



## Newsletter of the NOW Foundation Family Law Advisory Committee 2023-2024 Winter

### A WORD FROM THE COMMITTEE

*The NOW Family Law Advisory Committee will be reconfigured in the coming months. Newsletters may have a different format and may not be regularly produced. If you are interested in joining this Committee, please email [govtrel@now.org](mailto:govtrel@now.org).*

*These Newsletters and other materials the Committee has compiled can be found on the NOW Foundation website at this link, <http://now.org/now-foundation/crisis-in-family-courts/>. Resources | National Organization for Women (now.org) There are additional materials at the Chapters-only website on the NOW Inc. website.*

*This newsletter from the NOW Family Law Advisory Committee addresses the work of advocates nationwide to try to protect children in family courts and the state legislatures' attempts to override the clear desires of the citizenry to impact state constitutions and laws. Please also see the Committee's 2023 Summer newsletter which goes into detail on the first issue of protecting children in family courts nationwide.*

*The National Domestic Violence Hotline is 800-799-7233 (800-799-SAFE). You can call them from anywhere in the United States. You can chat live from here: [Get Help | The National Domestic Violence Hotline \(thehotline.org\)](https://www.thehotline.org)*

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## **Advocates nationwide work for changes to family court requirements to protect children from abuse**

By Nancy Fingerhood, Guest Contributor

Several bills and new laws to better protect children during family court custody decisions are on the horizon throughout the United States. This spring Colorado led the way with the passage of The Keeping Children Safe from Family Violence Act (a.k.a. Kayden's Law, a federal law named after a 7-year-old girl murdered by her abusive father in Pennsylvania).

California's legislature unanimously passed Piqui's Law: Keeping Children Safe from Family Violence Act in September, 2023. Piqui's Law is named after a five-year-old boy who was murdered by his father in 2017 after a family court judge allowed unsupervised visitation with him even when the boy's mother presented the court with evidence of abuse and risk. Piqui's Law includes a portion of the federal Kayden's Law which restricts family court from ordering children to attend unsafe "reunification" treatments and camps. It also establishes enhanced judicial training programs on domestic violence.

Last year, Maryland enacted SB 17, requiring judges and magistrates hearing custody cases to be educated on child abuse, including child sexual abuse, and domestic violence. Only judges who have received the training may preside over child custody cases that may involve child abuse or domestic violence. The law is a step forward in training judges and magistrates to better understand the complex issues that arise when there is family violence present. However, the bill does not require the trainers to be experts in abuse and to have substantial experience working with victims of abuse, and therefore does not adhere to this aspect of the training requirements as dictated by the federal version of Kayden's Law within the Violence Against Women Act (VAWA).

In Tennessee, HB 940 (Abrial's Law) sponsored by Representative Rebecca Alexander was signed into law in May of this year. (Abrial comes from the girl's name meaning safe and protected.) The new law includes the Findings section of federal Kayden's Law and training for judges involved in child custody cases in child sexual abuse, physical abuse, emotional abuse, coercive control, trauma and victim and perpetrator behavior patterns for two hours per year or ten hours in a five-year period. This falls short of the 20 hours required by VAWA's Kayden's Law, but is a first step to making Tennessee eligible for the federal funding available to states. States must also adopt provisions that evidence of domestic and child abuse be considered by courts when making child custody decisions, restrict the use of unscientific and invalid treatments, and require that experts testifying about abuse have expertise and clinical experience in the subject matter for which they testify.

Following Hawaii, California, Connecticut, and Washington, bills in New Jersey and Massachusetts seek to add coercive control definitions to the law. In Massachusetts, the proposed bill H1547 would add protections against coercive control and technological abuse. The bill defines coercive control as having "the purpose or effect of substantially restricting an individual's safety or autonomy through intimidation, isolation, implicit or explicit threats, or by compelling compliance." Abuse survivors, activists, mental health professionals and others

provided powerful testimony to the Judiciary Committee in September of 2023. The committee is considering whether to advance the bill.

Unlike California and Connecticut, in Hawaii, coercive control was incorporated into the criminal statute after it was added to the civil statute. Connecticut establishes a grant program to provide low-income victims with legal representation when applying for a restraining order. In California, if a court finds a person has committed coercive control, the petitioner can get a restraining order against the abuser in family court.

While several states are introducing positive legislation that will enhance the safety of victims of domestic violence and child abuse, others are jumping on the bandwagon to enact dangerous default shared parenting or 50/50 presumption custody laws which create even greater barriers to justice for abuse victims. Missouri enacted a shared parenting presumption child custody law this summer and Kentucky, Arkansas and West Virginia have adopted 50/50 parenting laws over the last few years. Florida's legislature passed such a bill this year.

In addition, some proponents of the "alienation" theory and members of the Association of Family and Conciliation Courts (AFCC) have actively opposed laws like Kayden's Law in the media and at their conferences, spreading misinformation about what the law actually does. We must remain vigilant in testifying for child safety laws and against default 50/50 bills, as well as attending conferences alongside those in the field of child custody to present accurate information about laws that protect children.

**State legislatures attempt to thwart the will of the people  
or effectively assure citizen input is impossible or ineffective**

By the NOW Family Law Committee

**Oklahoma** voters used the initiative petition process to expand Medicare. Tens of thousands of Oklahomans now have medical insurance coverage because of this.

Oklahoma voters then used the initiative petition process to place the use of medical marijuana on the ballot, after which the voters approved such use. An appointed group wrote very restrictive rules to administer this process. A court review found these rules were too restrictive and did not comply with what the voters approved. The rules were rewritten.

Also, by initiative petition Oklahoma voters got the right to vote to make the use of recreational marijuana legal. The Governor set this matter for a vote in early 2023, when this was one of very few matters on the ballot. As a result, there was a very low voter turnout and the recreational marijuana vote failed. The Governor now claims this is a mandate to him and the legislature to make the medical marijuana rules more restrictive. At least eight bills were introduced to make the rules more restrictive in the last legislative session.

The Oklahoma legislature has introduced bills in the last two sessions to limit ability of the voters to get initiative petitions on the ballot by raising the percentage of positive votes required for success. So far, this legislation has not passed.

In recent years, **Missouri** voters have used the initiative petition process to limit new taxes, expand Medicaid and legalize marijuana. The Republican Missouri Legislature undermines what these referendum petitions and constitutional amendments, in many ways. The legislature considered not funding the Medicaid expansion and they have authored and promoted several bills to make the initiative petition process much harder.

It is not uncommon for those wishing to attend legislative hearings in **Michigan** to receive only 72 hours' notice of hearings. It is also not uncommon for domestic violence victims advocates to be allowed to speak for far less time than the time granted to other speakers advocating for 50/50 custody presumption laws, or for other measures harmful to protective parents and children.

In **Florida**, women have gotten to speak to the Legislature about Greyson's law, but not enough notice is given of these hearings. Tallahassee is 400 miles from South Florida, so testifying is not accessible for everyone.

**Ohio** requires those persons who wish to testify on pending bills to submit written testimony to the Committee Chair at least 24 hours in advance. This requirement sometimes creates serious pitfalls when people are unaware of the requirement, when there are technical glitches or miscommunications between ordinary citizens and the Committee Chair's office, or when there is very short notice of the Committee hearings. For example, this spring several domestic violence victims who recently drove from around the state to the Statehouse in Columbus to

testify against a presumptive 50-50 child custody bill were told they could not testify because the Chair had not received their prior written testimony. (In this case they said they had submitted (or tried to submit) their written testimony, but the Chair said her office did not have their written testimony.)

Unlike some states, Ohio does not allow any virtual testimony. Some people must drive 3 hours each way to Columbus to testify or must go to great lengths to arrange transportation. Other people are unfamiliar with the prior written testimony requirements, or they have difficulty preparing prior written testimony or navigating the process for submitting prior written testimony. As a result, many Ohioans do not have the ability to fully participate in Committee hearings or the legislative process.

In May, 2023 Ohio abortion rights supporters launched a campaign to collect over 413,000 required signatures on a petition to place an abortion rights measure on the November 2023 statewide ballot. Surveys showed that 59% of Ohio voters support abortion rights. However, the GOP political leadership and supermajority in the state legislature has done everything in its power to block the democratic process. First, they quickly rammed through (with no testimony and little debate) a resolution for a special August 8 election on a measure (Issue 1) that would amend the state constitution to require a 60% supermajority for passage of all future citizen-sponsored state constitutional amendments and imposing more draconian signature garnering requirements. (Last year Republican state legislators placed similar measures on the ballot in **Arkansas** and **South Dakota**.) That move backfired. In the past, usually fewer than 10 % of eligible Ohio voters turned out for August special elections, but this time there was an unusually high turnout and Issue 1 was defeated by a 57%-43% margin.

Meanwhile, abortion rights supporters in Ohio succeeded in collecting more than the required number of valid signatures to place the abortion rights measure on the November ballot. But Republican efforts to manipulate and control the political process the political process continued. The GOP majority on the Ohio Ballot Board approved deceptive summary language for the November abortion rights ballot measure, which was then rubber stamped by the GOP majority on the Ohio Supreme Court Rep by a 4-3 vote. The coalition proposing the November amendment had asked for a more accurate summary or that the full amendment text be used. The GOP-drafted summary alters the language in a biased way, such as using “unborn child” rather than the medically accurate term “fetus.” The summary also lists only one of the five protected reproductive rights included in the amendment, focusing on abortion, and failing to mention contraception, miscarriage care, fertility treatment, and continuing one’s pregnancy. Moreover, the summary language is confusing and minimizes the role of the pregnant patient by saying the amendment would “always allow an unborn child to be aborted” if a physician determines it is necessary. The actual language of the amendment would “prohibit such an abortion if the patient objects to it.”

Gerrymandered legislative maps are another powerful anti-democratic tool used to suppress voter preferences and manipulate election outcomes. In many states partisan lawmakers have adopted heavily gerrymandered legislative and Congressional maps that dilute the voting power of many voters and lead to unfair outcomes. The tortuous history of redistricting efforts in Ohio illustrates the extreme lengths to which GOP lawmakers in Ohio have gone to block the adoption of fair legislative maps. During the last two years the GOP-controlled Ohio Redistricting

Commission has adopted five versions of state legislative district maps that were struck down by the Ohio Supreme Court as unconstitutional partisan gerrymanders.

On September 13, 2023, the Ohio Redistricting Commission suddenly held a brief, chaotic meeting characterized by infighting between the Republican leaders of the Ohio House and Senate, respectively, over who would have greater control over the Commission. One week later, the Commission quickly adopted— without any significant debate or analysis —a sixth version of Statehouse district maps that was even worse than the previously rejected maps. They then scheduled public hearings several days later (on September 24 and 25) with little public notice. Two of the public hearings were held at remote locations – rural state parks; the other was scheduled at the Statehouse in Columbus. All the hearings were held at inconvenient times during the work day. The two public hearings on September 25 conflicted with the most important Jewish holiday (Yom Kippur). The next day, September 26, the Commission adopted a slightly tweaked version of the unfair GOP-drafted legislative map.

However, a statewide coalition – Citizens Not Politicians –is seeking a new constitutional amendment to provide for fair and impartial redistricting. The proposed amendment creates a 15-member redistricting commission including Republican, Democratic, and independent Ohio Citizen Commissioners, along with keeping “former politicians” from sitting on the commission. Other states, such as California and Michigan, have already implemented independent redistricting commissions. They have proven to be an effective tool in eliminating or reducing partisan gerrymandering. The Ohio Attorney General has approved ballot summary language, but only after rejecting two previous summaries on questionable “technical grounds.” The petition now moves to the Ohio Ballot Board for its approval, after which petitioners will be able to collect signatures of support from registered Ohio voters to place the measure on a statewide ballot in 2024.

Despite all of these obstacles, Ohio voters passed the abortion rights amendment by a wide margin (nearly 57%). However, some GOP legislators are saying they will try to nullify the amendment (and voters' desires) by taking away the jurisdiction of state courts to hear any cases involving the enforcement of Issue 1 or conflicts with restrictive abortion statutes, seeking to repeal or replace the new constitutional amendment with another, more restrictive amendment next year, or by taking other, unspecified actions.

Lawmakers in other states are also making anti-democratic moves that raise fears for the fairness of future elections. In **North Carolina**, a bill giving the state legislature control of state and local election boards – possibly allowing lawmakers to overturn results – could soon become law. In **Wisconsin**, the Republican-controlled state Senate has voted to remove the top state election official from her job despite the absence of any allegations of wrongdoing; the Wisconsin Attorney Gen. has filed a lawsuit to stop the removal. Wisconsin’s Republican lawmakers also considered impeaching new Supreme Court Justice Janet Protasiewicz – who had not yet ruled in a single Supreme Court case – because she opposes illegal gerrymandering and might vote to overturn Wisconsin’s extremely gerrymandered legislative map. Meanwhile, **Alabama** has ignored a federal district court decision, a U.S. Court of Appeals decision, and an earlier U.S. Supreme Court decision finding that its gerrymandered Congressional maps discriminate against black voters and violate the federal Voting Rights Act.

## A Call to Action

Go to your state legislature's website to see the schedule for hearings. You may be able to sign up for email reminders for specific legislative committee meetings. Some states televise hearings or stream them live online. Learn how to navigate your state legislature's website so you can find the early versions and the latest versions of the bills in question. Then, using that same website, contact your legislators about bills you have concerns about. Please contact this Committee with your experiences contacting your representatives or attending or testifying to legislative committees regarding domestic violence, abuse and/or coercive control.

## General Information on Family Courts

A clearinghouse of materials the committee has compiled can be found on the NOW Foundation website at this link, <http://now.org/now-foundation/crisis-in-family-courts/>. Resources | National Organization for Women (now.org) There are additional materials at the Chapters-only website on the NOW Inc. website.

The Family Law Advisory Committee's Brochure the Family Courts (Updated 2021) is available here: <https://now.org/wp-content/uploads/2021/07/NOW-Family-Law-Committee-Brochure-2021.pdf>

**To reach the Family Law Committee, please email: [famlaw@now.org](mailto:famlaw@now.org)**