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Children's Law Committee

Saturday, January 19

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Children's Law Committee

Saturday, January 19

Human Trafficking in South Carolina

Heather S. Weiss

Human Trafficking in South Carolina

CHAPTER 3 Offenses Against the Person

ARTICLE 19 Trafficking in Persons

SECTION 16-3-2010. Definitions.

As used in this article:

(1) “Business” means a corporation, partnership, proprietorship, firm, enterprise, franchise, organization, or self-employed individual.

(2) “Charitable organization” means a charitable organization pursuant to Section 33-56-20.

(3) “Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his personal services or those of a person under his control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined or if the principal amount of the debt does not reasonably reflect the value of the items or services for which the debt was incurred.

(4) “Forced labor” means any type of labor or services performed or provided by a person rendered through another person’s coercion of the person providing the labor or services.

This definition does not include labor or services performed or provided by a person in the custody of the Department of Corrections or a local jail, detention center, or correctional facility.

(5) “Involuntary servitude” means a condition of servitude induced through coercion.

(6) “Person” means an individual, corporation, partnership, charitable organization, or another legal entity.

(7) “Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for one of the following when it is induced by force, fraud, or coercion or the person performing the act is under the age of eighteen years and anything of value is given, promised to, or received, directly or indirectly, by any person:

- (a) criminal sexual conduct pursuant to Section 16-3-651;
- (b) criminal sexual conduct in the first degree pursuant to Section 16-3-652;
- (c) criminal sexual conduct in the second degree pursuant to Section 16-3-653;
- (d) criminal sexual conduct in the third degree pursuant to Section 16-3-654;
- (e) criminal sexual conduct with a minor pursuant to Section 16-3-655;

- (f) engaging a child for sexual performance pursuant to Section 16-3-810;
 - (g) producing, directing, or promoting sexual performance by a child pursuant to Section 16-3-820;
 - (h) sexual battery pursuant to Section 16-3-651;
 - (i) sexual conduct pursuant to Section 16-3-800; or
 - (j) sexual performance pursuant to Section 16-3-800.
- (8) “Services” means an act committed at the behest of, under the supervision of, or for the benefit of another person.
- (9) “Victim of trafficking in persons” or “victim” means a person who has been subjected to the crime of trafficking in persons.

HISTORY: 2012 Act No. 258, Section 1, eff December 15, 2012; 2015 Act No. 7 (S.196), Section 3, eff April 2, 2015; 2018 Act No. 238 (H.3329), Section 1, eff May 17, 2018.

Effect of Amendment

2015 Act No. 7, Section 3, in (7), substituted “person performing the act” for “person forced to perform the act”; deleted former (7)(g), relating to Section 16-3-800; and redesignated the remaining paragraphs accordingly.

2018 Act No. 238, Section 1, in (7), substituted “by any person” for “by another person” at the end; and deleted (9), which related to the definition of “trafficking in persons”, and redesignated (10) as (9).

SECTION 16-3-2020. Trafficking in persons; penalties; minor victims; defenses.

(A) A person is guilty of trafficking in persons if he:

(1) recruits, entices, solicits, isolates, harbors, transports, provides, or obtains, or so attempts, a victim, knowing that the victim will be subjected to, or for the purposes of, sex trafficking, forced labor or services, involuntary servitude or debt bondage through any means or who benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in this subsection, is guilty of trafficking in persons;

(2) aids, abets, or conspires with another person to violate the criminal provisions of this section; or

(3) knowingly gives, agrees to give, or offers to give anything of value so that any person may engage in commercial sexual activity with another person when he knows that the other person is a victim of trafficking in persons.

(B) A person convicted of a violation of subsection (A) is guilty of a felony and, upon conviction:

(1) for a first offense, must be imprisoned not more than fifteen years;

(2) for a second offense, must be imprisoned not more than thirty years;

(3) for a third or subsequent offense, must be imprisoned not more than forty-five years.

(C) If the victim of an offense contained in this section is under the age of eighteen, the person convicted under this section is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years. For a second or subsequent offense, if the victim is under the age of eighteen, the person convicted under this section is guilty of a felony and, upon conviction, must be imprisoned not more than forty-five years.

(D) A business owner who uses his business in a way that participates in a violation of this article, upon conviction, must be imprisoned for not more than ten years in addition to the penalties provided in this section for each violation.

(E) A plea of guilty or the legal equivalent entered pursuant to a provision of this article by an offender entitles the victim of trafficking in persons to all benefits, rights, and compensation granted pursuant to Section 16-3-1110.

(F) In a prosecution of a person who is a victim of trafficking in persons, it is an affirmative defense that he was under duress or coerced into committing the offenses for which he is subject to prosecution, if the offenses were committed as a direct result of, or incidental or related to, trafficking. A victim of trafficking in persons convicted of a violation of this article or prostitution may motion the court to vacate the conviction and expunge the record of the conviction. The court may grant the motion on a finding that the person's participation in the offense was a direct result of being a victim.

(G) If the victim was a minor at the time of the offense, the victim of trafficking in persons may not be prosecuted in court pursuant to this article or a prostitution offense, if it is determined after investigation that the victim committed the offense as a direct result of, or incidental or related to, trafficking.

(H) The human trafficking specialized service providers must be certified by the Attorney General through criteria established by the Human Trafficking Task Force. The Attorney General, through the task force, must also establish necessary criteria for Human Trafficking Acute Crisis Care and Resource Centers to be established in the communities of South Carolina. Once the service providers are certified and the assessment centers are open, the information must be disseminated to the family court bench and bar as well as law enforcement to be utilized in carrying out the mandates of this statute. The court must determine the most appropriate way to provide specialized services to the juveniles to address the concerns relating to human trafficking.

(I) Evidence of the following facts or conditions do not constitute a defense in a prosecution for a violation of this article, nor does the evidence preclude a finding of a violation:

(1) the victim's sexual history or history of commercial sexual activity, the specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct;

(2) the victim’s connection by blood or marriage to a defendant in the case or to anyone involved in the victim’s trafficking;

(3) the implied or express consent of a victim to acts which violate the provisions of this section do not constitute a defense to violations of this section;

(4) age of consent to sex, legal age of marriage, or other discretionary age; and

(5) mistake as to the victim’s age, even if the mistake is reasonable.

(J) A person who violates the provisions of this section may be prosecuted by the State Grand Jury, pursuant to Section 14-7-1600, when a victim is trafficked in more than one county or a trafficker commits the offense of trafficking in persons in more than one county.

HISTORY: 2012 Act No. 258, Section 1, eff December 15, 2012; 2015 Act No. 74 (S.183), Section 1, eff June 8, 2015; 2018 Act No. 238 (H.3329), Section 2, eff May 17, 2018.

Effect of Amendment

2015 Act No. 74, Section 1, in (E), added a comma following “and”; in (G), added the second sentence; and in (J), added the last three sentences.

2018 Act No. 238, Section 2, rewrote the section, restructuring the offense of trafficking in persons, providing a penalty when the victim is a minor under the age of eighteen, and ensuring the protection of minor victims.

SECTION 16-3-2030. Criminal liability of principal owners of business; loss of profits and government contracts; penalties.

(A) The principal owners of a business, a business entity, including a corporation, partnership, charitable organization, or another legal entity, that knowingly aids or participates in an offense provided in this article is criminally liable for the offense and will be subject to a fine or loss of business license in the State, or both. In addition, the court may consider disgorgement of profit from activity in violation of this article and disbarment from state and local government contracts.

(B) If the principal owners of a business entity are convicted of violating a section of this article, the court or Secretary of State, when appropriate, may:

(1) order its dissolution or reorganization;

(2) order the suspension or revocation of any license, permit, or prior approval granted to it by a state or local government agency; or

(3) order the surrender of its charter if it is organized under state law or the revocation of its certificate to conduct business in the State if it is not organized under state law.

HISTORY: 2012 Act No. 258, Section 1, eff December 15, 2012; 2015 Act No. 74 (S.183), Section 2, eff June 8, 2015.

Effect of Amendment

2015 Act No. 74, Section 2, in (A), added the last sentence.

SECTION 16-3-2040. Restitution for victims of trafficking.

(A) An offender convicted of a violation of this article must be ordered to pay mandatory restitution to the victim as provided in this section.

(B) If the victim of trafficking dies as a result of being trafficked, a surviving spouse of the victim is eligible for restitution. If no surviving spouse exists, restitution must be paid to the victim's issue or their descendants per stirpes. If no surviving spouse or issue or descendants exist, restitution must be paid to the victim's estate. A person named in this subsection may not receive funds from restitution if he benefited or engaged in conduct described in this article.

(C) If a person is unable to pay restitution at the time of sentencing, or at any other time, the court may set restitution pursuant to Section 16-3-1270.

(D) Restitution for this section, pursuant to Section 16-3-1270, means payment for all injuries, specific losses, and expenses, including, but not limited to, attorney's fees, sustained by a crime victim resulting from an offender's criminal conduct pursuant to Section 16-3-1110(12)(a). In addition, the court may order an amount representing the value of the victim's labor or services.

(E) Notwithstanding another provision of law, the applicable statute of limitations for a victim of trafficking in persons is pursuant to Section 16-3-1110(12)(a).

(F) Restitution must be paid to the victim promptly upon the conviction of the defendant. The return of the victim to his home country or other absence of the victim from the jurisdiction does not prevent the victim from receiving restitution.

HISTORY: 2012 Act No. 258, Section 1, eff December 15, 2012; 2015 Act No. 74 (S.183), Section 3, eff June 8, 2015.

Effect of Amendment

2015 Act No. 74, Section 3, in (D), inserted “, including, but not limited to, attorney's fees,” and added the last sentence.

SECTION 16-3-2050. Interagency task force established to develop and implement State Plan for Prevention of Trafficking in Persons; members; responsibilities; grants.

(A) The Attorney General shall establish an interagency task force to develop and implement a State Plan for the Prevention of Trafficking in Persons. The task force shall meet at least quarterly and should include all aspects of trafficking in persons, including sex trafficking and labor trafficking of both United States citizens and foreign nationals, as defined in Section 16-3-2010. The Attorney General also shall collect and publish relevant data to this section on their website.

(B) The task force shall consist of, at a minimum, representatives from:

- (1) the Office of the Attorney General, who must be chair;
- (2) the South Carolina Department of Labor, Licensing and Regulation;

- (3) the South Carolina Police Chiefs Association;
- (4) the South Carolina Sheriffs' Association;
- (5) the State Law Enforcement Division;
- (6) the Department of Health and Environmental Control Board;
- (7) the Office of the Attorney General, South Carolina Crime Victim Services Division;
- (8) the South Carolina Commission on Prosecution Coordination;
- (9) the Department of Social Services;
- (10) a representative from the Office of the Governor;
- (11) a representative from the Department of Employment and Workforce; and
- (12) two persons appointed by the Attorney General from nongovernmental organizations, especially those specializing in trafficking in persons, those representing diverse communities disproportionately affected by trafficking, agencies devoted to child services and runaway services, and academic researchers dedicated to the subject of trafficking in persons.

(C) The Attorney General shall invite representatives of the United States Department of Labor, the United States Attorneys' offices, and federal law enforcement agencies' offices within the State, including the Federal Bureau of Investigations and the United States Immigration and Customs Enforcement office, to be members of the task force.

(D) The task force shall carry out the following activities either directly or through one or more of its constituent agencies:

- (1) develop the state plan within eighteen months of the effective date of this act;
- (2) coordinate the implementation of the state plan; and
- (3) starting one year after the formation of the task force, submit an annual report of its findings and recommendations to the Governor, the Speaker of the House of Representatives, and the President of the Senate on or before December thirty-first of each calendar year.

(E) The task force shall consider carrying out the following activities either directly or through one or more of its constituent agencies:

- (1) coordinate the collection and sharing of trafficking data among government agencies, which data collection must respect the privacy of victims of trafficking in persons;
- (2) coordinate the sharing of information between agencies for the purposes of detecting criminal groups engaged in trafficking in persons;
- (3) explore the establishment of state policies for time limits for the issuance of Law Enforcement Agency (LEA) endorsements as described in C.F.R. Chapter 8, Section 214.11(f)(1);

(4) establish policies to enable state government to work with nongovernmental organizations and other elements of civil society to prevent trafficking in persons and provide assistance to United States citizens and foreign national victims;

(5) review the existing services and facilities to meet trafficking victims' needs and recommend a system to coordinate services including, but not limited to, health services, including mental health, housing, education and job training, English as a second language classes, interpreting services, legal and immigration services, and victim compensation;

(6) evaluate various approaches used by state and local governments to increase public awareness of the trafficking in persons, including United States citizens and foreign national victims of trafficking in persons;

(7) mandatory training for law enforcement agencies, prosecutors, and other relevant officials in addressing trafficking in persons;

(8) collect and periodically publish statistical data on trafficking, that must be posted on the Attorney General's website;

(9) prepare public awareness programs designed to educate potential victims of trafficking in persons and their families on the risks of victimization. These public awareness programs must include, but are not limited to:

(a) information about the risks of becoming a victim, including information about common recruitment techniques, use of debt bondage, and other coercive tactics, risk of maltreatment, rape, exposure to HIV or AIDS and other sexually transmitted diseases, and psychological harm related to victimization in trafficking cases;

(b) information about the risks of engaging in commercial sex and possible punishment;

(c) information about victims' rights in the State;

(d) methods for reporting suspected recruitment activities; and

(e) information on hotlines and available victims' services;

(10) preparation and dissemination of awareness materials to the general public to educate the public on the extent of trafficking in persons, both United States citizens and foreign nationals, within the United States and to discourage the demand that fosters the exploitation of persons that leads to trafficking in persons.

(a) The general public awareness materials may include information on the impact of trafficking on individual victims, whether United States citizens or foreign nationals, aggregate information on trafficking in persons worldwide and domestically, and warnings of the criminal consequences of engaging in trafficking in persons. These materials may include pamphlets, brochures, posters, advertisements in mass media, and other appropriate media. All materials must be designed to communicate to the target population.

(b) Materials described in this section may include information on the impact of trafficking in persons on individual victims. However, information on the experiences of individual victims must preserve the privacy of the victim and the victim's family.

(c) All public awareness programs must be evaluated periodically by the task force to ensure their effectiveness.

(F) To the extent that funds are appropriated, the task force may make grants to or contract with a state agency, local government, or private victim's service organization to develop or expand service programs for victims. A recipient of a grant or contract shall report annually to the task force the number and demographic information of all victims receiving services pursuant to the grant or contract.

HISTORY: 2012 Act No. 258, Section 1, eff December 15, 2012; 2015 Act No. 7 (S.196), Section 5, eff April 2, 2015; 2015 Act No. 74 (S.183), Section 4, eff June 8, 2015.

Code Commissioner's Note

Pursuant to 2017 Act No. 96, Section 14, the reference to "State Office of Victim Assistance" in (B)(7) was changed to "Office of the Attorney General, South Carolina Crime Victim Services Division".

Effect of Amendment

2015 Act No. 7, Section 5, in (B)(2), inserted "Department of"; deleted former (B)(7), relating to the U.S. Dept. of Labor; and redesignated the remaining paragraphs accordingly; and in (C), inserted "Department of Labor, the United States" and inserted a comma following "Attorneys' offices".

2015 Act No. 74, Section 4, added (F).

SECTION 16-3-2060. Civil action for victim of trafficking; statute of limitations.

(A) A person who is a victim of trafficking in persons may bring a civil action in the court of common pleas. The court may award actual damages, compensatory damages, punitive damages, injunctive relief, and other appropriate relief. A prevailing plaintiff also must be awarded attorney's fees and costs. Treble damages must be awarded on proof of actual damages when the defendant's acts were wilful and malicious.

(B) Pursuant to Section 16-3-1110, the applicable statute of limitations for a crime victim who has a cause of action against an incarcerated offender is tolled and does not expire until three years after the offender's sentence is completed, including probation and parole, or three years after release from commitment pursuant to Chapter 48, Title 44, whichever is later. However, this provision does not shorten any other tolling period of the statute of limitations which may exist for the victim.

(C) The statute of limitations for the filing of a civil suit does not begin to run until a minor victim has reached the age of majority.

(D) If a victim entitled to sue is under a disability at the time the cause of action accrues, so that it is impossible or impractical for him to bring an action, then the time of the disability is not part of the time limited for the commencement of the action. Disability includes, but is not limited to, insanity, imprisonment, or other incapacity or incompetence.

(E) The running of the statute of limitations may be suspended when a victim could not have reasonably discovered the cause of action due to circumstances resulting from the trafficking situation, such as psychological trauma, cultural and linguistic isolation, and the inability to access services.

(F) A defendant is estopped to assert a defense of the statute of limitations when the expiration of the statute is due to conduct by the defendant inducing the victim to delay the filing of the action or placing the victim under duress.

HISTORY: 2012 Act No. 258, Section 1, eff December 15, 2012.

SECTION 16-3-2070. Compensation for victims of trafficking; identity of victim and victim's family confidential.

(A) Victims of trafficking in persons pursuant to this article are considered victims for purposes of the Victims' Bill of Rights and are entitled to all appropriate forms of compensation available pursuant to the South Carolina Victim Compensation Fund in accordance with the provisions of Article 13, Chapter 3, Title 16. Victims of trafficking in persons pursuant to this article also are entitled to the rights provided in Article 15, Chapter 3, Title 16.

(B) In addition to the provisions of subsection (A), in a prosecution for violations of the criminal provisions of this article, the identity of the victim and the victim's family must be kept confidential by ensuring that names and identifying information of the victim and victim's family are not released to the public, including by the defendant.

(C) Pursuant to Section 16-3-1240, it is unlawful, except for purposes directly connected with the administration of the victim compensation fund, for any person to solicit, disclose, receive, or make use of or authorize, knowingly permit, participate in or acquiesce in the use of any list, or names of, or information concerning persons applying for or receiving awards without the written consent of the applicant or recipient. The records, papers, files, and communications of the board, its panel and the director and his staff must be regarded as confidential information and privileged and not subject to disclosure under the Freedom of Information Act as contained in Chapter 4, Title 30.

HISTORY: 2012 Act No. 258, Section 1, eff December 15, 2012.
Code Commissioner's Note

Pursuant to 2017 Act No. 96, Section 14, the reference to “State Crime Victim’s Compensation Fund” in (A) was changed to “South Carolina Victim Compensation Fund”, and the reference to “victim’s compensation fund” in (C) was changed to “victim compensation fund”.

SECTION 16-3-2080. Unlawful disclosure; trespassing notice; unlawful entrance or presence on grounds of domestic violence or trafficking shelter; exceptions; penalties.

(A) For purposes of this section:

(1) “Domestic violence shelter” means a facility whose purpose is to serve as a shelter to receive and house persons who are victims of criminal domestic violence and that provides services as a shelter.

(2) “Trafficking shelter” means a confidential location which provides emergency housing for victims of trafficking in persons.

(3) “Grounds” means the real property of the parcel of land upon which a domestic violence or trafficking shelter or a domestic violence or trafficking shelter’s administrative offices are located, whether fenced or unfenced.

(B) A person who maliciously or with criminal negligence publishes, disseminates, or otherwise discloses the location of a trafficking victim, a trafficking shelter, a domestic violence shelter, or another place designated as a trafficking shelter or domestic violence shelter, without the authorization of that trafficking victim, trafficking shelter, or domestic violence shelter, is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than three years.

(C) It is unlawful for a person who has been charged with or convicted of a violation of Section 16-3-2020 to enter or remain upon the grounds or structure of a domestic violence or trafficking shelter in which the victim resides or the domestic violence shelter’s administrative offices or the trafficking shelter’s administrative offices.

(D) The domestic violence shelter and trafficking shelter must post signs at conspicuous places on the grounds of the domestic violence shelter, trafficking shelter, the domestic violence shelter’s administrative offices, and the trafficking shelter’s administrative offices which, at a minimum, must read substantially as follows: “NO TRESPASSING—VIOLATORS WILL BE SUBJECT TO CRIMINAL PENALTIES”.

(E) This section does not apply if the person has legitimate business or any authorization, license, or invitation to enter or remain upon the grounds or structure of the domestic violence or trafficking shelter or the domestic violence or trafficking shelter’s administrative offices.

(F) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not more than three thousand dollars or imprisoned for not more than three years, or both. If the person is in possession of a dangerous weapon

at the time of the violation, the person is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both.

HISTORY: 2012 Act No. 258, Section 1, eff December 15, 2012.

SECTION 16-3-2090. Forfeiture.

(A)(1) The following are subject to forfeiture:

- (a) all monies used, or intended for use, in violation of Section 16-3-2020;
- (b) all property constituting the proceeds obtained directly or indirectly, for a violation of Section 16-3-2020;
- (c) all property derived from the proceeds obtained, directly or indirectly, from any sale or exchange for pecuniary gain from a violation of Section 16-3-2020;
- (d) all property used or intended for use, in any manner or part, to commit or facilitate the commission of a violation for pecuniary gain of Section 16-3-2020;
- (e) all books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or which have been positioned for use, in violation of Section 16-3-2020;
- (f) all conveyances including, but not limited to, trailers, aircraft, motor vehicles, and watergoing vessels, which are used or intended for use unlawfully to conceal or transport or facilitate a violation of Section 16-3-2020. No motor vehicle may be forfeited to the State under this item unless it is used, intended for use, or in any manner facilitates a violation of Section 16-3-2020;
- (g) all property including, but not limited to, monies, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for any kind of services under Section 16-3-2020, and all proceeds including, but not limited to, monies, and real and personal property traceable to any exchange under Section 16-3-2020; and
- (h) overseas assets of persons convicted of trafficking in persons also are subject to forfeiture to the extent they can be retrieved by the government.

(2) Any property subject to forfeiture may be seized by the investigating agency having authority upon warrant issued by any court having jurisdiction over the property. Seizure without process may be made if the:

- (a) seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;
- (b) property subject to seizure has been the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture proceeding based upon Section 16-3-2020;
- (c) the investigating agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the investigating agency has probable cause to believe that the property was used or is intended to be used in violation of Section 16-3-2020.

(3) In the event of seizure, proceedings under this section regarding forfeiture and disposition must be instituted within a reasonable time.

(4) Any property taken or detained under this section is not subject to replevin but is considered to be in the custody of the investigating agency making the seizure subject only to the orders of the court having jurisdiction over the forfeiture proceedings. Property is forfeited and transferred to the government at the moment of illegal use. Seizure and forfeiture proceedings confirm the transfer.

(5) For the purposes of this section, whenever the seizure of property subject to seizure is accomplished as a result of a joint effort by more than one law enforcement agency, the law enforcement agency initiating the investigation is considered to be the agency making the seizure.

(6) Law enforcement agencies seizing property pursuant to this section shall take reasonable steps to maintain the property. Equipment and conveyances seized must be removed to an appropriate place for storage. Monies seized must be deposited in an interest bearing account pending final disposition by the court unless the seizing agency determines the monies to be of an evidential nature and provides for security in another manner.

(7) When property and monies of any value as defined in this article or anything else of any value is seized, the law enforcement agency making the seizure, within ten days or a reasonable period of time after the seizure, shall submit a report to the appropriate prosecution agency.

(a) The report must provide the following information with respect to the property seized:

- (i) description;
- (ii) circumstances of seizure;
- (iii) present custodian and where the property is being stored or its location;
- (iv) name of owner;
- (v) name of lienholder; and
- (vi) seizing agency.

(b) If the property is a conveyance, the report shall include the:

- (i) make, model, serial number, and year of the conveyance;
- (ii) person in whose name the conveyance is registered; and
- (iii) name of any lienholders.

(c) In addition to the report, the law enforcement agency shall prepare for dissemination to the public upon request a report providing the following information:

- (i) a description of the quantity and nature of the property and money seized;
- (ii) the seizing agency;

(iii) the make, model, and year of a conveyance; and
(iv) the law enforcement agency responsible for the property or conveyance seized.

(d) Property or conveyances seized by a law enforcement agency or department may not be used by officers for personal purposes.

(B)(1) Forfeiture of property must be accomplished by petition of the Attorney General or his designee or the circuit solicitor or his designee to the court of common pleas for the jurisdiction where the items were seized. The petition must be submitted to the court within a reasonable time period following seizure and shall provide the facts upon which the seizure was made. The petition shall describe the property and include the names of all owners of record and lienholders of record. The petition shall identify any other persons known to the petitioner to have interests in the property. Petitions for the forfeiture of conveyances also shall include the make, model, and year of the conveyance, the person in whose name the conveyance is registered, and the person who holds the title to the conveyance. A copy of the petition must be sent to each law enforcement agency which has notified the petitioner of its involvement in effecting the seizure. Notice of hearing or rule to show cause must be directed to all persons with interests in the property listed in the petition, including law enforcement agencies which have notified the petitioner of their involvement in effecting the seizure. Owners of record and lienholders of record may be served by certified mail, to the last known address as appears in the records of the governmental agency which records the title or lien.

(2) The judge shall determine whether the property is subject to forfeiture and order the forfeiture confirmed. The Attorney General or his designee or the circuit solicitor or his designee has the burden of proof to establish by a preponderance of the evidence that the property is subject to forfeiture. If the judge finds a forfeiture, he shall then determine the lienholder's interest as provided in this article. The judge shall determine whether any property must be returned to a law enforcement agency pursuant to this section.

(3) If there is a dispute as to the division of the proceeds of forfeited property among participating law enforcement agencies, this issue must be determined by the judge. The proceeds from a sale of property, conveyances, and equipment must be disposed of pursuant to this section.

(4) All property, conveyances, and equipment which will not be reduced to proceeds may be transferred to the law enforcement agency or agencies or to the prosecution agency. Upon agreement of the law enforcement agency or agencies and the prosecution agency, conveyances and equipment may be transferred to any other appropriate agency. Property transferred may not be used to supplant operating funds within the current or future budgets. If the property seized and forfeited is an aircraft or watercraft and is transferred to a state law enforcement agency or other state

agency pursuant to the provisions of this subsection, its use and retainage by that agency is at the discretion and approval of the Department of Administration.

(5) If a defendant or his attorney sends written notice to the petitioner or the seizing agency of his interest in the subject property, service may be made by mailing a copy of the petition to the address provided, and service may not be made by publication. In addition, service by publication may not be used for a person incarcerated in a Department of Corrections facility, a county detention facility, or other facility where inmates are housed for the county where the seizing agency is located. The seizing agency shall check the appropriate institutions after receiving an affidavit of nonservice before attempting service by publication.

(6) Any forfeiture may be effected by consent order approved by the court without filing or serving pleadings or notices provided that all owners and other persons with interests in the property, including participating law enforcement agencies, entitled to notice under this section, except lienholders and agencies, consent to the forfeiture. Disposition of the property may be accomplished by consent of the petitioner and those agencies involved. Persons entitled to notice under this section may consent to some issues and have the judge determine the remaining issues.

(7) Disposition of forfeited property under this section must be accomplished as follows:

(a) Property forfeited under this subsection shall first be applied to payment to the victim. The return of the victim to his home country or other absence of the victim from the jurisdiction shall not prevent the victim from receiving compensation.

(b) The victim and the South Carolina Victim Compensation Fund shall each receive one-fourth, and law enforcement shall receive one-half of the value of the forfeited property.

(c) If no victim is named, or reasonable attempts to locate a named victim for forfeiture and forfeiture fails, then all funds shall revert to the South Carolina Victim Compensation Fund and law enforcement to be divided equally.

(d) If federal law enforcement becomes involved in the investigation, they shall equitably split the share local law enforcement receives under this section, if they request or pursue any of the forfeiture. The equitable split must be pursuant to 21 U.S.C. Section 881(e)(1)(A) and (e)(3), 18 U.S.C. Section 981(e)(2), and 19 U.S.C. Section 1616a.

(C)(1) An innocent owner, manager, or owner of a licensed rental agency or any common carrier or carrier of goods for hire may apply to the court of common pleas for the return of any item seized. Notice of hearing or rule to show cause accompanied by copy of the application must be directed to all persons and agencies

entitled to notice. If the judge denies the application, the hearing may proceed as a forfeiture hearing.

(2) The court may return any seized item to the owner if the owner demonstrates to the court by a preponderance of the evidence:

(a) in the case of an innocent owner, that the person or entity was not a consenting party to, or privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture; or

(b) in the case of a manager or an owner of a licensed rental agency, a common carrier, or a carrier of goods for hire, that any agent, servant, or employee of the rental agency or of the common carrier or carrier of goods for hire was not a party to, or privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture.

If the licensed rental agency demonstrates to the court that it has rented the seized property in the ordinary course of its business and that the tenant or tenants were not related within the third degree of kinship to the manager or owner, or any agents, servants, or employees of the rental agency, then it is presumed that the licensed rental agency was not a party to, or privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture.

(3) The lien of an innocent person or other legal entity, recorded in public records, shall continue in force upon transfer of title of any forfeited item, and any transfer of title is subject to the lien, if the lienholder demonstrates to the court by a preponderance of the evidence that he was not a consenting party to, or privy to, or did not have knowledge of, the involvement of the property which made it subject to seizure and forfeiture.

(D) A person who uses property or a conveyance in a manner which would make the property or conveyance subject to forfeiture except for innocent owners, rental agencies, lienholders, and the like as provided for in this section, is guilty of a misdemeanor and, upon conviction, must be imprisoned for not less than thirty days nor more than one year, fined not more than five thousand dollars, or both. The penalties prescribed in this section are cumulative and must be construed to be in addition to any other penalty prescribed by another provision of this article.

HISTORY: 2012 Act No. 258, Section 1, eff December 15, 2012.

Code Commissioner's Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015. Pursuant to 2017 Act No. 96, Section 14, the references to "Victim's Compensation Fund" in (B)(7)(b) and (B)(7)(c) were changed to "Victim Compensation Fund".

SECTION 16-3-2100. Posting of information regarding National Human Trafficking Resource Center Hotline in certain establishments; fines.

(A) The following establishments are required to post the information contained in subsection (B) regarding the National Human Trafficking Resource Center Hotline:

(1) an establishment which has been declared a nuisance for prostitution pursuant to Chapter 43, Title 15;

(2) an adult business, including a nightclub, bar, restaurant, or another similar establishment in which a person appears in a state of sexually explicit nudity, as defined in Section 16-15-375, or seminudity, as defined in Section 57-25-120;

(3) businesses and establishments that offer massage or bodywork services by any person who is not licensed under Chapter 30, Title 40;

(4) emergency rooms within any hospital;

(5) urgent care centers;

(6) any hotel, motel, room, or accommodation furnished to transients for which fees are charged in this State;

(7) all agricultural labor contractors and agricultural labor transporters as defined pursuant to Section 41-27-120; and

(8) all airports, train stations, bus stations, rest areas, and truck stops.

(B) The information must be posted in each public restroom for the business or establishment and a prominent location conspicuous to the public at the entrance of the establishment where posters and notices are customarily posted on a poster no smaller than eight and one-half by eleven inches in size and must state in both English and Spanish on the same poster information relevant to the hotline, including the following or language substantially similar:

“If you or someone you know is being forced to engage in any activity and cannot leave, whether it is commercial sex, housework, farm work, or any other activity, call the National Human Trafficking Resource Center Hotline at 1-888-373-7888 to access help and services. Victims of human trafficking are protected under federal law and the laws of South Carolina. The hotline is:

(1) available twenty-four hours a day, seven days a week;

(2) operated by a nonprofit, nongovernmental organization;

(3) anonymous and confidential;

(4) accessible in one hundred seventy languages;

(5) able to provide help, referral to services, training, and general information.”

(C) The Department of Revenue, the State Law Enforcement Division, and the Department of Transportation, as appropriate depending on the regulatory control or authority the respective department exercises over the establishment, are directed to provide each establishment with the notice required to be posted by this section. The departments shall post on the departments’ websites a sample of the notice required

to be posted which must be accessible for download. The business must download and post the notice in not less than sixteen point font.

(D) The Department of Revenue, the State Law Enforcement Division, or the Department of Transportation, as appropriate, is authorized to issue a written warning to an establishment which fails to post the required notice provided in this section and may assess a fine of not more than fifty dollars for each subsequent violation. Each day that the establishment remains in violation of this section is considered a separate and distinct violation and the establishment may be fined accordingly.

(E) The South Carolina Human Trafficking Task Force, Department of Revenue, and Department of Transportation are directed to collaborate on the design of the required notice to be posted and may partner to develop materials, and shall have the design finalized no later than one hundred twenty days after the effective date of this section. Establishments required to post the notice must be in compliance no later than six months after the effective date of this action.

(F) This section does not apply to establishments providing entertainment in theatres, concert halls, art centers, museums, or similar establishments that are devoted primarily to the arts or theatrical performances when the performances presented are expressing matters of serious literary, artistic, scientific, or political value.

HISTORY: 2015 Act No. 7 (S.196), Section 4, eff April 2, 2015.



South Carolina Bar

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Children's Law Committee

Saturday, January 19

The State of Education and
School Safety Concerns

Kimaka Nichols-Graham

Dangers and Disruption: Critical Issues Facing S. C. Youth

The State of Education and School Safety Concerns



South Carolina

- Demographics
- Performance Measures
- Drugs
- Aggression
- Weapons
- Mass Shootings

South Carolina Students Outperform Nation on SAT and Advanced Placement Examinations

Average SAT Scores (Public Schools)

SAT	SC	US
Total Average Score	1064	1049
Reading and Writing	543	529
Math	520	520

<https://ed.sc.gov/newsroom/news-releases/south-carolina-students-outperform-nation-on-sat-and-advanced-placement-examinations/>

Percentage of AP Exams with Scores of 3+ (Public Schools)

AP Exam	SC	US
English Language and Composition	59%	55%
United States History	57%	50%
Human Geography	57%	54%
English Literature and Composition	49%	44%
Psychology	66%	65%
Calculus AB	56%	56%
Biology	64%	59%
United States Government and Politics	60%	52%
Statistics	54%	60%
European History	52%	56%

<https://ed.sc.gov/newsroom/news-releases/south-carolina-students-outperform-nation-on-sat-and-advanced-placement-examinations/>

US News Report Rankings

- In 2017 South Carolina Ranked last (50) in education.
- In 2018 South Carolina Ranked 48 in education.
 - About 50 % of the education ranking in US News Report is **higher education** data. (high tuition rates, student debt, extremely low 2 year college graduation rate)

https://www.postandcourier.com/news/south-carolina-ranks-last-in-education-in-u-s-news/article_5a7d26c8-fe9d-11e6-9644-2bab813ed6f7.html?utm_medium=social&utm_source=email&utm_campaign=user-share

Child Suicide

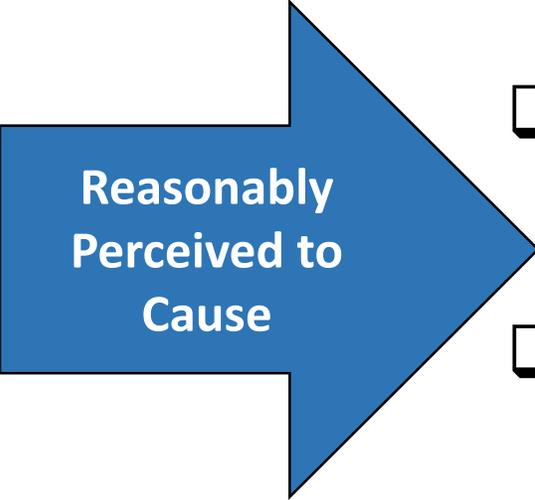
S.C. Child Suicide (2016)

23

- White Male 12
- Black Male ≤ 5
- White Female 6
- Black Female ≤ 5

2nd leading cause of deaths for children aged 10 to 17 years.

Harassment, Intimidation, Bullying

- A Gesture
 - An Electronic Communication
 - A Written Statement
 - A Verbal Statement
 - A Physical Act
 - A Sexual Act
- 
- Reasonably Perceived to Cause
- Physical harm to a student
 - Emotional harm to a student
 - Damage to a student's property (or)
 - Places a student in reasonable fear of all of the above
- OR**
- Insulting or Demeaning that causes a substantial disruption or substantial interference with the orderly operation of a school (Includes **Off Campus Conduct**)

Who has a duty to report?

- ALL school employees
- ALL students
- ALL volunteers

... SHALL report to the appropriate school official.

**When?
Witness It**

(or)

**Receive Reliable
Information**

SC State Data (Fiscal Year 2016-2017)

- 13,591 cases referred to Department of Juvenile Justice
- 10% were for violent offenses
- 3,320 juveniles were detained
- 1,060 juveniles were committed
- Ages 14-15 48%
- 55% Black, 40% White, 3% Hispanic, 2%Other

What Are Persistently Dangerous Schools?

- Unsafe School Choice Options
 - Type or number of offenses
 - Victim of certain offenses
- Transportation
- Temporary or Permanent
- Choice Implies Another Option
- Quality Education
- Student Needs (other things to consider)

Factors To Consider

- Mental Health Resources/Training
- Special Education / ADA / 504
- School Resource Officers
- Facility Concerns
- School Safety Task Force
- Armed Shooter Drills

School Shootings

DISCUSSION



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Private Custody Concerns
and Parental Alienation

Dr. Jenny Savitz-Smith

Dr. Marc J. Harari

Private Custody Concerns and Parental Alienation: Treating Alienation Dynamics

January 19, 2019

Jennifer Savitz-Smith, Ph.D.

Parental Alienation is NOT

- Present when the child has justified reasons for not wanting to be with the child
- Present when there is physical, emotional, or sexual abuse- often in these cases there is insecure attachment and not complete cut-off and all or none thinking.
- Expected reaction to divorce/separation/new partner
- When a parent bad mouths another parent and the attachment is not disrupted

Sullivan and Kelly (2001)

1. Timely attempt at interaction
(continuity of care)
2. Limit, manage and avoid conflict
3. Begin visits in a therapeutic session
4. Make orders clear- consequences for not complying and clarify confidentiality and who therapist needs to communicate with

Systemic Treatment

Templer et al (2016)

- Parental alienation requires **legal** and therapeutic management to enhance family functioning
- Awarding primary parental responsibility to the targeted parent and providing specialized family therapy is effective in ameliorating parental alienation
 - Much research says only in SEVERE cases
- A specialized form of systemic family therapy for parental alienation can improve family functioning and prevent further parental alienation. (Family systems treatment)

Attachment Based Theory of PA Childress (2013)

- Theory that PAS by Gardner is not well defined allowing it to be controversial, however, parental alienation fits within current accepted literature and nomenclature. (Borderline-Narcissitic, Attachment, Enmeshment)
- Attachment-based parental alienation is essentially a role reversal of a normal, healthy parent-child relationship. Instead of serving as a “regulatory other,” which involves providing stability and meeting the child’s emotional and psychological needs, alienating parents use their children to meet their own needs, violating boundaries and seriously compromising and damaging the child’s healthy development.
- Children are programmed genetically to bond with parents. Attachment is primary motivation throughout our lifespan

Attachment Based Treatment

- **Referral Question:** Which parent is the source of pathogenic parenting creating the child's attachment pathology (rejection of a parent), and what are the treatment implications?
- Children do not reject parents. (neurobiology)
- Authentic conflict is normal to attachment.
- It hurts to be with the targeted parent because it is painful. Alienating parent takes away pain when they reinforce that they are "protecting"
- Therapy goal is to reestablish positive response to connecting to and attaching to both parents
- Therapist must understand the intricacies of attachment theory, trauma and treatment. Attachment mediates personality and relationships throughout life.
- Delusional process reenacted in alienating parent

Treatment (continued)

- Child adopts victimized stance (alienated parent is the predator, insecure attachment to the alienating parent, coalition us vs. them)
- The problem is not one of custody it is one of child protection (child has a pathenogenic parent)
- Grief response of the child
 - Grief response of divorce has been distorted toward the targeted parent.
- Recognize that this is a specialized population
- Attachment theory, personality disorders, and family systems
- I am the best parent. I am protecting my child. Has to be reversed.

Case Examples

What has worked, has not worked and when I have had to go back to the drawing board.

-Emma E. (changed custody)

-Andrew B. (extended family problematic)

-Scott S. (personality characteristics maintained problem through adolescence)

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PRIVATE CUSTODY CONCERNS AND PARENTAL ALIENATION:

ASSESSING ALIENATION DYNAMICS

JANUARY 19, 2019

A. Shift of Emphasis from “Parental Alienation” to the “Alienated Child.” Kelly and Johnston’s (2001) Child Alienation Model

1. Systemic Focus - Addresses shift from solely the parent’s behavior to complex and dynamic factors.
2. Definition of Alienated Child: “One who expresses, freely and persistently, unreasonable negative feelings and beliefs (such as anger, hatred, rejection, and/or fear) toward a parent that are significantly disproportionate to the child’s actual experience with that parent (p. 251).
3. A Continuum of Child-Parent Relationships after Separation and Divorce:
There are five points that range from positive to negative:
 - i. Positive Relationships to Both Parents – Healthiest end of the continuum. Children value both parents and want to spend significant (and often equal) time with each of them.
 - ii. Affinity with One Parent – Child feels closer to one parent than the other, although they still want substantial contact and have love for both parents.
 - iii. Allied Children – Strong alliance with one parent. These children often wanted limited contact with non-preferred parent, but not full rejection or a desire to terminate all contact.
 - iv. Estranged Children – Fact-based Response - In which child has little or no contact from one of their parents as a result of a consequence such as violence, mistreatment, and poor parenting practices.
 - v. The Alienated Child – Pathological Response - Extreme end of the continuum in which child desires no contact with target parent. In these cases, the child grossly distorts history and exaggerates resulting in this pathological response.

B. Assessment of Alienation Dynamics:

1. Forensic Psychological Investigation – Complex method of gathering information from multiple sources to rule out or in alienation dynamics.
 - i. Potential Hypotheses: Alienation vs. Estrangement; Alienation vs. Alignment.
 - ii. Forensic Interviews – Separate interviews with each of the participants to include both sets of parents and the children.
 - iii. Parent-Child Behavioral Interactions – Observations of the parent and child together.
 - iv. Relevant Collateral Sources – Information from third parties that have a knowledge of the family history.
 - v. Psychological Testing?
 1. Pros and Cons

C. Sample Excerpts from Alienation Assessments

1. Portions of reports that address these dynamics.

D. References

- Gould, J.W. and Martindale, D.A (2007). *The art and science of child custody evaluations*. New York: The Guildford Press.
- Kelly, J.B. and Johnson, J.R. (2001). The alienated Child. A reformulation of Parent Alienation Syndrome. *Family Court Review*, 39(3), 249-266.
- Stahl, P.M. (2011). *Conducting child custody evaluations: From basic to complex issues*. California: Sage Publications.
- Warshak, R. (2015). Parental Alienation: Overview, Management, Intervention, and Practice Tips. *Journal of American Academy of Matrimonial Lawyers*, 28, 181-248.
- Warshak, R.A. (2015). Ten Parental Alienation Fallacies that Compromise Decisions in the Court and in Therapy. *Professional Psychology: Research and Practice*, 46, 235-249.

SAMPLE REPORT EXCERPTS ADDRESSING ALIENATION DYNAMICS

OVERVIEW OF CONCEPTUAL MODEL

Children in family disputes can be at risk for many psychosocial problems, including alignment with one parent against the other. It is especially problematic when the alignment becomes so entrenched that the child becomes alienated and joins forces with one parent to completely reject and denigrate the other, once-loved parent.

A working model is introduced to conceptualize child alienation for the purposes of the present report. Gould and Martindale (2007) devoted an entire chapter in their highly regarded publication, *The Art and Science of Child Custody Evaluations*, to parental and child alienation. In this chapter titled, "Assessing Allegations of Child Alienation," Gould and Martindale reviewed the classic Parental Alienation Syndrome (PAS) by Richard Gardner (1992). Additionally, these authors provided many sources of criticism for PAS. Gould and Martindale subsequently cited an alternate method to assess alienation dynamics in conflicted families, the Child Alienation Model by Kelly and Johnston (2001).

In Kelly and Johnston's (2001) Child Alienation Model, the emphasis of alienation shifts from a sole focus on the parent, to the parent-child interaction. Based on the parent-child relationships, a five-point continuum is devised with regard to the relationship between the child and the parents after separation or divorce. The child having a positive relationship with each parent is on the positive end of the continuum while the alienated child is at the other end. Reviewing the five points on the continuum, *Positive Relationships to Both Parents* is proposed to be the healthiest alternative in which the child relates well and values each parent equally. *Affinity with One Parent* relates to children who still desire continuity with both parents. However, these children tend to have a minor preference for one of the parents over the other due to such factors as age, gender, interests, and sibling dynamics.

Allied Children exhibit a consistent preference of one parent over the other. These alliances often occur through the context of the problematic marital relationship. Allied children tend to admit that they still love the other parent. At this point on the continuum, they do not engage in fierce battles or cruel behaviors toward the less-preferred parent. However, these children tend to perceive their preferred parent as more vulnerable and requiring their attention due to the conflict between the other parent. Allied children are generally amenable to treatment intervention with the hope of the alliance with the aligned parent fading over time. At this point on the continuum, they are not yet alienated from the other parent.

Estranged Children do not have contact with one of their parents because of fact-based reasons. For example, parental anger, parental unpredictability, and parental impulsivity are factors that may affect a child's comfort and result in resistance to interacting. These

dynamics can also occur in cases of domestic violence, abuse, or neglect. These children also need to be distinguished from alienated children. As such, estrangement is typically viewed as a healthy response to an untenable situation.

The *Alienated Child* is at the final and most negative end of the continuum. These children do not wish to have any contact with the other parent. Alienated children tend to act-out in a highly negative manner if they spend time with the targeted parent. These children also overemphasize the positive attributes of the alienating parent while providing primarily negative statements on the part of the targeted parent. Finally, alienated children typically feel abandoned or rejected by the targeted parent. According to Stahl (2011), typical behaviors of alienated children include near or complete rejection of one parent in favor of the other, a fusion of thinking between the aligned parent and child, superficial allegations about the rejected parent that have little substance, inconsistent and contradictory statements and behaviors with the rejected parent, a strong tendency for the child to become overly involved in the adult issues with regard to the divorce, and a tendency for the child to offer vague reasons why they are rejecting the other parent. Another feature in alienation dynamics includes, “The children’s treatment of the rejected parent is disproportionate to those parents’ behavior and is inconsistent with the prior history of their affectionate and close relationships (Warshak, 2015, pg. 188). It is also common for alienated children to use the same phrases or expressions as the aligned parent. These children also sometimes act as spies for the aligned parent and keep secrets from the rejected parent. Moreover, alienated children often see the world in rigid ways and possess an all or nothing perspective. As a result, the aligned parent generally becomes solely good while the rejected parent is solely bad.

Continuing Kelly and Johnston’s review, alienated children primarily wish to discuss their viewpoints with authoritative figures (GAL, counselors, custody evaluators) to terminate the relationship with the rejected parent. Additionally, they tend to tell their stories in a manner that is similar to the preferred parent’s allegations. The preferred parent commonly believes that the children do not need the other parent in their lives, that the rejected parent tends to be physically dangerous, abusive, or neglectful, and that the rejected parent has never really loved or cared about the children. Qualities of rejected parents typically include a tendency to become passive in the face of conflict, a tendency to become highly offended by the lack of respect afforded them by the children, a rigid parenting style that lacks empathy (but does not rise to the level of emotional or physical abuse), and a history of critical and demanding behaviors during the marriage.

A common fallacy is that alienation is a healthy short-term coping mechanism for children in reaction to divorce. However, it is noted that alienation is rarely transient (Warshak, 2015) and associated with short- and long-term psychosocial problems, as the psychological processes involved in rejecting a parent often affect other relationships. These include all-or-nothing categorization of others, contempt for those who disagree with one’s perspective, feelings of entitlement, avoidance of and poor skills to deal with conflict, and impaired critical thinking skills. In the present, these tendencies can increase

anxiety, defiance, and aggression. Even when directed solely towards the rejected parent, these emotional and behavioral disturbances are considered significant (Warshak, 2015).

In the long term, alienated children may develop maladaptive emotional regulation skills, poor self-esteem, low-quality friendships, intimate relationship problems, and higher levels of distress. These can subsequently increase the risk for depression or behavioral disorders. Warshak further notes that alienated children often disregard their own need for developmentally-appropriate autonomy to meet the favored parent's needs. In time, they may feel guilty about the way they treated the rejected parent and regret missing out on the relationship with the rejected parent. Therefore, alienated children are at risk for psychological problems, over and above those accounted for by exposure to post-divorce parental conflict alone. Psycholegal Formulation # 3 applies Kelly and Johnston's (2001) Child Alienation Model to the present case.

Is there supportive evidence that the minor child is alienated from either parent?

Some Examples: Positive Relations to Both Parents, Allied Child, and the Alienated Child:

Positive Relations to Both Parents

The accumulation of acquired data suggests that Scott and Bella appear to best fall into the category of having a *Positive Relationship to Both Parents*. Overall, Scott and Bella reportedly have both positive and negative experiences with both parents, as is typical for any parent-child relationship. Neither child expressed or displayed a preference for one parent over the other. Moreover, Scott and Bella did not present as children who have been subjected to deliberate alienation tactics. Specifically, in my presence, they displayed consistent behavior towards both parents and indicated limited knowledge of the parents' ongoing conflict. Moreover, both children expressed a desire to see their mother despite the limited time they have spent in their mother's home recently.

Allied Child

As described earlier, the present evaluation utilizes Kelly and Johnston's (2001) model with respect to addressing this psychological formulation pertaining to child alienation. The information obtained during the present evaluation suggests that Madeline is best characterized as *Allied* with Nick. Overall, Madeline exhibited a strong preference for her father while expressing ambivalence with respect to her relationship with her mother, Jessica. Specifically, this child expressed and exhibited love for her mother, while also noting some trepidation about spending time in her home.

Given these present dynamics, Madeline appears to be at a high risk of being alienated from her mother without proper intervention. At present, the most problematic factor is Nick's initial stance that it is Madeline's choice whether to visit her mother or not.

Coupled with her pattern of restrictive gatekeeping and apparently exposing Madeline to his negativity towards Jessica in the past, this position increases the likelihood that Madeline could begin to exhibit stronger criticism of her mother and isolate herself from her in the future. On a positive note, Nick presented as more supportive of the mother-daughter relationship during his second interview. However, I maintain concern that Nick has directly communicated a different message to Madeline in the recent past and could resume so if her concerns about Jessica were reactivated.

The Alienated Child

The accumulation of acquired data suggests that Gerald and Monica clearly meet the classification of Alienated Children. While the acquired information from both parental sides is highly contradictory, the accumulation of data suggests that several of the systemic factors outlined above exist in the present case. Tim and Jennifer both described marital tension for several years prior to their separation. Moreover, it is evident that Jennifer left the marital home and that the ongoing conflict involves a highly contentious dialogue between Jennifer and Tim and his parents. With regards to the pattern of behaviors of each party in Kelly and Johnson's review, it is apparent that Tim (the preferred parent) has portrayed Jennifer (the rejected parent) as a mother who was abusive and neglectful, never really loved the children, and is no longer needed by the children. Like a typical rejected parent, Jennifer has become passive in her interactions with Gerald and Monica, though she is clearly offended by their disrespectful behavior towards her. Moreover, the acquired data suggests that Jennifer was previously a strict and demanding wife and mother. Therefore, both of these parental parties fit the relational dynamics outlined by Kelly and Johnston.

Additionally, these three children have clearly rejected their mother, are highly resistant to spending time with Jennifer, and have verbalized their concerns with the professionals involved in this case. In contrast, the children have consistently spoken highly and uncritically of their father, while also expressing a perception of events that mirrors Tim's. For example, both Justin and Nora stated that their mother's behavior was quite different "behind closed doors." It is noted that Tim made similar statements pertaining to Jennifer. Not only are the children's perspectives aligned with their father's, they also appear synchronized with one another. Gerald and Monica made similar allegations against Jennifer and, at times, provided identical examples of incidents of abuse to this examiner. Furthermore, Monica tended to "recall" incidents of abuse suffered by her older brother (some of which likely occurred before she was born), rather than describing violence towards herself. Therefore, it was evident that she had adopted a narrative similar to that of Justin and David and her fears were not based on any direct experiences of abuse. Overall, these children each were reluctant to admit they ever had any positive experiences within their family unit or with their mother before the separation, which seems unrealistic and implausible based on the accumulated information. Therefore, regardless of the reason, it is evident that these children are alienated from their mother.



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Legislative Update

Representative Peter M. McCoy, Jr.

No Materials Available