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POSITION ON PROPOSED LEGISLATION

BILL: HB561
FROM: Maryland Office of the Public Defender
POSITION: Support With Amendments
DATE: February 15, 2022

The Maryland Office of the Public Defender respectfully requests that with the amendments below, the Committee issue a favorable report on House Bill 571 with amendments.

This bill would make it a requirement that the Maryland Judiciary develop a training program for judges presiding over cases involving child abuse and/or domestic violence, and requiring the judges to preside over said cases to participate in the training program. The Office of the Public Defender (OPD) has a stake in this proposed legislation because judges handle Children 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 the following amendments:

(1) Amend § 9-103.3(A)(1) to include magistrates among those required to participate in the training.

In both family law and CINA cases, magistrates are authorized to conduct certain types of hearings and make recommendations to a judge as to factual findings and dispositions regarding visitation and custody. Therefore, magistrates also need to be trained in the subject of trauma arising from child abuse and domestic violence.

(2) Amend § 9-103.3(B) to include the following topics that must be included in the training program:

(a) The dynamics and effects of domestic violence on the abused partner and why the non-abusive parent or partner may not leave their abuser even though their children may be adversely affected by exposure to domestic violence.

(b) The psychological effect of domestic violence on the victim, including the mental injury and trauma that occur;

(c) The trauma that results to children from being separated from the parent who is the victim of domestic violence.

Without training on these aspects of domestic violence, judges will 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. Furthermore, judges may be misled into assuming that the trauma to children arising from exposure to any form of domestic violence is always worse than the trauma that arises to children from being unwillingly separated from their non-abusive parent, when this is not supported by science and should be determined on a case-by-case basis.

(3) Amend 9-103(B)(3)(II)

Subsection (B)(II) should be amended to reflect that judges 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 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 did. 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.

(4) Delete 9-103(B)(3)(III)

Subsection (B)(3)(III) should be deleted. This language is problematic because it gives the impression that judges may not base their 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 accusations and allegations must be proven before a court may draw conclusions about the allegations.

(5) Delete 9-103(B)(11)(I-III).

This subsection of the bill is highly biased and requires the Maryland Judiciary to completely reject the notion that there are some parents who deliberately use a set of strategies to foster a child's rejection of the other parent. This would require the judiciary to ignore or give no weight to relevant facts that may be presented by the rejected parent. While there are some experts who believe parental alienation is invalid as a syndrome, there are other experts who believe it does in fact occur. If parental alienation is to be part of a training at all, both points of view on it should be taught to the judiciary.

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For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report with amendments on HB561.

Submitted by: Government Relations Division of the Maryland Office of the Public Defender.

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