

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 336
Family Law – Custody Evaluators – Qualifications and Training
DATE: January 26, 2022
(2/9)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 336. This bill would require all court-appointed or court-approved custody evaluators to have certain experience obtained through observation under clinical supervision or the performance of custody evaluations. Beginning October 1, 2023, custody evaluators must complete at least 20 hours of training on certain topics before appointed or approved by a court and complete at least 5 hours of continuing education and training every two years. The bill would also require courts to provide information about the role, availability, and cost of a custody evaluator in all contested child support, custody, and visitation cases and required custody evaluators provide parties written information regarding their policies, procedures, fees, and costs for the evaluation.

While the Judiciary supports measures that help ensure courts receive trustworthy and accurate assessment evidence, the Court of Appeals is in the best position to determine training and eligibility requirements for custody evaluators. Additionally, the bill is unnecessary in light of the work of the Custody Evaluator Standards & Training Workgroup of the Judicial Council’s Domestic Law Committee, which has been working to implement rule changes and other best practices that are intended to help increase the evidentiary value of custody evaluations and confidence that evaluations are conducted fairly.

The 209th Report of the Standing Committee on Rules of Practice and Procedure included proposed amendments to Maryland Rule 9-205.3 (governing custody evaluations and other related assessments), based on the workgroup’s recommendations.¹ The Court of Appeals adopted those amendments on January 27, 2022 and the rule will

¹ The 209th report is available at <https://www.mdcourts.gov/sites/default/files/rules/reports/209threport.pdf>. The Court of Appeals held a hearing on the 209th Report on January 27, 2022 (see: <https://www.mdcourts.gov/sites/default/files/rules/notices/rulesnotice01272022.pdf>).

set new training requirements for custody and specific issue evaluators, require screening for intimate partner violence, require data collection from high neutrality/low affiliation collateral sources, and will clarify the purpose and use of specific issue evaluations. The Administrative Office of the Courts is collaborating with workgroup members and consultants to support a training program that will meet the guidelines referenced in the amendments to the rule.

Section 9-109 (b) of the proposed bill sets essentially the same qualifications as Rule 9-205.3(d) with one exception: it does not allow the waiver of the requirements as is permitted under section (d)(3) of the rule. The Court of Appeals adopted the rule's waiver provision for the sole purpose of ensuring that court-employed custody evaluators who did not meet the educational qualifications and were working for the courts prior to the adoption of the Rule in 2016 would not lose their jobs. If this legislation is enacted, it would affect two Anne Arundel Circuit Court employees.

The individuals who are eligible to serve as custody evaluators under the Rule are licensed mental health care providers. The current Rule states that they must comply with the continuing education requirements of their fields. For example, eligible psychologists and social workers must complete 40 hours of continuing education in their fields every two years. Also, to maintain their eligibility under the Rule they must have training or experience observing or performing custody evaluations and must have "current knowledge" about 1) domestic violence, 2) child neglect and abuse; 3) family conflict and dynamics; 4) child and adult development; and 5) the impact of divorce and separation on children and adults. These topics encompass the eleven areas of training set forth in the proposed legislation.

The requirement that custody evaluators have experience in the areas set forth in (b)(2) of the bill will erect roadblocks to courts' use of custody evaluations. Evaluators who do not have such experience would be disqualified and the requirement will make it more difficult for practitioners to become qualified. There is already a limited pool of qualified professionals available to do this work, especially in rural parts of the state. This requirement would further limit that pool, as would the requirement that evaluators complete at least 20 hours of initial training in certain topics before court appointment or approval. The topics that must be covered in initial training are both specific and numerous and there is no single existing training program that satisfies them all. The bill does not specify who will provide the training, how it would be funded, or give an indication of how it will be available before the October 1, 2023 effective date of the training requirement. Furthermore, 20 hours of training is a burdensome length for any training course. The additional training and experience requirements will also increase the costs for private custody evaluations and, since the Judiciary often covers the costs of custody evaluations when parties qualify and are granted a waiver, this will have a financial impact on the Judiciary.

The bill requires the court to provide information to the parties regarding the role, availability, and cost of custody evaluations in the jurisdictions. It is not evident why the court would need to provide this information to parties in child support actions. The

purpose of appointing a custody evaluator is to provide expert professional assistance to courts in making difficult custody decisions. If one is needed in a case, the parties will be directed to each court's Differentiated Case Management plans, which currently incorporate custody and visitation-related assessments. In addition, there are jurisdictions that do not currently have custody evaluators who live or work in the jurisdiction, which complicates the information process. Finally, it is not in the courts' purview to investigate and provide the cost of a custody evaluator.

cc. Hon. Mary Beth Carozza
Judicial Council
Legislative Committee
Kelley O'Connor