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Erhan Bedestani
Catholic University of America (Student)

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THE NEGATIVE IMPACT OF SERVICE MEMBER AND VETERAN POST TRAUMATIC STRESS DISORDER (PTSD) RATING OR SPECTER OF PTSD ON CHILD CUSTODY ARRANGEMENTS

Erhan Bedestani

The following story is a composite of the unfortunate experiences veterans and service members often face in family court, specifically when navigating custody and parenting time. Mike served in the Army for ten years from 2008 to 2018, during which time he was deployed twice, once to Iraq in 2009 and once to Afghanistan in 2011.¹ Since his return from Iraq in 2011, Mike has been stationed stateside in what could be described as a nine to five position in his unit's logistics and contracting office. Mike is married to the love of his life Susan. They wed in 2008 when he first enlisted in the Army. Susan and Mike have two children, David and Sally, born in 2010 and 2014 respectively at Fort Bragg, North Carolina, when Mike was stationed with the 82nd Airborne Division. In 2020, Susan filed for divorce citing irreconcilable differences. During the divorce proceedings, Susan's attorneys call for an emergency hearing citing Mike as a risk to their children, ten and six respectively, because he likely suffers from PTSD as a result of his combat deployments in 2008 and 2010. Mike had assumed he would have 50/50 parenting time during the course of the divorce proceedings. He is an engaged father. He makes time to help with the children's school work and volunteer as a coach for their sports teams. He has a distinguished military record. Instead, his non-service member spouse is awarded custody while Mike must now prove that he does not have PTSD or, if he does, that he is not a risk to his children.

¹ This is not a true story but reflects, in general, the unfortunate experiences veterans and service members often face in family court, specifically when navigating custody and parenting time.

Fast forward two years and Mike has still not seen his children now thirteen and nine with any regularity. When he is fortunate to have visitation it is under the supervision of a licensed clinical social worker. Every word and interaction with the children is reported upon. The sessions are nerve-wracking for Mike and the children. David and Sally struggle to understand why they can't see their father, who prior to divorce proceedings took great pride in their accomplishments and activities. Mike struggles to explain what is happening in a way that his children would understand. Truly speaking, he too does not understand.

Mike has lost hope he will ever re-establish the type of relationship he once had with his children. He can see them drifting away. Mike is filled with sadness, worried that by the time the children reach adulthood his opportunity to re-establish a relationship with them will be too far gone. These thoughts are also coupled with the sadness he feels from the accumulating missed moments he used to treasure, like helping them with their homework assignments at the dinner table or Friday movie and pizza nights. He is at a loss as to how his military service and the accusation that he suffers from PTSD has consumed so much of his time, energy, and resources as he seeks to re-establish his parenting privileges. Mike commits suicide in 2021, one of the nearly twenty veterans and service members to do so each day.²

Mike's story represents the dichotomy many service member and veteran parents face; praised as our Nation's heroes, yet feared in family court and too often type-casted as a ticking time bomb on account of their service or combat experience.³ They are praised for their service to country and sacrifice in deployment and combat, while in family court they defend against the common misattribution of violent behavior to PTSD.⁴ Veterans' and service members' parental rights are negatively impacted because courts typically conclude that PTSD diagnoses indicate a risk to their children.⁵ Veterans and service members who are engaged, loving, and supportive parents are stripped of joint custody, have parenting time significantly reduced, or in worst case scenarios, lose legal and physical custody all together.⁶ Even veterans and service members without

² U.S. DEP'T OF VETERANS AFFS., OFF. OF MENTAL HEALTH & SUICIDE PREVENTION, NATIONAL VETERAN SUICIDE PREVENTION 5 (2021) (showing that veteran suicide deaths per day rose from 16.2 in 2001 to 17.2 in 2019).

³ See Patricia Kime, *PTSD Myths Persist in the Military Community, New Survey Finds*, MILITARY.COM (June 17, 2021), <https://www.military.com/daily-news/2021/06/17/ptsd-myths-persist-military-community-new-survey-finds.html>.

⁴ See *id.*

⁵ Stephen Krasner, *A Broken System: Veteran and Service Member Mistreatment*, HUFFPOST, https://www.huffpost.com/entry/a-broken-system-veteran-and-service-member-mistreatment_b_5801a7c1e4b0f42ad3d26180 (Oct. 25, 2017).

⁶ *Id.*

a diagnosis must wrestle with the assertion that they have undiagnosed PTSD.⁷ Where does this strong and prevailing bias come from, how is it perpetuated, and how can it be addressed? It is imperative to consider these questions so as to ensure veterans and service members' parental rights are not violated and their children unfairly stigmatized by a family court construct that paints the service member or veteran parent as a risk to them. Furthermore, it is important to note the scientific underpinning of PTSD continues to evolve and this paper will describe recent scientific advancements in the study of PTSD.

The assumptions, stigma, and bias regarding PTSD are negatively impacting service members and veterans during child custody proceedings.⁸ A majority of Americans believe that most service members and veterans suffer from PTSD; they also believe that those who suffer from PTSD have a propensity for violent behavior.⁹ In actuality, PTSD "is not the expected outcome from trauma exposure"¹⁰ and one diagnosed with PTSD is not dangerous.¹¹

This paper is structured into six parts. Part one will provide a high-level introduction on what PTSD is, how it is diagnosed, and how it manifests in a majority of those diagnosed with it. Part two will look at the prevailing stigma and bias service members and veterans experience based on assumptions about their mental health and suitability to parent resulting from a pervasive yet factually inaccurate narrative that one with a PTSD rating has a propensity for violence. Part three of the paper will highlight the constitutional law that establishes the fundamental right to a parent-child relationship, as well as the procedural due process arguments this issue presents.

Part four will delve into state law, specifically the "best interest of the child" standard, in order to highlight common factors states take into consideration

⁷ See generally Press Release, Katie Sullivan, Cohen Veterans Network, From Symptoms to Treatment, New Survey Reveals Americans' Strong Misconceptions About PTSD (June 3, 2021), <https://www.cohenveteransnetwork.org/wp-content/uploads/2022/11/Press-Release-Americas-Mental-Health-Pulse-Survey-PTSD-FINAL.pdf>.

⁸ See 38 U.S.C. § 101 (2021) (Veteran for the purpose of this comment is defined as per 38 U.S.C. § 101).

⁹ Chris Haxel, *A Study Shows PTSD Carries a Stigma for Veterans – Regardless of Whether They Suffer from It*, AM. HOMEFRONT PROJECT (Sept. 23, 2021), <https://americanhomefront.wunc.org/news/2021-09-23/a-study-shows-ptsd-carries-a-stigma-for-veterans-regardless-of-whether-they-suffer-from-it>; see generally Press Release, Katie Sullivan, Cohen Veterans Network, From Symptoms to Treatment, New Survey Reveals Americans' Strong Misconceptions About PTSD (June 3, 2021), <https://www.cohenveteransnetwork.org/wp-content/uploads/2021/06/Press-Release-Americas-Mental-Health-Pulse-Survey-PTSD-FINAL-1.pdf>.

¹⁰ Mikel Matto et al., *A Systematic Approach to the Detection of False PTSD*, 47 J. AM. ACAD. PSYCHIATRY L. 325, 325 (2019).

¹¹ Megan Thielking, *9 Myths About PTSD*, VOX, <https://vox.com/2015/1/29/7945099/ptsd-myths-trauma> (Mar. 12, 2015).

when awarding custody and how pervasive factual inaccuracies associated with veteran or service member PTSD (or the specter of PTSD) impacts application of the standard. Part five will highlight the case of a Marine Veteran David Carlson, a Minnesota resident who deployed three times to Iraq during Operation Iraqi Freedom. Following his divorce in 2012, David had enjoyed a co-parenting arrangement predicated on joint custody. In 2014 that all changed, when it was asserted that he had PTSD. The accusation was leveraged by his former spouse's legal team to paint him as a risk to the children. Mind you he had already co-parented throughout his marriage, separation and divorce, for six years and had no history of violence. The children's mother was awarded full custody in 2017, following an unwillingness by the family court judge to give weight to a psychological assessment by the Veterans of Foreign War's Surgeon General and leading PTSD expert that David was a fit parent, who suffered from mild anxiety, not PTSD, and posed no risk to his children.¹² The family court judge said to David Carlson she was "concerned whether [he has] some mental issues as a result of the traumatic stress [he] endured."¹³

Part five of the paper includes a review of a data set compiled through a survey of service members and veterans on their perceptions and experiences in family court relating to child custody arrangements. At present time, there has been no study to quantify how many veterans and service members have been negatively impacted in their child custody hearings because the court or opposing counsel have used PTSD or the specter of PTSD to paint them as unfit to parent. Therefore, in an effort to better understand the impact of the issue, a twenty-seven question survey was distributed in February 2022 to service members and veterans. While the eighteen responses to the survey do not represent a mountain of evidence, the survey serves as an example of the types of questions that could be asked by veterans groups, State courts, and Federal agencies such as the Department of Veterans Affairs (VA) and the Department of Defense (DoD) to capture data on family court custody outcomes for service members and veterans; from this data they may draw better informed conclusions. For veterans and service members, the VA, DoD, and veterans groups play an important role in advocating for the fair treatment of veterans and service members. Their advocacy comes in the form of educating the broader U.S. population on the veteran and service member experience. This helps mitigate prejudice towards veterans and service members.

Part six proposes several options to address the legal error through both legal

¹² *The War at Home: Iraq Veteran Says Family Court Using PTSD Treatment Against Him*, FOX 9 (May 10, 2017), <https://www.fox9.com/news/the-war-at-home-iraq-veteran-says-family-court-using-ptsd-treatment-against-him>.

¹³ *Id.*

and policy recommendations to reduce instances of unfair treatment of service members and veterans in family court on account of their PTSD or the specter of PTSD. It also highlights recently passed legislation in California, specifically State Senate Bill (SB) 1182.¹⁴ SB1182 was approved on September 17, 2022, by Governor Gavin Newsom.¹⁵ The bill was introduced by Senator Susan Eggman, of California's 5th Senate district, who is a veteran herself.¹⁶ Senator Eggman wanted to address "a concern that family courts are improperly discriminating against parents, legal guardians, or relatives who suffer from mental illnesses when determining the best interest of the child in making a custody determination."¹⁷ Section 3040 of Senate Bill 1182 is an effort to address the problem by better defining the parameters in which one's mental health condition can be factored when evaluating the best interest of the child, and furthermore, requiring family court judges to state on the record as to how the mental health illness factored into their ruling.¹⁸ Ideally readers of this paper, at a minimum, will come away with an appreciation that this issue necessitates an empirical study to better develop the full scope of its impact on veterans and service members and also take note that the fact that ongoing draft amendments to California family law code reinforces the idea that this issue is both real, substantial, and requires attention.

The bottom line is that veterans and service members' parental rights are negatively impacted because courts typically conclude that their PTSD diagnosis indicates a risk that they pose to their children.¹⁹ It is imperative veterans and service members' parental rights are not violated and their children unfairly stigmatized by a family court construct that paints the service member or veteran parent as a risk to them strictly because of a PTSD diagnosis and unfounded inferences from this diagnosis. In addition to wanting to highlight this issue this paper also proposes solutions. The first solution is decoupling fact from fiction as it related to PTSD. The second is modification to state law so as to provide

¹⁴ This author spoke with Senator Eggman's legislative assistant during the drafting process of SB1182 in late March of 2022. Senator Eggman's office had compiled significant anecdotal evidence of veterans in the 5th California Senate District being treated unfavorably in family court on account of a mental health condition, to include PTSD, and sought recommendations for additional research materials to facilitate their drafting.

¹⁵ S.B. 1182, 2021–22, Reg. Sess. (Cal. 2022).

¹⁶ *See generally id.*

¹⁷ *Hearing on SB1182 Before the California Senate Judiciary Committee, 2021–22, Reg. Sess. (Cal. 2022)* (statement of Senator Thomas Umberg, Chairman, Senate Judiciary Comm.) (the author's comments acknowledge occasions in which parents are denied custody because of a mental health diagnosis with no examination by the court into if the diagnosis affects the parents' relationship with the child or ability to care for the child).

¹⁸ *See generally* S.B. 1182, 2021–22, Reg. Sess. (Cal. 2022) (discussing the amended language of Section 3040 of Senate Bill 1182).

¹⁹ Krasner, *supra* note 5.

procedural due process protections applied to family court proceedings so that a PTSD diagnosis alone is not enough to impact a custody determination.

I. WHAT IS PTSD?

PTSD can occur in anyone.²⁰ It was first added to the American Psychiatric Association Diagnostic and Statistical Manual (DSM) in 1980.²¹ It is defined as, “a psychiatric disorder that may occur in people who have experienced or witnessed a traumatic event such as a natural disaster, serious accident, a terrorist act, war/combat, or rape or who have been threatened with death, sexual violence or serious injury.”²² PTSD’s symptoms generally manifest in four ways: 1) re-experiencing the traumatic event through flashbacks or nightmares, 2) avoidance of events or dynamics that remind one of the traumatic event, 3) increase in negative thoughts about oneself, and/or 4) feeling on edge in what is described as irritability, being overly aware of one’s surroundings, resulting in problems with sleep and concentration.²³ PTSD is diagnosed by a psychiatrist or psychologist, and an adult must exhibit the following symptoms for at least a month to be diagnosed: “[a]t least one re-experiencing symptom, at least one avoidance symptom, at least two arousal and reactivity symptoms, and at least two cognition and mood symptoms.”²⁴ Treatment and recovery include either the use of medication in the form of antidepressants and/or talk therapy with a mental health professional.²⁵

Technology has now provided an additional method by which PTSD can be identified; instead of focusing on symptomatic behavior, the technology identifies physiological changes in the brain.²⁶ Improved brain imaging and microscopes have been instrumental in identifying another etiology for PTSD: actual physiological change in the brain from exposure to large concussive blasts

²⁰ See Thielking, *supra* note 11.

²¹ Matthew J. Friedman, *PTSD History and Overview*, U.S. DEP’T OF VETERANS AFFS., https://www.ptsd.va.gov/professional/treat/essentials/history_ptsd.asp (Nov. 18, 2022) (the most recent DSM-5 was published in 2015).

²² *What is Posttraumatic Stress Disorder (PTSD)?*, AM. PSYCHIATRIC ASS’N, <https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd> (Nov. 18, 2022).

²³ *PTSD Basics*, U.S. DEP’T OF VETERAN AFFS., https://www.ptsd.va.gov/understand/what/ptsd_basics.asp (Nov. 27, 2022).

²⁴ *Post-Traumatic Stress Disorder*, NAT’L INST. OF MENTAL HEALTH, <https://www.nimh.nih.gov/health/topics/post-traumatic-stress-disorder-ptsd> (Nov. 27, 2022).

²⁵ *Id.*

²⁶ Caroline Alexander, ‘Shell Shock’ – *The 100 Year Mystery May Now Be Solved*, NAT’L GEOGRAPHIC (June 9, 2016), <https://www.nationalgeographic.com/science/article/blast-shock-tbi-ptsd-ied-shell-shock-world-war-one>.

or the aggregation of repeated exposure to smaller blasts.²⁷ In 2016, *National Geographic* reported on the unique and distinct damage to the brains of service members from the Iraq and Afghanistan wars caused by “exposure to blast force,” in what has become more commonly known as Traumatic Brain Injury (TBI).²⁸ The emergence of high-powered microscopes with improved resolution allows scientists to identify a distinct type of brain scarring attributed to concussive blast forces.²⁹ Images show that the damage impacts regions of the brain responsible for functions like attention span, emotional control, sleep regulation, and memory formation.³⁰ The evidence draws a clear line between concussive blast TBI and symptoms often attributed to PTSD. It also provides a scientific underpinning to what has been so often referred to as “shell shock”, a term first coined during World War I, which saw significant use of large caliber artillery in combat.³¹ This is different and distinct from the brain injury known as Chronic Traumatic Encephalopathy (CTE), a brain injury and disease associated with repeated concussions from blows to the head and has emerged as a focus in professional contact sports.³² Emerging discussion on another manner in which PTSD comes to fruition is “Operator Syndrome.”³³ Many of the behavioral symptoms of PTSD are also associated with Operator Syndrome.³⁴ Unlike PTSD, however, Operator Syndrome treats such behavioral symptoms as the “natural consequence[] of an extraordinarily high allostatic load,” or rather the “accumulation of physiological, neural, and neuroendocrine responses resulting for prolonged chronic stress” and physical demands.³⁵ Such symptoms are notably closely correlated with a career in the military, specifically with experience in combat-oriented military units.³⁶ This research and emerging science enforce two key points that bear heavily on the rest of the paper. First, the study of PTSD, specifically the physiological and psychological underpinnings of a PTSD diagnosis, is very much an emerging science.³⁷ Second, the number of veterans and service members who are at risk of

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ See Edgar Jones, *Shell Shocked*, 43 AM. PSYCH. ASSOC. 18, 18 (2012), <https://www.apa.org/monitor/2012/06/shell-shocked>.

³² See Alexander, *supra* note 26.

³³ See generally Christopher Freuh et al., “Operator Syndrome”: A Unique Constellation of Medical and Behavioral Health-Care Needs of Military Special Operation Forces, 55 INT’L J. PSYCHIATRY MED. 281 (2020).

³⁴ *Id.* at 287.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Eric B. Elbogen et al., *Violent Behaviour and Post-Traumatic Stress Disorder in US Iraq and Afghanistan Veterans*, 204 BRIT. J. PSYCHIATRY 368, 374 (2014).

stigmatization from PTSD is staggering.³⁸ According to the Veterans Administration, between eleven and twenty percent of veterans are diagnosed with PTSD.³⁹ In an estimated population of nearly twenty million veterans and service members, this means that at least four million of them suffer from PTSD. One can only assume the number is even higher, because many service members and veterans who meet the criteria have not sought or may even avoid a diagnosis. Given such a large population of those diagnosed and who potentially could be diagnosed with PTSD, coupled with the risk of continued mis-attribution by judges, lawyers, and larger society between violence and PTSD, it is easy to see why there is a high volume of anecdotal reporting that veterans and service members, with or without PTSD, are dealing with what they perceive is a strong bias against them in family court custody proceedings.⁴⁰

II. THE FACT VERSUS FICTION OF PTSD

PTSD impacts people from all walks of life.⁴¹ According to the American Psychiatric Association, “an estimated one in 11 people will be diagnosed with PTSD in their lifetime.”⁴² It is by no means unique to veterans and service members.⁴³ However, a recent June 2021 survey found, “[t]wo-[t]hirds (67%) of Americans believe [that most] veterans [have] PTSD, while three in four (74%) believe [that most] combat veterans [have] PTSD. One in four (26%) believe [patients] with PTSD are violent [or] dangerous.”⁴⁴

The public’s connection between violent behavior and PTSD has drawn considerable attention as a result of the wars in Iraq and Afghanistan, and so studies have sought to better understand the link.⁴⁵ Leading experts from the United States and United Kingdom published a 2014 study in the British Journal of Psychiatry titled, *Violent Behaviour and Post-Traumatic Stress Disorder in*

³⁸ Haxel, *supra* note 9.

³⁹ *How Common is PTSD in Veterans?*, U.S. DEP’T. OF VETERANS AFFS., https://www.ptsd.va.gov/understand/common/common_veterans.asp (last visited Nov. 20, 2022).

⁴⁰ Press Release, Katie Sullivan, Cohen Veterans Network, From Symptoms to Treatment, New Survey Reveals Americans’ Strong Misconceptions About PTSD (June 3, 2021), <https://www.cohenveteransnetwork.org/wp-content/uploads/2021/06/Press-Release-Americas-Mental-Health-Pulse-Survey-PTSD-FINAL-1.pdf>.

⁴¹ See S.B. 1182, 2021–22, Reg. Sess. (Cal. 2022) (discussing the amended language of Section 3040 of Senate Bill 1182).

⁴² *What is Posttraumatic Stress Disorder (PTSD)?*, AM. PSYCHIATRIC ASS’N, <https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd> (last visited Nov. 20, 2022).

⁴³ See S.B. 1182, 2021–22, Reg. Sess. (Cal. 2022) (discussing the amended language of Section 3040 of Senate Bill 1182).

⁴⁴ See Sullivan, *supra* note 7; Kime, *supra* note 3.

⁴⁵ Elbogen, *supra* note 37, at 368.

US Iraq and Afghanistan Veterans, providing critical facts and factors that help decouple the simplistic connection made between PTSD and violent behavior.⁴⁶ The core finding of the study was that “veterans with PTSD and no alcohol misuse were not statistically more likely to be severely violent compared with veterans with neither PTSD nor alcohol misuse.”⁴⁷ The study notes that “PTSD may play a less direct and . . . weaker role in violence by veterans than is commonly perceived . . . [and] it was the co-occurrence of PTSD and alcohol misuse that was particularly associated with dramatically increased odds of violent behavior perpetrated by veterans.”⁴⁸ The study went on to highlight that their “findings also support that risk factors beyond PTSD and alcohol misuse are important in understanding violence and physical aggression in veterans. Other risk factors affecting levels of violence included younger age, combat exposure, financial insatiability and history of violence before military service . . .”⁴⁹

The British Journal of Psychiatry study noted above significantly decouples the connection between PTSD and propensity for violence, noting the need to account for a number of other factors pre- and post-PTSD diagnosis before seeing any correlation between the diagnosis and violence.⁵⁰ The study also emphasizes that many factors which on their own without PTSD, such as alcoholism, represent a high correlation with violent behavior.⁵¹ This is an important point because within the context of family court and how the court evaluates parent-child relationships, generalizations that PTSD alone presents a significant risk factor is very likely harmful to a veteran or service member’s efforts to seek equitable parenting time or any form of visitation in the event they are not awarded joint physical custody.⁵² Any assertion that one has a propensity for violence makes it easy to assume they will commit intimate partner violence/abuse (IPV/IPA).⁵³ IPV/IPA is a significant factor when we later look at common factors courts weigh when applying the best interest of the child standard, because one who abuses a spouse also has the potential to abuse their child or children.⁵⁴ The complex nature of relationships combined with

⁴⁶ *Id.* at 372–74.

⁴⁷ *Id.* at 371.

⁴⁸ *Id.* at 372–74.

⁴⁹ *Id.* at 373.

⁵⁰ *Id.* at 373–74.

⁵¹ *Id.* at 373.

⁵² See Haxel, *supra* note 9 (discussing a generalized misperception among Americans that overestimates the number of veterans suffering from severe PTSD); Krasner, *supra* note 5 (discussing a presumption of PTSD in veterans by family court systems).

⁵³ See Jennifer L. Hardesty & Grace H. Chung, *Intimate Partner Violence, Parental Divorce, and Child Custody: Directions for Intervention and Future Research*, 55 FAM. RELS. 200, 202–03 (2006).

⁵⁴ *Id.*

behavioral risk factors and a PTSD diagnosis has led researchers from the National Center for PTSD to appreciate that the link between PTSD and violence requires more close study and “consideration of co-occurring conditions, specific PTSD symptoms and severity of violence.”⁵⁵ Researchers assess there is a need for “a deeper understanding about the role of PTSD in IPV not only as a risk factor for perpetration but also as a vulnerability factor for victimization.”⁵⁶ An important and often cited 2015 study is one that reviewed findings from 65 veterans from the wars in Iraq and Afghanistan. The study concluded that “female partners were found to perpetrate higher levels of physical IPA than the male veterans did.”⁵⁷ The study had Iraq and Afghanistan male war veterans and their female partners report physical IPA, with over 30% of partners in the study self-reporting physically abusing their veteran partner.⁵⁸ The study highlights “the finding that the female partners perpetrated more physical IPA than the male veterans indicates clinical efforts should take the time to assess IPA perpetrated by both members of the relationship rather than simply the male veteran.”⁵⁹ Additionally, the study notes the need to study the IPV/IPA between female veterans and their male partners.⁶⁰ Factors seeking to account for this are illuminating, including that “veterans’ PTSD symptoms may lead to emotional withdrawal behaviors, and the partners’ IPV may represent an effort to elicit engagement and emotion from the veterans.”⁶¹ Another key conclusion is that, “[v]eteran combat exposure alone was not significantly correlated with physical or psychological aggression on the part of the veteran or spouse.”⁶²

⁵⁵ See Elbogen, *supra* note 37, at 372–73.

⁵⁶ Gabriel Misca & Mary Ann Forgey, *The Role of PTSD in Bi-Directional Intimate Partner Violence in Military and Veteran Populations: A Research Review*, FRONTIERS PSYCH., Aug. 15, 2017, at 1, 2.

⁵⁷ *Id.* at 1, 6 (explaining further that “this study is important as it brings evidence that PTSD in Iraq and Afghanistan veterans may act as a risk factor for IPV victimization adding to our understanding of the complex relationship between combat-related PTSD and IPV.”); *Intimate Partner Abuse*, UNIV. COL. BOULDER, <https://www.colorado.edu/ova/intimate-partner-abuse> (last visited Nov. 19, 2022) (defining IPA as Intimate Partner Abuse and that it “occurs in a relationship that is or has been intimate. There is a pattern of one person inflicting emotional or physical pain on another in order to control them. Abuse can take many forms including [sic] verbal, emotional, psychological, physical, sexual, financial, and reproductive.”).

⁵⁸ Adam D. LaMotte et al., *Examining Intimate Partner Aggression Assessment Among Returning Veterans and Their Partners*, 26 PSYCH. ASSESSMENT 8, 9, 11 (2014).

⁵⁹ *Id.* at 14.

⁶⁰ *Id.*

⁶¹ Adam D. LaMotte et al., *Correlates of Intimate Partner Violence Perpetrated by Female Partners of Operation Iraqi Freedom and Operation Enduring Freedom Veterans*, PARTNER ABUSE, Apr. 2015, at 1, 3.

⁶² Misca & Forgey, *supra* note 56, at 5.

Clearly, there is significant evidence contrary to the commonly held view that most veterans suffer from PTSD, and those that do suffer from it are violent or have a propensity for violence. PTSD, as clarified in part one of the paper, in and of itself has no direct connection to physical violence.⁶³ Furthermore, PTSD, in an intimate partner setting may very well be indicative of a dynamic in which the veteran or service member is the victim of physical abuse from their partner.⁶⁴ The physiological and psychological underpinnings of the diagnosis are still emerging.⁶⁵ To draw a conclusion that one with PTSD has a proclivity to aggression is simply wrong and presents a significant risk to the veteran and service member population who find themselves before a judge in family court.⁶⁶

III. THE PARENT CHILD RELATIONSHIP IS A FUNDAMENTAL CONSTITUTIONAL RIGHT

In the landmark case of *Stanley v. Illinois*, the Supreme Court addressed the equal protection claim of Peter Stanley, who sought custody of his three children upon the death of their mother to whom he was not wed.⁶⁷ Illinois law at the time stated, “children of unwed fathers become wards of the State upon the death of the mother.”⁶⁸ Stanley appealed his case to the Illinois Supreme Court, which accepted that his “own unfitness had not been established but rejected the equal protection claim, holding that Stanley could properly be separated from his children upon proof of the single fact he and the dead mother had not been married [and his] actual fitness as a father was irrelevant.”⁶⁹ Stanley then appealed to the Supreme Court, whose decision emphasized the strong private interest, “of a man in the children he has sired and raised, undeniably warrants deference and, absent powerful countervailing interest, protection.”⁷⁰ The Supreme Court, in a five to two majority, reversed the Illinois Supreme Court decision, determining that unmarried fathers had a right to a parental fitness hearing, and could not be deemed unfit parents “without proof of neglect.”⁷¹

⁶³ See Elbogen, *supra* note 37, at 372.

⁶⁴ See Misca & Forgey, *supra* note 56.

⁶⁵ See generally *Post Traumatic Stress*, COHEN VETERANS BIOSCIENCE, <https://www.cohenveteransbioscience.org/post-traumatic-stress/> (last visited Nov. 30, 2022); see Alexander, *supra* note 26.

⁶⁶ See Sonya Norman et al., *Research Findings on PTSD and Violence*, U.S. DEP’T OF VETERANS AFFS., https://www.ptsd.va.gov/professional/treat/cooccurring/research_violence.asp#one (last visited Nov. 30, 2022).

⁶⁷ *Stanley v. Illinois*, 405 U.S. 645, 646 (1972).

⁶⁸ *Id.*

⁶⁹ *Id.* at 646–47.

⁷⁰ *Id.* at 651.

⁷¹ *Id.* at 658.

Justice White also emphasized the Illinois State statute “insists on presuming rather than proving Stanley’s unfitness solely because it is more convenient to presume than to prove.”⁷²

In a more recent case, *Troxel v. Granville*, the Supreme Court again solidified the parent-child relationship as a fundamental right.⁷³ The case dealt with third party visitation as grandparents Jennifer and Gary Troxel sought visitation rights of their two grandchildren following the death of their son Brad.⁷⁴ Brad Troxel and Tommie Granville – who were unmarried – had two daughters.⁷⁵ Brad “regularly brought his daughters to his parents’ home for weekend visitation,” as Brad lived with his parents rather than Ms. Granville.⁷⁶ A Washington state court, under the state’s best interest of the child standard, overturned Ms. Granville’s decision to deny Jennifer and Gary Troxel visitation rights following Brad’s suicide in 1993.⁷⁷

The Washington statute’s test stated, “[a]ny person may petition the court for visitation rights at any time,’ and the court may grant such visitation rights whenever ‘visitation may serve the best interest of the child.’”⁷⁸ Justice O’Connor, in a six to three decision, wrote that the Fourteenth Amendment’s Due Process Clause has a substantive component that “provides heightened protection against government interference with certain fundamental rights and liberty interests,” including “the fundamental right of a parent to make decisions concerning the care, custody, and control of their children.”⁷⁹ The decision notes the presumption that, “fit parents act in their children’s best interests . . . [and] there is normally no reason for the State to inject itself into the private realm of family to further question [a] fit parent’s ability to make the best decisions regarding their children.”⁸⁰ The court went on to define a fit parent as one that “adequately cares for his or her children.”⁸¹ The decision in *Troxel* also noted strict scrutiny was the appropriate standard by which to review the state statute, and that Washington lacked a “compelling [interest] in second-guessing a fit parent’s decision regarding visitation with third parties.”⁸²

Stanley v. Illinois and *Troxel v. Granville* highlight the fundamental right a parent has to a relationship with their children and also that state child custody

⁷² *Id.*

⁷³ *Troxel v. Granville*, 530 U.S. 57, 72 (2000).

⁷⁴ *Id.* at 61–62.

⁷⁵ *Id.* at 60.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at 67.

⁷⁹ *Id.* at 65–66.

⁸⁰ *Id.* at 58.

⁸¹ *Id.* at 68.

⁸² *Id.* at 80 (Thomas, J., concurring).

statutes may elicit procedural due process arguments.⁸³ The deprivation of a liberty interest through substantial infringement of a fundamental constitutional right necessitates application of the *Mathews v. Eldridge* three-part test. In *Mathews*, the Supreme Court heard a case regarding social security disability benefits and the extent to which a recipient of those benefits is due an in-person hearing before denial of those benefits.⁸⁴ Justice Powell, in his majority opinion, articulates the three-part test based on the context that “due process,” unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place, and circumstances . . . [it] is flexible and calls for such procedural protections as the particular situation demands.”⁸⁵ He specified that,

due process generally requires consideration of three distinct factors: First the private interest that will be affected by the official action; second, the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.⁸⁶

The respondent in the case requested an evidentiary hearing prior to any decision to terminate his disability payments, even though such a hearing was not required by the administrative procedures prescribed.⁸⁷

Deprivation of a liberty interest through substantial infringement of a fundamental constitutional right requires an analysis of due process requirements and specifically what level of due process one is to be afforded before such substantial infringement can occur.⁸⁸ The Fifth Amendment of the Constitution states that no person is to be “deprived of life, liberty, or property without due process of law,”⁸⁹ and the Fourteenth Amendment states, “nor shall any State deprive any person of life, liberty, or property, without due process of law.”⁹⁰ Understanding the requirements of the *Mathews v. Eldridge* balancing test combined with the fundamental right that is the child-parent relationship enables us with the necessary context when evaluating if custody statutes provide a service member or veteran due process when PTSD or the specter of

⁸³ *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Troxel*, 530 U.S. at 65–66 (first citing *Washington v. Glucksberg*, 521 U.S. 702, 719 (1997); then citing *Stanley v. Illinois*, 405 U.S. 645, 651 (1972)); *Troxel*, 530 U.S. at 68 (quoting *Parhman v. J.R.*, 442 U.S. 584, 602 (1979)).

⁸⁴ *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976).

⁸⁵ *Id.* at 334.

⁸⁶ *Id.* at 334–35.

⁸⁷ *Id.* at 325.

⁸⁸ *Id.* at 333.

⁸⁹ U.S. CONST. amend. V.

⁹⁰ U.S. CONST. amend. XIV, § 1.

PTSD is cited in their efforts for a fair custody arrangement.

In transitioning to part four, please keep at the forefront the following three key points from part three:

- 1: The parent-child relationship is a fundamental right.⁹¹
- 2: Substantial infringement upon this fundamental constitutional right may be a deprivation of an individual's liberty interest.⁹²
3. How state family courts weigh PTSD in the overall best interest of the child standard is entering into the space of erroneous deprivation by over asserting that a PTSD diagnosis in and of itself presents a risk to children warranting negative impact on a veteran or service members request for custody or parenting time.⁹³

IV. STATE LAW AND BEST INTEREST OF THE CHILD STANDARD

Family law resides in the domain of state courts primarily based on the Tenth Amendment, which states “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.”⁹⁴ This has led to what a “domestic relations exception” which prohibits federal courts from becoming involved in family law issues that are deemed to be within the authority of the states.⁹⁵

While state child custody statutes will vary, within those statutes is the “best interests of the child” standard.⁹⁶ This standard will vary across jurisdictions, however, there are common factors that exist amongst them, as noted in section 402 of the Uniform Marriage and Divorce Act (UMDA).⁹⁷ The UMDA is a model code and serves as a guide for states from which they can formulate their own best interest of the child standard.⁹⁸ Section 402 of the UMDA states:

⁹¹ See *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

⁹² *Id.* at 65, 67.

⁹³ Throughout this legal note I have identified that the parent-child relationship is a fundamental constitutional right. I pose that depriving or altering a military veteran or service member's parenting time solely on account of a false assertion one with PTSD presents a risk to their child or children can be argued as entering into the space of erroneous deprivation.

⁹⁴ U.S. CONST. amend. X.

⁹⁵ Emily J. Sack, *The Domestic Relation Exception, Domestic Violence, and Equal Access to Federal Courts, Partners*, 84 WASH. UNIV. L. REV. 1441, 1450 n.27 (2006).

⁹⁶ Jennifer Wolf, *Child's Best Interest in Custody Cases*, VERYWELL FAM., <https://www.verywellfamily.com/best-interests-of-the-child-standard-overview-2997765> (June 23, 2021).

⁹⁷ Steven N. Peskind, *Determining the Undeterminable: The Best Interest of the Child Standard as an Imperfect but Necessary Guidepost to Determine Child Custody*, 25 N. ILL. L. REV. 449, 458 (2005).

⁹⁸ See UNIF. MARRIAGE & DIVORCE ACT § 402 (1970) (amended 1973).

The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors including: (1) the wishes of the child's parent or parents as to his custody; (2) the wishes of the child as to his custodian; (3) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest; (4) the child's adjustment to his home, school, and community; and (5) **the mental and physical health of all individuals involved**. The court shall not consider conduct of a proposed custodian that does not affect his relationship to the child.⁹⁹

It is often factor (5), which presents veterans and service members with PTSD or dealing with an assertion they have PTSD the most significant hurdle in seeking custody or parenting time of their children.¹⁰⁰ In assessing any of the best interest of the child standards, Harvard Law professor and scholar Robert Mnookin states,

[B]ecause what is in the best interests of a particular child is indeterminate, there is good reason to be offended by the breadth of power exercised by a trial court judge in the resolution of custody disputes. But the underlying reasons for this indeterminacy—our inability to make predictions and our lack of consensus with regard to values—make the formulation of rules especially problematic.¹⁰¹

He concludes in his 1975 article, *Child Custody Adjudication: Judicial Framework in the Face of Indeterminacy*, that “what is best or least detrimental for a particular child is usually indeterminate and speculative. For most custody cases, existing psychological theories simply do not yield confidence in prediction of the effects of alternative custody dispositions.”¹⁰² Additionally, Professor Mnookin acknowledges that “while psychiatrists and psychoanalysts have at time been enthusiastic in claiming for themselves the largest possible role in custody proceedings, many have conceded that their theories provide no reliable guidance for predictions about what is likely to happen to a particular child.”¹⁰³ In returning to his points four decades later, Professor Mnookin reaffirms what he posited in his earlier work that “[p]resent-day knowledge about human behavior provides no basis for the kind of individualized predictions required by the best-interests standard.”¹⁰⁴

⁹⁹ UNIF. MARRIAGE AND DIVORCE ACT § 402 U.L.A. (1973) (emphasis added).

¹⁰⁰ Evan R. Seamone, *Improved Assessment of Child Custody Cases Involving Veterans with Posttraumatic Stress Disorder*, 50 FAM. CT. REV. 310, 314–15 (2012).

¹⁰¹ Robert H. Mnookin, *Child Custody adjudication: Judicial functions in the Face of Indeterminacy*, 39 LAW & CONTEMP. PROBS. 226, 230 (1975).

¹⁰² *Id.* at 229.

¹⁰³ *Id.* at 258–59.

¹⁰⁴ Robert H. Mnookin, *Child Custody Revisited*, 77 LAW & CONTEMP. PROBS. 249, 250 (2014).

He cites the work of colleagues Elizabeth Scott and Robert Emery, who go as far as to state, “the legal systems confidence in the best-interest standard rests on a misplaced faith in the ability of psychologists and other mental-health professionals to evaluate families and advise courts about custodial arrangements that will promote children’s interests.”¹⁰⁵ The core takeaway from these articles is that the best interest of the child standard presents the judge with a great deal of discretion, and gives the impression that there is an optimal decision with respect to child custody where there is not.¹⁰⁶ The best interest of the child standard, though the predominant method, is one of three theories or methods that have been used in family courts to help determine child custody arrangements.¹⁰⁷ The second, now defunct theory is the primary caretaker preference, which though gender neutral, created argument over who was the primary caretaker and generated more custody litigation.¹⁰⁸ It is mentioned here solely to provide context as to one of the methods by which custody has been determined in the past, but is not a method this paper considered in offering solutions to the issue raised by a PTSD diagnosis in family court. The third is the presumption of joint custody, which is generally the even distribution of parenting time, and based on the presumption that joint custody is in the best interest of the child.¹⁰⁹

Professor Elizabeth Scott’s approximation standard, adopted by the American Law Institute, seeks to award parenting upon the basis of past caretaking.¹¹⁰ Ultimately, despite the significant issues presented by the best interest of the child standard, it remains the primary method by which child custody is determined.¹¹¹ Thus, child custody is “the remaining ‘fault’ battlefield.”¹¹²

The temptation for viciousness is surely increased when the odds are heightened by narrow restriction of the possible outcomes; it strains human capacities to trust a spouse accorded custody in such a context voluntarily to permit her former spouse’s relationship with their child to continue. Law may not influence human behavior much; but when it places an efficient instrument for revenge at hand, it is hard to believe the instrument will not be used and feared, with unfortunately

¹⁰⁵ Elizabeth Scott and Robert Emery, *Gender Politics and Child Custody: The Puzzling Persistence of the Best-Interests Standard*, 77 *LAW & CONTEMP. PROBS.* 69, 71 (2014).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 69, 71, 76.

¹⁰⁸ Marygold S. Meli, *The American Law Institute Principles of Family Dissolution, the Approximation Rule and Shared Parenting*, 25 *N. ILL. UNIV. REV.* 347, 352 (2005).

¹⁰⁹ *Id.* at 351–52.

¹¹⁰ *Id.*

¹¹¹ Scott, *supra* note 105, at 69.

¹¹² Joanna B. Strauss & Peter Strauss, *Beyond the Best Interests of the Child*, 74 *COLUM. L. REV.* 996, 1003–04 (1974).

predictable impact on litigation incidence and character.¹¹³

PTSD or the assertion that a veteran or service member has PTSD presents a fault instrument by which the best interest of the child standard calculation can be turned against the service member and can become an insurmountable barrier.¹¹⁴ Not because the PTSD diagnosis presents risk to the child or is by any means a predictor of future caretaking ability of the service member or veteran parent or well-being of the child, but only for the reason that the standard allows judges a high degree of discretion.¹¹⁵ This discretion operates in a context informed by misunderstandings and openly false narratives surrounding the PTSD diagnosis and its misattribution as a direct cause of violent behavior, identified, *supra*, in parts one and two of this paper.¹¹⁶ The result is judicially awarded custody arrangements, which do not favor the service member or veteran with an actual, or asserted, PTSD diagnosis, nor do they necessarily represent the best interest of the child.¹¹⁷ This is indicative of State intervention that is unjustified because such intervention is reserved for when a parent endangers the welfare of the child, not when the parent is diagnosed with a mental health disorder for which a diagnosis alone presents no risk of violence, especially when reviewed under the context of past behavior and care taking which has no history of abuse or violence.¹¹⁸ Such intervention, as stated by Joseph Goldstein in his work *Beyond Best Interests of the Child*, results in disruption of 1) relationships and their continuity, 2) continuity of surroundings and 3) continuity of environmental influences which harms children.¹¹⁹ Technological advancements in artificial intelligence have aided doctors in developing a blood test to screen for PTSD with “77 percent accuracy...in male combat veterans.”¹²⁰ As discussed in part one, improving medical technology is identifying the physiological underpinnings of PTSD. Objective screenings,

¹¹³ *Id.* at 1004.

¹¹⁴ Seamone, *supra* note 100, at 320.

¹¹⁵ *Id.*

¹¹⁶ Eric Elbogen et al. *Violent Behavior and Post-Traumatic Stress Disorder in US Iraq and Afghanistan Veterans*, 204 BRIT. J. OF PSYCH., 368, 373–74 (2014); COHEN VETERANS NETWORK, *Americans’ Strong Misconception on PTSD Revealed*, June 3, 2021, <https://www.cohenveteransnetwork.org/wp-content/uploads/2021/06/Press-Release-Americas-Mental-Health-Pulse-Survey-PTSD-FINAL-1.pdf> (last visited November 21, 2022).

¹¹⁷ Seamone, *supra* note 100, at 311.

¹¹⁸ Harry Krause et al., FAMILY LAW: CASES, COMMENTS, AND QUESTIONS, 572 (8th ed. 2018).

¹¹⁹ *Id.* (citing to JOSEPH GOLDSTEIN ET AL. *BEYOND BEST INTEREST OF THE CHILD*, 31–32 (2d ed. 1979)).

¹²⁰ Greg Williams, *Experimental Blood Test may accurately Screen for Post-traumatic Stress Disorder*, NYU LANGONE HEALTH NEWS HUB (Sept. 10, 2019), <https://nyulangone.org/news/experimental-blood-test-may-accurately-screen-post-traumatic-stress-disorder> (last visited November 21, 2022).

such as a blood test, will soon allow for a veteran or service member to determine if they do or do not have PTSD and either seek treatment in the event they do or defend against an accusation lodged in family court in the event they do not.

V. THE CASE OF MARINE VETERAN DAVID CARLSON, A FAILURE OF PROCEDURAL DUE PROCESS IN FAMILY COURT.

David Carlson is a former Marine and veteran of the Iraq war.¹²¹ David served a total of three combat tours of duty to Iraq as a Marine Corps infantryman between 2002 and 2007.¹²² Married in 2006, he and his former spouse welcomed the birth of their twin girls a year later.¹²³ The marriage was short lived and, following a period of separation, they divorced in Ramsey County, Minnesota in 2012.¹²⁴ Their 2012 divorce decree “provided for joint legal and physical custody of the couple’s then twin five-year-old daughters, with roughly equal parenting time.”¹²⁵ In 2014, David’s former spouse filed for a “harassment restraining order (HRO) with the Tenth Judicial District Court for Anoka County, Minnesota.”¹²⁶ Disagreements related to their co-parenting efforts became more frequent, culminating in the HRO and request by his former spouse in family court for sole custody of children.¹²⁷ The former spouse made accusations of physical and emotional abuse in support of the request for an HRO.¹²⁸ David agreed to a telephonic interview with me on January 21, 2022. In that interview, he discussed the HRO. David insisted the accusations were false and also that they were filed in a calculating manner so as to generate the HRO immediately before his former spouse petitioned for full custody of the children.¹²⁹ He assessed the HRO combined with his veteran status created a strong perception and bias that he suffered from issues with emotional regulation and was violent in nature.¹³⁰ He clarified that in fact he had, and still to this day has, no record of violence, had an impeccable military service record, had served as a substitute high school teacher, and had co-parented for over seven years at

¹²¹ FOX 9, *Supra* note 12; I came across the story of David Carlson in the fall of 2021 when seeking stories of Veterans or Service members negatively impacted by the assertion they had PTSD on their child custody arrangement.

¹²² FOX 9, *Supra* note 12.

¹²³ *Id.*

¹²⁴ Carlson v. Cnty. of Ramsey, Civ. No. 16-765, 2016 WL 3352196, at *1 (D. Minn. June 15, 2016).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.* at *1–2.

¹²⁸ *Id.*

¹²⁹ Telephone Interview with David Carlson (Jan. 21, 2022).

¹³⁰ *Id.*

the time the HRO was granted.¹³¹

David, in response to the HRO, immediately filed for additional parenting time, but he and his former spouse entered into mediation and reached agreement that she would dismiss the HRO if he dismissed his request for additional parenting time.¹³² Soon thereafter, in June 2015, his former spouse sought sole custody of the twins.¹³³ The court appointed a *guardian ad litem* (GAL) to conduct an investigation over a six-month period, which included a review of all mental health records of the parties involved.¹³⁴ The GAL presented a number of concerns in her report and asked that David's parenting time be limited to supervised visitation once a week, that he voluntarily release all of his mental health records, and submit to ninety days of additional review.¹³⁵ The GAL focused on need to obtain David's mental health records and to conduct a psychological evaluation of him.¹³⁶ In February 2016, the GAL issued a report to the trial court judge that David refused to provide his mental health records.¹³⁷ Soon after, David provided a comprehensive psychological evaluation from PTSD expert and Surgeon General for Veterans of Foreign Wars (VFW), Dr. James Tuorila.¹³⁸ Dr. Tuorila's evaluation was highly favorable to David, diagnosing him with "anxiety disorder, mild depression and residuals of multiple concussions, and opined that '[David's] parenting rights resume immediately because he is and can continue to be a good father and role model for his children.'" ¹³⁹

Dr. Tuorila's report was rebuffed by the GAL for what court records state as "perceived deficiencies," but included no details about those alleged deficiencies.¹⁴⁰ The judge ordered that David release all of his mental health records if he wanted to be able to see his children.¹⁴¹ The judge stated she was "concerned...whether [he] [had] some mental health issues as a result of the traumatic stress [he] endured."¹⁴² David refused to release any more records stating, "the evaluation from Dr. James Tuorila stood for itself."¹⁴³ David was

¹³¹ *Id.*

¹³² *Id.*

¹³³ Carlson v. Cnty. of Ramsey, Civ. No. 16-765, 2016 WL 3352196, at *2 (D. Minn. June 15, 2016).

¹³⁴ *Id.*

¹³⁵ *Id.* at *3.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at *2; FOX 9, *supra* note 12.

¹⁴² FOX 9, *supra* note 12.

¹⁴³ Telephone Interview with David Carlson (Jan. 21, 2022).

eventually denied all visitation in 2017.¹⁴⁴ During the January 22, 2022 interview, he went on to explain that after being denied visitation he eventually worked with the court, providing it all of his mental health records, and met with a court-appointed psychologist for nearly three years from 2017 through 2020.¹⁴⁵ David noted that the court-appointed psychologist provided the same assessment that Dr. Tuorila had back in 2016.¹⁴⁶ As a result, supervised visitation sessions between he and his twin daughters began in 2021 with the possibility of parenting time being re-established.¹⁴⁷ His former spouse then petitioned the family court to allow her to move the children with her and her new spouse to Texas.¹⁴⁸ According to David, the family court judge stated he found nothing that would keep David from resuming his parenting time, but deferred to the twin girls and if they wanted to move or remain in Minnesota and resume parenting time with their father.¹⁴⁹ By this time, David had been effectively separated from his twin daughters for nearly six years.¹⁵⁰

It was not a surprise to David that his daughters chose to move with their mother and stepfather in 2021.¹⁵¹ The close relationship he had with his daughters prior to the HRO was fundamentally changed as a result of the prolonged court proceedings.¹⁵² He is convinced that the court's continued assertion that he had service-related mental health issues biased its ruling that he was unfit to parent and subjected him to significant hurdles to disprove their assertions.¹⁵³ By the time he surmounted these hurdles, it was far too late; the children had moved on.¹⁵⁴ In speaking with David, it was evident he fought for the chance to see his girls again, but the amount of time it took to surmount all these obstacles is something no child can really understand and this point came up often in the interview.¹⁵⁵ One can only imagine what a child is left to think when a parent who was always present suddenly is not. What can a parent do or say to ever explain such a drastic and immediate change? In speaking with David, one can hear the pain and sense of loss he feels as well as the hope that one day in the future he can reconnect with his daughters. It is a pain and sense of loss this author has listened to far too often from countless veterans and

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

service members.

Minnesota Statute 518.17 describes the state's best interests of the child standard (BIOC). Similar to Section 402 of the UMDA, it takes into consideration any physical, mental, or chemical health issue of a parent that affects the child's safety or developmental needs.¹⁵⁶ In David Carlson's case, both the judge and the GAL prematurely asserted that his service had traumatized him, and required he be evaluated by a court-appointed psychologist and provide all his mental health records to determine his fitness to parent.¹⁵⁷ What is difficult to understand with respect to the family court's application of the BIOC, is that:

- 1) David Carlson received a favorable report in February 2016 from Dr. Tuorila, a leading expert in PTSD, who determined Mr. Carlson did not suffer from PTSD and whose parenting time should immediately be re-initiated.¹⁵⁸
- 2) David Carlson did not have a record of domestic violence, drug or alcohol abuse, and at the time his parenting was restricted in 2016, he had over nine years of a successful and healthy parent-child relationship.¹⁵⁹

The seeming disparity between the record and the outcome evokes part four of this paper and a remark of Dr. Mnookin, "because what is in the best interests of a particular child is indeterminate, there is good reason to be offended by the breath of power exercise by a trial court judge in the resolution of custody disputes."¹⁶⁰ It is clear that in this case there was a significant over-reliance on the GAL's assessment, who did not rely on facts regarding David Carlson's mental health, instead over-emphasizing the need for his entire mental health record and discounting a favorable psychological assessment from Dr. Tuorila.¹⁶¹

If we appreciate the fundamental constitutional right reflected in the parent-child relationship, it is difficult for this author to understand what more David Carlson could have done to advocate for his right to a parent-child relationship with his daughters. David Carlson's experience is likely being repeated every day by veterans and service members in each state across the United States. We know from *Mathews v. Eldridge* that first we must assess the private interest that

¹⁵⁶ Custody and Support of Children on Judgment, MINN. STAT. § 518.17 (2021); UNIF. MARRIAGE AND DIVORCE ACT, 42 U.S.C. § 402.

¹⁵⁷ Carlson v. Cnty. of Ramsey, Civ. No. 16-765, 2016 WL 3352196, at *3 (D. Minn. June 1, 2016).

¹⁵⁸ *Id.*

¹⁵⁹ Telephone Interview with David Carlson (Jan 21, 2022); Carlson v. Cnty. of Ramsey, Civ. No. 16-756, 2016 WL 3352196, at *1, *4 (D. Minn. June 15, 2016).

¹⁶⁰ Mnookin, *supra* note 101, at 230.

¹⁶¹ Carlson, 2016 WL 3352196, at *3.

will be affected if there is no action, and in cases dealing with child custody, the private interest is very high.¹⁶² Second, we assess the risk of erroneous deprivation based on the procedures currently in use.¹⁶³ In reflecting on David Carlson's experience, one can argue that additional procedures are necessary to safeguard a veteran or service member before they are required to prove their mental health fitness. This is especially true when there is only an assertion that the veteran or service member is dealing with combat-related trauma, but there is no evidence it has manifested as a risk to the individual, their children, or others. David Carlson pursued an education, parented his children for nine years, and then found himself effectively alienated from them because a court asserted his combat experience and associated trauma needed to be assessed. That arguably unnecessary assessment, which took the better part of five years, recognized he was not a risk. Unfortunately, by that point his parent-child relationship was irreversibly damaged and fundamentally ceased to exist. In the case of family court proceedings, this author assesses the first two parts of the test weigh substantially in favor of the veteran or service member parent. The third part of *Mathews v. Eldridge* due process test asks what additional cost the government would absorb if there were an additional procedural requirement and to determine if the benefit outweighs the cost.¹⁶⁴ It is this author's recommendation that adding an additional step within the family court process to establish set criteria for when a service member or veteran's service-related mental health diagnosis can come into the BIOC analysis would not create additional expense, but instead clarify and simplify the requirements for use of such diagnoses. This paper will further explore both legal and policy options to address this issue in part six. Here we consider the idea that a service-related mental health diagnosis only be applicable to proceedings if there is any officially confirmed and documented history of:

- 1) violence (domestic, child abuse, criminal), and/or
- 2) alcohol or drug abuse, and/or
- 3) military discharge which is specifically other than honorable, which is "the most severe type of military administrative discharge and "include[s] security violations, use of violence, [and] conviction by a civilian court"¹⁶⁵

¹⁶² *Mathews v. Eldridge*, 424 U.S. 319, 336 (1976).

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ G.I. JOBS, *What You Need to Know About Other-Than-Honorable Discharge*, (last visited April 2, 2021), <https://www.gijobs.com/what-you-need-to-know-about-other-than-honorable-discharge/#:~:text=Other%2DThan%2DHonorable%20Conditions%20Discharge&text=In%20most%20cases%2C%20veterans%20who,through%20this%20type%20of%20discharge.>

These represent the key corollary factors discussed in part two that contribute to violent behavior when coupled with a PTSD diagnosis.¹⁶⁶ Absent these facts, there is a “less direct and somewhat weaker role in violence by veterans than is commonly perceived.”¹⁶⁷ These corollary factors in conjunction with a service-related mental health diagnosis raise the risk factor, specifically if the veteran or service member is suffering from PTSD.¹⁶⁸ This would then meet the requirement for the diagnosis to be considered when evaluating BIOC.

VI. DATA SURVEY METHODOLOGY AND RESULTS

This paper presents a methodology to both define the problem veterans and service members are experiencing in family court on account of their service as well as quantify the problem. The assertion made in family court that a veteran or service member’s PTSD diagnosis presents a risk to their children, negatively impacts child custody and parenting time determinations.¹⁶⁹ In an effort to develop a small data set, a survey of twenty-seven questions was distributed through the website “warriorfamilyadvocacy.com” with the intent to gather responses from veterans or service members on their experience with the family court system.¹⁷⁰ The questionnaire may be submitted anonymously or respondents can provide contact information if they are open to further inquiry. The questions are focused on identifying if PTSD was used in family court proceedings and the impact of the diagnosis, or the assertion of a diagnosis, on the custody arrangement. The questions are as follows:

Q1: Prefer to Remain Anonymous? Yes or No

Q2: If you answered No to Question 1, please provide preferred method of contact: email address or phone number and please provide the specific email address or phone number

Q3: Have you had a child custody case while in the Military Service or since leaving the Service. Yes or No

Q4: Do you feel your military service history was used against you in your child custody case? Yes or No

Q5: If you answered yes to Q4, please select from one of the following options:

Option 1 Denial of parenting time

¹⁶⁶ Eric B. Elbogen et al., *Violent Behavior and Post-Traumatic Stress Disorder in US Iraq and Afghanistan Veterans*, BRIT J. OF PSYCH. 368, 373 (2014).

¹⁶⁷ *Id.* at 372.

¹⁶⁸ *Id.* at 373.

¹⁶⁹ Seamone, *supra* note 100, at 317.

¹⁷⁰ Erhan Bedestani, *Warrior Family Advocacy Survey*, <https://www.warriorfamilyadvocacy.com/questionnaire> (Jan. 18, 2022).

Option 2 Reduction of requested parenting time

Option 3 Denial of Full Custody

Option 4 Denial of Joint Custody

Option 5 Other

Q6: If selected Option 5 “Other” in Q5, please explain:

Q7: Was a protection order ever issued against you? Examples are Temporary Restraining Order, Harassment Order, No Contact Order? Yes or No

Q8: If you answered Yes to Q7, please feel free to explain details regarding the order and circumstances that led to it.

Q9: Was your Military Service or Veteran Status introduced to impact your effort for child custody? Yes or No

Q10: If Yes to Q9, please explain how.

Q11: Was PTSD and or Service Related Trauma cited in your child custody case in a manner that negatively impacted your child custody case? Yes or No

Q12: If Yes to Q11, please explain how:

Q13: Q13: Are you receiving compensation from the VA for PTSD? Yes or No

Q14: Did you suffer financial hardship or homelessness as a result of your child custody legal battle? Yes or No

Q15: If Yes to Q14, please explain.

Q16: Do you feel that your parenting time has been unfairly limited as a result of your military service or PTSD diagnosis?

Q17: If Yes to Q16, please explain

Q18: Have you been alienated from your child as a result of child custody legal battle in which your Military Service or PTSD diagnosis was used against you? Yes or No

Q19: If Yes to Q18, please explain

Q20: Has your mental health been impacted by your custody battle?

Q21: If Yes, please explain:

Q22: Has your physical health been impacted? Yes or No

Q23: If Yes, please explain:

Q24: Do you know a Veteran or Service member who has contemplated suicide because of losing custody of their children on account of their Service or PTSD?

Q25: If Yes to Q24 please explain:

Q26: Are you willing to share more about your specific case? Yes or No

Q27: If Yes, please provide best email or phone number to contact you.

In total, 18 service members and veterans responded to the survey including this author. Key insights from the questionnaire are that over half the responses to question nine were “yes.”¹⁷¹ In question ten, responses ranged from the service members and veterans saying their parenting was called into question because of deployments to PTSD being cited as a reason to deny both custody and visitation.¹⁷² Nearly half of the respondents answered “yes” to question eleven and their responses ranged from describing how opposing counsel created a perception that they were dangerous because they had been in combat to specific use of their PTSD diagnosis to argue denial of their parenting time.¹⁷³ Only six of the 18 respondents receive compensation from the Veterans Administration for PTSD.¹⁷⁴ Ten of the respondents said they felt their parenting time has been unfairly limited as a result of their military service or PTSD diagnosis.¹⁷⁵ Six of the 18 answered “yes” to question eighteen and over half said their physical and mental health has been impacted by their custody battle.¹⁷⁶ Most distressing was that nearly half said they know a veteran or service member who has contemplated suicide because of losing custody of their children on account of their Service or PTSD.¹⁷⁷ One respondent noted they had lost five friends to suicide because of this issue.¹⁷⁸

VII. POLICY AND LAW RECOMMENDATIONS TO ADDRESS THE ISSUE

Through Sections One to Five above, I have sought to define problems veterans face in family court and provide, through the case of David Carlson, a specific vignette of how assertion of PTSD may impact child custody and parenting-time determinations.¹⁷⁹ This section seeks to provide recommendations to address legal and policy issues contributing to victimization of veterans and service members in family court child custody and parenting time proceedings.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ FOX 9, *supra* note 12.

A. Recommendation to Address Legal Error

The assertion of PTSD or proof of PTSD without other factors present should not be considered as part of the overall best interest of child standard analysis. Relying on the research noted in Section Two of the paper, a recommendation is that only when the service member or veteran has 1) a previous domestic violence charge for physical abuse or 2) documented abuse of drugs or alcohol with no current treatment on file, or 3) a statement from service member or veteran's medical care provider that they are specifically unfit to parent, or 4) an other than honorable discharge, or 5) existing criminal record for violent offense should the judge take into consideration a PTSD diagnosis. If a veteran or service member is diagnosed with PTSD and also exhibits one or more of the five attributes listed (a PTSD Plus requirement) is the court to take into consideration a PTSD diagnosis in evaluating the service member or veterans fitness to parent. Shy of this, PTSD or the assertion of PTSD is not be considered in BIOC analysis.

At the time this note was being drafted in Spring 2022, California State Senator Susan Eggman of the 5th Senate District introduced a draft amendment in the form of Senate Bill 1182, which requires California courts to “state its reasons for the finding and the evidence relied upon in writing or on the record,” if mental health illness of a parent is a factor when determining the best interest of the child.¹⁸⁰ SB 1182 was signed in to California state law by Governor Gavin Newsom on September 17, 2022. Below is the amended version of Senate Bill 1182 from April 18, 2022. This version identifies added and deleted language during the drafting process. Light blue text reflects additions and lined out red text reflect deletions. The light blue text became part of the final approved bill, while the red text was omitted. SB 1182 was first introduced on February 17, 2022 and evolved in drafting from explicitly stating a court “shall not consider a history of or current mental illness of a parent, legal guardian, or relative in determining the best interest of the child under subdivision (a) absent a finding by the court that the....history of mental illness would make them unsuitable and unable to provide adequate and proper care and guidance for the child.”¹⁸¹ It now reads that “if a court finds that the effects of a parent’s, legal guardian’s, or relative’s history of or current mental illness are a factor in determining the best interest of the child under subdivision (a), the court shall do both of the following: (A) Provide the parent, legal guardian, or relative with a list of local

¹⁸⁰ Act of Sept. 17, 2022, ch. 385, §3(d)(1)(B), 2021-22 Cal. Stat. 93 (Cal. 2022) (amending family law statute: section 3040 to the Family Code).

¹⁸¹ Act of Sept. 17, 2022, ch. 385, §3(d)(1), 2021-22 Cal. Stat. 93 (Cal. 2022) (history of parental, mental illness in child-custody decisions).

resources for mental health treatment...[and] (B) State its reasons for the finding and the evidence relied upon in writing or on the record.”¹⁸²

SEC. 3. Section 3040 of the Family Code is amended to read:

3040.

(a) Custody should be granted in the following order of preference according to the best interest of the child as provided in Sections 3011 and 3020:

(1) To both parents jointly pursuant to Chapter 4 (commencing with Section 3080) or to either parent. In making an order granting custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent, consistent with Sections 3011 and 3020. The court, in its discretion, may require the parents to submit to the court a plan for the implementation of the custody order.

(2) If to neither parent, to the person or persons in whose home the child has been living in a wholesome and stable environment.

(3) To any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

(b) The immigration status of a parent, legal guardian, or relative shall not disqualify the parent, legal guardian, or relative from receiving custody under subdivision (a).

(c) The court shall not consider the sex, gender identity, gender expression, or sexual orientation of a parent, legal guardian, or relative in determining the best interest of the child under subdivision (a).

~~(d)(1) Commencing January 1, 2024, the court shall not consider a history of or current mental illness of a parent, legal guardian, or relative in determining the best interest of the child under subdivision (a) absent a finding by the court that the parent, legal guardian, or relative's history of mental illness would make them unsuitable and unable to provide adequate and proper care and guidance for the child.~~

~~(2) A court that makes a finding described in paragraph (1) shall do both of the following:~~

(d) (1) Commencing January 1, 2024, if a court finds that the effects of a parent's, legal guardian's, or relative's history of or current mental illness are a factor in determining the best interest of the child

¹⁸² Act of Sept. 17, 2022, ch. 385, §3(d)(1)(B), 2021–22 Cal. Stat 93 (Cal. 2022) (updated verbiage of family law statute: section 3040 to the Family Code).

under subdivision (a), the court shall do both of the following:

(A) Provide the parent, legal guardian, or relative with a list of local resources for mental health treatment.

~~(B) Make a written statement on the record how the person's mental illness factored into the judge's ruling.~~

(3)

(B) State its reasons for the finding and the evidence relied upon in writing or on the record.

(2) Nothing in this subdivision prohibits a court from considering ~~violence, even violence~~ *violence or abuse, even violence or abuse* as a result of mental illness, from determining the best interest of the child.

(3) For purposes of this subdivision “mental illness” means a significant mental illness or emotional impairment, as determined by a mental health professional qualified under the laws and regulations of the state.

(e) This section establishes neither a preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody, but allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the child, consistent with this section.

(f) In cases where a child has more than two parents, the court shall allocate custody and visitation among the parents based on the best interest of the child, including, but not limited to, addressing the child's need for continuity and stability by preserving established patterns of care and emotional bonds. The court may order that not all parents share legal or physical custody of the child if the court finds that it would not be in the best interest of the child as provided in Sections 3011 and 3020.¹⁸³

Senator Eggman's state legislation highlights California's effort to balance how mental health illness is addressed in family court proceedings and requires judges to go on the record and state with a degree of specificity the reasons why a parent's mental health is, or was, a factor in determining best interest of the child.¹⁸⁴ Although Section 3 is not specific to veterans or service members, Section 1 of the SB 1182 notes the specific risk in the form of bias and stigma veterans with mental health illness face.¹⁸⁵ SB 1182, in this author's opinion,

¹⁸³ Act of Sept. 17, 2022, ch. 385, §3(a–f), 2021–22 Cal. Stat 93 (Cal. 2022).

¹⁸⁴ See Act of Sept. 17, 2022, ch. 385, §3(d)(1), 2021–22 Cal. Stat 93 (Cal. 2022) (amending family law statute: section 3040 to the Family Code).

¹⁸⁵ Cal. S. Bill 1182, 2021-2022 LEGISLATIVE COUNSEL'S DIGEST, ch. 385, §

provides an example of how states can amend existing family law statutes to improve procedural due process. A version of SB1182 adopted by Minnesota could have made a difference in David Carlson's case, because the judge would have had to write on the record the specific facts and evidence used to determine why David Carlson's mental health was a key factor in the custody determination. This would present a body of evidence that appellate court judges could review under the clearly erroneous standard, as opposed to relying on the discretion of the judge in case.¹⁸⁶ Section 1 of SB 1182 also deserves attention for the notable legislative findings which serve as the underpinning for the law. Section 1 explicitly states, "having a mental health disorder, including a service-linked disorder, does not inherently make you more violent...[and] a mental health disorder should not be used as a sole predictor of future violence."¹⁸⁷

Another recommendation is that if PTSD is noted as an issue requiring additional court review, that the court place children under care of selected third party so as to ensure that the child or children are safe and that neither parent is accruing parenting time as the court appointed GAL conducts review and provides a recommendation to the court. This recommendation will better ensure that the process to evaluate all parties is done expeditiously. More expeditious review is important to a serving service member because those on active duty are routinely reassigned every three years to another stateside or overseas assignment, and the military does not have a specific provision to allow the service member to remain on location until the custody determination is rendered.¹⁸⁸ Current anecdotal evidence notes a propensity for family courts to immediately reduce or enjoin a Service member or veterans time when PTSD is asserted by opposing party or the court.¹⁸⁹ This has the potential to, and likely does, condition children of veterans and service members to think their military parent is dangerous after what were many years of healthy parenting.¹⁹⁰ Without the benefits of state legislation like SB 1182, one can argue fewer veterans and

3040(d)(1)(B), at 3.

¹⁸⁶ *Unites States v. U.S. Gypsum Co.*, 33 U.S. 364, 394–95 (1948).

¹⁸⁷ *See* Act of Sept. 17, 2022, ch. 385, §1(d)–(e)(1), 2021–22 Cal. Stat 93 (Cal. 2022) (legislative findings described in advance of amended family law statute: section 3040 to the Family Code); *See* Act of Sept. 17, 2022, ch. 385, §1, 2021–22 Cal. Stat 93 (Cal. 2022) (SB 1182 section 1 serves as a listing of key facts which seek to decouple mental health fact from fiction and though not explicitly stating PTSD, acknowledges the issues Veterans and service members are facing in family court from the stigma that comes with mental health disorders in family court.).

¹⁸⁸ Patricia Tong et al., *Enhancing Family Stability During a Permanent Change of Station: A Review of Disruptions and Policies*, 1 RAND CORP., 1 (2018).

¹⁸⁹ *See* FOX 9, *supra* note 12.

¹⁹⁰ Katrin Schuy et al., *Stigma and its Impact on the Families of Former Soldiers of the German Armed Forces: An Exploratory Study*, MIL. MED. RSCH., Nov. 29, 2018, at 2.

service members to seek behavioral health treatment.¹⁹¹

B. Policy Recommendation to Assess Bias

With respect to a potential equal protection violation, a recommendation is for states to maintain records for every veteran or service member who is in family court and PTSD is asserted as a criteria for reducing or denying parenting time and or custody. States can compare results of veteran and service member custody proceedings with those of non-military in which mental health concerns are raised. This comparison will help to determine if there is an unfair treatment of veterans and service members. One can determine if the veteran and service member population is experiencing a greater reduction in parenting time and more frequently than a non-military population that also has mental health issues cited in their cases.

The Department of Defense and Veterans Administration must play a substantive role in engaging with state family courts to provide education on PTSD and how it impacts veterans and service members. Education in this form can only help to reduce the stigma associated with the diagnosis to include the notion that the diagnosis means one has a propensity for violence.¹⁹² The Department of Defense and Veterans Administration should consider developing a legal fund to supplement or fully cover legal expenses of service members and veterans who are engaged in family court and their service record and specifically PTSD rating is under review. This fund can be something service members opt into when entering service, similar to how service members pay into life insurance. This fund would help alleviate a portion of the significant resource burden imposed on service members seeking to defend their parent-child relationship when their military service or mental health is questioned.

The military services have Judge Advocate General (JAG) attorneys to call on as a resource. JAGs are not necessarily licensed in the state in which they serve. They could serve in a “Soldier Family Advocate” role where a JAG attorney or some other trained DoD professional could be called as a witness in family court proceedings to provide testimony regarding the service member’s disciplinary record, reputation in the service, and other questions that the court may have. In essence, they would serve as an expert witness informed by the service member’s complete record of service in order to counter an inference that they exhibit attributes that are predisposed to domestic violence or child abuse. Additionally, the Department of Defense could allow behavioral health

¹⁹¹ *Why Veterans May be Resistant to Seeking Help*, VETERANS FAM. UNITED, <https://veteransfamiliesunited.org/consequences-of-facing-war-related-illness/>.

¹⁹² See Thielking, *supra* note 11.

professionals to testify at hearings.

The Department of Defense can benefit from the better use of discretion to stabilize a service member who is undergoing a family court proceeding. This will allow the service member the time to properly advocate for their position, unencumbered by stress of new assignment or allow for the opposing party to use this fact to their advantage by seeking to prolong the process. Given the length of time needed for child custody proceedings, especially when a review one's mental health and overall fitness as a parent is required, the pending reassignment of a service member becomes a primary contributor to the service member acquiescing a viable legal position to retain employment, remain in service, and render continued financial support to their child/children.

VIII. CONCLUSION

The law establishes the fundamental right of parent and child.¹⁹³ States should seek to intervene only in the most exigent circumstances. A service member or veteran's PTSD rating alone should not meet the exigent circumstance requirement if unsupported by anything other than the assumption they pose a risk based on their diagnosis. Development of criteria to safeguard against the exploitation of the PTSD rating is critical, and state statutes related to best interest of the child must be modified to reduce this exploitation. Department of Defense, Veteran's Administration, and State Courts through education initiatives must dispel the PTSD myths. They should develop a legal assistance fund and active engagement by JAGs, military behavioral specialists, and other advocates that can speak to a service member or veteran's service, medical and mental health record. The current dynamic in family courts throughout our country strongly contributes to service members' and veterans' feelings of hopelessness, contributing to suicide amongst these groups.¹⁹⁴ Veterans and service members are highly resilient and exhibit growth through challenge. However state family courts, in severing the parent-child relationship of this group are damaging them in a way war never could and generating hopelessness from which few can recover. Implementing any one of these suggestions would help increase veterans' and service members' quality of life, and reduce the risk of erroneous deprivation of the fundamental constitutional right that is the parent-child relationship, with minimal to no extra cost to states or the Federal government. No child should suffer from losing connection to their veteran or

¹⁹³ See *Troxel v. Granville*, 530 U.S. 57, 72–73 (2000) (first citing *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997); then citing *Stanley v. Illinois*, 405 U.S. 645, 651 (1972)).

¹⁹⁴ Stephen Krasner, *Family Law Attacks Veterans*, MEDIUM (June 28, 2019), <https://medium.com/light-it-up/family-law-attacks-veterans-a6b36b1adde>.

service member parent on account of a family court decision based solely on the parents PTSD diagnosis or assertion the parent has PTSD.