

1-1 By: Thompson of Harris (Senate Sponsor - Rodríguez) H.B. No. 1501
1-2 (In the Senate - Received from the House May 5, 2017;
1-3 May 5, 2017, read first time and referred to Committee on State
1-4 Affairs; May 12, 2017, reported favorably by the following vote:
1-5 Yeas 9, Nays 0; May 12, 2017, sent to printer.)

1-6 COMMITTEE VOTE

| | Yea | Nay | Absent | PNV |
|------|------------|-----|--------|-----|
| 1-7 | | | | |
| 1-8 | Huffman | X | | |
| 1-9 | Hughes | X | | |
| 1-10 | Birdwell | X | | |
| 1-11 | Creighton | X | | |
| 1-12 | Estes | X | | |
| 1-13 | Lucio | X | | |
| 1-14 | Nelson | X | | |
| 1-15 | Schwertner | X | | |
| 1-16 | Zaffirini | X | | |

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to child custody evaluations; creating an offense.

1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-21 SECTION 1. Section 107.009(a), Family Code, is amended to
1-22 read as follows:

1-23 (a) A guardian ad litem, an attorney ad litem, a child
1-24 custody evaluator, or an amicus attorney appointed under this
1-25 chapter is not liable for civil damages arising from an action
1-26 taken, a recommendation made, or an opinion given in the capacity of
1-27 guardian ad litem, attorney ad litem, child custody evaluator, or
1-28 amicus attorney.

1-29 SECTION 2. Sections 107.103(a) and (c), Family Code, as
1-30 redesignated and amended by Chapter 1252 (H.B. 1449), Acts of the
1-31 84th Legislature, Regular Session, 2015, are amended to read as
1-32 follows:

1-33 (a) The court, after notice and hearing or on agreement of
1-34 the parties, may order the preparation of a child custody
1-35 evaluation regarding:

1-36 (1) the circumstances and condition of:

1-37 (A) a child who is the subject of a suit;

1-38 (B) a party to a suit; and

1-39 (C) if appropriate, the residence of any person
1-40 requesting conservatorship of, possession of, or access to a child
1-41 who is the subject of the suit; and

1-42 (2) any issue or question relating to the suit at the
1-43 request of the court before or during the evaluation process.

1-44 (c) Except for an order appointing a child custody evaluator
1-45 who is qualified under Section 107.104(b)(3), an [An] order for a
1-46 child custody evaluation must include:

1-47 (1) the name of each person who will conduct the
1-48 evaluation;

1-49 (2) the purpose of the evaluation; ~~and~~

1-50 (3) a list of the basic elements of an evaluation
1-51 required by Section 107.109(c);

1-52 (4) a list of any additional elements of an evaluation
1-53 required by the court to be completed, including any additional
1-54 elements specified in Section 107.109(d); and

1-55 (5) the specific issues or questions to be addressed
1-56 in the evaluation.

1-57 SECTION 3. Sections 107.109(a), (c), and (d), Family Code,
1-58 are amended to read as follows:

1-59 (a) A child custody evaluator may not offer an opinion
1-60 regarding conservatorship of a child who is the subject of a suit or
1-61 possession of or access to the child unless each basic element of a

2-1 child custody evaluation as specified in [described by] this
2-2 section and each additional element ordered by the court, if any,
2-3 has been completed, unless the failure to complete an element is
2-4 satisfactorily explained as provided by Subsection (b).

2-5 (c) The basic elements of a child custody evaluation under
2-6 this subchapter consist of:

2-7 (1) a personal interview of each party to the suit
2-8 seeking conservatorship of, possession of, or access to the child;

2-9 (2) interviews, conducted in a developmentally
2-10 appropriate manner, of each child who is the subject of the suit who
2-11 is at least four years of age [~~regardless of the age of the child,~~]
2-12 during a period of possession of each party to the suit but outside
2-13 the presence of the party;

2-14 (3) observation of each child who is the subject of the
2-15 suit, regardless of the age of the child, in the presence of each
2-16 party to the suit, including, as appropriate, during supervised
2-17 visitation, unless contact between a party and a child is
2-18 prohibited by court order or the person conducting the evaluation
2-19 has good cause for not conducting the observation and states the
2-20 good cause in writing provided to the parties to the suit before the
2-21 completion of the evaluation;

2-22 (4) an observation and, if the child is at least four
2-23 years of age [~~old~~], an interview of any child who is not a subject of
2-24 the suit who lives on a full-time basis in a residence that is the
2-25 subject of the evaluation, including with other children or parties
2-26 who are subjects of the evaluation, where appropriate;

2-27 (5) the obtaining of information from relevant
2-28 collateral sources, including the review of:

2-29 (A) relevant school records;

2-30 (B) relevant physical and mental health records
2-31 of each party to the suit and each child who is the subject of the
2-32 suit;

2-33 (C) relevant records of the department obtained
2-34 under Section 107.111;

2-35 (D) criminal history information relating to
2-36 each child who is the subject of the suit, each party to the suit,
2-37 and each person who lives with a party to the suit; and

2-38 (E) notwithstanding other law, records or
2-39 information from any other collateral source that may have relevant
2-40 information;

2-41 (6) [~~evaluation of the home environment of each party~~
2-42 ~~seeking conservatorship of a child who is the subject of the suit or~~
2-43 ~~possession of or access to the child, unless the condition of the~~
2-44 ~~home environment is identified as not being in dispute in the court~~
2-45 ~~order requiring the child custody evaluation,~~

2-46 [~~(7)~~] for each individual residing in a residence
2-47 subject to the child custody evaluation, consideration of any
2-48 criminal history information and any contact with the department or
2-49 a law enforcement agency regarding abuse or neglect; and

2-50 (7) [~~(8)~~] assessment of the relationship between each
2-51 child who is the subject of the suit and each party seeking
2-52 possession of or access to the child.

2-53 (d) The court may order additional elements of a child
2-54 custody evaluation under this subchapter, including the following
2-55 [~~consist of~~]:

2-56 (1) balanced interviews and observations of each child
2-57 who is the subject of the suit so that a child who is interviewed or
2-58 observed while in the care of one party to the suit is also
2-59 interviewed or observed while in the care of each other party to the
2-60 suit;

2-61 (2) an interview of each individual, including a child
2-62 who is at least four years of age, residing on a full-time or
2-63 part-time basis in a residence subject to the child custody
2-64 evaluation;

2-65 (3) evaluation of the residence [~~home environment~~] of
2-66 each party seeking conservatorship of a child who is the subject of
2-67 the suit or possession of or access to the child [~~regardless of~~
2-68 ~~whether the home environment is in dispute~~];

2-69 (4) observation of a child who is the subject of the

3-1 suit with each adult who lives in a residence that is the subject of
3-2 the evaluation;

3-3 (5) an interview, if the child is at least four years
3-4 of age, and observation of a child who is not the subject of the suit
3-5 but who lives on a full-time or part-time basis in a residence that
3-6 is the subject of the evaluation;

3-7 (6) psychometric testing, if necessary, consistent
3-8 with Section 107.110; and

3-9 (7) the performance of other tasks requested of the
3-10 evaluator by the court, including:

3-11 (A) a joint interview of the parties to the suit;
3-12 or

3-13 (B) the review of any other information that the
3-14 court determines is relevant.

3-15 SECTION 4. Section 107.110(d), Family Code, is amended to
3-16 read as follows:

3-17 (d) If a child custody evaluator considers psychometric
3-18 testing necessary but lacks specialized training or expertise to
3-19 use the specific tests under this section, the evaluator may
3-20 designate a licensed psychologist to conduct the testing and may
3-21 request additional orders from the court.

3-22 SECTION 5. Section 107.1101(b), Family Code, is amended to
3-23 read as follows:

3-24 (b) If a child custody evaluator identifies the presence of
3-25 a potentially undiagnosed serious mental illness experienced by an
3-26 individual who is a subject of the child custody evaluation and the
3-27 evaluator is not qualified by the evaluator's licensure,
3-28 experience, and training to assess a serious mental illness, the
3-29 evaluator shall make one or more appropriate referrals for a mental
3-30 examination of the individual and may request additional orders
3-31 from the court.

3-32 SECTION 6. Subchapter D, Chapter 107, Family Code, is
3-33 amended by adding Section 107.1111 to read as follows:

3-34 Sec. 107.1111. CHILD CUSTODY EVALUATOR ACCESS TO OTHER
3-35 RECORDS. (a) Notwithstanding any other state law regarding
3-36 confidentiality, a child custody evaluator appointed by a court is
3-37 entitled to obtain records that relate to any person residing in a
3-38 residence subject to a child custody evaluation from:

3-39 (1) a local law enforcement authority;

3-40 (2) a criminal justice agency;

3-41 (3) a juvenile justice agency;

3-42 (4) a community supervision and corrections
3-43 department created under Chapter 76, Government Code; or

3-44 (5) any other governmental entity.

3-45 (b) Except as provided by this section, records obtained by
3-46 a child custody evaluator under this section are confidential and
3-47 not subject to disclosure under Chapter 552, Government Code, or to
3-48 disclosure in response to a subpoena or a discovery request.

3-49 (c) A child custody evaluator may disclose information
3-50 obtained under Subsection (a) in the child custody evaluation
3-51 report prepared under Section 107.113 only to the extent the
3-52 evaluator determines that the information is relevant to the child
3-53 custody evaluation or a recommendation made under this subchapter.

3-54 (d) A person commits an offense if the person recklessly
3-55 discloses confidential information obtained under Subsection (a)
3-56 in violation of this section. An offense under this subsection is
3-57 a Class A misdemeanor.

3-58 SECTION 7. Sections 107.113(a) and (b), Family Code, are
3-59 amended to read as follows:

3-60 (a) A child custody evaluator who conducts a child custody
3-61 evaluation shall prepare ~~and file~~ a report containing the
3-62 evaluator's findings, opinions, recommendations, and answers to
3-63 specific questions asked by the court relating to the evaluation.

3-64 (b) The person conducting a child custody evaluation shall
3-65 file with the court on a date set by the court notice that the report
3-66 under this section is complete. On the earlier of the date the
3-67 notice is filed or the date required under Section 107.114, the
3-68 person shall provide a copy of the report to:

3-69 (1) each party's attorney;

4-1 (2) each party who is not represented by an attorney;

4-2 and

4-3 (3) each attorney ad litem, guardian ad litem, and
4-4 amicus attorney appointed in the suit [~~a report containing the~~
4-5 ~~person's findings and conclusions. The report shall be made a part~~
4-6 ~~of the record of the suit~~].

4-7 SECTION 8. Section 107.114(a), Family Code, is amended to
4-8 read as follows:

4-9 (a) Disclosure to the court or the jury of the contents of a
4-10 child custody evaluation report prepared under Section 107.113 is
4-11 subject to the rules of evidence.

4-12 SECTION 9. Section 411.1285, Government Code, is amended to
4-13 read as follows:

4-14 Sec. 411.1285. ACCESS TO CRIMINAL HISTORY RECORD
4-15 INFORMATION: DOMESTIC RELATIONS OFFICE AND CHILD CUSTODY
4-16 EVALUATOR. (a) A domestic relations office created under Chapter
4-17 203, Family Code, is entitled to obtain from the department
4-18 criminal history record information that relates to a person who is
4-19 a party to a proceeding in which the domestic relations office is
4-20 providing services permitted under Chapter 203, Family Code.

4-21 (a-1) A domestic relations office created under Chapter
4-22 203, Family Code, or a child custody evaluator appointed under
4-23 Chapter 107, Family Code, is entitled to obtain from the department
4-24 criminal history record information that relates to [~~or~~] a person
4-25 involved in a child custody evaluation under Chapter 107, Family
4-26 Code, in which the domestic relations office or child custody
4-27 evaluator has been appointed to conduct the child custody
4-28 evaluation.

4-29 (b) The department shall provide the domestic relations
4-30 office or the child custody evaluator with criminal history record
4-31 information not later than the 10th day after the date on which the
4-32 criminal history record information is requested.

4-33 (c) Criminal history record information requested under
4-34 this section, except for relevant information included in a report
4-35 of a child custody evaluation or adoption evaluation filed under
4-36 Chapter 107, Family Code, may not be released or disclosed by a
4-37 domestic relations office or a child custody evaluator to a person
4-38 other than the court ordering the child custody evaluation or
4-39 adoption evaluation except on court order or with the consent of the
4-40 person who is the subject of the criminal history record
4-41 information.

4-42 SECTION 10. The changes in law made by this Act apply only
4-43 to a suit affecting the parent-child relationship that is filed on
4-44 or after the effective date of this Act. A suit affecting the
4-45 parent-child relationship filed before the effective date of this
4-46 Act is governed by the law in effect on the date the application is
4-47 filed, and the former law is continued in effect for that purpose.

4-48 SECTION 11. This Act takes effect September 1, 2017.

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