



## POSITION ON PROPOSED LEGISLATION

**BILL:**                    **HB1036 Child Custody – Cases Involving Child Abuse or Domestic Violence – Training for Judges and Child’s Counsel**

**POSITION:**            **SUPPORT WITH AMENDMENTS**

**DATE:**                 **March 2, 2021**

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The Maryland Office of the Public Defender respectfully requests that with the amendment below, the Committee issue a favorable report on House Bill 1036.

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This bill would make it a requirement that judges receive relevant training on issues involved in cases in which child abuse and/or domestic violence is a component of the case. It also requires that attorneys receive training before they may represent children in said cases. The proposed legislation would improve the judiciary’s understand of the effect and impact of child abuse and domestic violence on families and, furthermore, would raise the quality of representation of children. The Office of the Public Defender (OPD) has a stake in this proposed legislation because judges handle Child In Need of Assistance (CINA) cases, where there are almost always allegations of child abuse and neglect, and sometimes there are allegations of domestic violence. Therefore, while the intent of this bill is to address private family custody cases and not cases where the state initiates the case, families in CINA cases would benefit from having a better-trained judiciary. The Office of the Public Defender **SUPPORTS** this bill with amendments as follows:

**(1)Include Magistrates within the ambit of this bill.**

In family custody cases, magistrates hear cases and make decisions or recommendations to the judges. They should also be required to participate in the same trainings described in this bill.

**(2) Amend § 9-101.4 to clarify the type of cases in which a danger and lethality assessment is required.**

Section 9-101.4 reads:

17 IN ANY CUSTODY OR VISITATION PROCEEDING, IF THE COURT HAS  
18 REASONABLE GROUNDS TO BELIEVE THAT THE CASE MAY INVOLVE CHILD  
ABUSE OR  
19 DOMESTIC VIOLENCE, THE COURT SHALL ORDER A DANGER AND LETHALITY  
20 ASSESSMENT TO BE CONDUCTED BY AN APPROPRIATE INDIVIDUAL TO HELP  
ENSURE  
21 THE SAFETY OF THE PARTIES AND THE CHILDREN.

This section should be amended to make it clear that the “custody or visitation proceedings” refers to private custody and visitation proceedings and not CINA cases. This is because in CINA cases, a safety assessment is already conducted by the local department of social services, and there are already statutes in place that permit the government to separate the family if there is a risk of immediate and serious harm to the children. A danger and lethality assessment in a CINA case would be redundant and a waste of resources, since the family is already being overseen by the department of social services.

**(3) Amend § 9-101.3 to expand the training about DSS investigations and to delete language that seems to limit the court’s discretion to assess evidence before it.**

The following amendments are urged to Section 9-101.3(B)(3)(I)-(III) which requires judges to be trained on:

THE PROCESS FOR INVESTIGATING A REPORT OF SUSPECTED  
16 CHILD ABUSE OR CHILD SEXUAL ABUSE, INCLUDING:  
17 (I) THE ROLE OF CHILD ADVOCACY CENTERS AND FORENSIC  
18 INTERVIEWS; **AND**  
19 (II) THE **PERMISSIBLE SCOPE** AND LIMITATIONS OF LOCAL  
DEPARTMENTS OF SOCIAL  
20 SERVICES IN INVESTIGATING REPORTS OF SUSPECTED CHILD ABUSE AND  
CHILD  
21 SEXUAL ABUSE; ~~AND~~  
22 ~~(III) THE LIMITATIONS OF THE INVESTIGATION PROCESS,~~

~~23 INCLUDING THAT CHILD ABUSE AND CHILD SEXUAL ABUSE MAY HAVE OCCURRED~~

~~24 EVEN WITHOUT AN INDICATED FINDING OF ABUSE, ANY PHYSICAL EVIDENCE OF~~

~~25 ABUSE, OR A VERBAL DISCLOSURE OF ABUSE BY THE CHILD;~~

Subsection (B)(II) should be amended to reflect that judges and magistrates should be trained on the PERMISSIBLE SCOPE AND LIMITATIONS of local departments of social services in investigating reports of suspected child abuse and child sexual abuse.

This is because the local department of social services actually has a rather broad scope of investigatory authority. The local department of social services has a great deal of power to intrude into a family's life and into its private affairs when investigating a report of child abuse and child sexual abuse, and the courts should be informed about what the DSS is capable of doing in order to determine whether it did all it could do. This way, the court can better assess the validity of the DSS's conclusions based on everything the DSS. Informing the courts only about the DSS's limitations may lead the court to draw an erroneous conclusion about the validity of the DSS's efforts and/or conclusions.

Subsection III should be deleted. This language is problematic because it gives the impression that judges may not base its conclusions on evidence. While judges should be trained on the types of methods for determining whether abuse occurred, judges must have the discretion to determine whether based on the evidence before the court, the alleged abuse did or did not occur. This language makes it sound as if even if the result of the investigation tends to show abuse did not occur, the court may ignore that and conclude that it did. These proceedings are taking place in a court of law, where allegations must be proven before a court may draw conclusions about the allegations.

**(4) Amend § 9-101.3 to require judges to be trained on why non-abusive parents or partners may not leave their abuser even though children may be adversely affected by exposure to domestic violence.**

Subsection (B)(7) presently requires judges to be trained on

(7) THE IMPACT OF EXPOSURE TO DOMESTIC VIOLENCE ON

7 CHILDREN AND THE IMPORTANCE OF CONSIDERING THE IMPACT OF EXPOSURE TO

8 DOMESTIC VIOLENCE ON CHILDREN WHEN MAKING CHILD CUSTODY AND

## 9 VISITATION DECISIONS;

If this subsection remains part of the legislation, then judges also need to be trained on why a parent or partner who is the victim of domestic violence may choose not to leave or report the abuser despite the fact that children are being exposed to the domestic violence – it is not an indication of neglectful parenting. Without training on this aspect of domestic violence, judges may erroneously conclude that because exposure to domestic violence adversely affects children, then the non-abusive parent who does not leave the abuser is complicit in harming the children.

### **(5) Delete 9-101.3(B)(11) Parental Alienation.**

There is controversy over whether parental alienation is a valid syndrome. It is premature to assume it is invalid, as this bill proposes. This topic must be studied more in-depth before judges and magistrates are taught that it is invalid and make decisions without considering whether one parent is in fact alienating a child from the other parent.

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For these reasons, with the amendment, the Maryland Office of the Public Defender urges a favorable report on HB1036.