

**MARYLAND JUDICIAL CONFERENCE**  
**GOVERNMENT RELATIONS AND PUBLIC AFFAIRS**

Hon. Matthew J. Fader  
Chief Justice

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 285  
Family Law – Custody Evaluators – Qualifications and Training  
**DATE:** January 25, 2023  
(2/9)  
**POSITION:** Oppose

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The Maryland Judiciary opposes House Bill 285. 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 Supreme Court of Maryland not only is in the best position to determine training and eligibility requirements for custody evaluators but also has done so. Among other reasons, this bill is unnecessary because 1) Rule 9-205.3 (governing custody evaluations and other related assessments), as amended in 2022, mandates training for all custody evaluators who will be appointed or approved in Maryland; and 2) the eligibility requirements of the bill already are imposed by Rule 9-205.3 but with a reasonable and necessary waiver exception.

**Training:** In April 2022, the Supreme Court of Maryland adopted several amendments to Rule 9-205.3, including section (d)(2), which imposes a mandatory training requirement: Unless waived by the court, a custody evaluator shall have completed, or commit to completing, the next available training program that conforms with the guidelines established by the Administrative Office of the Courts (AOC). The current guidelines shall be posted on the Judiciary’s website.

The Custody Evaluator Standards and Training Workgroup of the Judicial Council's Domestic Law Committee is developing the course curriculum. The course will be offered for the first time on May 15 through 17, 2023, at the Maryland Judicial Center. The Administrative Office of the Courts' (AOC) training guidelines for the course are:

**LEGAL FRAMEWORK:**

- Legal terms, standards, and concepts related to family law judicial process
- Relevant statutes, case law, and rules, including Rule 9-205.3
- Parenting plans
- Distinctions between clinical and forensic examinations
- Roles and perspectives of judges and attorneys

**CHILD DEVELOPMENT:**

- Basics of infant and child development, including critical periods of brain development
- Attachment and how it relates to developmentally appropriate access schedules
- Overview of normal and aberrant mental health functioning
- Impact of high conflict parental behavior on children and families
- Impact of separation and divorce on children

**CUSTODY EVALUATION PROCESS:**

- Interviews with children, parents, caregivers, and collaterals
- Parent-child observations
- Areas and modes of data collection
- Required and optional elements of custody evaluations and specific issue evaluations under Rule 9-205.3
- Psychological evaluations
- Cultural and diversity considerations
- Neutrality and how personal attitudes, values, and feelings that may compromise an evaluator's neutrality
- Risks inherent in the role of custody evaluator and how best to manage them

**REPORTING TO COURT AND INVOLVEMENT IN COURT PROCESS:**

- Written report structure and format for custody evaluations and specific issue evaluations under Rule 9-205.3
- Oral reporting
- Depositions
- Testimony

**SPECIAL CIRCUMSTANCES, ISSUES, AND CHALLENGES:**

- Parental relocation
- Intimate partner violence: Dynamics and effects on parenting and children; barriers to disclosure; initial screening; assessment protocols; indicators for protective safety recommendations; implications for child access

- Child abuse: Types (physical, emotional, sexual); barriers to disclosure; dynamics and effects; implications for child access; nature and role of child protective services investigations
- Special needs children
- LGBTQ+ parents and children
- Mental health conditions, protocols for monitoring and treatment, and implications for child access
- Substance misuse, protocols for monitoring and treatment, and implications for child access
- Parent-child contact failure

Course attendees will learn about the relevant research and best practices in these areas and will explore the practical application of ethical considerations. As the AOC training guidelines make clear, child development, child abuse and domestic violence, the impact of intimate partner violence on children, the nature and role of protective services investigations, and the impact of violence in the home on access all will be covered by the Judiciary's course. The course will be taught by judges, a magistrate, and experienced professionals who are qualified and experienced custody evaluators. The training topics listed in the proposed bill are both overly specific and widespread, are unwieldy, and are not neutrally framed. The Judiciary's course will provide custody evaluators with information they need to make thorough and neutral assessments in ordinary custody cases and in cases involving intimate partner violence and child abuse of all types. The course will be comprehensive, lasting three days.

HB 285 is not needed, given the Judiciary-designed mandatory training course for custody evaluators that will be offered beginning this year.

***Eligibility:*** The eligibility requirements of the bill are essentially the same as the already-existing qualifications for custody evaluators in 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 Supreme Court of Maryland adopted the Rule's waiver provision for the sole purpose of ensuring that certain court-employed custody evaluators who did not meet the educational qualifications and were working for the court prior to the adoption of the Rule in 2016 would not lose their jobs. If this bill is enacted, it would affect two Anne Arundel Circuit Court employees who have been working as custody evaluators for many years.

Importantly, the professionals who are eligible to serve as custody evaluators under the Rule as it now stands are licensed health care providers who must satisfy 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 be eligible as custody evaluators 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 bill's requirement that custody evaluators have experience (outside of training) in all the various areas set forth in (b)(2) is overreaching, unrealistic, and will erect roadblocks to the courts' use of custody evaluators at all. 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 a limited pool of qualified professionals available to do this work already, especially in rural parts of the state. This requirement would further limit that pool but would not result in custody evaluators who are more capable of performing assessments.

**Other:** The bill requires at part (D) that the court provide information to the parties regarding the role, availability, and cost of custody evaluations in the jurisdiction in any case in which "child support, custody, or visitation is at issue." This also is unnecessary, for more than one reason. The Family Services section of the Judiciary's website - - which is available to the public - - contains a video library that addresses many services for families, including custody evaluations. *See* <https://mdcourts.gov/reference/familyservicesvideolibrary>. The 7½ minute video about custody evaluations explains in everyday language what such an evaluation is, some of the reasons a custody evaluation may be ordered, what the evaluation entails, the evaluator's report and its availability, mediation and settlement conferences after a custody evaluation, the role of the evaluator at trial, and the judge's role as an independent decision-maker. The video also explains that some courts have court-based evaluators and that otherwise, the fee usually is split between the parties.

With respect to fees, Rule 9-205.3(g) provides that the order for appointment of a custody evaluator shall contain a provision "concerning payment of any fee, expense, or charge, including a statement of any hourly rate that will be charged which, as to a court appointment, may not exceed the maximum rate established under section (n) of this Rule and, if applicable, a time estimate for the assessment."

Section (D) of the proposed legislation is not necessary given the information the Judiciary already gives litigants about custody evaluations.

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