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FISCAL AND POLICY NOTE
First Reader

House Bill 405
Judiciary

(Delegate Kaufman, *et al.*)

Family Law - Child Custody Evaluators - Qualifications and Training

This bill specifies certain requirements regarding the qualifications and training of custody evaluators. In specified child custody or visitation proceedings that involve allegations of abuse, expert evidence from professionals related to the abuse may only be admitted if the professional meets certain requirements. **The bill takes effect July 1, 2024.**

Fiscal Summary

State Effect: Potential significant operational impact and general fund expenditure increase for the Judiciary. Revenues are not affected.

Local Effect: Potential significant operational impact and expenditure increase for the circuit courts. Local revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Custody Evaluators – Qualifications and Training

A “custody evaluator” is an individual appointed or approved by a court to perform a custody evaluation. A court may not appoint or approve an individual as a custody evaluator unless the individual (1) is a physician licensed in any state who is board certified in psychiatry or has completed an accredited psychiatry residency, as specified; (2) is a State-licensed practitioner in related fields, as specified, or has an equivalent level of

licensure in another state; or (3) is a State-licensed graduate or master social worker with at least two years of experience in one or more areas, as specified, or has an equivalent level of licensure and experience in any other state.

The individual also must have training in (1) child growth and development; (2) psychological testing; (3) parent-child bonding; (4) scope of parenting; (5) adult development and psychopathology; (6) family functioning; and (7) child and family development.

If a court identifies one or more of the following issues in a custody or visitation proceedings, the court is required to appoint a custody evaluator or licensed health care provider who has experience, education, training or supervision in the specific issue identified:

- physical, sexual, or psychological abuse of an intimate partner or former intimate partner;
- physical, sexual, or psychological abuse of a child;
- coercive control;
- neglect of a child;
- trauma or toxic stress;
- alcohol or substance abuse;
- medical, physical, or neurological impairment that affects the ability to effectively parent; or
- any other issue relevant to a custody proceeding that the court determines requires specific experience, education, training, or supervision.

Beginning October 1, 2025, *in addition to* meeting the requirements specified above and complying with the continuing educational requirements of the applicable field, before being appointed or approved as a custody evaluator an individual must complete at least 20 hours of initial training, and at least 15 hours of training every three years thereafter, in areas that focus solely on domestic and sexual violence and child abuse. The training must include the topics of:

- child sexual abuse;
- physical abuse;
- emotional abuse;
- coercive control;
- implicit and explicit bias, including biases relating to disabilities;
- trauma;
- long- and short-term impacts of domestic violence and child abuse on children; and

- victim and perpetrator behavior patterns and relationship dynamics within the cycle of violence.

The training must be provided by a professional with substantial experience in assisting survivors of domestic violence or child abuse, and, if possible, a survivor of domestic violence or child physical or sexual abuse. Such trainings must rely on evidence-based research by recognized experts in the types of abuse (domestic violence or child abuse), and not include theories, concepts, or belief systems unsupported by research not meeting these standards. The trainings must be designed to improve the ability of courts to (1) recognize and respond to child physical and/or sexual abuse, domestic violence, and trauma in victims (particularly children) and (2) make appropriate custody decisions that prioritize safety and well-being and are culturally sensitive and appropriate for diverse communities.

Miscellaneous

The bill also establishes that in any action in which child support, custody, or visitation is at issue, a court must provide information to the parties regarding the role, availability, and cost of a custody evaluator in the jurisdiction. Before engaging in the custody evaluation process, a custody evaluator must provide, in writing, information regarding the policies, procedures, and fees and costs for the evaluation.

The Administrative Office of the Courts (AOC) may adopt procedures to implement the aforementioned provisions.

Expert Evidence in Child Custody or Visitation Proceedings

In a child custody or visitation proceeding in which a parent is alleged to have committed abuse against specified individuals under § 9-101.1 of the Family Law Article, expert evidence from a court-appointed or party-retained professional relating to the alleged abuse may be admitted only if the professional has demonstrated expertise and clinical experience in working with victims of abuse that is not solely forensic in nature.

Current Law: Pursuant to Maryland Rule 9-205.3, a custody evaluation is the study and analysis of (1) the needs and development of a child who is the subject of an applicable action or proceeding and (2) the abilities of the parties to care for the child and meet the child's needs. A custody evaluator is an individual appointed or approved by the court to perform a custody evaluation. On motion of a party or child's counsel, or on its own initiative, the court may order an assessment (including a custody evaluation) to aid the court in evaluating the health, safety, welfare, or best interests of a child in a contested custody or visitation case. In some jurisdictions, custody evaluators are court employees and perform custody evaluations free of charge to litigants. In other jurisdictions, the family

support services coordinator maintains a list of qualified custody evaluators, and the county administrative judge is required to develop and adopt maximum fee schedules for custody evaluations.

Maryland Rule 9-205.3 also establishes specified requirements for custody evaluators, including those related to education, licensing, and training. Under the rule, custody evaluators must generally meet the license requirements as specified in the bill. However, the rule also permits the waiver of these licensing requirements for a court employee who has been performing custody evaluations on a regular basis as an employee of or under contract with the court for at least five years prior to January 1, 2016. Such individuals must then participate in at least 20 hours of continuing education annually relevant to the performance of custody evaluations, as specified.

In addition to meeting the continuing education requirements for applicable licensure, a custody evaluator is also required under Rule 9-205.3 to have training or experience in observing or performing custody evaluations as well as current knowledge in domestic violence, child neglect and abuse, family conflict and dynamics, child and adult development, and the impact of divorce and separation on children and adults. Furthermore, unless waived by the court, a custody evaluator must have completed (or commit to completing) the next available training program that conforms with the current guidelines established by AOC, as posted on the Judiciary's [website](#).

The Code of Maryland Regulations (COMAR) also contains specific requirements governing the professional conduct of licensed psychologists who perform child custody evaluations or who otherwise render an opinion on legal or physical custody, including standards related to the competence necessary to conduct child custody evaluations. (See, generally, COMAR 10.36.09.00-05.)

Custody – Evidence of Abuse or Neglect

Under § 9-101.1 of the Family Law Article, when deciding custody or visitation issues, the court must consider evidence of abuse by a party against the other parent of the party's child, the party's spouse, or any child residing within the party's household, including a child other than the child who is the subject of the custody or visitation proceeding. If the court finds that the party has committed abuse against any of these individuals, it must make arrangements for custody or visitation that best protect the child who is the subject of the proceeding and the victim of the abuse.

State/Local Fiscal Effect: The bill's requirements have a potentially significant operational and fiscal impact on the circuit courts and the use of custody evaluations and expert witnesses in child custody and visitation matters. For context, 880 custody evaluations were ordered in fiscal 2022; over 1,000 evaluations were ordered in fiscal 2023.

According to the Judiciary, there is already a limited pool of professionals qualified under current requirements to perform custody evaluations, especially in rural parts of the State. The bill's requirements may further limit that pool of qualified professionals, as some of those individuals likely do not have the qualifications required under the bill, and it is unknown how many individuals otherwise qualified to perform evaluations will be able to meet the new requirements once the bill takes effect July 1, 2024. For example, although individuals in various professions may serve as custody evaluators, the bill requires *all* individuals to have had training in psychological testing. The Judiciary also notes that two current court employees are directly impacted once the Judiciary's discretion to waive education/licensing requirements in limited circumstances (as is allowed now under the Maryland Rules) is eliminated.

Furthermore, the additional training requirements (effective October 1, 2025) likely exacerbates the above impacts, as there is no existing training program that satisfies all of the requirements. While some components of the guidelines for the currently required training program (as posted on the Judiciary's website) align *generally* with some of the training areas required under the bill, they are not identical. In addition, the Maryland Rules currently afford additional flexibility by allowing the court to waive the requirement to attend the training program and allowing an individual to be qualified based on a commitment to complete the next available training program. *Although not required to do so by the bill*, if the Judiciary elected to develop and offer training in order to facilitate the availability of qualified custody evaluators *under the bill's requirements*, general fund expenditures increase, *potentially* significantly. The Judiciary also notes that the more stringent requirements for custody evaluators may increase the costs for private custody evaluations, which are often funded by the courts when parties qualify for and are granted a fee waiver. To the extent that custody evaluators do increase fees and those costs are assumed by the courts, general fund/circuit court expenditures increase.

Small Business Effect: Any individual who conducts custody evaluations has to meet more stringent requirements in order to remain eligible for appointment or approval as a custody evaluator. Similarly, the bill may impact professionals who have otherwise been retained by parties to offer expert testimony on abuse but do not possess demonstrated expertise and clinical experience in working with abuse victims that is not solely forensic in nature, as required in the bill.

Additional Comments: The bill partially implements numerous recommendations of the Workgroup to Study Child Custody Court Proceedings Involving Child Abuse or Domestic Violence Allegations. The workgroup, chaired by the Secretary of State, submitted its final [report](#) in September 2020.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 13 and HB 285 of 2023; SB 336 and HB 1407 of 2022; and SB 355 of 2021.

Designated Cross File: SB 365 (Senator Carozza, *et al.*) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Legislative Services

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js/jkb

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