

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Mary Ellen Barbera
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: House Judiciary Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: House Bill 1036
Child Custody – Cases Involving Child Abuse or Domestic
Violence – Training for Judges and Child’s Counsel
DATE: February 10, 2021
(3/4)
POSITION: Oppose

The Maryland Judiciary opposes House Bill 1036. This bill requires the Maryland Judiciary, in consultation with certain organizations, to develop a training program for judges presiding over child custody cases involving child abuse or domestic violence and to review and update the training program at certain intervals. It also requires the training program to include certain information.

This bill is based on recommendations contained in the [final report](#) of the *Workgroup to Study Child Custody Court Proceedings Involving Child Abuse or Domestic Violence Allegations* (the workgroup). The Judiciary’s opposition is based on constitutional, economic, and practical issues with this bill. The Judiciary recognizes how serious child abuse and intimate partner violence are. As they permeate our society, these issues are covered in standing training programs for judges and specific training that is offered on a yearly basis. The Judiciary provided the bill’s sponsor and the other legislative members of the workgroup an overview judicial training programs, including descriptions of courses that will be offered to judges in 2021. It also met with and is willing to continue discussions with them. Judges are always in need of new, better, and more training. However, every hour in training is an hour (plus travel) judges are away from their courthouses. Their need for training must be balanced against the need to keep courts operational to ensure the administration of justice.

The Judiciary’s specific concerns are as follows.

This bill violates the Maryland State Constitution’s separation of powers doctrine by infringing on duties constitutionally assigned to the Judicial Branch. Current laws recognize that the Chief Judge of the Court of Appeals has authority over the behavior and training of Judges in Maryland. Courts and Judicial Proceedings Article § 1-201 empowers the Court of Appeals to make rules and regulations for courts of the state.

By Administrative Order, on June 6, 2016, the Chief Judge of the Court of Appeals reorganized Judicial Education and renamed the same as the Judicial College of Maryland, “responsible for the continuing professional education of judges” and “[t]he Education Committee of the Judicial Council shall establish subcommittees and work groups to develop, with the support of the Judicial College, the courses, educational programs, and academic opportunities offered to judges, magistrates, commissioners, and other Judiciary employees....” Further, judicial education and training materials are protected under Maryland Rule 16-913(e).

Specifically, this bill encroaches upon the Court of Appeals’ constitutional duty to oversee the integrity and impartiality of state judges by mandating a means of how training is developed and by requiring public disclosure about the same. It also ignores the existing mechanisms in the Judicial Branch to offer trainings and the expertise of the Judicial Council’s Education Committee and the Judicial College to determine the most suitable trainings for the bench. In doing so, the bill infringes on the constitutional role of the Chief Judge of the Court of Appeals as “administrative head of the Judicial system of the State[.]”

Notwithstanding the constitutional issues, § 9-101.3 presents economic and practical problems. It requires the Judiciary, in consultation with domestic violence and child abuse organizations, to develop a training program for judges. While Judicial College regularly utilizes practitioners and subject matter experts (including child abuse and domestic violence experts) as faculty for its training programs, this mandate would open the door for criticism about or litigation over whether a judge presiding over child custody cases involving child abuse or domestic violence can be impartial. As discussed above, it is the role of the Judicial College to determine the most suitable training for the bench.

Effective July 1, 2023, judges would have to complete at least 60-hours of training on the topics delineated in §9-101.3(b) *before* presiding over a child custody cases involving child abuse or domestic violence. This would apply to circuit court judges, district court judges (who are authorized to award temporary custody in temporary and final protective order proceedings under Title 4 of the Family Law Article), and judges on both Courts of Appeals. The topics that must be covered in the training are both specific and numerous and there is no single existing training program that satisfies them all. It would be overly burdensome for the Judiciary to develop and make available the training to ensure judges would not be disqualified from presiding over these cases after the effective date. At this time, courts are setting matters well into 2022. They would need to reschedule or reassign cases to allow for judges to be away from their courthouses to attend the 60 hour – 7 ½ eight-hour days long – initial training. This would exacerbate the backlog of cases resulting from court closures during the COVID-19 pandemic and be particularly disruptive for small courts. This bill provides no appropriation to implement this requirement or for courts to absorb costs associated with accommodating training-related judicial absences.

The workgroup, selected the topics the training must cover because “[i]n order to make sound, safety-focused decisions, judges need to be armed with the background necessary to sort through the “smoke” that has been described as pervading custody cases that include domestic violence or child abuse.” [Workgroup Final Report](#), p. 25. While the topics are relevant, there is no data that shows 60+ hours of training on them will have the desired effect. Further, the time requirement and the associated administrative burdens leave little room for judges to receive training on how to navigate the legal issues or be educated on developments in the law that arise in these (or any other) case type.

The terms “involving child abuse or domestic violence in §§ 9-101.3 and 9-109 and “involve child abuse or domestic violence” in § 9-101.4 are difficult to interpret. It is not clear whether an allegation alone is sufficient or if certain facts or conditions must exist to trigger the judicial training and assignment requirements or child counsel eligibility requirements. It is also not clear what should happen if child abuse or domestic violence is discovered or disclosed later in the case and after the commencement of proceedings before judge who has not completed the initial training. The Judiciary notes that courts already screen domestic cases for abuse and the Domestic Law Committee’s Family Mediation and Abuse Screening Work Group is working to update a screening tool and developing best practices.

Section 9-109 would require child counsel to complete the same training as judges before they may be appointed in cases involving child abuse or domestic violence. There is no single exiting training program that satisfies all the topics that must be covered in the program. The bill does not specify who will provide the training, or how it would be funded. Many attorneys serve as child counsel on a pro bono or low bono basis and may not be willing or able to afford to complete the lengthy training program. Furthermore, the Maryland Rule 9-205.14 and the *Maryland Guidelines for Practice for Court-Appointed Attorneys Representing Children in Cases Involving Child Custody or Child Access* impose eligibility requirements, by education and training, for child counsel. The courts are in the best position to determine the eligibility requirements for these attorneys; it is not necessary for the legislature to impose its own education and training requirements in place of those adopted by the Court of Appeals. Prior to the COVID-19 pandemic, Juvenile and Family Services of the Administrative Office of the Courts hosted regional training programs for child counsel. In addition to the legal content, the program covers infant, child, and youth development; types of abuse; adverse childhood experiences; domestic violence including how it presents in different regions of the state; and other similar topics.

cc. Hon. Vanessa Atterbeary
Judicial Council
Legislative Committee
Kelley O’Connor