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### **POSITION ON PROPOSED LEGISLATION**

**BILL: SB 25 Family Law - Child Custody Evaluators – Qualifications**

**FROM: Maryland Office of the Public Defender**

**POSITION: Unfavorable**

**DATE: 1/28/2025**

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on Senate Bill 25. However, the MOPD would have no opposition to the passage of this bill if it (1) explicitly excluded its application to Child In Need of Assistance (CINA) cases, and (2) required child custody evaluators to have skills, training, and knowledge of the effects on families of separating children from their parents. Senate Bill 25 codifies the qualifications certain professionals must possess in order to be appointed or approved by the court as custody evaluators, and authorizes the court on its own initiative or at the request of a party to order an assessment to aid the court in evaluating, among other things, the “best interests of a child in a contested custody or visitation case.”

The Office of the Public Defender’s concern with SB 25 is its effect on parties involved in Child In Need of Assistance (CINA) cases, which are governed by Courts and Judicial Proceedings Title 3 Subtitle 8. Although CINA cases are governed by a separate and distinct statute, the statutes in the Family Law Article have been applied to CINA proceedings because all CINA proceedings involve issues of custody and visitation. Therefore, Family Law § 9-101.1 has been applied to CINA cases, and accordingly Senate Bill 25 will apply to CINA cases if it is passed. That means that in every CINA case – which by definition involves issues of abuse and neglect of the child – the juvenile court may appoint a third party to determine what is in the best interest of the child, even though in a case involving the government taking away children from their families, it is supposed to be the court which determines what is in the child’s best interests.

Additionally, if SB 25 applies to CINA cases, the experts should be trained, experienced, and knowledgeable about the harm caused by family separation and involvement in the foster care system. The present language of the bill does not require that.

Finally, SB 25 authorizes a court to order the cost of an assessment to be paid in whole or in part by a party but must give the parties notice and an opportunity to object. This provision potentially adds another hearing to be placed on the docket. CINA cases already involve at least six hearings at which there must be an attorney from the Department of Social Services, attorney for the child or children, and an attorney for each parent. Nearly 98% of all parents in CINA cases are represented by the MOPD, which means they are poor and likely cannot afford to pay for the assessment. The children are also represented by state appointed counsel. In other words, a hearing would have to be held to determine who will bear the cost of the assessment, and the costs would likely fall on either the court or the Department of Social Services. The MOPD sees approximately 1,300 new CINA cases every year statewide. The number of additional hearings that would have to be docketed in court could potentially increase by at least 1,000.

If SB 25 explicitly excluded application to CINA cases, these concerns would cease to exist and the MOPD would not have any opposition to the proposed provisions.

**For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on Senate Bill 25.**

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

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