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POSITION ON PROPOSED LEGISLATION

BILL: SB 365 Child Custody Evaluators – Qualifications and Training

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: 2/7/2024

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on Senate Bill 365. However, if this bill specifically excluded application to Child In Need of Assistance (CINA) cases, the MOPD would have no opposition to the passage of this bill. Senate Bill 365l codifies the qualifications and training necessary for certain professionals to be appointed or approved by the court as custody evaluators, directs that expert testimony by a court-appointed or party-retained individual be admitted only under certain conditions, mandates that a child custody evaluator be appointed in every case in which the court identifies abuse or neglect or other circumstances in a case, and requires a specific number of hours of training and continuing professional education, all of which is to be implemented and monitored by the Administrative Office of the Courts.

The glaring issue with SB 365 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 SB 9-109 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 will be required to appoint a qualified child custody evaluator or licensed health care provider.

The OPD sees approximately 1,300 new CINA cases every year statewide. In nearly all CINA cases, there are approximately 3-5 hearings, where the issue of abuse or neglect, or the other circumstances triggering the need for a child custody evaluator, is present. This additional requirement of a court-appointed child custody evaluator will interfere with the court's ability to meet established timelines in CINA cases. Child In Need of Assistance cases must proceed under federally-mandated timelines, and requiring the court to appoint a qualified child custody evaluator in every CINA case not only will place an onerous burden on the court but will prevent the parties from being able to have their cases heard in a timely manner. Parties in a CINA case are entitled to have their case heard within 30-60 days. Finding child custody evaluators who satisfy the qualification requirements of SB 365 will be challenging. Locating evaluators ready, willing, and able to familiarize themselves with the case and then prepared to present a conclusion to the court within the short time period in CINA cases will be extremely difficult.

It should be noted that the failure to comply with federally-mandated timelines in CINA cases may result in a loss of federal funds to the Department of Human Services. Assuming the juvenile court could locate a qualified child custody evaluator who could perform the services within the mandated time frame, the parties may be unable to afford to pay for the fees of the child custody evaluator. The vast majority of parents in a CINA case are impoverished and are unable to afford bus fare to get to court, never mind pay

fees for court-appointed experts. One solution to the massive issues SB 365 will create in CINA cases is to include language that excludes its applicability to CINA cases.

The OPD is also concerned about the ability of the judiciary to create an effective system for qualifying health and social work professionals to evaluate and render professional opinions on child custody, given the staffing and budgetary needs such an endeavor would require. Senate Bill 365 authorizes the Administrative Office of the Courts to adopt procedures to implement these measures, thus putting the onus on the judiciary to determine whether certain individuals possess the professional licensure, educational degrees, training and experience, and personal demeanor and skills to satisfy the requirements of SB 365, as well as to determine whether the individuals completed the necessary courses and whether the courses meet the requirements of the statute. This will require the creation of a court office comprised of members who have the capability to check licenses of prospective custody evaluators, are qualified to evaluate courses at schools to ensure that they cover the topics enumerated in the bill, can keep track of evaluators' training hours, and stay updated on changes in the field to ensure that the courses remain relevant and in keeping with the most recent scientific and social theories and principals. Whether a mental health, medical, or social work professional is qualified to conduct a custody evaluation is a determination best made by qualified individuals in the relevant fields, not by the judiciary.

As noted above, if SB 365 specifically excluded CINA cases from its reach, 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 365.

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

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