

BILL ANALYSIS

Senate Research Center
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H.B. 1501
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State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 1501 is a cleanup bill regarding processes relevant to child custody evaluations. H.B. 1501 codifies case law that provides that evaluators are immune from civil liability in the same manner as other officers of the court. H.B. 1501 clarifies that all the statutory steps in an evaluation must occur unless the evaluator explains why one or more functions have not taken place. H.B. 1501 makes clear that interviews of the child are required only for children four years of age or older. Finally, the bill specifies the kinds of documents a child custody evaluator must have access to, including criminal history information, when forming an opinion regarding the child's custody arrangements.

H.B. 1501 is part of the legislative package of the Family Law Section of the State Bar of Texas (state bar), and was reviewed and approved by all sections of the state bar.

H.B. 1501 amends current law relating to child custody evaluations and creates an offense.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 107.009(a), Family Code, as follows:

(a) Provides that a child custody evaluator, among other, appointed under this chapter (Special Appointments, Child Custody Evaluations, and Adoption Evaluations) is not liable for civil damages arising from an action taken, a recommendation made, or an opinion given in that capacity.

SECTION 2. Amends Sections 107.103(a) and (c), Family Code, as redesignated and amended by Chapter 1252 (H.B. 1449), Acts of the 84th Legislature, Regular Session, 2015, as follows:

(a) Authorizes the court, after notice and hearing or on agreement of the parties, to order the preparation of a child custody evaluation regarding the circumstances and condition of a child who is the subject of a suit, a party to a suit, and if appropriate, the residence of any person requesting conservatorship of, possession of, or access to a child who is the subject of the suit.

(c) Requires an order for a child custody evaluation, except for an order appointing a child custody evaluator who is qualified under Section 107.104(b)(3) (relating to requiring an individual to be qualified to conduct a child custody evaluation being employed by or under contract with a domestic relations office, provided that the individual only conducts certain evaluations), to include certain information, including a list of the basic elements of an evaluation required by Section 107.109(c) (relating to the basic elements of a child custody evaluation) and a list of any additional elements of an evaluation required by the court to be completed, including any additional elements specified in Section 107.109(d) (relating to additional elements of a child custody evaluation). Makes nonsubstantive changes.

SECTION 3. Amends Sections 107.109(a), (c), and (d), Family Code, as follows:

(a) Prohibits a child custody evaluator from offering an opinion regarding conservatorship of a child who is the subject of a suit or possession of or access to the child unless each basic element of a child custody evaluation as specified in, rather than described by, this section (Elements of Child Custody Evaluation) and each additional element ordered by the court, if any, has been completed, unless the failure to complete an element is satisfactorily explained as provided by Subsection (b) (relating to elements required to be included in a child custody evaluation).

(c) Provides that the basic elements of a child custody evaluation under this subchapter (Child Custody Evaluation) consists of:

(1) a personal interview of each party to the suit seeking conservatorship of, possession of, or access to the child;

(2) interviews, conducted in a developmentally appropriate manner, of each child who is the subject of the suit who is at least four years of age, rather than regardless of the age of the child, during a period of possession of each party to the suit but outside the presence of the party;

(3) makes no change to this subdivision;

(4) an observation and, if the child is at least four years of age, rather than is at least four years old, an interview of any child who is not a subject of the suit who lives on a full-time basis in a residence that is the subject of the evaluation, including with other children or parties who are subjects of the evaluation, where appropriate;

(5) the obtaining of available information from relevant collateral sources, including the review of:

(A) through (D) makes no changes to these paragraphs; and

(E) records or information from any other collateral source that may have relevant information, notwithstanding any other law;

(6) deletes this subdivision. Redesignates existing Subdivisions (7) and (8) as Subdivisions (6) and (7).

(d) Authorizes the court to order additional elements of a child custody evaluation under this subchapter, including the following, rather than providing that additional elements of a child custody evaluation under this subchapter consist of:

(1) and (2) makes no changes to these subdivisions;

(3) evaluation of the residence, rather than home environment, of each party seeking conservatorship of a child who is the subject of the suit or possession of or access to the child, rather than regardless of whether the home environment is in dispute;

(4) through (7) makes no changes to these subdivisions.

SECTION 4. Amends Section 107.110(d), Family Code, to authorize the evaluator, if a child custody evaluator considers psychometric testing necessary but lacks specialized training or expertise to use the specific tests under this section (Psychometric Testing), to designate a licensed psychologist to conduct the testing and to request additional orders from the court.

SECTION 5. Amends Section 107.1101(b), Family Code, to authorize the evaluator, if a child custody evaluator identifies the presence of a potentially undiagnosed serious mental illness experienced by an individual who is a subject of a child custody evaluation and the evaluator is not qualified by the evaluator's licensure, experience, and training to assess a serious mental illness, to request additional orders from the court.

SECTION 6. Amends Subchapter D, Chapter 107, Family Code, by adding Section 107.1111, as follows:

Sec. 107.1111. CHILD CUSTODY EVALUATOR ACCESS TO OTHER RECORDS.

(a) Provides that a child custody evaluator appointed by a court is entitled to obtain records that relate to any person residing in a residence subject to a child custody evaluation from a local law enforcement authority, a criminal justice agency, a juvenile justice agency, a community supervision and corrections department created under Chapter 76 (Community Supervision and Corrections Departments), Government Code, or any other governmental entity, notwithstanding any other state law regarding confidentiality.

(b) Provides that, except as provided by this section, records obtained by a child custody evaluator under this section are confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code, or to disclosure in response to a subpoena or a discovery request.

(c) Authorizes a child custody evaluator to disclose information obtained under Subsection (a) in the child custody evaluation report prepared under Section 107.113 (Child Custody Evaluation Report Required) only to the extent the evaluator determines that the information is relevant to the child custody evaluation or a recommendation made under this subchapter.

(d) Provides that a person commits an offense if the person recklessly discloses confidential information obtained under Subsection (a) in violation of this section. Provides that an offense under this subsection is a Class A misdemeanor.

SECTION 7. Amends Sections 107.113(a) and (b), Family Code, as follows:

(a) Deletes existing text requiring a child custody evaluator who conducts a child custody evaluation to file a certain report.

(b) Requires the person conducting a child custody evaluation to file with the court on a date set by the court notice that the report under this section is complete. Requires the person, on the earlier of the date the notice is filed or the date required under Section 107.114 (Introduction and Provision of Child Custody Evaluation Report), to provide a copy of the report to certain persons. Deletes existing text requiring the person conducting a child custody evaluation to file with the court on a date set by the court a report containing the person's findings and conclusions and text requiring the report to be made a part of the record of the suit.

SECTION 8. Amends Section 107.114(a), Family Code, to provide that disclosure to the court or the jury, rather than the jury, of the contents of a child custody evaluation report prepared under Section 107.113 is subject to the rules of evidence.

SECTION 9. Amends Section 411.1285, Government Code, as follows:

Sec. 411.1285. New heading: ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: DOMESTIC RELATIONS OFFICE AND CHILD CUSTODY EVALUATOR. (a) Makes a nonsubstantive change.

(a-1) Creates this subsection from existing text. Provides that a domestic relations office created under Chapter 203 (Domestic Relations Offices), Family Code, or a child custody evaluator appointed under Chapter 107, Family Code, is entitled to

obtain from the Texas Department of Public Safety (DPS) criminal history record information that relates to a person involved in a child custody evaluation under Chapter 107, Family Code, in which the domestic relations office or child custody evaluator, rather than domestic relations office, has been appointed to conduct the child custody evaluation.

(b) Requires DPS to provide the domestic relations office or the child custody evaluator with criminal history record information not later than a certain date.

(c) Makes a conforming change.

SECTION 10. Makes application of this Act prospective.

SECTION 11. Effective date: September 1, 2017.