Uniform Code does not include a specific crime for domestic violence is no excuse for failure to report domestic violence-type offenses to the FBI.

These provisions are not a panacea. Some military service members and former members may still fall through the cracks. No bureaucracy is perfect. But the passage of the Domestic Violence Loophole Closure Act would represent significant progress by providing greater accountability and guidance to the armed services in reporting domestic violence to the FBI. The Act's requirements would thus enhance and facilitate enforcement of the federal prohibition on firearms acquisition or possession by convicted domestic violence offenders. These measures would help to prevent future domestic violence-related murders and perhaps even prevent similar domestic violence-motivated mass shootings.

Therefore, please contact your U.S. senators to urge them to support the S.2094 and urge your Representative to co-sponsor the House companion bill, H.R. 4365.

### **Update on Michigan Rape Case on Custody Decision**

A 21-year-old Michigan woman, referred to publically only by her first name, "Tiffany," was ordered in September by Judge Gregory Ross of Sanilac County to share partial custody of her son with her convicted rapist, Christopher Mirasolo. The reasoning of Judge Ross' court order appeared to be that Mirasolo had been ordered to pay child support and should have partial custody. Tiffany was only 12-years-old when she was raped and became pregnant, and Mirasolo served just seven months for her rape. Furthermore, not long after being released from jail, Mirasolo sexually assaulted a 14-year old girl.

To date, Judge Ross has overturned his ruling granting partial custody to Mirasolo, and the attorneys for Tiffany and Mirasolo were last reported to be creating a mutually-agreed upon settlement not involving custody. Though Mirasolo has yet to actually pay child support, Tiffany received notice from her caseworker that she will lose benefits of food stamps and health insurance for her son due to the \$100,000 raised on her and her child's behalf from a Go Fund Me account.

(From Mike Martindale, Oct./Nov. 2017. *The Detroit News*)

### **A Call to Action**

The Washington Post carried a long article on Dec. 11 entitled, "More Than 20 States in 2017 Considered Laws to Promote Shared Custody of Children Following Divorce," by Michael Alison Chandler, [https://www.washingtonpost.com/local/social-issues/more-than-20-states-in-2017-considered-laws-to-promote-shared-custody-of-children-after-divorce/2017/12/11/d924b938-c4b7-11e7-84bc-5e285c7f4512\\_story.html?utm\\_term=.132ad621f2fc](https://www.washingtonpost.com/local/social-issues/more-than-20-states-in-2017-considered-laws-to-promote-shared-custody-of-children-after-divorce/2017/12/11/d924b938-c4b7-11e7-84bc-5e285c7f4512_story.html?utm_term=.132ad621f2fc).

NOW submitted a Letter to the Editor in response to the article, based on a draft by Mike Smalz. The draft to meet the length limitation. Here is our statement -- which could be used when advocates for protective parents comment on proposed state legislation.

To: Washington Post Letters to the Editor

From: Toni Van Pelt, President, National Organization for Women, 727-278-8446

Date: Dec. 15, 2017

The Washington Post recently (12/12/17) highlighted the efforts of fathers' rights groups such as the National Parents Association to push for adoption of presumptive shared custody laws in various states. So far, most states have

rejected such legislation. There is good reason for state legislatures to be wary of implementing such laws. The focus of child custody laws should be on the best interest of the children – the long-standing legal test – rather than the possessory rights of the parents or harmful legal presumptions. Under the “best interest” test, courts must consider all relevant factors – including parenting skills, which parent has provided the child with significant nurturing or was primarily responsible for meeting the children’s day-to-day needs, and the impact of domestic violence on the children. Shared legal custody is especially troubling where there is a history of domestic abuse. Joint decision-making arrangements put the parents in the position of having to communicate frequently and directly with each other. Such contact allows the pattern of domestic abuse to continue, enables the coercive parent to dictate what happens, and teaches children that abusive behavior is an effective and appropriate tool of control. For these reasons, the National Council of Juvenile and Family Court Judges has recommended that states adopt a legal presumption **against** awarding shared custody in cases involving a history of domestic violence, as it could engender risk to the health and safety of parents and children.

---