

- SUBJECT:** Amending child custody evaluations and adoption evaluations
- COMMITTEE:** Juvenile Justice and Family Issues — committee substitute recommended
- VOTE:** 7 ayes — Dutton, Riddle, Hughes, Peña, Rose, Sanford, J. White
0 nays
- WITNESSES:** For — Charla Bradshaw and Steve Bresnen, Texas Family Law Foundation; Benjamin Albritton; Christy Bradshaw Schmidt; Aaron Robb; Alissa Sherry; (*Registered, but did not testify:* Will Francis, National Association of Social Workers - Texas Chapter; Katherine Barillas, One Voice Texas; Sarah Crockett, Texas CASA)

Against — Paul Andrews, Texas Psychological Association; Tim Branaman; (*Registered, but did not testify:* David White, Texas Psychological Association)

On — Elizabeth “Liz” Kromrei, Department of Family and Protective Services; Isaac Sommers, Texas Home School Coalition Association; (*Registered, but did not testify:* D. Gene Valentini, Office of Dispute Resolution for Lubbock County; Darrel Spinks, Texas State Board of Examiners of Psychologists)
- BACKGROUND:** Family Code, ch. 107 governs special appointments and social studies and guides the appointment and duties of professionals in suits affecting the parent-child relationship. Subch. D concerns the execution of social studies in cases involving the adoption of a child, conservatorship of a child, or possession of or access to a child.

Social studies are the evaluative processes performed by certain professionals to provide information and recommendations to the court regarding the custody or adoption of a child.
- DIGEST:** CSHB 1449 would make several changes to Family Code, subch. D, including splitting up the subchapter into two distinct sections: subch. D regarding social studies, which would instead be called “child custody

evaluations,” ordered in contested custody cases, and subch. E covering social studies, instead called adoption evaluations, for pre-placement or post-placement evaluations in adoption cases. The term “social study” would be eliminated throughout subchapters D and E.

Subchapter D: child custody evaluations. The bill would specify that child custody evaluations under this subsection were to be done only as ordered by a court in contested custody cases, removing adoptions and custody cases where the Department of Family and Protective Services is a party from this subchapter of the Family Code. The bill would limit these evaluations to conservatorships, suits for possession of or access to a child, or any other issue affecting the best interests of a child.

The bill would require specific details to be included in a court order for a child custody evaluation, such as the name of each person who would conduct the evaluation, the purpose of the evaluation, and the specific issues or questions to be addressed in the evaluation.

The bill would amend the minimum qualifications for individuals conducting child custody evaluations, including requiring a master’s level degree rather than a bachelor’s degree and allowing individuals with medical licenses or those board certified in psychiatry to do evaluations. The bill would add specific qualifications related to training and education for those holding a doctoral degree. Courts would determine whether an evaluator met these qualifications and could make an exception to qualification requirements if the case was in a smaller-sized county and finding a qualified individual could not be done in a timely manner. These individuals still would be required to meet all other provisions of the subchapter.

Under the bill, child custody evaluators would be required to disclose potential bias or conflicts of interest in an increased number of scenarios. For example, disclosure would be required for any information where a reasonably prudent person would believe impartiality would be affected in conducting an evaluation. The court would not be able to appoint a person who disclosed such information, and an evaluator would need to step down if such information was later discovered, unless the court made a finding that the information would not present a conflict or the parties

agreed in writing to the appointment.

Child custody evaluators would be expected to include more information in their evaluation reports, including an assessment of how the reliability or validity of their report may have been affected by the extent of information received. The bill would include expectations that evaluators review collateral source materials as part of the basic elements of a report, including school records and physical and mental health records. Evaluators also would be expected to undertake more “additional elements” than in current law, such as psychometric testing if necessary.

The bill also would increase protocols for the evaluators’ handling, keeping, and releasing of records and information obtained in the execution of a child custody evaluation.

Subchapter E: adoption evaluations. The bill’s added subsection for adoption would contain provisions from the current law regarding adoptions as well as protocols, processes, and duties for individuals doing adoption evaluations, rather than evaluations in contested custody hearings. Subch. E would contain provisions equivalent to subch. D for orders for evaluations, minimum qualifications for evaluators, procedures in the event of a potential conflict of interest or bias, and requirements for reports and the handling of records. These would include slight modifications to subch. D’s provisions to reflect the different nature of adoptions.

The bill would make several conforming changes to language throughout the Family Code. The bill also would direct relevant professional licensure boards and agencies to adopt rules and regulations necessary for the implementation of the bill.

The bill would take effect September 1, 2015, and apply only to suits affecting the parent-child relationship pending in a trial court on that date or filed on or after that date.

SUPPORTERS
SAY:

CSHB 1449 would update the Family Code to better align it with national legal and mental health practices, updating terms and helping ensure that child custody and adoption evaluations were admissible according to

evidence standards for expert testimony in court cases.

The bill's clear, comprehensive requirements for child custody evaluators and evaluation elements also would ensure that Texas families got reliable, quality evaluations in adversarial child custody suits, which can be one of the most stressful situations a family can experience. In addition, the separation of adoption procedures from custody disputes would better reflect the different nature of these two proceedings.

While the bill would help standardize requirements for evaluator qualifications, it still would provide flexibility to address the diverse needs of the state, such as allowing courts to appoint an evaluator who did not meet all specific qualifications if one were not readily available. The bill would provide qualifications standards that were appropriate to the unique work of child custody evaluations and adoptions. Using another set of standards like those for competency hearings in criminal cases would likely not be effective.

The bill would help encourage more people who might not understand the qualifications or duties for the job to become child custody or adoption evaluators. There is a current evaluator shortage in the state, which can cause delays in having these important reports done. The bill would not threaten any existing jobs because there is a need for more professionals in this field.

**OPPONENTS
SAY:**

CSHB 1449 delves too deeply into the specifics of the education, training, and experience that evaluators would need to do this work, creating a niche market for a particular group. Instead, professional licensure organizations and agencies should be trusted to regulate licensees so that they are qualified to be evaluators, avoiding any possible restriction on their trade.

The bill should limit qualifications to specific practices like psychiatry and psychology to take a simpler approach to ensuring knowledgeable professionals do this work. Texas' Code of Criminal Procedure contains a good model for this in articles 46B and 46C, which govern the appointment of evaluators to assess competency to stand trial or insanity pleas. These models do not contain very prescriptive requirements beyond needing to be a licensed psychiatrist or psychologist certified by the

relevant board to do that work.

OTHER
OPPONENTS
SAY:

CSHB 1449 should allow individuals who have been doing this work for years but who may not meet all new qualifications to be grandfathered in so the state does not lose a large number of experienced child custody evaluators when there is already an existing shortage.

The bill should allow for the observation of other children in a residence with the children or parties that are subject to the evaluation as a basic element of an evaluation. This would allow evaluators to observe interactions between the subject child or parties and other family members like stepchildren, which could offer important insight.

NOTES:

The author plans to offer a floor amendment to the bill that would:

- allow individuals with doctoral degrees and licenses in human services to be found qualified as child custody evaluators per the standards of the licensing agency;
- allow for the observation of other children in a residence with subject children and parties under evaluation as a basic element of an evaluation;
- exempt individuals from the amended child custody evaluator qualifications who had completed at least 20 court-ordered child custody evaluations before the effective date of the bill and met certain other requirements; and
- make the bill apply only to suits affecting the parent-child relationship pending in a trial court on March 1, 2016, or filed on or after that date.