

By: Rodríguez

S.B. No. 1236

A BILL TO BE ENTITLED

AN ACT

relating to child custody evaluations; creating an offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

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

SECTION 2. 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, are amended to read as follows:

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

(1) the circumstances and condition of:

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

(B) a party to a suit; and

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

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

(c) An order for a child custody evaluation must include:

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

(2) the purpose of the evaluation; ~~and~~

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

(4) 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); and

(5) the specific issues or questions to be addressed in the evaluation.

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

(a) A child custody evaluator may not offer 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 ~~[described by]~~ this section 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).

(c) The basic elements of a child custody evaluation under this subchapter consist 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

1 appropriate manner, of each child who is the subject of the suit who  
2 is at least four years of age [~~, regardless of the age of the child,~~]  
3 during a period of possession of each party to the suit but outside  
4 the presence of the party;

5 (3) observation of each child who is the subject of the  
6 suit, regardless of the age of the child, in the presence of each  
7 party to the suit, including, as appropriate, during supervised  
8 visitation, unless contact between a party and a child is  
9 prohibited by court order or the person conducting the evaluation  
10 has good cause for not conducting the observation and states the  
11 good cause in writing provided to the parties to the suit before the  
12 completion of the evaluation;

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

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

20 (A) relevant school records;

21 (B) relevant physical and mental health records  
22 of each party to the suit and each child who is the subject of the  
23 suit;

24 (C) relevant records of the department obtained  
25 under Section [107.111](#);

26 (D) criminal history information relating to  
27 each child who is the subject of the suit, each party to the suit,

1 and each person who lives with a party to the suit; and

2 (E) records or information from any other  
3 collateral source that may have relevant information;

4 (6) evaluation of the residence [~~home environment~~] of  
5 each party seeking conservatorship of a child who is the subject of  
6 the suit or possession of or access to the child, unless the  
7 condition of the residence [~~home environment~~] is identified as not  
8 being in dispute in the court order requiring the child custody  
9 evaluation;

10 (7) for each individual residing in a residence  
11 subject to the child custody evaluation, consideration of any  
12 criminal history information and any contact with the department or  
13 a law enforcement agency regarding abuse or neglect; and

14 (8) assessment of the relationship between each child  
15 who is the subject of the suit and each party seeking possession of  
16 or access to the child.

17 (d) The court may order additional elements of a child  
18 custody evaluation under this subchapter, including the following  
19 [~~consist of~~]:

20 (1) balanced interviews and observations of each child  
21 who is the subject of the suit so that a child who is interviewed or  
22 observed while in the care of one party to the suit is also  
23 interviewed or observed while in the care of each other party to the  
24 suit;

25 (2) an interview of each individual, including a child  
26 who is at least four years of age, residing on a full-time or  
27 part-time basis in a residence subject to the child custody

1 evaluation;

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

6 (4) observation of a child who is the subject of the  
7 suit with each adult who lives in a residence that is the subject of  
8 the evaluation;

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

13 (6) psychometric testing, if necessary, consistent  
14 with Section 107.110; and

15 (7) the performance of other tasks requested of the  
16 evaluator by the court, including:

17 (A) a joint interview of the parties to the suit;  
18 or

19 (B) the review of any other information that the  
20 court determines is relevant.

21 SECTION 4. Section 107.110(d), Family Code, is amended to  
22 read as follows:

23 (d) If a child custody evaluator considers psychometric  
24 testing necessary but lacks specialized training or expertise to  
25 use the specific tests under this section, the evaluator may  
26 designate a licensed psychologist to conduct the testing and may  
27 request additional orders from the court.

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

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

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

Sec. 107.1111. CHILD CUSTODY EVALUATOR ACCESS TO OTHER RECORDS. (a) Notwithstanding any other state law regarding confidentiality, 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:

- (1) a local law enforcement authority;
- (2) a criminal justice agency;
- (3) a juvenile justice agency;
- (4) a community supervision and corrections department created under Chapter 76, Government Code; or
- (5) any other governmental entity.

(b) 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, Government Code, or to disclosure in response to a subpoena or a discovery request.

1        (c) A child custody evaluator may disclose information  
2 obtained under Subsection (a) in the child custody evaluation  
3 report prepared under Section 107.113 only to the extent the  
4 evaluator determines that the information is relevant to the child  
5 custody evaluation or a recommendation made under this subchapter.

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

10        SECTION 7. Section 107.114(a), Family Code, is amended to  
11 read as follows:

12        (a) The ~~[Disclosure to the jury of the]~~ contents of a child  
13 custody evaluation report prepared under Section 107.113 are ~~[is]~~  
14 subject to the rules of evidence.

15        SECTION 8. Section 411.1285, Government Code, is amended to  
16 read as follows:

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

24        (a-1) A domestic relations office created under Chapter  
25 203, Family Code, or a child custody evaluator appointed under  
26 Chapter 107, Family Code, is entitled to obtain from the department  
27 criminal history record information that relates to ~~[or]~~ a person

1 involved in a child custody evaluation under Chapter 107, Family  
2 Code, in which the domestic relations office or child custody  
3 evaluator has been appointed to conduct the child custody  
4 evaluation.

5 (b) The department shall provide the domestic relations  
6 office or the child custody evaluator with criminal history record  
7 information not later than the 10th day after the date on which the  
8 criminal history record information is requested.

9 (c) Criminal history record information requested under  
10 this section, except for relevant information included in a report  
11 of a child custody evaluation or adoption evaluation filed under  
12 Chapter 107, Family Code, may not be released or disclosed by a  
13 domestic relations office or a child custody evaluator to a person  
14 other than the court ordering the child custody evaluation or  
15 adoption evaluation except on court order or with the consent of the  
16 person who is the subject of the criminal history record  
17 information.

18 SECTION 9. Section 107.113(b), Family Code, is repealed.

19 SECTION 10. The changes in law made by this Act apply only  
20 to a suit affecting the parent-child relationship that is filed on  
21 or after the effective date of this Act. A suit affecting the  
22 parent-child relationship filed before the effective date of this  
23 Act is governed by the law in effect on the date the application is  
24 filed, and the former law is continued in effect for that purpose.

25 SECTION 11. This Act takes effect September 1, 2017.