

An Act

HOUSE BILL 21-1228

BY REPRESENTATIVE(S) Froelich, Amabile, Bernett, Bird, Caraveo, Cutter, Duran, Esgar, Exum, Gonzales-Gutierrez, Gray, Hooton, Jackson, Lontine, McCluskie, McCormick, Michaelson Jenet, Mullica, Ricks, Roberts, Sirota, Snyder, Titone, Valdez A., Valdez D., Van Winkle, Weissman, Woodrow, Young, Garnett, Carver, Jodeh, Kennedy, McLachlan, Ortiz, Sullivan;

also SENATOR(S) Smallwood and Winter, Bridges, Buckner, Coleman, Coram, Fenberg, Fields, Ginal, Gonzales, Hansen, Jaquez Lewis, Kirkmeyer, Kolker, Lee, Moreno, Pettersen, Priola, Rankin, Simpson, Story, Zenzinger, Garcia.

CONCERNING OVERSIGHT OF COURT PERSONNEL WHO ARE REGULARLY INVOLVED IN CASES RELATED TO DOMESTIC MATTERS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that:

(a) Approximately 15 million children are exposed each year to domestic violence or child abuse, which are often linked;

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(b) Child sexual abuse is significantly under-documented and under-addressed in the legal system; and

(c) Child abuse is a major public health issue in the United States, with total lifetime estimated financial costs associated with just one year of confirmed cases of child maltreatment, including physical abuse, sexual abuse, psychological abuse, and neglect, amounting to approximately \$124 billion.

(2) The general assembly further finds that:

(a) Exposure to domestic violence is a leading cause of adverse childhood experiences;

(b) Research confirms that allegations of domestic violence, child abuse, and child sexual abuse are often discounted when raised in child custody litigation, even when credible claims of abuse are presented in court;

(c) Research shows that abusive parents are often granted custody or unprotected parenting time by courts, placing children at ongoing risk;

(d) Research confirms that a child's risk of abuse increases after a perpetrator of domestic violence separates from a domestic partner, even when the perpetrator has not previously abused the child;

(e) Researchers have documented a minimum of 735 children murdered in the United States since 2008 by a parent involved in a divorce, separation, custody, visitation, or child support proceeding, often after access was provided by family courts over the objections of a protective parent;

(f) Scientifically unsound theories are frequently applied to reject parents' and children's reports of abuse;

(g) In cases involving allegations of domestic violence, child abuse, and child sexual abuse, courts should rely on the assistance of third-party professionals only when the professionals possess the proper experience or expertise for assessing domestic violence, child abuse, child sexual abuse,

and trauma, and when the professionals apply scientifically sound and evidence-based theories; and

(h) Custody litigation involving domestic violence, child abuse, and child sexual abuse allegations is sometimes prohibitively expensive, resulting in parental bankruptcy as a result of court-mandated payments to appointed fee-paid professionals, in addition to attorney fees, and excessive civil action, especially regarding custody, is a documented tactic of domestic offenders to control and harass the victim after separation.

(3) The general assembly therefore declares that:

(a) Child safety is the first priority of custody and parenting adjudications, and courts should resolve safety risks and claims of domestic violence, child abuse, and child sexual abuse first as a fundamental consideration in determining the best interests of the child before assessing other best interest factors;

(b) Domestic violence is an important factor for courts to consider when making decisions related to parenting time and parental responsibilities;

(c) All evidence admitted in custody and parenting adjudications should be subject to evidentiary admissibility standards;

(d) Evidence from a court-affiliated or appointed fee-paid professional regarding allegations of domestic violence, child abuse, and child sexual abuse in custody cases should be admitted only when the professional has undergone proper and regular training, including training on the effects of domestic abuse, child abuse, and child sexual abuse, and the professional possesses documented expertise and experience in the relevant types of abuse, trauma, and the behaviors of victims and perpetrators; and

(e) All professional groups involved in parenting time and parental responsibilities evaluations, including child and family investigators, parenting coordinators, parent responsibility evaluators, decision makers, family court facilitators, and judges and magistrates, need to have appropriate and ongoing training in domestic violence, coercive control, and related issues.

SECTION 2. In Colorado Revised Statutes, 13-22-311, **amend** (1) as follows:

13-22-311. Court referral to mediation - duties of mediator.

(1) Any court of record may, in its discretion, refer any case for mediation services or dispute resolution programs, subject to the availability of mediation services or dispute resolution programs; except that the court shall not refer the case to mediation services or dispute resolution programs where one of the parties claims that ~~it~~ THE PARTY has been the victim of physical or psychological abuse by the other party, AT ANY TIME AND REGARDLESS OF PRIOR PARTICIPATION, and states that ~~it~~ THE PARTY is thereby unwilling to enter into mediation services or dispute resolution programs. In addition, the court may exempt from referral any case in which a party files with the court, within five days of a referral order, a motion objecting to mediation and demonstrating compelling reasons why mediation should not be ordered. Compelling reasons may include, but are not limited to, that the costs of mediation would be higher than the requested relief and previous attempts to resolve the issues were not successful. Parties referred to mediation services or dispute resolution programs may select said services or programs from mediators or mediation organizations or from the office of dispute resolution. This section shall not apply in any civil action where injunctive or similar equitable relief is the only remedy sought.

SECTION 3. In Colorado Revised Statutes, 14-10-116, **amend** (2) as follows:

14-10-116. Appointment in domestic relations cases - representation of the best interests of the child - legal representative of the child - disclosure - short title. (2) (a) The legal representative of the child, appointed pursuant to subsection (1) of this section, shall represent the best interests of the minor or dependent child, as described in section 14-10-124, with respect to the ~~child's custody~~ PARENTING TIME, the allocation of parental responsibilities, FINANCIAL support for the child, the child's property, ~~parenting time~~, or any other issue related to the child that is identified by the legal representative of the child or the appointing court. The legal representative of the child shall actively participate in all aspects of the case involving the child, within the bounds of the law. The legal representative of the child shall comply with the provisions set forth in the Colorado rules of professional conduct and any applicable provisions set

forth in chief justice directives or other practice standards established by rule or directive of the chief justice pursuant to section 13-91-105 (1)(c) C.R.S., concerning the duties or responsibilities of best interest representation in legal matters affecting children, INCLUDING TRAINING REQUIREMENTS RELATED TO DOMESTIC VIOLENCE AND ITS EFFECT ON CHILDREN, ADULTS, AND FAMILIES. The legal representative of the child shall not be called as a witness in the case. While the legal representative of the child shall ascertain and consider the wishes of the child, the legal representative of the child is not required to adopt the child's wishes in ~~his or her~~ THE LEGAL REPRESENTATIVE OF THE CHILD'S recommendation or advocacy for the child unless such wishes serve the ~~child's best interest~~ BEST INTERESTS OF THE CHILD, as described in section 14-10-124.

(b) THE SHORT TITLE OF THIS SUBSECTION (2) IS "JULIE'S LAW".

SECTION 4. In Colorado Revised Statutes, 14-10-116.5, **amend** (2) and (3)(a) as follows:

14-10-116.5. Appointment in domestic relations cases - child and family investigator - disclosure - background check. (2) (a) A child and family investigator appointed by the court FROM AN ELIGIBILITY ROSTER ESTABLISHED PURSUANT TO CHIEF JUSTICE DIRECTIVE may be an attorney, a mental health professional, or any other individual with appropriate training AND qualifications, AS SET FORTH IN SUBSECTION (2)(f) OF THIS SECTION, and an independent perspective acceptable to the court. The child and family investigator for the court shall investigate AND report ~~and make recommendations~~ as specifically directed by the court in the appointment order, taking into consideration the relevant factors for determining the best interests of the child, as ~~specified~~ DESCRIBED in section 14-10-124. THE PURPOSE OF THE INVESTIGATION IS TO ASSIST IN DETERMINING THE BEST INTERESTS OF THE CHILD, WITH THE CHILD'S SAFETY ALWAYS PARAMOUNT.

(b) The child and family investigator shall make independent and informed recommendations to the court, in the form of a written report ~~filed~~ with the court, unless otherwise ordered by the court. While the child and family investigator shall consider the wishes of the child, the child and family investigator need not adopt such wishes in making his or her recommendations to the court, unless they serve the ~~child's best interests~~ OF THE CHILD, as described in section 14-10-124. The child's wishes, if expressed, ~~shall~~ MUST be disclosed in the child and family investigator's

written report. THE COURT SHALL CONSIDER THE ENTIRETY OF THE REPORT, AS WELL AS ANY TESTIMONY BY THE CHILD AND FAMILY INVESTIGATOR, THE PARTIES, AND ANY OTHER PROFESSIONALS, BEFORE ADOPTING ANY RECOMMENDATIONS MADE BY THE CHILD AND FAMILY INVESTIGATOR.

(c) The child and family investigator may be called to testify as a COURT-APPOINTED EXPERT witness regarding ~~his or her recommendations~~ THE CHILD AND FAMILY INVESTIGATOR'S REPORTS, BUT ONLY IF THE COURT FINDS THAT THE CHILD AND FAMILY INVESTIGATOR HAS THE APPROPRIATE TRAINING AND QUALIFICATIONS SET FORTH IN SUBSECTION (2)(f) OF THIS SECTION. RECOMMENDATIONS SHOULD BE CONSIDERED IN FULL CONTEXT OF THE REPORT.

(d) IN ADDITION TO THE TRAINING REQUIREMENTS AND QUALIFICATIONS SET FORTH IN SUBSECTION (2)(f) OF THIS SECTION, the child and family investigator shall comply with applicable provisions set forth in chief justice directives, and any other practice or ethical standards established by rule, statute, or ANY licensing board that regulates the child and family investigator. A CHILD AND FAMILY INVESTIGATOR SHALL STRIVE TO ENGAGE IN CULTURALLY INFORMED AND NONDISCRIMINATORY PRACTICES.

(e) A PARTY WISHING TO FILE A COMPLAINT RELATED TO A PERSON'S DUTIES AS A CHILD AND FAMILY INVESTIGATOR SHALL FILE SUCH COMPLAINT IN ACCORDANCE WITH THE APPLICABLE PROVISIONS IN CHIEF JUSTICE DIRECTIVES.

(f) THE COURT SHALL NOT APPOINT A PERSON FROM THE ELIGIBILITY REGISTRY TO BE A CHILD AND FAMILY INVESTIGATOR FOR A CASE PURSUANT TO THIS SECTION UNLESS THE COURT FINDS THAT THE PERSON IS QUALIFIED AS COMPETENT BY TRAINING AND EXPERIENCE IN, AT A MINIMUM, DOMESTIC VIOLENCE AND ITS EFFECTS ON CHILDREN, ADULTS, AND FAMILIES, CHILD ABUSE, AND CHILD SEXUAL ABUSE. THE PERSON'S TRAINING AND EXPERIENCE MUST BE PROVIDED BY RECOGNIZED SOURCES WITH EXPERTISE IN DOMESTIC VIOLENCE AND THE TRAUMATIC EFFECTS OF DOMESTIC VIOLENCE. AS OF JANUARY 1, 2022, INITIAL AND ONGOING TRAINING MUST INCLUDE, AT A MINIMUM:

(I) SIX INITIAL HOURS OF TRAINING ON DOMESTIC VIOLENCE, INCLUDING COERCIVE CONTROL, AND ITS TRAUMATIC EFFECTS ON CHILDREN,

ADULTS, AND FAMILIES;

(II) SIX INITIAL HOURS OF TRAINING ON CHILD ABUSE AND CHILD SEXUAL ABUSE AND ITS TRAUMATIC EFFECTS; AND

(III) FOUR SUBSEQUENT HOURS OF TRAINING EVERY TWO YEARS ON DOMESTIC VIOLENCE, INCLUDING COERCIVE CONTROL, CHILD ABUSE, AND CHILD SEXUAL ABUSE, AND THE TRAUMATIC EFFECTS ON CHILDREN, ADULTS, AND FAMILIES.

(3) (a) The court shall enter an order for costs, fees, and disbursements in favor of the child and family investigator appointed pursuant to subsection (1) of this section. The order ~~shall~~ MUST be made against any or all of the parties; except that, if the responsible parties are determined to be indigent, the costs, fees, and disbursements ~~shall be~~ ARE borne by the state.

SECTION 5. In Colorado Revised Statutes, 14-10-124, **amend** (1.5)(a) introductory portion; and **add** (1.5)(a)(III.5) as follows:

14-10-124. Best interests of the child. (1.5) Allocation of parental responsibilities. The court shall determine the allocation of parental responsibilities, including parenting time and decision-making responsibilities, in accordance with the best interests of the child giving paramount consideration to the child's safety and the physical, mental, and emotional conditions and needs of the child as follows:

(a) **Determination of parenting time.** The court, upon the motion of either party or upon its own motion, may make provisions for parenting time that the court finds are in the ~~child's~~ best interests OF THE CHILD, WITH THE CHILD'S SAFETY ALWAYS PARAMOUNT, unless the court finds, after a hearing, that parenting time by the party would endanger the child's physical health or significantly impair the child's emotional development. In addition to a finding that parenting time would endanger the child's physical health or significantly impair the child's emotional development, in any order imposing or continuing a parenting time restriction, the court shall enumerate the specific factual findings supporting the restriction, INCLUDING FINDINGS RELATED TO DOMESTIC VIOLENCE, CHILD ABUSE, AND CHILD SEXUAL ABUSE, and may enumerate the conditions that the restricted party could fulfill in order to seek modification in the parenting plan. When

a claim of child abuse or neglect, domestic violence, or sexual assault where there is also a claim that the child was conceived as a result of the sexual assault has been made to the court, or the court has reason to believe that a party has committed child abuse or neglect, domestic violence, or sexual assault where there is also a claim that the child was conceived as a result of the sexual assault, prior to determining parenting time, the court shall follow the provisions of subsection (4) of this section. In determining the best interests of the child for purposes of parenting time, the court shall consider all relevant factors, including:

(III.5) ANY REPORT RELATED TO DOMESTIC VIOLENCE THAT IS SUBMITTED TO THE COURT BY A CHILD AND FAMILY INVESTIGATOR, IF ONE IS APPOINTED PURSUANT TO SECTION 14-10-116.5; A PROFESSIONAL PARENTAL RESPONSIBILITIES EVALUATOR, IF ONE IS APPOINTED PURSUANT TO SECTION 14-10-127; OR A LEGAL REPRESENTATIVE OF THE CHILD, IF ONE IS APPOINTED PURSUANT TO SECTION 14-10-116. THE COURT MAY CONSIDER OTHER TESTIMONY REGARDING DOMESTIC VIOLENCE FROM THE PARTIES, EXPERTS, THERAPISTS FOR ANY PARENT OR CHILD, THE DEPARTMENT OF HUMAN SERVICES, PARENTING TIME SUPERVISORS, SCHOOL PERSONNEL, OR OTHER LAY WITNESSES.

SECTION 6. In Colorado Revised Statutes, 14-10-127, **amend** (1)(a)(I), (1)(a)(I.5) introductory portion, (1)(a)(II), (1)(b), (4) introductory portion, (5), (6)(a), and (6)(b) introductory portion; and **add** (1)(c), (4)(a.5), (6)(c), (9), and (10) as follows:

14-10-127. Evaluation and reports - training and qualifications of evaluators - disclosure. (1) (a) (I) (A) In all proceedings concerning the allocation of parental responsibilities with respect to a child, the court may, upon motion of either party or upon its own motion, order any county or district department of human or social services or a licensed mental health professional qualified pursuant to subsection (4) of this section AND REFERRED TO IN THIS SECTION AS AN "EVALUATOR" to perform an evaluation and file a written report concerning the disputed issues relating to the allocation of parental responsibilities for the child, unless the motion by either party is made for the purpose of delaying the proceedings. THE PURPOSE OF THE EVALUATION AND REPORT IS TO ASSIST IN DETERMINING THE BEST INTERESTS OF THE CHILD, WITH THE CHILD'S SAFETY ALWAYS PARAMOUNT. THE EVALUATION AND SUBSEQUENT REPORT MUST FOCUS ON THE BEST INTERESTS OF THE CHILD AND THE FACTORS SET FORTH IN

SECTIONS 14-10-124 AND 14-10-129 IN ANY POST-DECREE OR RELOCATION CASE. IN ADDITION, THE EVALUATOR SHALL ASSESS A PARTY'S PARENTING ATTRIBUTES AS THOSE ATTRIBUTES RELATE TO THE BEST INTERESTS OF THE CHILD, AND CONSIDER ANY PSYCHOLOGICAL NEEDS OF THE CHILD WHEN MAKING RECOMMENDATIONS CONCERNING DECISION MAKING AND PARENTING TIME.

(B) Any court or any personnel of a county or district department of human or social services appointed by the court to do ~~such~~ AN evaluation PURSUANT TO THIS SECTION must be qualified pursuant to subsection (4) of this section AND BE SELECTED FROM AN ELIGIBILITY ROSTER ESTABLISHED PURSUANT TO APPLICABLE CHIEF JUSTICE DIRECTIVE.

(C) When a mental health professional performs the evaluation, the court shall appoint or approve the selection of the mental health professional AS THE EVALUATOR. Within seven days after the appointment, the evaluator shall comply with the disclosure provisions of subsection (1.2) of this section. The court shall, at the time of the EVALUATOR'S appointment, ~~of the evaluator~~, order one or more of the parties to deposit a reasonable sum with the court to pay the cost of the evaluation. The court may order the reasonable charge for the evaluation and report to be assessed as costs between the parties at the time the evaluation is completed.

(I.5) A party may request a supplemental evaluation to the evaluation ordered pursuant to ~~subparagraph (I) of this paragraph (a)~~ SUBSECTION (1)(a)(I) OF THIS SECTION. The court shall appoint another ~~mental health professional~~ QUALIFIED EVALUATOR to perform the supplemental evaluation at the initial expense of the moving party. The ~~person~~ EVALUATOR appointed to perform the supplemental evaluation shall comply with the disclosure provisions of subsection (1.2) of this section. The court shall not order a supplemental evaluation if it determines that any of the following applies, based on motion and supporting affidavits:

(II) Each party and the child, IF POSSIBLE, shall cooperate in the supplemental evaluation. If the court finds that the supplemental evaluation was necessary and materially assisted the court, the court may order the costs of such supplemental evaluation to be assessed as costs between the parties. Except as otherwise provided in this section, ~~such~~ THE report ~~shall be considered~~ IS confidential and ~~shall not be~~ IS NOT available for public inspection unless by order of court. The cost of each department of human

services evaluation ~~shall be~~ IS based on an ability to pay and ~~shall~~ MUST be assessed as part of the costs of the action or proceeding, and, upon receipt of such sum by the clerk of court, ~~it shall be transmitted~~ THE CLERK OF COURT SHALL TRANSMIT THE MONEY to the department or agency performing the evaluation.

(b) The person signing a report or evaluation and supervising its preparation ~~shall~~ MUST be a licensed mental health professional. ~~The mental health professional may have associates or persons working under him or her who are unlicensed.~~ THE LICENSED MENTAL HEALTH PROFESSIONAL SIGNING A REPORT OR EVALUATION MUST BE QUALIFIED AS COMPETENT, BY TRAINING AND EXPERIENCE, AS DESCRIBED IN SUBSECTION (4) OF THIS SECTION. UNLICENSED ASSOCIATES OR OTHER PERSONS MAY WORK WITH THE MENTAL HEALTH PROFESSIONAL TO PREPARE THE REPORT.

(c) AN EVALUATOR SHALL STRIVE TO ENGAGE IN CULTURALLY INFORMED AND NONDISCRIMINATORY PRACTICES, AND STRIVE TO AVOID CONFLICTS OF INTEREST OR MULTIPLE RELATIONSHIPS IN CONDUCTING EVALUATIONS.

(4) A person ~~shall not be~~ IS NOT allowed to testify AS AN EXPERT WITNESS regarding a parental responsibilities or parenting time evaluation that the person has performed pursuant to this section unless the court finds that the person is qualified as competent, by training and experience, in the areas of:

(a.5) THE EFFECTS OF DOMESTIC VIOLENCE ON CHILDREN, ADULTS, AND FAMILIES, INCLUDING THE CONNECTION BETWEEN DOMESTIC VIOLENCE AND TRAUMA ON CHILDREN, CHILD ABUSE, AND CHILD SEXUAL ABUSE. THE PERSON'S TRAINING AND EXPERIENCE MUST BE PROVIDED BY RECOGNIZED SOURCES WITH EXPERTISE IN DOMESTIC VIOLENCE AND THE TRAUMATIC EFFECTS OF DOMESTIC VIOLENCE. AS OF JANUARY 1, 2022, INITIAL AND ONGOING TRAINING MUST INCLUDE, AT A MINIMUM:

(I) SIX INITIAL HOURS OF TRAINING ON DOMESTIC VIOLENCE, INCLUDING COERCIVE CONTROL, AND ITS TRAUMATIC EFFECTS ON CHILDREN, ADULTS, AND FAMILIES;

(II) SIX INITIAL HOURS OF TRAINING ON CHILD ABUSE AND CHILD SEXUAL ABUSE AND ITS TRAUMATIC EFFECTS; AND

(III) FOUR SUBSEQUENT HOURS OF TRAINING EVERY TWO YEARS ON DOMESTIC VIOLENCE, CHILD ABUSE, AND CHILD SEXUAL ABUSE AND THE TRAUMATIC EFFECTS ON CHILDREN, ADULTS, AND FAMILIES.

(5) If AN evaluation is indicated in an area ~~which is~~ beyond the training or experience of the evaluator, the evaluator shall consult with a mental health professional qualified by training or experience, AS DESCRIBED IN SUBSECTION (4) OF THIS SECTION, in that area. Such areas may include, but are not limited to, domestic violence, child abuse, CHILD SEXUAL ABUSE, alcohol or substance abuse, or psychological testing.

(6) (a) ~~A mental health professional~~ AN EVALUATOR may make specific ~~recommendations~~ REPORTS when the ~~mental health professional~~ EVALUATOR has interviewed and assessed all parties to the dispute, assessed the quality of the relationship, or the potential for establishing a quality relationship, between the child and each of the parties, and had access to pertinent information from outside sources.

(b) ~~A mental health professional~~ AN EVALUATOR may make ~~recommendations~~ REPORTS even though all parties and the child have not been evaluated by the same ~~mental health professional~~ EVALUATOR in the following circumstances, if the ~~mental health professional~~ EVALUATOR states with particularity ~~in his or her opinion~~ the limitations of ~~his or her~~ THE EVALUATOR'S findings and ~~recommendations~~ REPORTS:

(c) RECOMMENDATIONS SHOULD BE CONSIDERED IN FULL CONTEXT OF THE REPORT.

(9) ON AND AFTER JANUARY 1, 2022, A PARTY WISHING TO FILE A COMPLAINT RELATED TO A PERSON'S DUTIES AS AN EVALUATOR SHALL FILE SUCH COMPLAINT IN ACCORDANCE WITH THE APPLICABLE PROVISIONS IN CHIEF JUSTICE DIRECTIVES.

(10) THE REQUIREMENTS OF THIS SECTION APPLY ONLY TO ACTIVITIES RELATED TO WORK PERFORMED THAT IS RELATED TO PROCEEDINGS CONCERNING THE ALLOCATION OF PARENTAL RESPONSIBILITIES. ALL OTHER LICENSURE REQUIREMENTS FOR MENTAL HEALTH PROFESSIONALS, AS ESTABLISHED BY THE DEPARTMENT OF REGULATORY AGENCIES AND SET FORTH IN ARTICLE 245 OF TITLE 12, STILL APPLY.

SECTION 7. Appropriation. (1) For the 2021-22 state fiscal year, \$86,680 is appropriated to the judicial department. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

(a) \$80,480 for general courts administration, which amount is based on an assumption that the department will require an additional 0.9 FTE; and

(b) \$6,200 for capital outlay.

SECTION 8. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Alec Garnett
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Leroy M. Garcia
PRESIDENT OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO