

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Joseph M. Getty
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 17
Child Custody – Cases Involving Child Abuse or Domestic
Violence – Training for Judges
DATE: January 5, 2022
(1/26)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 17. 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. 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....”

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[.]”

The Judiciary notes that testimony submitted in response to SB675/21 from House of Ruth Maryland,¹ the Maryland Coalition Against Domestic Violence,² the Maryland Coalition Against Sexual Assault,³ the Women’s Law Center,⁴ and Family & Juvenile Law Section Council of the Maryland State Bar Association⁵ agree that judicial training should remain under the authority of the Chief Judge of the Court of Appeals. The Judiciary through its Judicial College is the correct mechanism for determining appropriate training for judges.

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, 2024, judges would have to complete at least 20-hours of training on the topics delineated in §9-101.3(b) within their first year 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 the 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

¹ https://mgaleg.maryland.gov/cmte_testimony/2021/jpr/1u308JQcTI7c6o8V-yzDzYZdqInOx_HeR.pdf.

² https://mgaleg.maryland.gov/cmte_testimony/2021/jud/11gxylvGE1kguzpUEkNHRDpXPhktzKUHk.pdf.

³ https://mgaleg.maryland.gov/cmte_testimony/2021/jpr/132R35EDAy1cUSI-uA16N4iMR52HwrwEw.pdf.

⁴ https://mgaleg.maryland.gov/cmte_testimony/2021/jpr/1AbjrG0LfdI7SYI3LItoUhto-m0ugB_tv.pdf.

⁵ https://mgaleg.maryland.gov/cmte_testimony/2021/jpr/1sGXppxPU-NcoJv_wh5CeKUf3YT2hoeDJ.pdf.

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 2024. They would need to reschedule or reassign cases to allow for judges to be away from their courthouses to attend the 20-hour 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 20 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 this (or any other) case type.

Section 9-101.3(d) requires the Judiciary to adopt certain procedures to identify case that “involve child abuse or domestic violence” for the purpose of ensuring only judges who have received the required training are assigned those cases. The terms and “involve child abuse or domestic violence” is difficult to interpret. It is not clear whether an allegation alone is sufficient or if certain facts or conditions must exist to trigger the assignment requirement. 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 a judge who has not completed the initial training. The Judiciary notes that courts already screen domestic cases for abuse and the Committee’s Family Mediation and Abuse Screening Work Group is working to update a screening tool and developing best practices.

Finally, section 9-101.3 requires the Judiciary to report the names of judges who do not comply with the bill’s training requirements to the Commission on Judicial Disabilities. This is unnecessary, overreaching and not an appropriate use of that Commission. The Judiciary already has mechanisms to track compliance with judicial training requirements.

cc. Hon. Chris West
Judicial Council
Legislative Committee
Kelley O’Connor