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POSITION ON PROPOSED LEGISLATION

BILL: Senate Bill 13 Family Law – Custody Evaluators – Qualifications and Tr:

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 1/30/2023

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on Senate Bill 13. This bill codifies the qualifications and training necessary for certain professionals to be appointed or approved by the court as custody evaluators. Moreover, before an individual may be appointed or approved to be a custody evaluator, the individual must complete at least 20 hours of initial training in very specific topics enumerated in the bill, and then 5 hours every two years thereafter, even though there is no rational correlation between the number of hours of study and the topics required to be studied and whether certain professionals are qualified to conduct custody evaluations. The requirements of SB 13 create an onerous burden on the court and litigants, will create delay in appointing custody evaluators, and will mandate training that is biased toward government intrusion on family life without actually ensuring that those who are approved by the court as custody evaluators have the appropriate or adequate training, experience, and education.

Especially problematic is that the courses are biased and weigh heavily in favor of governmental intrusion on family life. For example, prospective custody evaluators will be taught that “the lack of a finding of indicated child abuse or sexual abuse by law enforcement or local department does not mean that child abuse or sexual abuse did not occur.” This teaches evaluators to disregard findings that are made based on the evidence and instead make a recommendation on custody based on suspicion or a gut response. Another topic that is problematic is §9-101(C)(1)(XI) which is on “background and current research-informed literature regarding parental alienation, its invalidity as a syndrome, and the inappropriateness of

its use in child custody cases.” The language of this subsection is highly biased and requires child custody evaluators to completely reject the notion that there are some parents who deliberately use a set of strategies to foster a child’s rejection of the other parent. This would require a child custody evaluator, who is supposed to be a disinterested and neutral individual, to ignore or give no weight to relevant facts that may be presented by the rejected parent. While there are some experts who believe parental alienation is invalid as a syndrome, there are other experts who believe it does in fact occur. If parental alienation is to be part of a training for child custody evaluators, both points of view on it should be taught.

There are also problems with § 9-101(b)(1), under which a wide range of professionals may be appointed by a court to conduct a custody evaluation, even if they have no experience at all in working with children or in the subject of custody evaluations. A board-certified psychiatrist, licensed psychologist, licensed clinical marriage and family therapist, or a licensed certified social worker clinical may be appointed as a child custody evaluator without any relevant experience with children or the subject of child custody. These professionals would only be required to take 20 hours of courses on a wide variety of subjects, some of which may only be tangentially related to child custody. In contrast, a licensed graduate or master social worker or a licensed clinical professional counselor must have at least two years of experience in subjects such as child development, family systems, impact of loss, impact of parent-child separation, all forms of domestic violence, and effects of trauma on children. It does not make sense to require some professionals to have knowledge and training on topics pertinent to child custody and not require other professionals to do the same even if their education and experience has not been in the subject of children and custody. It is also unclear whether certain professionals must complete a minimum of 20 hours of training on all of the enumerated topics or a minimum of 20 hours on their choice of the enumerated topics. Further, it is unclear what form of training will satisfy the required training – for example, must the course be taken at an accredited school, or is independent study sufficient?

Finally, the OPD is concerned about the judiciary creating a system for qualifying mental health and social work professionals to evaluate and render professional opinions on child custody. Senate Bill 13 authorizes the Administrative Office of the Courts to adopt procedures to

implement these measures, thus putting the onus on the judiciary to determine whether certain individuals possess the professional licensure, educational degrees, training and experience, and personal demeanor and skills to satisfy the requirements of the statute as well as to determine whether the individuals completed the necessary courses and whether the courses meet the requirements of the statute. This will require the creation of a court office comprised of members who have the capability to check licenses of prospective custody evaluators, are qualified to evaluate courses at schools to ensure that they cover the topics enumerated in the bill, can keep track of evaluators' training hours, and stay updated on changes in the field to ensure that the courses remain relevant and in keeping with the most recent scientific and social theories and principals. Whether a mental health, medical, or social work professional is qualified to conduct a custody evaluation is a determination best made by qualified individuals in the relevant fields, not, not by the judiciary.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a[n] [un]favorable report on SB 13.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.

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