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FISCAL AND POLICY NOTE
First Reader

House Bill 285
Judiciary

(Delegate Atterbeary)

Family Law - Custody Evaluators - Qualifications and Training

This bill establishes specified requirements regarding the licensure, experience, and training of custody evaluators. The bill also requires a court, in any action in which child support, custody, or visitation is at issue, to provide information to the parties regarding the role, availability, and cost of a custody evaluator. **The bill takes effect July 1, 2023.**

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: 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 experience, obtained either through observation under clinical supervision or through the performance of custody evaluations with:

- family systems, partner conflict, and conflict resolution styles;
- normative child, adolescent, and adult development;
- the impact of interpersonal loss and chronic stress on an individual and family system;
- mental health diagnoses, including current substance abuse issues relevant to the capacity of an individual to provide health, protective, or restorative parenting;
- the immediate and long-term neurodevelopmental impact of child neglect, all types of child abuse, and exposure to domestic violence;
- culturally and spiritually sensitive clinical interviewing skills;
- how children respond to traumatic stress and why the verbal and nonverbal expression of traumatic stress by a child may be delayed;
- all forms of domestic violence, as specified;
- the immediate and long-term impacts of parental separation on a child;
- protective factors that promote a child's healthy resolution of parent separation; and
- protective factors and parent practices that promote trauma recovery in cases of child abuse.

Beginning October 1, 2024, *in addition to* meeting the requirements specified above and complying with the continuing educational requirements of the applicable field, an individual must complete at least 20 hours of initial training before being appointed or approved as a custody evaluator. The training must include numerous specified topics, including:

- neurotypical infant and child development;
- the investigation process after a law enforcement agency or local department of social services has received 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;
- information on how survivors of domestic violence may present information in a manner that does not conform to general expectations for credibility;
- specified information regarding parental alienation; and
- how the inappropriate application of the best interest of the child standard can harm children suffering from abuse and the necessity of weighing the physical and psychological safety of the child before weighing other best interest factors.

Following completion of the initial training requirements, an individual must complete five hours of continuing education and training every two years.

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 bill's provisions.

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.)

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. More than 950 custody evaluations were ordered in both fiscal 2020 and 2021; 880 evaluations were ordered in fiscal 2022. 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 experience required under the bill, and it is unknown how many individuals otherwise qualified to perform evaluations will be able to meet the new requirements regarding experience once the bill takes effect July 1, 2023. 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 specificity of the training requirements (effective October 1, 2024) 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 will have to meet more stringent requirements in order to remain eligible for appointment or approval as a custody evaluator.

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

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

Designated Cross File: SB 13 (Senator Carozza, *et al.*) - Judicial Proceedings.

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

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