



# Montana Family Court Reform

## “Brody’s Law”

Supported by: MT Family Court Awareness Project, Montana Child Protection Alliance, National Family Violence Law Center, National Family Court Awareness Month, National Safe Parents Organization, One Mom’s Battle and the Family Justice League

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# STATE OF MONTANA



## *Governor's Proclamation*



*WHEREAS, the family court system should prioritize child safety and act in the best interest of children; and*

*WHEREAS, Montana honors children who have been injured or tragically lost their lives after a custody court failed to appropriately prioritize child safety; and*

*WHEREAS, the National Family Court Awareness Month Committee, Montana Family Court Awareness Project, and Montana Child Protection Alliance aim to support positive change in the family court system and promote the importance of education and training on domestic violence, childhood trauma, and post-separation abuse for professionals in the family court system;*

*NOW, THEREFORE, I, Greg Gianforte, Governor of the State of Montana, do hereby proclaim November 2023*

### **FAMILY COURT AWARENESS MONTH**

in Montana to support the family court system acting in the best interest of children.

A handwritten signature in blue ink, reading "Greg Gianforte".

**GREG GIANFORTE**  
Governor

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## Introduction

A broad coalition of Montana victims and advocates, including the MT Family Court Awareness Project, MT Child Protection Alliance, National Safe Parents Organization (NSPO), and One Mom's Battle, have been working for the past three years to bring about thoughtful and impactful reform to address growing concerns about family and domestic violence due to gaps in our current law & lack of necessary training. Their efforts led to Gov. Gianforte declaring November 2022 "Family Court Awareness Month" and calling on Montana family courts to prioritize child safety, just as the proposed "Brody's Law" does. Brody's Law is modeled on an important 2022 law approved by Congress and supported by national domestic violence groups, Title XV of VAWA "Kayden's Law".

This group spent three years researching family law cases, use of the Parental Alienation legal tactic, documented history of abuse, and the admission and acceptance of that evidence in family court. The research identified an alarming pattern in primary two areas: failure to consider past abuse as an evidence standard and use of unqualified and unethical professionals using trauma inducing therapeutic tactics. Brody's Law was the result of three years of dedication to giving victims a voice, and focusing on prioritizing the safety of children.

After research, witness accounts, and consulting with many well-known mental health professionals, family law attorneys, judges, and victims we have discovered problems in our family courts cases which stem from:

- *Failure to consider past evidence of abuse in custody decisions*
- *Lack of family violence prevention and signs of domestic violence signs training for court personnel*
- *Use of unqualified "expert witnesses" in custody matters*
- *Use of scientifically unsound theories and experimental therapeutic tactics such as Parental Alienation*

These issues are not unique to Montana. These issues lead to lengthy litigation processes, unjust financial burdens on families, and extensive emotional damages to parents and children across our nation. In March of 2022, the federal body passed the reauthorization of the Violence Against Women's Act, addressing this national epidemic. Title XV, Keeping Children Safe from Family Violence gave Montana a clear path to clean up our family courts, provide tectonic support for victims, and ensure children don't become collateral damages and marital property.



## U.S. child custody outcomes in cases involving parental alienation and abuse allegations: what do the data show?

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### ABSTRACT

Family court and abuse professionals have long been polarized over the use of parental alienation claims to discredit a mother alleging that the father has been abusive or is unsafe for the children. This paper reports the findings from an empirical study of ten years of U.S. cases involving abuse and alienation claims. The findings confirm that mothers' claims of abuse, especially child physical or sexual abuse, increase their risk of losing custody, and that fathers' cross-claims of alienation virtually double that risk. Alienation's impact is gender-specific; fathers alleging mothers are abusive are not similarly undermined when mothers cross-claim alienation. In non-abuse cases, however, the data suggest that alienation has a more gender-neutral impact. These nuanced findings may help abuse and alienation professionals find some common ground.

### KEYWORDS

Alienation; child custody; domestic violence; child abuse; family court

### Introduction

Protective parents and domestic violence professionals have long asserted that courts dealing with child custody and their affiliated professionals frequently deny true claims of adult partner or child abuse and instead punish parents (usually mothers) who allege domestic violence, child physical or sexual abuse, or seek to limit the other parent's child access for any reason. Anecdotal reports<sup>1</sup> have suggested that courts are even less receptive to mothers' claims of child physical or sexual abuse than their claims of partner violence, and that many mothers alleging abuse – especially child abuse<sup>2</sup> – are losing custody to the allegedly abusive father. Studies describe the severe and damaging consequences for children forced by courts to be with fathers they or their protective parents claimed were harmful (Silberg *et al.* 2013). Sadly, there is even a growing list of U.S. children killed by a parent; as of the time of writing, the website for the Center for Judicial Excellence lists 704 children killed by a separating or divorcing parent; researchers have verified that at least 101 of the children were not protected by family courts despite requests (Center for Judicial Excellence 2019).

A particular target of critique has been courts' reliance on 'parental alienation' to refute mothers' claims of abuse by fathers (Bruch 2001, Meier 2009, Milchman 2017, Neilson 2018). An adaptation of the 'parental alienation syndrome' ('PAS') coined by

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Richard Gardner (1992), parental alienation, while lacking any universal definition, embodies the notion that when a child (or the primary parent) resists contact with the non-custodial parent without 'legitimate' reason, the preferred parent is 'alienating' the child, due to her own anger, hostility or pathology (Johnston and Kelly 2004, Zaccour 2018). Although PAS itself – which Gardner defined as a mother's false claim of child sexual abuse to 'alienate' the child from the father – has been largely rejected by most credible professionals (Meier 2009, p. 5, Thomas and Richardson 2015), alienation theory writ large continues to be the subject of a growing body of literature, and is frequently relied on in U.S. family court cases.

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To understand the issues undermining the safety of MT Children, you need to understand the symptoms:

**“Domestic Abuse by Proxy” (or Post-Separation Abuse)** is what occurs when the abuser can no longer physically access their victim and so they turn their unhealthy attention to the children. Everything becomes a tool to weaponize an abuser. Unfortunately, children are the most readily available tool to hurt in place of the victim.

**“Post-separation abuse”** continues to escalate and often far surpasses the DV that victims are subjected to while under the same roof as their abuser. After the relationship ends, the perpetrator sets their sights on the child(ren) to exert control and to terrorize the healthy parent. Every high-conflict custody battle has three basic traits: the abuser’s need for control, the abuser’s need to “win” and, the abuser’s desire to hurt or punish the healthy parent. Post-separation abuse does not just affect the victim. It has immediate and long-lasting effects on children resulting in high Adverse Childhood Experiences (\*ACEs).

*\*ACE’s, a term used to describe any traumatic event during childhood such as divorce, violence, emotional abuse, neglect, substance abuse, or even an environment that undermines a child’s sense of bonding or stability. \*The ACE Study (The Center for Disease Control and Kaiser Permanente) should be the courtroom bible for judges and other family court professionals who are tasked with the responsibility of acting in the best interest of children.*

The Parental Alienation (PA) industry slipped into Montana relatively unnoticed several decades ago. Since 2000, there have been 38 Supreme Court cases heard on direct appeal centered around parental alienation claims. This does NOT account for denied appeals or any district court cases that were never appealed. Despite the fact that parental alienation is presented to the courts as “psychological abuse”, only TWO of these cases are listed as a DN case. This would directly contradict MCA Title 41 mandates, stating that ALL allegations of child abuse must be a DN case.

- ***“One of the biggest obstacles to custody courts protecting children from dangerous abusers are alienation distraction tactics (ADT). Richard Gardner concocted Parental Alienation Syndrome (PAS) based only on his personal experience, beliefs and bias and without any outside research. His extreme bias included many public statements that sex between adults and children can be acceptable. The purpose of ADT is to give unscrupulous lawyers and mental health professionals an approach to favor abusive fathers in child custody disputes. The mother is the primary attachment figure and the safe parent, so under proper practices any attempt by the father to seek custody would properly be recognized as frivolous. [Alienation Distraction Tactics: by Barry Goldstein - Center for Judicial Excellence](#)*”**

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2022 US Congressional findings:

- “evidence from court-affiliated or appointed fee-paid professionals regarding adult or child abuse allegations in custody cases should be considered only when the professional possesses documented expertise and experience in the relevant types of abuse, trauma, and the behaviors of victims and perpetrators;Scientifically unsound theories that treat abuse allegations as likely false attempts to undermine one parent are frequently applied in family court to minimize or deny reports of abuse of parents and children.”

**“UNFORTUNATELY, THERE CONTINUES TO BE THE SAME GROSS MISUNDERSTANDINGS BY LEGAL PROFESSIONALS, JUDGES, CHILD PROTECTION WORKERS, MENTAL HEALTH PROFESSIONALS, AND CHILD CUSTODY EVALUATORS REGARDING ABUSE DYNAMICS AND THE IMPACT OF TRAUMA ON THE INDIVIDUAL. THESE MISUNDERSTANDINGS THEN LEAD TO MANY FAMILY LAW COURT CASES MINIMIZING OR IGNORING SUCH ISSUES AND INFERRING PARENTAL ALIENATION OR SIMILAR LABELS INSTEAD.”**

From: Alienation and reunification issues in family courts: Theory, research, and programs in child custody cases. *Journal of Family Trauma, Child Custody & Child Development*, Volume 19, 2022.



# MENTAL HEALTH STUDIES OVERVIEW OF PRACTITIONER TYPES

## BACKGROUND

Mental health services are provided in many different settings through several different entities, but the treatment must be provided by individuals licensed or certified to provide the treatment. This briefing paper outlines the different types of mental health practitioners.

## PRACTITIONERS WITH INDEPENDENT AUTHORITY

The graphic below shows the types of licensed mental health practitioners who are authorized by state law to operate independently, without supervision by another licensee.

Psychiatrist	<ul style="list-style-type: none"> <li>• Medical doctor licensed under Title 37, chapter 3</li> <li>• Prescribing authority</li> <li>• Medical school, residency, and national exam required</li> </ul>
Advanced Practice Registered Nurse	<ul style="list-style-type: none"> <li>• Licensed under Title 37, chapter 8</li> <li>• Can apply to licensing board for prescribing authority</li> <li>• Graduate level education and national certification required</li> </ul>
Clinical Professional Counselor	<ul style="list-style-type: none"> <li>• Licensed under Title 37, chapter 23</li> <li>• No prescribing authority</li> <li>• 60 semester hours master's degree, 3,000 hours of supervised practice, and national exam required</li> </ul>
Marriage and Family Therapist	<ul style="list-style-type: none"> <li>• Licensed under Title 37, chapter 37</li> <li>• No prescribing authority</li> <li>• 60 semester hour master's degree, 3,000 hours of supervised practice, and national exam required</li> </ul>
Clinical Social Worker	<ul style="list-style-type: none"> <li>• Licensed under Title 37, chapter 22</li> <li>• No prescribing authority</li> <li>• Master's degree, 3,000 hours in not less than 24 months of supervised practice, and national exam required</li> </ul>
Psychologist	<ul style="list-style-type: none"> <li>• Licensed under Title 37, chapter 17</li> <li>• No prescribing authority</li> <li>• Doctoral degree, 2 years of supervised practice required, and national exam required</li> </ul>



## The Use of Children as a Tactic of Intimate Partner Violence and its Relationship to Survivors' Mental Health

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### Abstract

Although prior research has established that intimate partner violence (IPV) often leads to increased depression, anxiety and post-traumatic stress disorder (PTSD), little is known about how often abusive partners and ex-partners use survivors' children as an abuse tactic, nor whether this form of IPV also is detrimental to survivors' mental health. The current study interviewed 299 unstably housed survivors of intimate partner violence shortly after they sought services from a domestic violence agency. All participants were parents of minor children. In-person interviews asked about abuse experienced in the prior six months, including the ways children were used as a form of IPV. Participants were also asked about their current depression, anxiety, and symptoms of PTSD. As hypothesized, the majority of parents reported their abusive partners and ex-partners had used their children as a form of IPV to control and hurt them. Further, after controlling for other forms of IPV, use of the children significantly predicted both increased anxiety and greater number of PTSD symptoms. Results show the importance of focusing on the use of children as a common and injurious form of abuse used against survivors of intimate partner violence (IPV).

**Keywords** Children · Domestic violence · Control · Mental health

Domestic violence (DV) is more than just physical abuse. During the relationship, domestic violence can, in addition to physical abuse, also include coercive control, verbal abuse, emotional abuse, psychological abuse, sexual abuse, and financial abuse. When the relationship ends, the abuse does not stop. It just transitions to a new form of abuse referred to as post-separation abuse or Domestic Abuse by Proxy.

*“Domestic violence is about control, including financial control, so the abusive father usually controls most of the family’s economic resources. This means if you are a court professional who wants to make a large income and indifferent about hurting children, it makes sense to rely on ADT. Gardner was the founder of the cottage industry that makes large incomes by helping abusive fathers. ADT is a major part of their manipulative tactics.”* ([Center for Judicial Excellence, Barry Goldstein](#))

While there are many resources available to victims of DV during the relationship, the only resource available to victims of post-separation abuse is the family court system itself (judges, mediators, minor’s counsel, custody evaluators, therapists, co-parenting counselors, parenting coordinators and attorneys). It is so important for those in the family court system to be educated on post-separation abuse and to recognize it in high-conflict divorces, custody battles and paternity cases.



## Domestic Violence in MONTANA

### WHAT IS DOMESTIC VIOLENCE?

Domestic violence is the willful intimidation, physical assault, battery, sexual assault, and/or other abusive behavior as part of a systematic pattern of power and control perpetrated by one intimate partner against another. It includes physical violence, sexual violence, threats, and emotional abuse. The frequency and severity of domestic violence can vary dramatically.

### DOMESTIC VIOLENCE IN MONTANA

- 37.2% of Montana women and 34.6% of Montana men experience intimate partner physical violence, intimate partner sexual violence and/or intimate partner stalking in their lifetimes.<sup>1</sup>
- On a single day in September 2019 in Montana, 70% of domestic violence programs served 400 adult and child survivors. An additional 21 requests for services went unmet due to lack of resources.<sup>2</sup>
- According to a Department of Justice-funded study, domestic violence, dating violence and sexual assault have increased substantially in the Bakken region, due to the recent oil boom:
  - From 2005 – 2014, the rate of incidents reported to NIBRS increased from less than 50 per 10,000 residents to over 70 per 10,000;
  - More survivors were from out-of-state, and more survivors had limited English proficiency;
  - Survivors experienced more severe violence;
  - Survivors were more isolated and had fewer financial resources, and more survivors experienced homelessness;
  - More survivor experiencing multiple victimizations, and more perpetrators committed multiple acts of violence;
  - Overburdened shelters and other providers are unable to keep up with the need for services.<sup>3</sup>
- As of December 31, 2019, Montana had submitted one domestic violence misdemeanor and no active protective order records to the NICS index.<sup>4</sup>
- Between 2006 and 2015, there were 1,620 active protection orders in the National Crime Information Center for Montana, 650 of which had a disqualifying Brady Indicator.<sup>5</sup>
- In 2017, Montana had the 8<sup>th</sup> highest femicide rate in the United States.<sup>6</sup>
- Between 2000 and 2016, 75% of intimate partner homicides were committed with a firearm.<sup>7</sup>

### DID YOU KNOW?

- 1 in 3 women and 1 in 4 men have experienced some form of physical violence by an intimate partner.<sup>8</sup>
- On a typical day, local domestic violence hotlines receive approximately 19,159 calls, approximately 13 calls every minute.<sup>9</sup>
- In 2018, domestic violence accounted for 20% of all violent crime.<sup>10</sup>
- Abusers' access to firearms increases the risk of intimate partner femicide at least five-fold. When firearms have been used in the most severe abuse incident, the risk increases 41-fold.<sup>11</sup>
- 65% of all murder-suicides involve an intimate partner; 96% of the victims of these crimes are female.<sup>12</sup>

### DOMESTIC VIOLENCE-RELATED FIREARMS LAWS IN MONTANA

- If a firearm is used in a domestic violence or dating violence incident, Montana allows, but does not require, courts to prohibit a misdemeanant from possessing or using the firearm used in the assault.<sup>13</sup>

#### If you need help:

Call The National Domestic Violence Hotline 1-800-799-SAFE (7233)  
Or, online go to [TheHotline.org](https://www.thehotline.org)

Suggested citation: National Coalition Against Domestic Violence (2020). *Domestic violence in Montana*. Retrieved from [www.ncadv.org/files/Montana.pdf](https://www.ncadv.org/files/Montana.pdf).



### DOMESTIC VIOLENCE-RELATED FIREARMS LAWS IN MONTANA (Cont.)

- If a firearm is used in a domestic or dating violence incident, the local sheriff may revoke or deny renewal of a misdemeanor's concealed carry permit.<sup>14</sup>
- If a firearm is used in a domestic violence or dating violence incident, courts may, but are not required to, prohibit respondents to ex parte and final protective orders, including dating partners, from possessing the firearm used in the assault.<sup>15</sup> Courts issuing protective orders may also order whatever relief they deem necessary to protect survivors, including prohibiting respondents from possessing firearms and requiring them to relinquish any firearms in their possession.<sup>16</sup>
- When responding to a domestic violence incident in which a firearm was used, law enforcement must confiscate the firearm used in the abuse.<sup>17</sup>
- Montana can strengthen its laws to protect victims and survivors by:
  - Prohibiting all domestic violence, dating violence and stalking misdemeanants from possessing any firearms, not just those used in the abuse;
  - Prohibiting all respondents to ex parte and final protective orders from possessing any firearms, not just those used in the abuse;
  - Requiring persons prohibited due to domestic violence to relinquish any firearms in their possession;
  - Requiring background checks for all gun sales and transfers; and
  - If requested by the survivor, requiring law enforcement to recover all firearms and ammunition when responding to domestic violence calls.

For more information about domestic violence and firearms in Montana, go to <https://disarmdv.org/state/montana/>.

<sup>1</sup> National Center for Injury Prevention and Control (2019). *The national intimate partner and sexual violence survey: 2010-2012 State Report*. Centers for Disease Control and Prevention. Retrieved from <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>.

<sup>2</sup> National Network to End Domestic Violence (2020). *14th annual domestic violence counts report*. Retrieved from [https://nnedv.org/wp-content/uploads/2020/03/Library\\_Census-2019\\_Report\\_web.pdf](https://nnedv.org/wp-content/uploads/2020/03/Library_Census-2019_Report_web.pdf).

<sup>3</sup> Jayasundara, D. S., Heitkamp, T., Mayzer, R., Legerski, E., & Evanson, T. A. (2016). *Exploratory research on the impact of the growing oil industry in North Dakota and Montana on domestic violence, dating violence, sexual assault, and stalking: A final summary overview*. Retrieved from <https://www.ncjrs.gov/pdffiles1/nij/grants/250378.pdf>.

<sup>4</sup> Instant Criminal Background Check System Section (2020). *Active records in the NICS Index as of December 31, 2019*. FBI Criminal Justice Information Services. Retrieved from <https://www.fbi.gov/file-repository/active-records-in-the-nics-indices-by-state.pdf/view>.

<sup>5</sup> United States Government Accountability Office (2016). *Gun control: Analyzing available data could help improve background checks involving domestic violence records*. Retrieved from <https://www.gao.gov/assets/680/678204.pdf>.

<sup>6</sup> Violence Policy Center (2019). *When men murder women: An analysis of 2017 homicide data*. Retrieved from <https://vpc.org/studies/wmmw2019.pdf>.

<sup>7</sup> The Montana Department of Justice Office of Consumer Protection and Victim Services (2017). *Montana domestic violence fatality review commissions*. Retrieved from <https://dojmt.gov/victims/domestic-violence-fatality-review-commission/>.

<sup>8</sup> Black, M.C., Basile, K.C., Breiding, M.J., Smith, S.G., Walters, M.L., Merrick, M.T., Chen, J., & Stevens, M. (2011). *The national intimate partner and sexual violence survey: 2010 summary report*. Retrieved from [http://www.cdc.gov/violenceprevention/pdf/nisvs\\_report2010-a.pdf](http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf).

<sup>9</sup> National Network to End Domestic Violence (2020). *14th annual domestic violence counts report*. Retrieved from [https://nnedv.org/wp-content/uploads/2020/03/Library\\_Census-2019\\_Report\\_web.pdf](https://nnedv.org/wp-content/uploads/2020/03/Library_Census-2019_Report_web.pdf).

<sup>10</sup> Truman, J. & Morgan, R. (2014). *Nonfatal domestic violence, 2003-2012*. Retrieved from <http://www.bjs.gov/content/pub/pdf/ndv0312.pdf>.

<sup>11</sup> Campbell, J.C., Webster, D., Koziol-McLain, J., Block, C., Campbell, D., Curry, M. A., Gary, F., Glass, N., McFarlane, J., Sachs, C., Sharps, P., Ulrich, Y., Wilt, S., Manganello, J., Xu, X., Schollenberger, J., Frye, V., & Lauphon, K. (2003). Risk factors for femicide in abusive relationships: Results from a multisite case control study. *American Journal of Public Health, 93*(7), 1089-1097.

<sup>12</sup> Violence Policy Center. (2018). *American roulette: murder-suicide in the United States*. Retrieved from: [www.vpc.org/studies/amroul2018.pdf](http://www.vpc.org/studies/amroul2018.pdf)

<sup>13</sup> Mont. Code Ann. § 45-5-206(7).

<sup>14</sup> Mont. Code Ann. § 45-5-206(7), Mont. Code Ann. § 45-58-323.

<sup>15</sup> Mont. Code Ann. § 40-15-204(3), Mont. Code Ann. § 40-15-201(2)(f).

<sup>16</sup> Mont. Code Ann. § 40-15-201(2)(j), Mont. Code Ann. § 40-15-204(3).

<sup>17</sup> Mont. Code Ann. § 46-6-603(1).

### If you need help:

Call The National Domestic Violence Hotline 1-800-799-SAFE (7233)

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Below is a small sampling of Montana cases reviewed:

- In a current ongoing case, a 14 & 16 yr old have been denied (2x) requests for a GAL by a district court judge. This judicial decision was made without a hearing or review of the overwhelming evidence of need. Despite CPS involvement and an affidavit from the now aged-out eldest son outlining the extent of psychological abuse that his siblings are subjected to in their father's home. The safe parent was denied all access or notification of these events because she has been "diagnosed as a Parental Alienator" by court order.
- An ongoing case with 10 years of documented sexual abuse including reports from CPS in two separate states and involvement of law enforcement, therapists, sexual abuse victims advocates, psychologist, and educators. ALL of this evidence has been suppressed repeatedly by a judicial authority. Instead this judge ruled in favor of primary custody to the predator and diagnosed the safe parent with "Parental Alienation" from the bench.
- A case where the judicial authority refused to set an emergency hearing to review documented CPS, law enforcement, and Co Attorney involvement while the children were in the abusive parent's care. Instead, the judge cited the safe parent's with alienating behaviors and slapped them with all legal fees for even asking for an emergency hearing and GAL appointment.
- PA cases in multiple districts have languished in courts for between 4 and 10 years with the children begging to come home to their safe parent and be rescued from the claws of their abusive parent. Instead, the children have been ignored by the Judicial authority meant to protect them. These children have been denied education rights, right to representation, therapeutic care, medical care, and communication with their safe parents. Some of these children have disabilities.
- In multiple districts A judicial authority ignored evidence of gross misconduct of the appointed mental health professional in two separate rulings, despite two separate courts removing this same mental health professional for gross misconduct, impersonating a judicial authority and harming children. This judge denied a hearing to review the safe parent's motion to terminate the therapist appointment.
- A judicial authority allowed CPS with the assistance of the AGs office, to undermine a Supreme Court ruling and tear a young girl from her home under the pseudo diagnosis of PA. By District Court Judicial authority, the supreme court's decision was reversed and the child was placed with her abusive parent without a shred of evidence.
- A judicial authority allowed CPS with the assistance of the AGs office, to rip three young children from their safe parent and force them to live with their abusive parent under the pseudo diagnosis of PA. The abusive parent that had already been court-ordered to alcohol monitoring and anger management.
- Judicial authorities ignored evidence that the mental health professional who diagnosed PA deliberately misrepresented his license in testimony as a forensic psychologist despite not being licensed under the Board of Psychology and instead, held the lowest level of licensing of LCPC.



National  
Family Violence  
Law Center  
THE GEORGE WASHINGTON UNIVERSITY



**Bring the federally enacted VAWA "Kayden's Law" to your state to increase protections for children.**

"Kayden's Law" is named after Kayden Mancuso, a 7-year-old girl from Bucks County, Pennsylvania who was murdered by her father during his court-ordered unsupervised parenting time. Kayden's mother, [Kathy Sherlock](#), submitted evidence to the court of the father's abusive, violent history – including criminal records and a protection from abuse order for having threatened to kill family members. A professional recommended that he be required to have mental health treatment before receiving unsupervised access, but he was nevertheless granted unsupervised contact with little Kayden. The father beat Kayden to death, tied a bag over her head, left a note of retribution on her body, and then killed himself.

As Congress has now recognized, Kayden's story is not unique: many U.S. children – [estimates](#) are in the tens of thousands - have been put at risk and even [killed](#) by a dangerous parent, many after a family court rejected safety concerns voiced by a protective parent. Furthermore, it is well-documented that abusive parents frequently use family courts as a means of continuing their abuse [post-separation](#) to hurt and control their former partners by taking away or [harming the children](#). Profound system problems in U.S. family courts have been [reported](#) and [studied](#), yet children continue to be sent into harm's way.

**[The Keeping Children Safe From Family Violence Act or "Kayden's Law"](#) in the Violence Against Women Act (VAWA ) provides federal funds to states which improve their child custody laws to better protect at-risk children by:**

- 1. Restricting expert testimony to only those who are appropriately qualified to provide it:** Evidence from court-appointed or outside professionals regarding alleged abuse may be admitted only when the professional possesses demonstrated expertise and experience in working with victims of the types of abuse at issue, whether domestic violence, child abuse, or child sexual abuse.
- 2. Limiting the use of reunification camps and therapies which cannot be proven to be safe and effective:** No "reunification treatment" may be ordered by the court without scientifically valid and generally accepted proof of the safety, effectiveness, and therapeutic value of the particular treatment.
- 3. Providing evidence-based ongoing training to judges and court personnel on family violence,** including: (i) child sexual abuse; (ii) physical abuse; (iii) emotional abuse; (iv) coercive control; (v) implicit and explicit bias; (vi) trauma; (vii) long and short-term impacts of domestic violence and child abuse on children; and (viii) victim and perpetrator behaviors.
- 4. Requiring that family courts making parenting time decisions consider past evidence of abuse,** including protection orders, convictions and arrests for domestic violence or child abuse.

**Next Steps:**

**For State Lawmakers:** Policy and legal experts from the National Family Violence Law Center at GW Law who provided the technical expertise for Kayden's Law, in both the Violence Against Women Act (VAWA) and in Pennsylvania, are available to answer questions and provide technical assistance to interested state lawmakers. Email: [dpollack@law.gwu.edu](mailto:dpollack@law.gwu.edu) | [www.law.gwu.edu/national-family-violence-law-center](http://www.law.gwu.edu/national-family-violence-law-center) | IG: [nfvlc at gwu](#) | TW: [@nfvlcgwu](#) | FB: [www.facebook.com/NFVLC](https://www.facebook.com/NFVLC)

**For Advocates:** The National Safe Parents Organization provides training and support for advocates and concerned citizens to bring this important legislation to individual states. Join the NSPO advocacy community online to take action and coordinate with other advocates, or email to be connected with advocate coordinators in your state. Email: [advocacy@nationalsafeparents.org](mailto:advocacy@nationalsafeparents.org) | [www.nationalsafeparents.org](http://www.nationalsafeparents.org) | IG: [nationalsafeparentscoalition](#) | TW: [@safe\\_parents](#) *Thank you for bringing VAWA Kayden's Law to your state to protect children!*

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## PROPOSED BRODY'S LAW:

### A. Pass into law "Brody's Law" similar to what other states have passed.

WHEREAS: As Montanas we see the streams, mountains, minerals and land as our best resource, but it is the children of Montana that are our most valuable resource. Protecting our children is the most important thing we can do for our future. (Inspired by Rep. Gene Donaldson, a leader who invested in MT children.)

WHEREAS: As Montanas we declare the family unit as sacred, and "support and preserve the family as the single most powerful influence for ensuring the healthy social development and mental and physical well-being of Montana's children". (MCA 41-7-102)

WHEREAS: As Montanas we recognize that Montana children have a Constitutional right to speak their truth and be respected as individual citizens with rights to safety, security, and freedom from domestic violence.

Purpose: The purpose of Brody's Law is to:

- 1) increase the priority given to child safety in any child custody proceeding
- 2) strengthen the ability of courts to:
  - a) recognize and adjudicate domestic violence and child abuse allegations based on valid, admissible evidence; and
  - b) enter orders that protect and minimize the risk of harm to children; and
- 3) ensure that professionals involved in child custody proceedings containing domestic violence or child abuse allegations receive trauma-informed and culturally appropriate training on the dynamics, signs, and impact of domestic violence and child abuse, including child sexual abuse.

Definitions: As used in , the following definitions apply:

- 1) "Child custody proceeding" means a dissolution, separation, visitation, paternity, support, custody, or civil protection order proceeding between the parents of a child involving the care or custody of the child. The term does not include:
  - a) a child protective, abuse, or neglect proceeding under Title 41, chapter 3;
  - b) a juvenile justice proceeding under Title 41, chapter 5; or
  - c) a child placement proceeding in which the state or a tribal government, a designee of the state or a tribal government, or a contractor of the state or a tribal government is a party to the proceeding.
- 2) "Reunification treatment" means a treatment or therapy aimed at reuniting or reestablishing a relationship between a child and an estranged or rejected parent or other family member of the child.

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**B. Include modifications to MCA 3-10-203 & 3-1-1501 & 1502**

Annual training is currently statutorily written under Title 3 Part 2 “Justices of the Peace” but only requires mandatory training for lower courts. We propose moving MCA 3-10-203 under Title 3 Part 15 as “Courts of Limited Jurisdiction Training and Certification of Judges”.

MCA 3-1-Part 15 Courts ~~of Limited Jurisdiction~~ Training and Certification of Judges ~~and standing masters~~

**3-1-1501. Definitions.** As used in this part, the following definitions apply:

(1) "Commission" means the commission on courts ~~of limited jurisdiction~~ established by the supreme court.

(2) "Judge" means:

(a) a municipal court judge;

(b) a justice of the peace; or

(c) a city judge

(d) a district court judge

**3-1-1502. Training and certification of judges and standing masters.** Except as provided in **3-1-1503**, a judge selected for a term of office may not assume the functions of the office unless the judge or standing master/judicial officials has filed with the county clerk and recorder in the jurisdiction a certificate of completion of a course of education and training prescribed by the commission.

Move **3-10-203** to **3-1-1502** to encompass all judges and include New Section 4. MCA **3-10-203** could be removed since it is covered here.

**Orientation course -- annual training.** (1) Under the supervision of the supreme court, a course of study must be presented as soon as is practical following each general election. Actual and necessary travel expenses, as defined and provided in **2-18-501** through **2-18-503**, and the costs of registration and books and other materials must be paid to the elected or appointed judge or standing master ~~justice of the peace~~ for attending the course by the county in which the judge or standing master ~~justice of the peace~~ holds or will hold court and must be charged against that county.

(2) There must be two mandatory annual training sessions supervised by the supreme court for all elected and appointed judges or standing master ~~justices of the peace~~. One of the training sessions may be held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses, as defined and provided in **2-18-501** through **2-18-503**, and the costs of registration and books and other materials must be paid to the elected or appointed judges or standing masters ~~or appointed justice of the peace~~ for attending the sessions by the county in which the judge or standing master ~~justice of the peace~~ holds or will hold court and must be charged against that county.

(3) Each judge or standing master ~~justice of the peace~~ shall attend the training sessions provided for in subsection (2). Failure to attend disqualifies the judge or standing master ~~justice of the peace~~ from office and creates a vacancy in the office. However, the supreme court may

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excuse a ~~judge or standing master~~ ~~justice of the peace~~ from attendance because of illness, a death in the family, or any other good cause.

**NEW SECTION Section 4**

(1) Any judge or standing master presiding over child custody proceedings shall complete:

(a) not less than 20 hours of initial/orientation training

(b) not less than 15 hours of ongoing training every 2 years.

(2) The training required under this section:

(a) must focus solely on domestic and sexual violence and child abuse, including:

(i) child sexual abuse;

(ii) physical abuse;

(iii) emotional abuse;

(iv) coercive control;

(v) implicit and explicit bias, including biases relating to parents with disabilities;

(vi) trauma;

(vii) long-term and short-term impacts of domestic violence and child abuse on children;

and

(viii) victim and perpetrator behavior patterns and relationship dynamics within the cycle of violence;

(b) must be provided by:

(i) a professional with substantive experience in assisting survivors of domestic violence or child abuse, including a victim service provider as defined in 34 U.S.C. 12291; and

(ii) if possible, a survivor of domestic violence or child physical or sexual abuse;

(c) must rely on evidence-based and peer-reviewed research by recognized experts in the types of abuse described in subsection (2)(a);

(d) may not include theories, concepts, or belief systems unsupported by the research described in subsection (2)(c); and

(e) must be designed to improve the ability of courts to:

(i) recognize and respond to child physical abuse, child sexual abuse, domestic violence, and trauma in all family victims, particularly children; and

(ii) make appropriate custody decisions that prioritize child safety and well-being and are culturally sensitive and appropriate for diverse communities.

**C. Additionally, add training to Guardian Ad Litem who provide expertise to judges.**

**MCA 40-4-205. Guardian ad litem.** (1) The court may appoint a guardian ad litem to represent the interests of a minor dependent child with respect to the child's **best interest support, parenting, and parental contact**. The guardian ad litem ~~may~~ **shall** be an attorney. The county attorney, a deputy county attorney, if any, or the department of public health and human services or any of its staff may not be appointed for this purpose.

(2) The guardian ad litem has the following general duties:

(a) **work independently of other parties to establish an unbiased representation of the child's best interest.**

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(a) (b) to conduct investigations that the guardian ad litem considers necessary to ascertain the facts related to the child's best interests according to MCA 41-2-212 support, parenting, and parental contact;

(b) to interview or observe the child who is the subject of the proceeding;

(c) to make written reports to the court concerning the child's support, parenting, and parental contact;

(d) to appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child's best interest with regards to a custody proceedings, support, parenting, and parental contact; and

(e) to perform other duties as directed by the court.

(3) The guardian ad litem has access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child and the child's siblings and parents or caretakers.

(4) The court shall enter an order for costs and fees in favor of the child's guardian ad litem. The order must be made against either or both parents, except that if the responsible party is indigent, the costs must be waived.

(5) The guardian ad litem shall mail the report to counsel and to any party not represented by counsel at least 10 days prior to the hearing.

(6) The guardian ad litem appointed to represent the interests of a minor dependant child in custody proceedings is required to demonstrate to the clerk and recorder verification of:

(a) not less than 20 hours of initial training;

(b) Not less than 15 hours of ongoing training every 2 years

(7) The training required under (6) above:

(a) must focus solely on domestic and sexual violence and child abuse, including:

(i) child sexual abuse;

(ii) physical abuse;

(iii) emotional abuse;

(iv) coercive control;

(v) implicit and explicit bias, including biases relating to parents with disabilities;

(vi) trauma;

(vii) long-term and short-term impacts of domestic violence and child abuse on children;

and

(viii) victim and perpetrator behavior patterns and relationship dynamics within the cycle of violence;

(b) must be provided by:

(i) a professional with substantive experience in assisting survivors of domestic violence or child abuse, including a victim service provider as defined in 34 U.S.C. 12291; and

(ii) if possible, a survivor of domestic violence or child physical or sexual abuse;

(c) must rely on evidence-based and peer-reviewed research by recognized experts in the types of abuse described in subsection (7)(a);

(d) may not include theories, concepts, or belief systems unsupported by the research described in subsection (7)(c); and

(e) must be designed to improve the ability of courts to:

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(i) recognize and respond to child physical abuse, child sexual abuse, domestic violence, and trauma in all family victims, particularly children; and

(ii) make appropriate custody decisions that prioritize child safety and well-being and are culturally sensitive and appropriate for diverse communities

#### **D. In addition, add increased protections for children to ensure best interests**

##### **MCA 40-4-212 Best interest of child**

(1) The court shall determine the parenting plan in accordance with the best interest of the child. The court shall consider all relevant parenting factors, which may include but are not limited to:

(a) the wishes of the child's parent or parents;

(b) the wishes of the child; including the right to request an audience with the court as applicable in 40-4-214. children shall be provided the opportunity to be heard in any judicial and administrative proceedings affecting them, either directly, or through a representative or an appropriate body.

(c) the interaction and interrelationship of the child with the child's parent or parents and siblings and with any other person who significantly affects the child's best interest;

(d) the child's adjustment to home, school, and community;

(e) the mental and physical health of all individuals involved;

(f) physical, psychological, or financial abuse or threat of physical, psychological, or financial, abuse by one parent against the other parent or the child;

(i) in a proceeding in which a parent has been alleged to have committed domestic violence or child abuse, including sexual abuse, relevant admissible evidence including any abuse or neglect proceeding materials discoverable pursuant to 41-3-431 and evidence of past sexual or physical abuse committed by the accused parent, must be considered, including:

(1) any past or current protection or restraining orders against the accused parent;

(2) sexual violence abuse protection orders against the accused parent;

(3) arrests of the accused parent for domestic violence, sexual violence, or child abuse; or

(4) convictions of the accused parent for domestic violence, sexual violence, or child abuse.

(ii) expert testimony from a court-appointed or outside professional relating to the alleged abuse may be admitted only if the professional possesses demonstrated expertise and clinical experience in working with victims of domestic violence or child abuse, including child sexual abuse, that is not solely of a forensic nature as verified by curriculum vitae (CV) submitted to the court;

(iii) expert testimony cannot include diagnoses or opinion about any party not personally evaluated, and may not make parenting plan recommendations when both parents and children have not been personally evaluated. In situations where all parties cannot be evaluated, recommendations and opinions shall be limited to individuals evaluated.

(g) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent;

(h) continuity and stability of care;

(i) developmental needs of the child;

(j) whether a parent has knowingly failed to pay birth-related costs that the parent is able to pay, which is considered to be not in the child's best interests;

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(k) whether a parent has knowingly failed to financially support a child that the parent is able to support, which is considered to be not in the child's best interests;

(l) whether the child has frequent and continuing contact with both parents, which is considered to be in the child's best interests unless the court determines, after a hearing, that contact with a parent would be detrimental to the child's best interests. In making that determination, the court shall consider evidence of physical abuse or threat of physical abuse by one parent against the other parent or the child, including but not limited to whether a parent or other person residing in that parent's household has been convicted of any of the crimes enumerated in 40-4-219(8)(b).

(m) adverse effects on the child resulting from continuous and vexatious parenting plan amendment actions.

(2) When determining the best interest of the child of a parent in military service, the court shall consider all relevant parenting factors provided in subsection (1) and may not determine the best interest of the child based only upon the parent's military service.

(3) A de facto parenting arrangement, in the absence of a prior parenting decree, does not require the child's parent or parents to prove the factors set forth in 40-4-219.

(4) The following are rebuttable presumptions and apply unless contrary to the best interest of the child:

(a) A parenting plan action brought by a parent within 6 months after a child support action against that parent is vexatious.

(b) A motion to amend a final parenting plan pursuant to 40-4-219 is vexatious if a parent seeks to amend a final parenting plan without making a good faith effort to comply with the provisions of the parenting plan or with dispute resolution provisions of the final parenting plan.

#### **E. Close legal loophole of Amendment of Parenting Plan MCA 40-4-219**

**40-4-219. Amendment of parenting plan -- mediation.** (1) The court may in its discretion amend a prior parenting plan if it finds, upon the basis of facts that have arisen since the prior plan or that were unknown to the court at the time of entry of the prior plan, that a change has occurred in the circumstances of the child and that the amendment is necessary to serve the best interest of the child.

(a) In determining how a proposed change will affect the child, the court shall consider the potential impact of the change on the criteria in 40-4-212 **and the fundamental rights of the child under 40-2-227** whether:

(i) the parents agree to the amendment;

(ii) the child has been integrated into the family of the petitioner with consent of the parents;

~~(iii) the child is 14 years of age or older and desires the amendment; or~~

(iv) one parent has willfully and consistently:

**(A) found in contempt for violations of the parenting plan that undermines the best interests of the child creating a change in circumstances**

~~(A)~~ (B) refused to allow the child to have any contact with the other parent; or

~~(B)~~ (C) attempted to frustrate or deny contact with the child by the other parent.

(b) If one parent has changed or intends to change the child's residence in a manner that significantly affects the child's contact with the other parent, the court shall consider, in addition to all the criteria in 40-4-212 and subsection (1)(a):

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(i) the feasibility of preserving the relationship between the non-relocating parent and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties;

(ii) the reasons of each parent for seeking or opposing the change of residence;

(iii) whether the parent seeking to change the child's residence has demonstrated a willingness to promote the relationship between the child and the non-relocating parent; and

(iv) whether reasonable alternatives to the proposed change of residence are available to the parent seeking to relocate.

(2) A court may modify a de facto parenting arrangement in accordance with the factors set forth in 40-4-212.

(3) The court shall presume a parent is not acting in the child's best interest if the parent does any of the acts specified in subsection (1)(a)(iv) or (8).

(4) The court may amend the prior parenting plan based on subsection (1)(b) to provide a new residential schedule for parental contact with the child and to apportion transportation costs between the parents.

(5) Attorney fees and costs must be assessed against a party seeking frivolous or repeated amendment if the court finds that the amendment action is vexatious and constitutes harassment.

(6) A parenting plan may be amended pursuant to 40-4-221 upon the death of one parent.

(7) As used in this section, "prior parenting plan" means a parenting determination contained in a judicial decree or order made in a parenting proceeding. In proceedings for amendment under this section, a proposed amended parenting plan must be filed and served with the motion for amendment and with the response to the motion for amendment. Preference must be given to carrying out the parenting plan.

(8) (a) If a parent or other person residing in that parent's household has been convicted of any of the crimes listed in subsection (8)(b), the other parent or any other person who has been granted rights to the child pursuant to court order may file an objection to the current parenting order with the court. The parent or other person having rights to the child pursuant to court order shall give notice to the other parent of the objection as provided by the Montana Rules of Civil Procedure, and the other parent has 21 days from the notice to respond. If the parent who receives notice of objection fails to respond within 21 days, the parenting rights of that parent are suspended until further order of the court. If that parent responds and objects, a hearing must be held within 30 days of the response.

(b) This subsection (8) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(v) deviate sexual conduct with an animal or dead human body, as described in 45-2-101 and prohibited under 45-8-218;

(vi) incest, as described in 45-5-507;

(vii) child sex trafficking, as described in 45-5-711;

(viii) endangering the welfare of children, as described in 45-5-622;

(ix) partner or family member assault of the type described in 45-5-206(1)(a);

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- (x) sexual abuse of children, as described in 45-5-625; and
  - (xi) strangulation of a partner or family member, as described in 45-5-215.

(9) Except in cases of physical, sexual, or emotional abuse or threat of physical, sexual, or emotional abuse by one parent against the other parent or the child or when a parent has been convicted of a crime enumerated in subsection (8)(b), the court may, in its discretion, order the parties to participate in a dispute resolution process to assist in resolving any conflicts between the parties regarding amendment of the parenting plan. The dispute resolution process may include counseling or mediation by a specified person or agency, and court action.

(10) (a) Except as provided in subsection (10)(b), a court-ordered or de facto modification of a parenting plan based in whole or in part on military service orders of a parent is temporary and reverts to the previous parenting plan at the end of the military service. If a motion for an amendment of a parenting plan is filed after a parent returns from military service, the court may not consider a parent's absence due to that military service in its determination of the best interest of the child.

(b) A parent who has performed or is performing military service, as defined in 10-1-1003, may consent to a temporary or permanent modification of a parenting plan:

- (i) for the duration of the military service; or
- (ii) that continues past the end of the military service.

#### **F. Add protections for children rights**

**MCA 40-4-227. Rights of parents and children -- policy -- findings.** (1) It is the policy of the state of Montana:

(a) to recognize the constitutionally protected rights of parents and the integrity of the family unit;

(b) to recognize a child's constitutionally protected right:

(i) to be protected from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment, or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has care of the child, pursuant to Article 19 of the Convention of the Rights of the Child;

(ii) to ensure children, who are capable of forming their own views, the rights to express those views freely in all matters affecting them and for their views to be given due weight in accordance with their age and maturity, pursuant to Article 12 of the Convention on the Rights of the Child;

(iii) to refuse a relationship with an unfit parent, sibling, or extended family member.

(iv) to ~~including~~ all fundamental rights unless those rights are specifically precluded by laws that enhance their protection; and

(c) to ensure that the best interests of the child are met in parenting proceedings.

(2) The legislature finds:

(a) that while it is in the best interests of a child to maintain a relationship with a natural parent, a natural parent's inchoate interest in the child requires constitutional protection only when the parent has demonstrated a timely commitment to the responsibilities of parenthood; and

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(b) that a parent's constitutionally protected interest in the parental control of a child should yield to the best interests of the child when the parent's conduct is contrary to the child-parent relationship.

(3) A court in a child custody proceeding may not, solely in order to improve a deficient relationship with the other parent of a child, remove the child from or restrict contact between the child and a parent or litigating party:

(a) who is competent, protective, and not physically or sexually abusive; and

(b) with whom the child is bonded or to whom the child is attached.

(4) In a child custody proceeding, a court may not order a reunification treatment unless:

(a) there is generally accepted and scientifically valid proof of the safety, effectiveness, and therapeutic value of the reunification treatment; and

(b) the reunification treatment is not predicated on cutting off a child from a parent with whom the child is bonded or to whom the child is attached.

(5) Any order in a child custody proceeding to remediate the resistance of a child to have contact with a violent or abusive parent must primarily address the behavior of that parent or the contributions of that parent to the resistance of the child before ordering the other parent of the child to take steps to potentially improve the relationship of the child with the parent with whom the child resists contact.