

Department of Legislative Services  
Maryland General Assembly  
2021 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1036  
Judiciary

(Delegate Atterbeary)

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Child Custody – Cases Involving Child Abuse or Domestic Violence – Training  
for Judges and Child’s Counsel

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This bill requires the Judiciary, in consultation with domestic violence and child abuse organizations, to develop a training program for judges presiding over child custody cases involving child abuse or domestic violence. Among other provisions, the bill also (1) requires the court to order a danger and lethality assessment in specified circumstances; (2) establishes minimum training requirements for judges presiding over child custody cases involving child abuse or domestic violence; and (3) establishes minimum training requirements for individuals serving as child’s counsel in a custody case involving child abuse or domestic violence. **The bill generally takes effect July 1, 2021; however, numerous provisions are subject to a delayed effective date of July 1, 2023.**

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Fiscal Summary

**State Effect:** Potential significant operational impact for the Judiciary and general fund expenditures, as discussed below. 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.

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## Analysis

### Bill Summary:

#### *Judicial Training*

The training must include numerous specified topics, including:

- the typical brain development of infants and children;
- the process for investigating a report of suspected child abuse or child sexual abuse, as specified;
- the dynamics and effects of child sexual abuse, physical and emotional child abuse, and domestic violence;
- the impact of exposure to domestic violence on children and the importance of considering this impact when making child custody and visitation decisions;
- the potential impacts of explicit and implicit bias on child custody decisions;
- specified information regarding parental alienation; and
- standards for the knowledge, experience, and qualifications of child sexual abuse evaluators and treatment providers and the legal and ethical considerations of appointing an unqualified evaluator or allowing an evaluator to practice outside of his or her fields of expertise.

The training program must be reviewed and updated at least once every two years.

The Judiciary must make educational and training materials relating to the training of judges assigned to child custody cases involving child abuse or domestic violence available on request. The Judiciary must adopt procedures, including the uniform screening of initial pleadings, to identify child custody cases that may involve child abuse or domestic violence as soon as possible to ensure that only judges who have received training as specified above are assigned these cases.

The above provisions take effect July 1, 2021.

#### *Danger and Lethality Assessments*

In any custody or visitation proceeding, if the court has reasonable grounds to believe that the case may involve child abuse or domestic violence, the court must order a danger and lethality assessment to be conducted by an appropriate individual to help ensure the safety of the parties and the children. This provision takes effect July 1, 2021.

### *Minimum Training Requirements*

Beginning July 1, 2023, before presiding over a child custody case involving child abuse or domestic violence, a judge must receive at least 60 hours of initial training approved by the Judiciary that meets the requirements of the training program specified above. A judge who has received the initial training and who continues to preside over child custody cases involving child abuse or domestic violence must receive at least 10 hours of additional training every five years. A judge who is assigned to preside over a child custody case involving child abuse or domestic violence more than three years after receiving the initial training must register for and attend the next offered initial training.

### *Child's Counsel*

Beginning July 1, 2023, before an individual may serve as child's counsel in a child custody case involving child abuse or domestic violence, the individual must receive at least 60 hours of initial training on the topics required for judges, as specified above. After meeting these initial training requirements, the individual must receive at least 10 hours of ongoing training on the aforementioned topics every five years in order to continue to serve as a child's counsel. "Child's counsel" *includes* a Child's Best Interest Attorney, a Child's Advocate Attorney, or a Child's Privilege Attorney.

**Current Law:** Although judicial training requirements are not addressed in statute, a 2016 Administrative Order from Chief Judge Mary Ellen Barbera generally specifies training requirements for judges, including 12 hours of continuing judicial education annually. Pursuant to that order, the Judicial College of Maryland within the Administrative Office of the Courts serves as the primary entity through which judicial education is provided. The order has specific requirements regarding a Family Law Education program, whereby judges (and magistrates) who are assigned to hear family law cases must attend "Family Law University" according to specified timeframes.

Maryland Rule 9-205.1 generally governs the appointment of an attorney for a child in actions involving child custody or child access. The Rule notes that appointment may be most appropriate in cases that involve past or current child abuse or neglect, actual or threatened family violence, or consideration of terminating or suspending parent time. The Maryland Guidelines for Practice for Court-Appointed Lawyers Representing Children in Cases Involving Child Custody or Child Access complements Maryland Rule 9-205.1 and specifies standards for minimum training and experience. Under the guidelines, unless waived by the court, an attorney serving in one of these three roles should have completed at least six hours of training that includes specified topics, including (1) effectively communicating with children; (2) recognizing, evaluating, and understanding evidence of child abuse and neglect; and (3) family dynamics and dysfunction, domestic violence, and substance abuse.

**State/Local Fiscal Effect:** The Judiciary advises that the bill’s requirements have a potentially significant operational and fiscal impact on the courts.

Effective July 1, 2021, the courts must ensure that danger and lethality assessments are ordered in specified cases. Although the Judiciary is unable to provide a precise estimate regarding this impact, it notes that it will need to identify or develop a validated assessment tool, develop procedures to facilitate the assessments, and either hire or train staff or procure outside services to perform the assessments.

While the Judiciary has until July 1, 2023, to ensure that judges presiding over child custody cases involving child abuse and domestic violence are trained in accordance with the bill’s requirements, the comprehensive nature of the training program likely increases general fund expenditures, potentially significantly, to develop and sustain the training.

Furthermore, operationally, the Judiciary (1) will initially need to accommodate a number of judges being unavailable to preside over normal dockets/cases during the time they will instead be in training and (2) must develop procedures to ensure that after July 1, 2023, only judges who have received the specified trainings are assigned to preside over child custody matters involving child abuse or domestic violence. Both of these impacts may be particularly exacerbated in smaller jurisdictions.

Similar impacts are attributed to the training requirements for child’s counsel. The Judiciary notes that in fiscal 2019 (the last full fiscal year unaffected by restrictions on court operations due to COVID-19), courts appointed 1,078 individuals to serve as child’s counsel. The Judiciary advises that many attorneys serve as child’s counsel on a *pro bono* (or reduced fee) basis and may not be willing or able to complete a lengthy training program in order to continue to be eligible to serve. Furthermore, there is no single existing training program that satisfies the requirements and, unlike the bill’s requirements regarding judicial training, no entity specifically tasked to develop or provide such training. Although *not* required to do so by the bill, *if* the Judiciary elects to offer training specific to child’s counsel in order to facilitate the availability of qualified child’s counsel under the bill’s requirements, general fund expenditures further increase. The Judiciary also notes that the more stringent requirements for child’s counsel may increase the costs for such services, which are often funded by the courts when parties qualify for and are granted a fee waiver. To the extent that child’s counsel does increase fees and those costs are assumed by the courts, general fund/circuit court expenditures increase.

To the extent that a child in need of assistance (CINA) proceeding is deemed to be a “child custody case involving child abuse or domestic violence,” the Department of Human Services advises it incurs general fund expenditures of approximately \$100,000 annually to provide training for CINA attorneys.

**Small Business Effect:** Attorneys serving as child’s counsel will be subject to more stringent requirements in order to remain eligible for appointment by the court.

**Additional Comments:** The bill 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.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** SB 675 (Senator Lee) - Judicial Proceedings.

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

**Fiscal Note History:** First Reader - February 24, 2021  
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