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POSITION ON PROPOSED LEGISLATION

BILL: HB 137 Family Law - Child Custody Evaluators – Qualifications

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 1/29/2026

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on House Bill 137. 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/or (2) required child custody evaluators to have skills, training, and knowledge of the effects on families of separating children from their parents for placement into foster care.

House Bill 137 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 issue with HB 137 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 so will HB 137(proposed as Family Law § 9-109) if

it is passed. That means that under HB 137, in every CINA case – which by definition involves allegations 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. This is contrary to the CINA statutory scheme which gives the ultimate responsibility to the court to determine what is in the child’s best interests in a case involving the government taking away children from their families.

Additionally, if HB 137 does not have an explicit carve out to ensure it will not apply to CINA cases,, it should require that the experts be trained, experienced, and knowledgeable about the harm caused by family separation and involvement in the foster care system.

Finally, HB 137 authorizes a court to order the cost of an assessment to be paid in whole or in part by a party, and must give the parties notice and an opportunity to object. This provision may result in another hearing being 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. 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. Maryland is already out of compliance with the timelines established by law to resolve CINA cases, and adding another hearing will only worsen that problem.

Nearly 98% of all parents in CINA cases are represented by the MOPD, which means they are indigent and likely cannot afford to pay for the assessment. The children are also represented by state-appointed counsel. Thus, 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. If HB 137 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 House Bill 137.

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