# The Truth and Consequences of Kayden's Law: Emerging Trends

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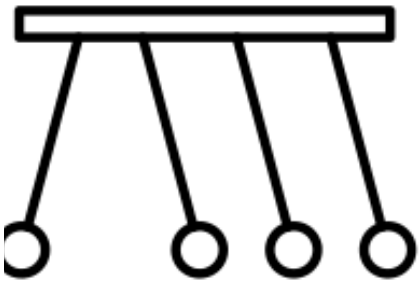
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# The Truth and Consequences of Kayden's Law: Emerging Trends

- Participants in this webinar:

1. Will gain a deeper understanding of the legislation in Kayden's Law
2. Will learn the unintentional consequences of applying Kayden's Law from a judicial, legal, and clinical perspective.
3. Will provide creative solutions to address the needs of these families within the law





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## Kayden's Law (SB-3623

The Violence Against Women's Act includes a provision related to Kayden's Law that provides a financial incentive for states to pass legislation restricting judges from ordering some reunification services. Specifically, reunification services must provide evidence of safety, effectiveness, and therapeutic value and may not cut off a child from a parent with whom the child is bonded or to whom the child is attached.



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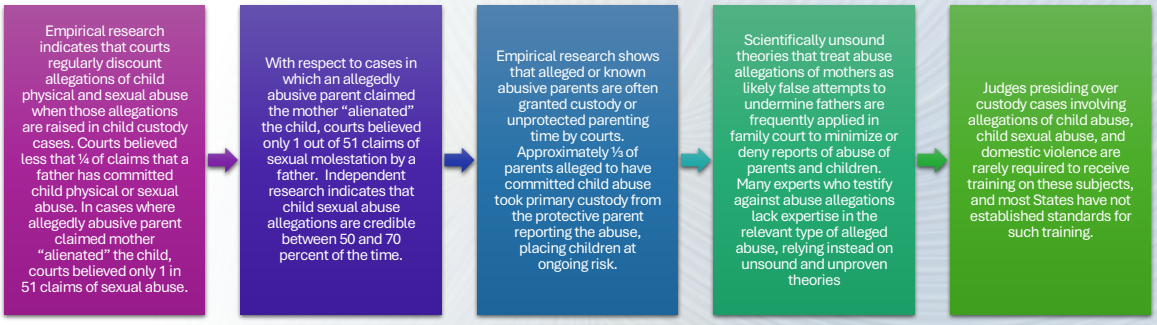
## Keeping Children Safe From Family Violence Act or Kayden's Law

- Public Law 117-103 Consolidated Appropriations Act of 2022
- "An Act making consolidated appropriations for the fiscal year ending September 30, 2022, and for providing emergency assistance for the situation in Ukraine, and for other purposes."
- Kayden's Law is part of the Violence Against Women Act Reauthorization Act of 2022
- Title XV- Keeping Children Safe From Family Violence
- Starts on Page 903 of 1068



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# Kayden's Law, Section 1502 "Congress finds the following:"




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# The Purposes of Kayden's Law

Increase the priority given to child safety in any State court divorce, separation, visitation, paternity, child support, civil protection order, or family custody court proceeding

Strengthen the abilities of the court to

(A) Recognize and adjudicate domestic violence and child abuse allegations based on valid, admissible evidence; and

(B) Enter orders that protect and minimize the risk of harm to children

Ensure that professional personnel involved in cases containing domestic violence or child abuse allegations receive trauma-informed and culturally appropriate training on the dynamics, signs and impact of domestic violence and child abuse, including child sexual abuse

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## Definitions Under Kayden's Law

### Reunification Treatment:

The term "reunification treatment" means a treatment or therapy aimed at reuniting or reestablishing a relationship between a child and an estranged or rejected parent or other family member of the child

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Funding Under Kayden's Law- The Attorney General shall increase the amount provided to a State …in accordance with this title **if…**

The State has in place a law ensuring that, in a custody proceeding where a parent has been alleged to have committed dv or child abuse, including csa, evidence from court-appointed or outside professionals regarding the alleged abuse may be admitted **only when the professional possesses demonstrated expertise and clinical, not solely forensic, experience** in working with victims of domestic violence or child abuse, including child sexual abuse

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## Funding Under Kayden's Law-

The Attorney General shall increase the amount provided to a State …in accordance with this title **if…**

The State has in place uniform required standards of domestic violence and child abuse expertise and experience for all court-appointed neutral professional opinions related to abuse, trauma, and the behaviors of victims and perpetrators, which meet the criteria in paragraph (1)(A)

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## Funding Under Kayden's Law-

The Attorney General shall increase the amount provided to a State …in accordance with this title **if…The State has in place a law ensuring that-**

REMEDIES FOR A CHILD'S RESISTANCE TO CONTACT WITH A PARENT

(A) NO REMOVAL OF CARE FROM SAFE PARENT-

No child shall be removed from the care of a competent protective, non-physically or sexually abusive parent or litigating party to whom the child is bonded or attached, nor shall the child's contact with such parent be restricted, solely in order to improve a deficient relationship with the other parent

(B) REUNIFICATION TREATMENT-

No "reunification treatment" may be ordered by the court without scientifically valid and generally accepted proof of the safety, effectiveness and therapeutic value of the particular treatment, nor may any treatment predicated on cutting off a child from the parent to whom they are bonded or attached be ordered.

(C) CAUSES OF CHILD RESISTANCE

Any order to remediate a child's contact resistance must address the resisted parent's behaviors or contributions to the child's resistance first, before ordering the preferred parent to take steps to potentially improve the child's relationship with the parent they resist.

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## Funding for training is hamstrung

To receive the grant increase:

- Cannot include any training on parent alienating behaviors
- Can only include specified areas of domestic and sexual violence and child abuse
- Note: Severe alienating behaviors are not considered child abuse.
- Training conducted by professionals with substantial experience assisting survivors of dv or child abuse and if possible a survivor of dv or child abuse



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## Noteworthy and contradictory

- The training should also include implicit and explicit bias



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## States who have adapted Kayden's Law (passing some limitations to reunification therapy)

- Arizona (137-2)
- California "Piqui's Law" (SB-331)
- Colorado (14-10-127.5)- Julie's Law
- Maryland
- New Hampshire
- Pennsylvania
- Tennessee "Abrial's Law" (Tenn Code Ann. Title 36 and 37)
- Utah (30-3-41) "Om's Law"

Another State Coming Near You



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## Kayden's Law: Flawed premises






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## Kayden's Law: Flawed premises

- Parent Child Contact Problems do not include the broad range of potential problems
- The focus is on the microsystem (child's immediate family, school, peers and specifically parent strengths and vulnerabilities, parent-child relationships, coparent conflict).
- Left out is the influence of broader systems, e.g. interactions between microsystems (mesosystem, e.g. attorney influence, legal proceedings), settings in which a child is not involved (exosystem, e.g. parent support system, community) and the institutions policies, and cultural values and beliefs that affect children and families (macrosystem).

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## By focusing only on domestic abuse it misses:

- Compromised parenting
- Once untreated substance misuse
- Once untreated mental illness
- Encapsulated delusion
- The range of parent alienating behaviors
- Absence of a parent due to: incarceration, deployment, existence of child was not known

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# Kayden's Law: false premises

Rationale cites to "one study"

Appealing to sensational information: 100 child murders since 2008 committed by parents who were given contact to child over objections of safe parent



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# Limits of Court Data

1. Between 5-10% of divorce disputes go to trial. About half of those are child related
2. A very small number of trial judgments are then appealed
3. A sample based on Appellate cases has several limitations:
   - Appellate judgements generally do not include all the details of the case.
   - They are based on errors made by the trial judge.
   - The published cases generally do not include the family dynamics –the evidence for or against abuse, alienation or anything else.
   - Trial judgments are more likely to include more detail about the case and support for findings of abuse or alienation.



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# Latest Research Findings (Bala, Birnbaum & Farshait, 2024)

Ontario cases (2021-2023) where alienation is raised n=172

- Most alienation claims are **NOT** established
- Claims of both IPV and PA in 60% (n=103/172) of cases (significant overlap)
  - **if IPV found by court, judge usually rejects alienation and almost never reverses custody;**
  - major issue is proof/credibility/reliability of IPV
- **If finding of alienation, custody reversal may occur, but often not***
  - 9/63 (14%) : 7 From Mom to Dad & 2 from Dad to Mom

*earlier study 2010-2022 showed increased reversal of custody upon court finding of alienation.

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# Other Relevant Research

Johnston et al., (2005) examined substantiations and allegations of abuse in custody-disputing families. Findings revealed much higher rates of allegations in their study consistent with premise **that there are more child abuse allegations in C/A disputing subsample than the general population**.

**Allegations against mothers and fathers had virtually identical rates of substantiation (52% and 51%)** implying that women in custody disputes are no more likely to allege unsubstantiated abuse against the OP than men.

O'Donohue and colleagues (2018) examined CSA allegations in the context of C/A disputes and found**, most allegations of CSA are true.**

**False allegations do occur at negligible rate (2%-5%).**

Saini et al., (2013) conducted secondary data analysis looking at sample of C/A disputes within the context of child protection.

12% of investigations involved a child custody dispute

Physical abuse was the most investigated form of maltreatment (32%) /5% involved an allegation of CSA.

**13% of investigations involving a C/A dispute involved a malicious referral– 51% physical abuse, 36% neglect, and 3% CSA. Compared to 4% malicious referrals without a child custody dispute.**

**More than one-third of all investigations involved exposure to domestic violence,**

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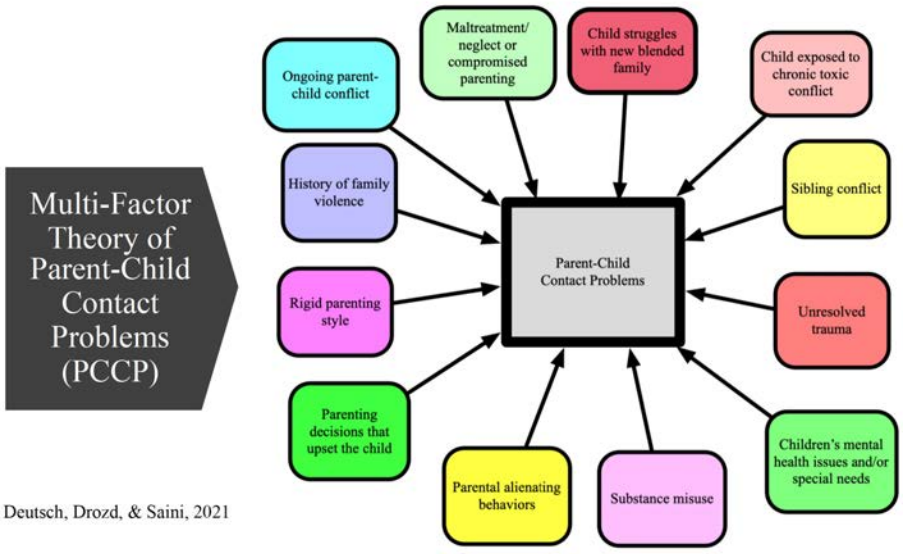
# Positive Aspects of Kayden's Law

- Greater attention to and education about various forms of domestic violence by mental health, legal and judicial communities where allegations of alienation are raised
- Greater attention to and education about child maltreatment (abuse and neglect) in contested custody matters where allegations of alienation are raised
- Provides for greater awareness to alternative clinical and judicial responses and interventions beyond custody reversals in PCCP cases.



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Areas that require attention, understanding, and education:

- Need to identify, differentiate subtypes of parent child contact problems to guide evaluation, determination, and intervention.
- Need a space to separately evaluate and place weight on allegations of alienation, family violence, and child abuse.
- Need a multifactorial approach to assessment that guards against anchoring biases.

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# Beware Reductionist approach

- If a child resists/refuses access to a parent is it by definition because the child has been abused? Or alienated?
- BROADEN the inquiry
- What else is going on?
- One size does not fit all

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## Some factors to consider regarding Parent-Child Contact Problems

- **Is it primarily the result of Parental Alienating Behaviors (PABs)?**
- **Is it the result of disordered thinking, including paranoia, delusional system? Can that parent separate their own thoughts and feelings from the child's? See things accurately?**
- **Is it the result of intentional fabrication of abuse allegations? Is the intent to interfere with the child's contact with the other parent?**
- **Is it the result of child abuse or neglect?**
- **Is it the result of domestic violence?**
- **Is it the result of alignment and identification with the abusive parent who exerts power, control, and/or physical violence on the other parent?**
- **Is it the result of an escalating cycle of fear and anxiety – child's anticipatory anxiety results in concern and protection and more anxiety**
- **Is it the result of enmeshment or role reversal in the favored parent-child relationship?**

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## Integrating & making sense of this information

- False allegations of CSA do occur and ideologies such as "believe the children" which may be construed to mean "always believe every child" need to be tempered by this information.
- Well-intentioned child interviewers can become biased based on their expectations and background beliefs and subsequently use suggestive techniques which can impact statements from children.
- A key question is, what steps can be instilled to assure this does not happen in the future?
- Little empirical research available addressing the mechanisms of how false accusations arise
- Further research needs to be conducted to refine investigatory processes so that false positive errors or false negative errors are minimized.

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The Goal of: Legislation, Evaluator Recommendations, Judicial Determinations, and Clinical Interventions should be the

**Psychological Health of the Child**



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## Considerations

SAFETY

DIFFERENTIATED RESPONSES

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## What is psychological health?

- The ability to withstand and cope with stress adaptively
- The defining characteristic of resilience is overall physical and psychological health: ability to bounce back from adversity
- **KEY WORDS: bounce back, cope, and adapt**



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## Resilience

- Resilience is based on
- Personal strengths,
- Resources and
- Psychological capital (synergistic and interdependent components)
  - hope,
  - efficacy,
  - resilience
  - optimism
  - (APA, 2023)





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# Intervention Suggestions

- We are looking to identify where in the system the problems lie: individual, parents, parent-child, coparents, other systems
- We are intervening at each of these levels
  - By building:
    - Coping skills
    - Healthy adaptation and mental health
    - Resilience



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## Intervention Suggestions/Creative Interventions

**If Trauma has been identified**

- 2-pronged approach between evidence-based treatment for issue at hand and court monitoring
- Restoring appropriate and safe contact (if appropriate) in conjunction with intervention
- Supervised therapeutic contact, if necessary.



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## Intervention Suggestions/Creative Interventions

**For mild & *some* moderate cases of alienation, justified rejection OR hybrid cases - ALL PCCP cases**

1. Parent education: individually, conjointly, group, on-line
2. Systems-Based Family Therapy (aka Reunification therapy-RT, Multi-Faceted Family Therapy, Multi-Modal Family Intervention-MMFI, Conjoint Child Centered Therapy-CCCT)
3. Multi-Day Family Intervention (for one family) - "intensives" (office based setting; home setting etc).



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# Intervention Suggestions/Creative Interventions

**In cases of justified rejection or severe alienation**

- Ensure child is protected from further risk associated with abusive parenting by either parent
- Whenever possible, and appropriate, prevent a "parentectomy"

1. Blended-sequential intervention (alienation)

2. Treatment of abusive parent (favored or rejected parent), demonstrated behavior change, understanding impact of behavior on child, genuine/authentic apology, ongoing individual treatment.

Increased contact contingent on demonstrated behavioral, cognitive and attitudinal changes

- 3. Do nothing. A process for the parent and child to "say goodbye for now".



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## What we must keep in mind

- Safety first: Screening & assessment for risk, violence, abuse needed separate from assessment of RRD and PCCP
- Need to limit the influence of our implicit and explicit biases
- Need to apply a multi-causal vs single causal model to explain RRD
- Some children express understandable and genuine fear, distrust, disrespect, hate for one parent
- Some parents induce, wittingly or unwittingly, fears & negative beliefs in children about other parent
- Allegations of alienation can be used as a strategic weapon in custody litigation
- Allegations of family violence/child abuse can be used as strategic weapon in custody litigation
- Need to identify/implement tailored responses to the needs of the specific family taking into account the surrounding systems

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## Complexity & Nuance

- Family dynamics are complex and nuanced - poses significant challenges in understanding and intervening efficaciously
- Many abused children remain conflicted/ambivalent about one or both parents, while other children are unequivocal
- In many cases, both parents contribute to the problems
- Multiple causes often co-exist in the same case – not either/or proposition – rather “both/and”
- May never know the causes for the PCCP for certain – living with ambiguity
- Difficult to make decisions or offer opinions that truly promote the “best interests” of the child (often its more of the “least detrimental alternative”

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# Moving Forward

- The continuation of screening for violence, coercive control and other risk factors is critical
- The use and guidance of academic literature, protocols and procedures formulated by professionals is essential for ongoing assessment
- The consideration of multiple hypothesis and alternative explanations for observed behaviors should be ongoing
- Continued assessment of other factors potentially contributing to a PCCP, and level of severity are necessary to identify the most appropriate legal and clinical remedies.
- Embracing the complexity and nuances of family dynamics– things are not usually black or white.
- Engage in constructive dialogue with professionals across disciplines and areas of study regarding child protection, child maltreatment, domestic violence and child custody.



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