
 **NIWAP** 

Custody, Custody Evaluation and Immigrant Victims

Multi-State Training
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1

Faculty

		
Judge Ramona Gonzalez	Judge Rosemary Collins (Retired)	Sujata Warriar

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Custody Evaluation Guidelines

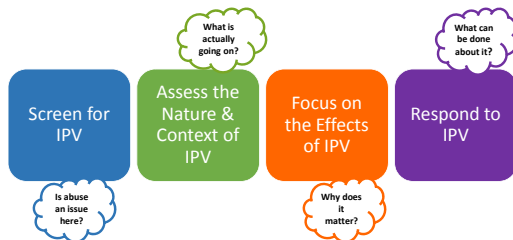
Background on the Guidelines


- Supplement to the Model Standards of Practice for Child Custody Evaluation
- Aspirational goals for IPV-related custody evaluations
- Multidisciplinary, cooperative effort
- Adopted by the AFCC Board of Directors in April 2016
- Endorsed by the NCJFCJ Board of Directors in October 2016

Guiding Principles


- **Prioritize the safety and wellbeing of children and parents**
 - During the process and in our recommendations
- **Ensure an informed, fair, and accountable process**
 - Lay the groundwork including limits of confidentiality, outcome of evaluation, and nature of process
- **Focus on the individual family**
 - From screening to, where appropriate, investigating, analyzing, synthesizing information relevant to *this family*

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- **Guideline 2: Universal and Ongoing Screening**
 - A child custody evaluator follows an intimate partner violence screening protocol in every case, including those where no allegations or judicial findings of intimate partner violence have been made.
- **Commentary:**
 - No assumptions that IPV is or is not present
 - Screen everyone who has significant contact with the child
 - Screening is different from assessment
 - If IPV is not detected, no need to go further
 - Screening is ongoing, though, so continue to do it throughout case


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- **Guideline 8: Information Collection – Intimate Partner Violence**
 - To obtain a full understanding of the events and circumstances, an evaluator strives to investigate and collect information concerning: (a) the nature of aggression; (b) the frequency, severity, and context of intimate partner violence; (c) whether one or both parties are responsible for the aggression; and (d) various risk factors for lethality, future violence, stalking, and abduction.


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Risk Factors: Commentary to Guidelines 1 and 8:


- High levels of (or increases in) violence and/or injury
 - Attempted strangulation
 - Forced sex or assault during pregnancy
- Threats, willingness, and means for lethal violence
 - Threats to kill; fear or perception of danger by the targeted parent
 - Threatened or attempted suicide – or threats to harm children
- Excessive control, jealousy, or obsession
 - Control of daily activities
 - Isolation
 - Stalking, obsessive monitoring, or constant jealousy
- Unwillingness to accept responsibility for abuse
 - Avoidance of arrest for DV
 - Violation of protection orders
- Psychological and/or substance problems

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- **Guideline 7: Information Collection Challenges**
 - A child custody evaluator employs a rigorous multi-method and multi-source protocol that anticipates challenges associated with investigating the effects of intimate partner violence on children, parenting, and co-parenting.
- **Commentary – challenges include:**
 - Minimizing and blaming
 - Delayed disclosure
 - Traumatic responses
 - Lack of documentation
 - Absence of past or recent physical violence
 - Unexpected reactions in children
 - Protective parenting can be mistaken or misunderstood
 - Limits of psychological testing

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- **Guideline 9: Information Collection – The Child**
 - A child custody evaluator collects information concerning: (a) the child’s experience(s) of past and current intimate partner violence, if any; and (b) if the child has had such experience(s), the possible impact of intimate partner violence on the child’s health, safety, and wellbeing.
- **Commentary – Two areas of concern:**
 - The child’s exposure to IPV, if any
 - The child’s reactions to IPV, if any

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- **Guideline 10: Information Collection – Parenting & Co-Parenting**
 - A child custody evaluator collects information related to the potential impact of intimate partner violence on each parent’s capacity to parent and/or co-parent.
- **Commentary:**
 - Look at both parents’ capacity to parent
 - Common problematic parenting behaviors among abusers
 - Common parenting challenges for targeted parents

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- **Guideline 12: Synthesis of Information**
 - A child custody evaluator endeavors to explicitly link intimate partner violence-related information with parenting recommendations concerning decision making and child access.

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Do this in a way that is:

- Safe**
 - Guideline 1: Safety First
- Informed**
 - Guideline 3: Knowledge and Skills
- Systematic**
 - Guideline 4: Systematic Approach
- Unbiased**
 - Guideline 5: Mitigation of Bias

Flight Risk of Foreign Born Parents with Children

- The Ninth Circuit found that “there is no evidence that undocumented status correlates closely with unmanageable flight risk.”¹

Assessing Risk Factors for International Child Abduction

- Consider whether the other parent:²
 - Has previously abducted or attempted to abduct the child;
 - Has threatened to abduct the child;
 - Has engaged in activities that may indicate a planned abduction including abandoning employment; terminating a lease; or closing bank accounts;
 - Has engaged in domestic violence, stalking, or child abuse;
 - Has refused to follow a child-custody determination; or
 - Has strong family, financial or emotional ties to another country.

1. Lopez-Velazquez v. Jones, 770 F.3d 772, 786 (9th Cir. 2014).
2. For complete list of risk factors, See Uniform Law Commission, *Uniform Child Abduction Prevention Act*, at 10, (2006).

Knowledge of ICE/CBP Sensitive Locations Helps Custody Exchange

- Enforcement actions by ICE and CBP are not to occur or be focused at sensitive locations:
 - Schools
 - Medical treatment and health care facilities
 - Places of worship
 - Religious or civil ceremonies: e.g. weddings, funerals
- Very limited exceptions:
 - Exigent circumstances
 - Prior approval by a designated supervisor
 - Other law enforcement action led ICE/CBP there

16

Flash Drive Materials

- Family > Custody > Custody Evaluation Materials
 - NCJFCJ
 - Association of Family and Conciliation Courts
- Family > Custody >
 - Bench cards: Custody and Enforcement Priorities
 - Parental Flight Risk Tool
 - Materials on Trauma and Resilience of Immigrant Children
 - Unaccompanied children vulnerable but not broken
 - Effects of trauma on minor's
 - brain development
 - Chapters and journal articles ...



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17

Technical Assistance and Materials

- Power Point presentations and materials for this conference at
 - <http://niwaplibrary.wcl.american.edu/jtn-nola-2019/>
- Judicial Training Manual at
 - <http://niwaplibrary.wcl.american.edu/sji-materials/>
 - **NIWAP Technical Assistance:**
 - Call (202) 274-4457
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18
