

DEMONSTRATION SITE PROFILE

The Bay Area, California Santa Clara, Santa Cruz, & San Mateo Counties

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The California Demonstration Site Initiative is a partnership between Santa Clara, Santa Cruz, and San Mateo Counties in the South Bay Area. Three visitation centers are funded to enhance their supervised visitation and safe exchange programs.

GOALS

- Increase safe access for families with issues of domestic violence and child abuse;
- Expand the availability of services to indigent parents who are underserved; and,
- Train with professionals in the Bay Area regarding domestic violence and safe access.

OBJECTIVES

- Develop and implement safety policies and procedures of all services;
- Increase availability of services to indigent families;
- Implement a comprehensive training module for all of the agencies and make this training available to other providers in the Bay Area;
- Develop and implement security procedures for high risk families;
- Provide therapeutic and directed supervision;
- Increase bilingual staff; and,
- Collaborate with community groups to provide education programs on the needs of high-conflict families.

COLLABORATING PARTNERS

SANTA CLARA COUNTY

Visitation Center:

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LEGAL CONSIDERATIONS¹

COURT RULES

RULE 5.210: Court-connected child custody mediation

Sets forth the standards of practice and administration for court-connected child custody mediation services that are consistent with the requirements of FAM. CODE § 3161.

- Subsection (d) describes the responsibility for mediation services and provides that the mediation program must use a detailed intake process that screens for, and informs the mediator about, any restraining orders or safety related issues affecting any party or child named in the proceeding.
- Subsection (e) describes the mediation process and requires all court-connected mediation processes to include ... (4) assistance to parties, without undue influence or personal bias, in developing a parenting plan that protects the health, safety, welfare, and best interest of the child and that optimizes the child's relationship with each party by including, as appropriate, provisions for supervised visitation in high-risk cases...
- Subsection (f) addresses training and continuing education requirements and mandates that each mediation supervisor and family court service program director attend at least 32 hours of additional training, which can be satisfied in part by the domestic violence training required under FAM. CODE § 1816.

RULE 5.125: Domestic violence protocol for Family Court Services

Sets forth the protocol for Family Court Services' (FCS) handling of domestic violence cases consistent with the requirement of FAM. CODE § 3170(b). Subsection (d) addresses the description and duties of FCS, including:

- Local protocols
- FCS duties relative to domestic violence cases, including offering appropriate services as available such as child custody evaluation and supervised visitation
- No negotiation of violence
- Domestic violence restraining orders
- Providing information
- Separate sessions
- Referrals
- Community resources

The court rule also identifies the policy and procedure for intake, screening (identification of domestic violence, procedures for identification, and context for screening), safety issues (developing a safety plan, safety procedures, confidential addresses), support persons, accessibility of services (language accessibility, facility design to minimize contact), and training and education.

STANDARDS OF JUDICIAL ADMINISTRATION, § 26.2: Uniform standards of practice for providers of supervised visitation (Appendix to California Rules of Court)

- Subsection (c) identifies the qualifications, experience, and training of the provider and states

¹ This information is provided as an overview of how the legal systems vary at each of the demonstration sites. It is highly recommended that the reader review the actual statutes, case laws, and court rules before relying on this information. Additionally, this list may not be all-inclusive, may contain dated information, and is intended for educational and research purposes only.

Safe Havens: Supervised Visitation and Safe Exchange Grant Program – Demonstration Initiative

that professional and therapeutic providers of supervised visitation should receive training on such topics as cultural sensitivity and issues related to substance abuse, child abuse, sexual abuse, and domestic violence.

- Subsection (d) regarding safety and security procedures states that professional and therapeutic providers should obtain, during the intake process, reports of any written record of allegations of domestic violence or abuse.

LOCAL COURT RULES

San Mateo Superior Court Rule 5.13: *Family court services*

This rule provides for separate mediation in contested custody and visitation cases involving a restraining order or allegations of domestic violence. The protected party may have a support person in the mediation session.

Santa Clara Superior Court Fam. Rule 2: *Custody and visitation*

This court rule addresses many issues related to custody and visitation, including contested cases. According to this rule, “only under extraordinary circumstances will the Court deny access of one parent to the child(ren) or change any child(ren)’s principal place of residence.” See Subsection C(1)(a). Subsection (b) provides for an emergency screening, the purpose of which is to provide the Court with recommendations regarding the interim custody and visitation schedule and related conditions. The rule also includes provisions addressing separate meetings with parties when domestic violence is alleged, and provisions for domestic violence training for court-appointed assessors and evaluators.

Santa Clara Superior Court Fam. Rule 8: *Default on uncontested judgment*

- Subsection C(1)(c) states that where the judgment is taken by default and there is no attached written agreement of the parties concerning custody and visitation, an attached factual declaration must be submitted with the judgment and must set forth several things, including: . . .
 - c. Where the party is seeking supervised visitation between the children and the defaulting party:
 - i. the reasons why such visitation should be supervised;
 - ii. when and where such supervised visitation is to take place;
 - iii. the person or agency who shall supervise;
 - iv. in the alternative to (ii) and (iii), a request that the matter be referred to Family Court Services for mediation.
- Subsection F(1)(a) requires the Family, Juvenile, and Probate Court to examine appropriate available databases for existing restraining or protective orders involving the same restrained and protected parties before issuing permanent CLETS Civil Restraining Order. Subsection F(1)(b) adds that any such order that permits contact between a defendant/restrained person and his or her children must contain specific language setting forth the time, day, place, and manner of transfer of the children, including the safe exchange of the children in accordance with Section 3100 of the Family Code. Such an order must not conflict with a criminal protective order; and the safety of all parties is to be the Court’s paramount concern.

Santa Clara Super Court Fam. Rule 10: Court communication regarding restraining orders

- Subsection A (1) addresses criminal court procedure and provides that when a criminal court issues a criminal protective order, the criminal court must inquire of the defendant/restrained person whether there are any children of the relationship between the defendant/restrained person and the victim/protected person, and whether there are any court orders for custody/visitation for those children. If there are children, the criminal court must consider whether peaceful contact with the victim/protected person should be allowed for the purpose of allowing defendant/restrained person to visit the children.
- Subsection B (1) provides that any court responsible for issuing custody or visitation orders involving minor children of a defendant/restrained person subject to a criminal protective order may modify the order under certain circumstances.

Santa Cruz Superior Court Rule 3.1.01: Co-parent workshop program

This rule provides that parties filing under the Domestic Violence Prevention Act may be ordered by the Court to attend the program.

STATUTES

The following statutes are all under the California Family Code:

§ 3011: Best interest of child; considerations

This is California's best interest of the child statute. Under this statute the court shall consider, among other factor it finds relevant, any history of abuse by one parent or any other person seeking custody against any of the following:

- Any child to whom he or she is related by blood or affinity or with whom he or she has had a caretaking relationship, no matter how temporary.
- The other parent.
- A parent, current spouse, or cohabitant, of the parent or person seeking custody, or a person with whom the parent or person seeking custody has a dating or engagement relationship.

As a prerequisite to the consideration of allegations of abuse, the court may require substantial independent corroboration. In addition, this statute provides that where allegations about a parent pursuant to this statute have been brought to the attention of the court in the current proceeding, and the court makes an order for sole or joint custody to that parent, the court shall state its reasons in writing or on the record. In these circumstances, the court shall ensure that any order regarding custody or visitation is specific as to time, day, place, and manner of transfer of the child as set forth in subdivision (b) of Section 6323.

§ 3030: Sex offenders; murderers; custody and visitation; child support; disclosure of information relating to custodial parent

In addition to the restrictions on custody, the statute prohibits visitation with a child if the person was convicted of rape and the child was conceived as a result.

§ 3031: Protective or restraining orders; findings; transfer of children; detail specific custody or visitation orders; required presence of third party

- Subsection (b) provides that whenever custody or visitation is granted to a parent in which domestic violence is alleged and an emergency, protective or other restraining order has been issued, the court must specify the time, day, place, and manner of transfer of the child to

limit the child’s exposure to potential domestic conflict or violence and to ensure the safety of all family members. This subsection also provides that where a party is staying at a shelter or other confidential location, the court’s order must be designed to prevent disclosure of the location.

- Subsection (c) provides that when making an order for custody or visitation in a case in which domestic violence is alleged and an emergency, protective or other restraining order is in place, the court must consider whether the best interest of the child requires that any custody or visitation arrangement take place in the presence of a third party as specified by the court or whether custody or visitation should be suspended or denied.

§ 3044: *Presumption against persons perpetrating domestic violence*

This statute states that upon a finding by the court that a party seeking custody of a child has perpetrated domestic violence against the other party seeking custody of the child or against the child or the child's siblings within the previous five years, there is a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is detrimental to the best interest of the child, pursuant to Section 3011.

§ 3046: *Party absence or relocation from residence; consideration; interference with contact; application*

This statute provides in part that if a party is absent or relocates from the family residence, the court shall not consider the absence or relocation as a factor in determining custody or visitation under certain circumstances, including whether the party is absent or relocates because of an act or acts of actual or threatened domestic or family violence by the other party.

§ 3048: *Required contents for custody or visitation orders; risk of child abduction; risk factors and preventative measures; notation of preventative conditions on minute order of court proceedings; Child Abduction Unit; child custody order forms*

Under this statute, if the court finds that there is a need for preventive measures after considering whether there is a risk of abduction of a child, the court must consider taking one or more of the listed measures to prevent the abduction such as ordering supervised visitation.

§ 3100: *Joint custody orders; visitation rights; domestic violence prevention orders; transfer of children; detail specific orders; confidentiality of shelter locations*

- Subsection (b) provides that if a protective order has been directed to a parent, the court must consider whether the best interest of the child requires that any visitation by that parent be limited to situations in which a third person is present, or whether visitation should be suspended or denied.
- Subsection (c) provides that whenever visitation is ordered in a case in which domestic violence is alleged and an emergency protective order, protective order, or other restraining order has been issued, the visitation order must specify the time, day, place, and manner of transfer of the child in order to limit the child's exposure to potential domestic conflict or violence and to ensure the safety of all family members.

§ 3200: *Supervised visitation provider standards; guidelines; report*

This statute requires the Judicial Council to develop standards for supervised visitation providers in accordance with the guidelines set forth in this section.

- Subsection (a) provides that when developing standards, the Judicial Council must consider orientation to and guidelines for cases in which there are allegations of domestic violence,

child abuse, substance abuse, or special circumstances.

- Subsection (b) requires the Judicial Council to consult with domestic violence prevention programs and other groups it regards as necessary in developing these standards.
- Subsection (c) provides that it is the intent of the Legislature that the safety of children, adults, and visitation supervisors be a precondition to providing visitation services. Once safety is assured, the best interest of the child is then the paramount consideration at all stages.

§ 3202: Uniform Standards of Practice for Providers of Supervised Visitation; eligible providers

- Subsection (a) requires all supervised visitation and exchange programs to comply with all requirements of the Uniform Standards of Practice for Providers of Supervised Visitation set forth in Section 26.2 of the Standards of Judicial Administration as amended. (See <http://www.courtinfo.ca.gov/rules/appendix/divistandard-69.htm>).
- Subsection (b)(3) states that ‘eligible providers’ means for providers of education, a professional with a bachelor's or master's degree in human behavior, child development, psychology, counseling, family-life education, or a related field, having specific training in issues relating to child and family development, substance abuse, child abuse, domestic violence, effective parenting, and the impact of divorce and inter-parental conflict on children; or an intern working under the supervision of that professional.

§ 3203: Establishment and administration of programs by family law division of county superior court

This statute provides that the family law division of the superior court in each county may establish and administer a supervised visitation and exchange program. The statute further requires programs to allow parties and children to participate in supervised visitation between a custodial party and a noncustodial party or joint custodians, and to participate in the education and group counseling programs, irrespective of whether the parties are or are not married to each other or are currently living separately and apart on a permanent or temporary basis.

App. § 4788 (Santa Clara County Pilot Project): Custody or visitation dispute; mediation orientation; request for mediation; resolution conference; extended evaluation

This statute requires that mediation orientation be conducted by the Family Court Services and include general information on the effect of exposure to domestic violence and extreme conflict on children and parents, among other topic areas.

§ 6323: Ex parte orders regarding temporary custody and visitation of minor children

- Subsection (a)(2)(A) provides that in making a best interest of the child determination and in order to limit the child's exposure to potential domestic violence and to ensure the safety of all family members, if the protected party has established a parent-child relationship and the other party has not established that relationship, the court may award temporary sole legal and physical custody to the protected party and may make an order of no visitation to the other party pending the establishment of a parent-child relationship between the child and the other party.
- Subsection (c) states that when making an order for custody or visitation under this statute, the court must specify the time, day, place, and manner of transfer of the child for custody or visitation to limit the child's exposure to potential domestic conflict or violence and to ensure the safety of all family members. If a party is staying at a shelter or other confidential

location, the order must be designed to prevent disclosure of the location of the shelter or other confidential location.

- Subsection (d) provides that when making an order for custody or visitation, the court must consider whether the best interest of the child requires that any visitation or custody arrangement shall be limited to situations in which a third person is present, or whether visitation or custody shall be suspended or denied.

CASE LAW

In re the Marriage of LaMusga, 12 Cal. Rptr. 3d 356 (2004)

The Court held that the non-custodial parent does not have the burden of establishing that a change of custody was essential to prevent detriment to the children from the planned move. The Court stated that in a move-away case, a change of custody is not justified simply because the custodial parent has made a good-faith decision to relocate, but only if, as a result of relocation with that parent, the child will suffer detriment rendering it essential or expedient for the welfare of the child that there be a change of custody. The facts of the case indicate that the mother never violated a court order and frequently stipulated to increases in the father's visitation time with the children. Although this case did not involve allegations of domestic violence, its holding will potentially have a great impact on how relocation cases are handled across the nation. In a dissenting opinion, Justice Kennard pointed out that the "effect of the relocation on the children's relationship with the father was not the *issue* before the court. Rather, it was just one of the potential detriments shown by the evidence that the trial court was required to consider. Equally important was the potential detriment from disrupting the existing custodial arrangement by transferring custody from the mother to the father."

NOT OFFICIALLY PUBLISHED CASES – See *California Rules of Court, Rule 977(a)*, which prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by Rule 977(b).

Palacios v. Ortiz, 2004 WL 585651 (Cal.App. 5 Dist.)

The trial court followed recommendations of the children's court-appointed attorney and granted full physical custody of the children to the mother, with the father having supervised visits. On appeal, the father sought full custody of his oldest son, and unsupervised visitation with the other children. The trial court found that the mother had testified without contradiction about the father's history and pattern of assaultive conduct and emotional abuse. The mother also testified that she did not mention father's assaultive behavior at an earlier hearing and agreed to unsupervised visitation because she was terrified and afraid of the father and hoped he would not cause any more problems. The Court of Appeal upheld the trial court's decision concluding that the trial court did not abuse its discretion in giving mother full physical custody of all children and ordering supervised visits with the father.

In re the Marriage of Jaks, 2003 WL 257918 (Cal.App. 5 Dist.)

This case involved the founder of the California-based Alliance for Non-Custodial Parent's Rights (ANCPR), a fathers' rights group. The Court of Appeal held that substantial evidence supported the order awarding mother sole physical custody of the child based on a finding that father had perpetrated specific acts of domestic violence and had engaged in emotional intimidation during the marriage. Visitation was unsupervised. Father, Lowell Jaks, abducted his son a year later and took

him to the Dominican Republic. The child was returned to the mother a month after being taken; father was charged with felony child abduction.

The court pointed out that the focus of California’s statutory scheme governing child custody is the best interest of the child. The court further stated that the “‘changed circumstance’ test does not supplant the ‘best interest of the child’ test but, rather, is an adjunct to it... After it has been established that a particular custodial arrangement is in the best interest of the child, the court need not reexamine that question. Instead, the court should preserve the custody plan unless some significant change in circumstances indicates that a different arrangement would be in the child’s best interest.”

In re the Marriage of Riedel, 2002 WL 2013461 (Cal.App. 3 Dist.)

The Court of Appeal (Court) held that ex-husband demonstrated awarding him sole or joint physical custody and legal custody of the child was in the child’s best interest, for purposes of rebutting the statutory presumption that an award of custody to a perpetrator of domestic violence is detrimental to the child’s best interest. The Court also held that the father rebutted the statutory presumption that an award of custody to a perpetrator of domestic violence is detrimental to the child’s best interest, by demonstrating that he successfully completed a batterer’s treatment program; and an order changing physical custody of the child from the mother to the father was based on proper application of the friendly parent provision.

The trial court based its finding of changed circumstances primarily upon the mother’s conduct that “made co-parenting impossible.” In addition to other behavior by the mother, the court found a “continuing and abusive pattern of unfounded or unsubstantiated reports by [the mother] to Child Protective Services of child abuse by [the father].” Mother originally was given sole physical custody of the child, father had unsupervised visits, but the parties were ordered to use a third party to carry out visitation. Mother sought to limit father’s visitation. During the pendency of the case, father pled guilty to felony spousal abuse and was placed on probation.

On appeal, the mother claimed the trial court inappropriately applied the friendly parent provision in a domestic violence rebuttable presumption case. The Court disagreed, stating that where the presumption of Fam. Code § 3044 is rebutted, there is no further statutory bar against an award of joint or sole custody to a parent who has perpetrated domestic violence. “Once the burden has been met and the presumption is rebutted, it has no further operative effect.” The Court focused on the best interest of the child factor regarding parental contact in its decision.

OTHER ANALYSIS

Privilege

The following information is research that was gathered in response to examining a specific aspect of privilege. That is, does an advocate-victim privilege exist in the state and, if so, does it extend to visitation centers.²

² This question was of interest as some of the centers are located in other organizations, like domestic violence agencies, hospitals, mental health providers, etc., and whether that fact can affect the privilege.

General:

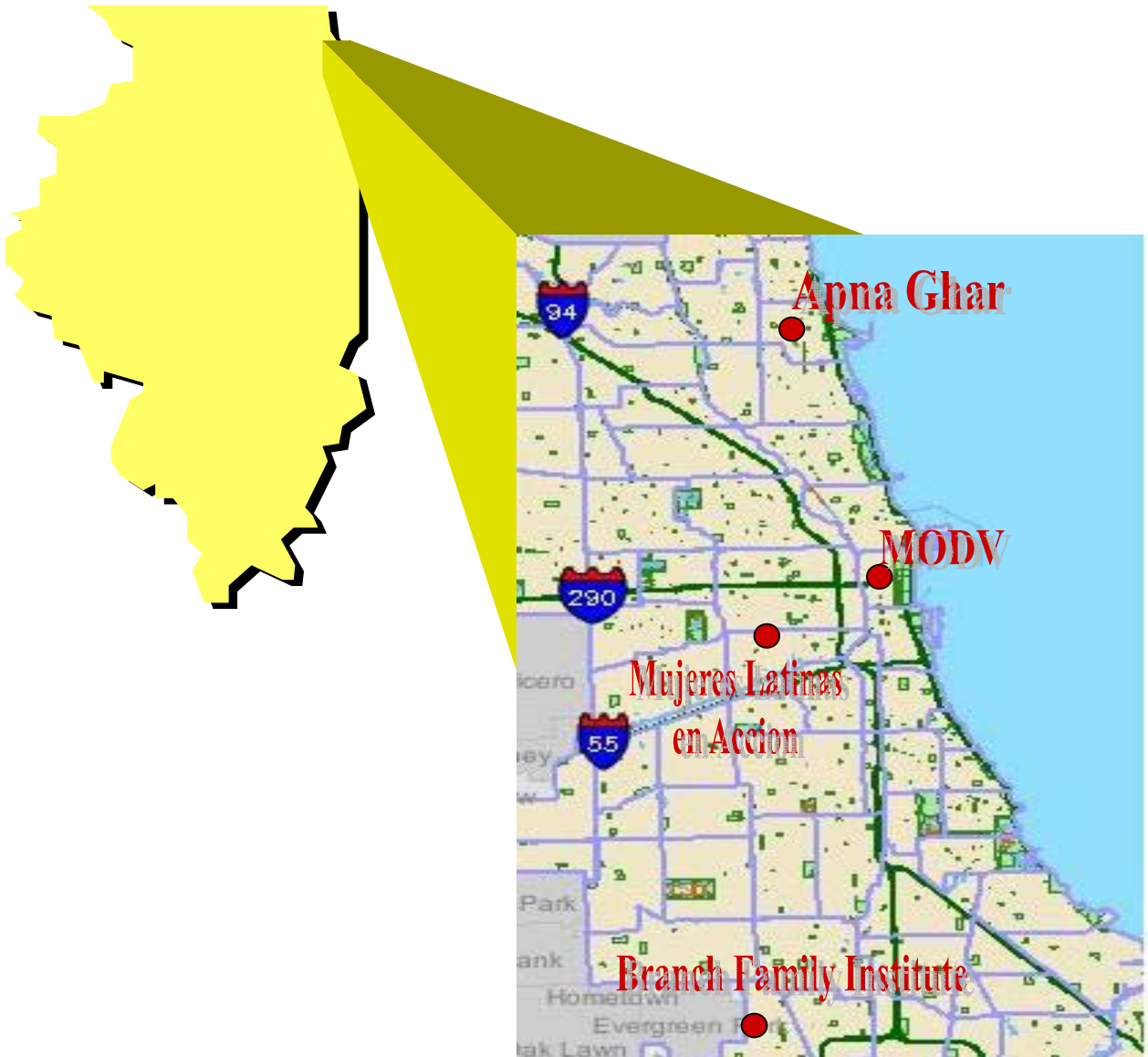
California Evidence Code § 1037.5 sets forth that there is a victim-domestic counselor privilege for confidential communications. California Evidence Code § 1037.2 defines confidential communications as information transmitted between the counselor in the course of their relationship and in confidence by a means which, so far as the victim is aware, discloses the information to no third persons other than those who are present to further the interests of the victim in the consultation or those to whom disclosures are reasonable necessary for the transmission of the information or an accomplishment of the purposes for which the domestic violence counselor is consulted. Confidential communications include all information regarding the facts and circumstances involving all incidents of domestic violence, as well as all information about the children of the victim or abuser and the relationship of the victim with the abuser.

California Evidence Code § 1037.1 defines domestic violence counselor as a person employed by a [domestic violence shelter] for the purpose of rendering advice or assistance to victims of domestic violence, who has received specialized training in the counseling of domestic violence victims, and who meets at least one of the following requirements: (1) has a master's degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in the counseling of domestic violence victims; or (2) has at least 40 hours of training as specified within this paragraph and is supervised by an individual who qualifies as a counselor under paragraph (1).

Specific to Supervised Visitation Centers:

The Standards of Judicial Administration § 26.2 sets forth the Uniform Standards of Practice for Providers of Supervised Visitation. It explicitly states that “*communications between parties and providers of supervised visitation are NOT protected by ANY privilege of confidentiality.*” (emphasis added). Moreover, it explicitly states that “*the psychotherapist privilege DOES NOT apply during therapeutic supervision.*” (emphasis added). This rule defines therapeutic provider as a licensed mental health professional paid for providing supervised visitation services, including but not limited to the following: a psychiatrist, psychologist, clinical social worker, marriage and family counselor, or intern working under direct supervision. Moreover, the rule states that the professional and therapeutic provider should, whenever possible, maintain confidentiality regarding the case, except when ordered by the court, subpoenaed to produce records or testify in court, requested by a mediator or evaluator in conjunction with a court ordered mediation, investigation, or evaluation, required by CPS, or requested by law enforcement.

MAYOR'S OFFICE ON DOMESTIC VIOLENCE CITY OF CHICAGO, ILLINOIS



MODV = Mayor's Office on Domestic Violence, City of Chicago

DEMONSTRATION SITE PROFILE

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The Mayor's Office on Domestic Violence (MODV) in collaboration with the Chicago Department of Human Services coordinates with the Domestic Violence Advocacy Coordinating Council (DVACC). DVACC is composed of key systems leaders, nonprofit domestic violence service providers and community representatives and will serve as the advisory committee under the demonstration initiative. The Chicago Department of Human Services collaborates with the MODV, the Chicago Metropolitan Battered Women's Network, the Illinois Department of Human Services, the Illinois Department of Children and Family Services, criminal and civil courts, police districts, attorneys and prosecutors, churches, community faith leaders and others to expand the geographic areas services and scope of the services provided.

MODV is using their Safe Havens grants funds to enhance the services of three visitation centers within the City of Chicago to:

- Implement a new program on the South side of Chicago
- Expand supervised visitation and safe exchange services on the West and North sides of Chicago by securing additional space, expanding hours of operation and space
- Collaborate with the courts, domestic violence, and sexual assault agencies and nonprofit legal service providers for referrals
- Train staff on domestic violence, sexual assault, and children's issues
- Ensure proper security measures are undertaken
- Create a standardized service protocol among all the visitation centers.

Visitation Center:

Apna Ghar (Our Home)
Bob Gallenbach
Supervised Visitation
Supervisor
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rgallenbach@apnaghar.org

Located on the North Side of Chicago, Apna Ghar provides shelter, counseling, case management and legal advocacy to primarily South Asian victims of domestic violence. In 1991, Apna Ghar began providing free, one-on-one supervised visitation and safe exchange services to non-DCFS involved families who have histories of domestic violence. Apna Ghar's supervised visitation center is able to provide bilingual services to South Asian families; approximately 12% of their visitation clients are Asian. Currently, Apna Ghar's supervised visitation center has two visitation rooms and 1.5 FTE domestic violence trained visitation staff.

Located on the West Side of Chicago, Mujeres Latinas en Acción (Mujeres) provides bilingual and bicultural domestic violence and sexual assault services to Latina women and their children. In 2001, Mujeres took over the operation of the West Side supervised visitation center. Currently, Mujeres provides free, one-on-one supervised visitation services to non-DCFS involved families who have histories of domestic violence. Mujeres' visitation center is in a temporary location until the agency completes construction on their new building. Once construction is done, the agency's domestic violence program will move into the new location and the supervised visitation center will permanently move into the agency's existing site. Mujeres has one supervised visitation room and 1.5 FTE, domestic violence trained visitation staff. Approximately 60% of Mujeres' supervised visitation client population is Latino/a.

Visitation Center:

Mujeres Latinas en Acción
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Visitation Center:

The Branch Family Institute
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Evergreen Park, IL 60805
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The Branch Family Institute

Located on the South Side of Chicago in Evergreen Park, the Branch Family Institute (BFI) is a non-profit family service center that has been providing counseling and support to families since 2000. In 2002, BFI contracted with the Chicago Department of Human Services to begin operating a supervised visitation center. Currently, BFI provides free, one-on-one supervised visitation and safe exchange to families with histories of domestic violence. The supervised visitation center is staffed and run by professionally trained and licensed social workers, however, the agency is not providing therapeutic visitation services. BFI has two supervised visitation rooms and 1.5 FTE domestic violence trained visitation staff. Approximately 50% of BFI's supervised visitation client population is African American.

LEGAL CONSIDERATIONS¹

COURT RULES

13.4 (g) Pre-Trial Phase – Provision concerning Mediation (Domestic Relations Proceedings)

Ill. R. Cir. Ct. Cook. Co., R 13.4

This rule provides that the Domestic Relations Division judge may order mediation on any pre or post judgment contested issue of visitation and/or removal of the minor children from the state of Illinois. Before mediation may begin, the mediator shall screen for issues of family violence that has occurred in the past or is occurring on an ongoing basis and will have the duty to report child abuse and neglect, as well as acts or intent of violence against another. Also confidentiality does not apply to information that reveal evidence of child abuse and neglect, or an act of violence or intent thereof of one party against another that occurred during mediation.

STATUTES

The following statutes are found under the Illinois Marriage and Dissolution of Marriage Act:

§ 750 ILCS 5/607 Visitation

Subsection (a) provides that a parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral or emotional health. If the custodian's street address is not identified, the court shall require the parties to identify reasonable alternative arrangements for visitation by a non-custodial parent.

According to the subsection (c) the court may modify an order granting or denying visitation rights of a parent whenever modification would serve the best interest of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral or emotional health.

Subsection (f) provides that unless the court determines, after considering all relevant factors that it would be in the best interests of the child to allow visitation, the court shall not enter an order providing visitation rights and pursuant to a motion to modify visitation shall revoke visitation rights previously granted to any person who would otherwise be entitled to petition for visitation rights under this Section who has been convicted of first degree murder of the parent, grandparent, great-grandparent, or sibling of the child who is the subject of the order. Until an order is entered pursuant to this subsection, no person shall visit, with the child present, a person who has been convicted of first degree murder of the parent, grandparent, great-grandparent, or sibling of the child without the consent of the child's parent, other than a parent convicted of first degree murder as set forth herein, or legal guardian.

¹ This information is provided as an overview of how the legal systems vary at each of the demonstration sites. It is highly recommended that the reader review the actual statutes, case laws, and court rules, before relying on this information. Additionally, this list may not be all-inclusive, may contain dated information, and is intended for educational and research purposes only.

§ 750 ILCS 5/607.1 *Enforcement of visitation orders; visitation abuse*

According to the subsection (a) visitation abuse occurs when a party has willfully and without justification: (1) denied another party visitation as set forth by the court, or (2) exercised his or her visitation rights in a manner that is harmful to the child or child's custodian.

Subsection (c) provides that in a visitation abuse action the court may modify the visitation order to specifically outline periods of visitation or restrict visitation; order supervised visitation with a third party or public agency; make up visitation of the same time period, such as weekend for weekend, holiday for holiday; and/or order counseling or mediation, except in cases where there is evidence of domestic violence.

The following statute is found under the Illinois Parentage Act of 1984:

§ 750 ILCS 45/13.5 *Injunctive relief*

Subsection (a) provides that the court, upon application of any party, may enjoin a party having physical possession or custody of a child from temporarily or permanently removing the child from Illinois. This notwithstanding, the court may, according to the subsection (c), decline to enjoin a domestic violence victim having physical possession or custody of a child from temporarily or permanently removing the child from Illinois. In determining whether a person is a domestic violence victim, the court shall consider the following factors:

- (1) a sworn statement by the person that the person has good reason to believe that he or she is the victim of domestic violence or stalking;
- (2) a sworn statement that the person fears for his or her safety or the safety of his or her children;
- (3) evidence from police, court or other government agency records or files;
- (4) documentation from a domestic violence program if the person is alleged to be a victim of domestic violence;
- (5) documentation from a legal, clerical, medical, or other professional from whom the person has sought assistance in dealing with the alleged domestic violence; and
- (6) any other evidence that supports the sworn statements, such as a statement from any other individual with knowledge of the circumstances that provides the basis for the claim, or physical evidence of the act or acts of domestic violence.

The following are found in the Illinois Domestic Violence Act of 1986 & Code of Criminal Procedure of 1963, respectfully:

§ 750 ILCS 60/214. *Order of protection; remedies*

§ 725 ILCS 5/112A-14. *Order of protection; remedies*

[The language of both statutes that refers to visitation as a remedy included in an order of protection is identical, although overall there are provisions where the statutory language differs].

Both statutes provide in the subsection (b) that the remedies included in an order of protection may include physical care and possession of a minor child; temporary legal custody and the determination

of visitation rights. The subsection (b)(7) provides that the court shall restrict or deny respondent's visitation with a minor child if the court finds that respondent has done or is likely to (i) abuse or endanger the minor child during visitation; (ii) use the visitation as an opportunity to abuse or harass petitioner or petitioner's family or household members; (iii) improperly conceal or detain the minor child; or (iv) otherwise act in a manner that is not in the best interests of the minor child. If the court grants visitation, the order shall specify dates and times for the visitation to take place or other specific parameters or conditions that are appropriate. No order for visitation shall refer merely to the term "reasonable visitation".

Subsection (b)(7) further provides that petitioner may deny respondent access to the minor child if, when respondent arrives for visitation, respondent is under the influence of drugs or alcohol and constitutes a threat to the safety and well-being of petitioner or petitioner's minor children or is behaving in a violent or abusive manner. In addition, subsection (b)(7) provides that should it be necessary to protect any member of petitioner's family or household from future abuse, respondent shall be prohibited from coming to petitioner's residence to meet the minor child for visitation, and the parties shall submit to the court their recommendations for reasonable alternative arrangements for visitation. A person may be approved to supervise visitation only after filing an affidavit accepting that responsibility and acknowledging accountability to the court.

Subsection (e) requires that denial of any remedy shall not be based, in whole or in part, on evidence that:

- (1) Respondent has cause for any use of force, unless that cause satisfies the standards for justifiable use of force
- (2) Respondent was voluntarily intoxicated;
- (3) Petitioner acted in self-defense or defense of another
- (4) Petitioner did not act in self-defense or defense of another;
- (5) Petitioner left the residence or household to avoid further abuse, neglect, or exploitation by respondent;
- (6) Petitioner did not leave the residence or household to avoid further abuse, neglect, or exploitation by respondent;
- (7) Conduct by any family or household member excused the abuse, neglect, or exploitation by respondent, unless that same conduct would have excused such abuse, neglect, or exploitation if the parties had not been family or household members.

CASE LAW

Radke v. Radke, 2004 Ill. App. LEXIS 528 (3d Dist. 2004)

After parents divorced, the father was granted extensive visitation rights over the 12 year-old daughter. As a result of an incident about the use of a phone and stopping the daughter from leaving the father's house, the mother was granted a plenary order of protection restraining the father from abusing, harassing, intimidating or interfering with the personal liberty of the parties' daughter. Although the Supreme Court recognized that the order of protection did not violate father's visitation rights it vacated the order because it found that the mother's intent when she petitioned for the order of protection was to limit the father's visitation and that the father's actions did not constitute harassment but rather reasonable direction of a child.

In re Marriage of Munger, 339 Ill. App. 3d 1104 (4th Dist. 2003)

The trial court issued an order of protection to the spouse against her husband and granted the husband supervised visitation of their daughter while she was in daycare. Shortly afterward the parents agreed that the father could have visitation arranged through private supervision service or as otherwise agreed by the parties. After the mother enrolled the child in a daycare center that better suited her unpredictable working schedule, the father contested the order of protection. The Appellate Court reaffirmed the order but eliminated supervised visitation. The Appellate Court found that the trial court modified the order of protection without a written motion to do so or prior notice to the mother, but it also found that the court had the authority to do so in accordance with the child's best interest.

People v. Taber, 329 Ill. App. 3d 1007 (1st Dist., 5th Div., 2002)

The trial court found the husband guilty of domestic violence and extended an order of protection, which prohibited the husband from having any contact with his children, for an additional 18 months. Since the domestic relations division granted the husband supervised visitation, the Appellate Court ruled that there is no further relief the court could grant him and declared moot the issue whether the trial court erred in issuing the order.

Wilson v. Jackson, 312 Ill. App. 3d 1156 (3d 2000)

A couple split shortly after the woman became pregnant. After the birth of the child the mother allowed the father unsupervised visitation. He filed for and was granted a plenary protection order alleging domestic violence and child abuse. The appellate court vacated the order because it found that the father's intent was not to prevent abuse, but to gain visitation. It further found that the trial court erred in finding mother abusive and that the court abused its discretion when it found that the mother interfered with the father's visitation rights. Under the Illinois statute (750 ILCS 60/214(c)(5)) the acknowledgement of paternity does not establish visitation rights; it is merely a precondition for visitation.

OTHER ANALYSIS

Privilege

The following information is research that was pulled in response to examining a specific aspect of privilege. That is, does an advocate-victim privilege exist in the state and if so, does it extend to visitation centers.²

General:

750 Ill. Comp. Stat. § 60/227 creates a privilege between domestic violence counselors and victims. It defines "domestic violence advocate or counselor" as any person (A) who has undergone a minimum of forty hours of training in domestic violence advocacy, crisis intervention, and related areas, and (B) who provides services to victims through a domestic violence program either on an employed or volunteer basis.

² This question was of interest as some of the centers are located in other organizations, like domestic violence agencies, hospitals, mental health providers, etc., and whether that fact can affect the privilege.

Safe Havens: Supervised Visitation and Safe Exchange Grant Program – Demonstration Initiative

750 Ill. Comp. Stat. § 60/227 defines “domestic violence program” as any unit of local government, organization, or association whose major purpose is to provide one or more of the following: information, crisis intervention, emergency shelter, referral, counseling, advocacy, or emotional support to victims of domestic violence.

Finally, 750 Ill. Comp. Stat. § 60/227 defines “confidential communication” as any communication between an alleged victim of domestic violence and a domestic violence advocate or counselor in the course of providing information, counseling, or advocacy. The term includes all records kept by the advocate or counselor or by the domestic violence program in the course of providing services to an alleged victim concerning the alleged victim and the services provided.

The statute does not define advocacy.

Specific to Supervised Visitation Centers:

Illinois does not have any statutes that are specific to supervised visitation centers and/or a privilege for supervised visitation centers.

CITY OF KENT, WASHINGTON



● Safe Havens Visitation Center
Kent, WA

DEMONSTRATION SITE PROFILE

City of Kent, Washington

Grant Administrator:

City of Kent, Division of Housing and Human
Services
220 Fourth Avenue South
Kent, WA 98032

Project Director:

Tracee Parker
Safe Havens Project Coordinator
City of Kent
220 Fourth Avenue South
Kent, WA 98032
Phone: (253) 856-5074
tparker@ci.kent.wa.us

Visitation Center:

Safe Havens Visitation Center
407 West Gowe Street
Kent, WA 98032

www.ci.kent.wa.us/HumanServices/SafeHavens

In January 2001, the visitation center was closed to security concerns in Kent, WA. The City of Kent is using their Safe Havens grant funds to open a visitation center to serve families of Kent and South King County. The population of Kent is 79,524 and has a 32% minority population. Their visitation center will concentrate on serving multicultural populations and cultural accessibility and will:

- Increase access to supervised visitation and exchange services for low and moderate-income family violence survivors.
- Identify and implement promising practices for supervised visitation and exchange services that are responsive to the needs of women and children victims of family violence.
- Increase access to culturally sensitive visitation and exchange services.
- Identify and implement security procedures to create a state of the art visitation and exchange center that is safe for family violence survivors.
- Increase communication between the court and the supervised visitation and exchange program to ensure compliance with court orders and survivor safety.
- Increase referral to agencies that provide essential social services.

The City of Kent's project goals are to:

- Hire project staff and a local evaluator.
- Hire a local evaluator.
- Convene an Advisory Committee.
- Provide training to the Advisory Committee and project partners.
- Translate program documents.
- Provide interpreters to non-English/limited English proficient clients.
- Ensure that services are culturally sensitive and accessible to the region's multicultural community.
- Pay for initial program operating costs.
- Purchase building security devices.

COLLABORATING PARTNERS

Court Partner:

King County Superior Court

- Unified Family Court
- Family Court Services assessments
- Training of judges and staff
- Work with the City of Kent to develop protocols for referrals and create methods for more timely contact with Court when parties fail to comply
- Support the City's efforts in prioritizing the safety of children and their families.

Domestic Violence Agency:

King County Coalition Against Domestic Violence (KCCADV)

- Strong and respected presence throughout King County
- 20 community-based domestic violence agencies
- Facilitates networking and outreach
- Policy work
- Information clearinghouse
- Assist with planning and implementation
- Develop and review best practices
- Serve on the Advisory Committee
- Refer monitors to member agencies for consultation
- Refer callers to program

Domestic Violence Agency:

Chaya

- Serves South Asian community
- Specialized domestic violence services
- Assist with planning and implementation with emphasis on tailoring services to meet the needs of South Asian DV survivors
- Develop and review best practices
- Provide consultation
- Refer survivors to the program

Domestic Violence Agency:

Washington State Coalition Against Domestic Violence (WSCADV)

- Expertise in policy, legislation, funding advocacy, training, and refugee and immigrant issues
- Assist with planning and implementation
- Develop and review best practices
- Serve on the Advisory Committee
- Refer callers to the program

Domestic Violence and Child Advocacy Program:

YWCA – South King County:

- Provides advocacy services in South King County
- Children's domestic violence program (only one in County)
- Staff sits on domestic violence task forces of several local cities
- Provides transitional housing for survivors
- Assist with planning and implementation
- Develop and review best practices
- Provide consultation, serve on the Advisory Committee
- Refer survivors to the program

Sexual Assault and Domestic Violence Agency:

Communities Against Rape and Abuse (CARA)

- Specialized services to people of color
- Specialized services for disabled
- Provide consulting and training to program with emphasis on tailoring services to meet the needs of Black communities, people with disabilities, and youth

LEGAL CONSIDERATIONS¹

STATUTES

The following statutes are found in the Washington Revised Code:

§ 26.09.191 Restrictions in Temporary or Permanent Parenting Plans

Section (2)(a)(iii) limits a parent’s residential time with a child if it is found that the parent has a history of acts of domestic violence. Similarly, section 2(b) limits a parent’s residential time with a child if it is found that the parent resides with a person who has a history of acts of domestic violence.

Section 2(m)(i) provides that the limitations imposed under the sections listed above “be reasonably calculated to protect the child from the physical, sexual, or emotional abuse or harm that could result if the child has contact with the parent requesting residential time.” However, section 2(m)(iii) explicitly mentions “supervised contact” as a means of limiting a parent’s residential time under the above listed sections. In addition, the section provides that the court shall revoke its approval of the supervisor where the supervisor failed to protect the child or is no longer willing to or capable of protecting the child.

Section 3(g) is the catch-all provision allowing the court to consider “such other factors or conduct as the court expressly finds adverse to the best interests of the child” in precluding or limiting any provisions of the parenting plan.

§ 26.10.160 Visitation Rights; Limitations

Section (1) provides that a parent not granted custody of the child is entitled to reasonable visitation rights except:

- Section 2(a) sets forth that visitation is limited where the parent seeking visitation has engaged in a history of acts of domestic violence.
- Similarly, pursuant to section 2(b) visitation is limited where the parent seeking visitation resides with a person who has engaged in a history of acts of domestic violence.
- Section 2(m)(i) provides that the limitations imposed under the sections listed above “be reasonably calculated to protect the child from the physical, sexual, or emotional abuse or harm that could result if the child has contact with the parent requesting residential time.”
 - However, section 2(m)(iii) explicitly mentions “supervised contact” as a means of limiting a parent’s residential time under the above listed sections. In addition, the section provides that the court shall revoke its approval of the supervisor where the supervisor failed to protect the child or is no longer willing to or capable of protecting the child.

¹ This information is provided as an overview of how the legal systems vary at each of the demonstration sites. It is highly recommended that the reader review the actual statutes, case laws, and court rules, before relying on this information. Additionally, this list may not be all-inclusive, may contain dated information, and is intended for educational and research purposes only.

§ 26.10.040 Provisions for Child Support, Custody, & Visitation; Continuing Restraining Orders; Domestic Violence or Anti-harassment Protection Orders

Section 1(d) provides that in entering an order under this chapter, the court shall consider, approve, or make provision for a domestic violence protection order or an anti-harassment protection order.

§ 26.10.170 Powers and Duties of Custodian; Supervision by Agency when Necessary

Statute provides that if both parents agree, or if the court finds in the absence of an order, the child may be physically, emotionally, or mentally harmed, the court may order an appropriate agency which regularly deals with children to continually supervise the case to assure that custodial or visitation terms of a decree are carried out.

§ 26.44.150 Temporary Restraining Order Restricting Visitation for Persons Accused of Sexually or Physically Abusing a Child

Statute provides that if a person who has unsupervised visitation rights with a minor child is accused of sexually or physically abusing the child, and the abuse is reported to a law enforcement officer, that officer may file an affidavit with the prosecuting attorney stating that the person is under investigation for sexual or physical abuse and that there is a risk of harm to the child if a temporary restraining order is not issued. If the prosecutor determines that there is risk of harm to the child, the prosecutor shall immediately file a motion for an order to show cause seeking to restrict visitation with the child and seek a temporary restraining order.

§ 26.50.060 Relief Available in Restraining Order; Duration

Statute provides for the relief available in a restraining order, including restraining the respondent from having any contact with the victim of domestic violence or the victim's children or restraining the respondent from the day care or school of a child. In addition, the court may order other relief as it deems necessary for the protection of the petitioner and other family or household members sought to be protected.

§ 26.50.070 Ex Parte Temporary Order for Protection

Statute allows the court, in an ex parte temporary order for protection, to grant relief that includes restraining the respondent from the day care or school of a child and restraining the respondent from having any contact with the victim of domestic violence or the victim's children.

CASE LAW

In re Marriage of Caven, 136 Wash.2d 800, 966 P.2d 1247 (1998)

Trial court granted mutual decision-making in a permanent parenting plan, despite the father's history of domestic violence. Mother appealed, and the Court of Appeals reversed and remanded, finding that mutual decision-making is prohibited whenever there is a history of domestic violence. Father argued that the phrase "a history of domestic violence" must be defined in a way that acknowledges a fear-based family dynamic, and that absent such fear, mutual decision-making should be granted. The court specifically rejected that argument. Finally, the court held that § 26.09.191 (2)(a)(iii) requires a finding by the court that there is a history of domestic violence, and that "[m]ere accusations, without proof, are not sufficient to invoke the restrictions under the statute. *Caven*, 136 Wash. 2d at 809. The decision of the Court of Appeals was affirmed.

State v. Ancira, 107 Wash.App. 650, 27 P.3d 1246 (Div. 1, 2001)

There was a long history of domestic violence between father and mother, who had two children. Father was required to stay away from mother based upon a domestic violence no-contact order. Father violated the order twice, and pled guilty to the felony violation charges. As part of the sentence, the court ordered no contact between husband and the children for a maximum of five years, noting that even witnessing domestic violence between the parents is harmful to the children. Father appealed the sentence. The appellate court held that “[p]arents have a fundamental liberty interest in the care, custody, and control of their children,” and that the state must show that the no-contact order was “reasonably necessary to protect them from the harm of witnessing domestic violence.” The court concluded that the State failed to make such a showing, holding that the order was “extreme and unreasonable.” However, the court further held that based on the record, “some limitations on [father’s] contact with his children, such as supervised visitation, might be appropriate, even as part of a sentence.”.

OTHER ANALYSIS

Privilege

The following information is research that was pulled in response to examining a specific aspect of privilege. That is, does an advocate-victim privilege exist in the state and if so, does it extend to visitation centers.²

General:

The State of Washington does not have a domestic violence advocate or counselor-victim privilege. However, Wa. Rev. Code Ann. § 70.123.075 does provide that client records maintained by domestic violence programs shall not be subject to discovery in any judicial proceedings unless: (1) a written pretrial motion is made; (2) the motion is accompanied by an affidavit setting forth the specific reasons why discovery is requested of these records; (3) the court reviews the program’s records in camera to determine relevancy and the probative value while taking into account the further trauma that may be caused upon the victim by disclosure of the records; and (4) the court enters an order stating whether the records or any part of the records are discoverable and setting forth the basis for the court’s findings. This statute defines “domestic violence program” as a program that provides shelter, advocacy, or counseling services for domestic violence victims.

Wa. Rev. Code Ann. § 70.123.020 defines “shelter” as a place of temporary refuge, offered on a twenty-four hour, seven day per week basis to victims of domestic violence and their children.

Wa. Rev. Code Ann. § 70.123.020 defines “community advocate” as a person employed by a local domestic violence program to provide ongoing assistance to victims of domestic violence in assessing safety needs, documenting the incidents and the extent of violence for possible use in the legal system, making appropriate social service referrals, and developing protocols and maintaining ongoing contacts necessary for local systems coordination.

Specific to Supervised Visitation Centers:

Washington does not have any statutes that are specific to supervised visitation centers and/or a privilege for supervised visitation centers.

² This question was of interest as some of the centers are located in other organizations, like domestic violence agencies, hospitals, mental health providers, etc., and whether that fact can affect the privilege.