

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 21-0070.01 Jane Ritter x4342

HOUSE BILL 21-1228

HOUSE SPONSORSHIP

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Smallwood,

House Committees

Public & Behavioral Health & Human Services

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A BILL FOR AN ACT

101 CONCERNING OVERSIGHT OF COURT PERSONNEL WHO ARE REGULARLY
102 INVOLVED IN CASES RELATED TO DOMESTIC MATTERS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill increases and clarifies domestic violence training requirements (training) for court personnel (personnel) who are regularly involved in cases related to domestic matters, including child and family investigators, parenting responsibility evaluators, and legal representatives of children.

Training for all personnel must include both an initial training

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

requirement as well as an ongoing annual continuing education requirement as follows:

- Six initial hours of training on domestic violence and its traumatic effects on children, adults, and families;
- Six initial hours of training on child abuse and its traumatic effects; and
- Four subsequent hours of training every 2 years on domestic violence and child abuse and the traumatic effects on children, adults, and families.

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

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

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

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

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

13 (2) The general assembly further finds that:

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

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

20 (c) Research shows that abusive parents are often granted custody

1 or unprotected parenting time by courts, placing children at ongoing risk;

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

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

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

12 (g) In cases involving allegations of domestic violence, child
13 abuse, and child sexual abuse, courts should rely on the assistance of
14 third-party professionals only when the professionals possess the proper
15 experience or expertise for assessing domestic violence, child abuse, child
16 sexual abuse, and trauma, and when the professionals apply scientifically
17 sound and evidence-based theories; and

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

25 (3) The general assembly therefore declares that:

26 (a) Child safety is the first priority of custody and parenting
27 adjudications, and courts should resolve safety risks and claims of

1 domestic violence, child abuse, and child sexual abuse first as a
2 fundamental consideration in determining the best interests of the child
3 before assessing other best interest factors;

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

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

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

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

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

25 **14-10-116. Appointment in domestic relations cases -**
26 **representation of the best interests of the child - legal representative**
27 **of the child - disclosure.** (2) The legal representative of the child,

1 appointed pursuant to subsection (1) of this section, shall represent the
2 best interests of the minor or dependent child, as described in section
3 14-10-124, with respect to the ~~child's custody~~ PARENTING TIME, the
4 allocation of parental responsibilities, FINANCIAL support for the child, the
5 child's property, ~~parenting time~~, or any other issue related to the child that
6 is identified by the legal representative of the child or the appointing
7 court. The legal representative of the child shall actively participate in all
8 aspects of the case involving the child, within the bounds of the law. The
9 legal representative of the child shall comply with the provisions set forth
10 in the Colorado rules of professional conduct and any applicable
11 provisions set forth in chief justice directives or other practice standards
12 established by rule or directive of the chief justice pursuant to section
13 13-91-105 (1)(c) ~~C.R.S.~~, concerning the duties or responsibilities of best
14 interest representation in legal matters affecting children, INCLUDING
15 TRAINING REQUIREMENTS RELATED TO DOMESTIC VIOLENCE AND ITS
16 EFFECT ON CHILDREN, ADULTS, AND FAMILIES. THE COURT SHALL NOT
17 CALL the legal representative of the child ~~shall not be called~~ as a witness
18 in the case. While the legal representative of the child shall ascertain and
19 consider the wishes of the child, the legal representative of the child is not
20 required to adopt the child's wishes in ~~his or her~~ THE LEGAL
21 REPRESENTATIVE OF THE CHILD'S recommendation or advocacy for the
22 child unless such wishes serve the ~~child's best interest~~ BEST INTERESTS OF
23 THE CHILD, as described in section 14-10-124.

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

26 **14-10-116.5. Appointment in domestic relations cases - child**
27 **and family investigator - disclosure - background check.** (2) (a) A

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

13 (b) The child and family investigator shall ~~make independent and~~
14 ~~informed recommendations to the court, in the form of~~ FILE a written
15 report ~~filed~~ with the court, unless otherwise ordered by the court. While
16 the child and family investigator shall consider the wishes of the child,
17 the child and family investigator need not adopt such wishes in ~~making~~
18 ~~his or her recommendations to~~ THE REPORT FILED WITH the court, unless
19 they serve the ~~child's~~ best interests OF THE CHILD, as described in section
20 14-10-124. The child's wishes, if expressed, ~~shall~~ MUST be disclosed in
21 the child and family investigator's written report.

22 (c) The child and family investigator may be called to testify as a
23 COURT-APPOINTED EXPERT witness regarding ~~his or her~~ THE CHILD AND
24 FAMILY INVESTIGATOR'S recommendations, BUT ONLY IF THE COURT FINDS
25 THAT THE CHILD AND FAMILY INVESTIGATOR HAS THE APPROPRIATE
26 TRAINING AND QUALIFICATIONS SET FORTH IN SUBSECTION (2)(f) OF THIS
27 SECTION.

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

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

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

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

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

27 (III) FOUR SUBSEQUENT HOURS OF TRAINING EVERY TWO YEARS

1 ON DOMESTIC VIOLENCE, CHILD ABUSE, AND THE TRAUMATIC EFFECTS ON
2 CHILDREN, ADULTS, AND FAMILIES.

3 (g) IF IT IS NECESSARY FOR AN EVALUATOR TO INTERVIEW A CHILD
4 FOR THE PURPOSES OF PREPARING THE REPORT, THE EVALUATOR SHALL
5 FOLLOW THE REQUIREMENTS SET FOR IN SECTION 19-3-308 AND IN
6 SECTION 19-3-308.5 IF THE INTERVIEW IS RECORDED.

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

13 **SECTION 4.** In Colorado Revised Statutes, 14-10-124, **amend**
14 (1.5)(a) introductory portion; and **add** (1.5)(a)(III.5) as follows:

15 **14-10-124. Best interests of the child. (1.5) Allocation of**
16 **parental responsibilities.** The court shall determine the allocation of
17 parental responsibilities, including parenting time and decision-making
18 responsibilities, in accordance with the best interests of the child giving
19 paramount consideration to the child's safety and the physical, mental, and
20 emotional conditions and needs of the child as follows:

21 (a) **Determination of parenting time.** The court, upon the motion
22 of either party or upon its own motion, may make provisions for parenting
23 time that the court finds are in the child's best interests unless the court
24 finds, after a hearing, that parenting time by the party would endanger the
25 child's physical health or significantly impair the child's emotional
26 development. In addition to a finding that parenting time would endanger
27 the child's physical health or significantly impair the child's emotional

1 development, in any order imposing or continuing a parenting time
2 restriction, the court shall enumerate the specific factual findings
3 supporting the restriction, INCLUDING FINDINGS RELATED TO DOMESTIC
4 VIOLENCE, and may enumerate the conditions that the restricted party
5 could fulfill in order to seek modification in the parenting plan. When a
6 claim of child abuse or neglect, domestic violence, or sexual assault
7 where there is also a claim that the child was conceived as a result of the
8 sexual assault has been made to the court, or the court has reason to
9 believe that a party has committed child abuse or neglect, domestic
10 violence, or sexual assault where there is also a claim that the child was
11 conceived as a result of the sexual assault, prior to determining parenting
12 time, the court shall follow the provisions of subsection (4) of this
13 section. In determining the best interests of the child for purposes of
14 parenting time, the court shall consider all relevant factors, including:

15 (III.5) ANY REPORT RELATED TO DOMESTIC VIOLENCE THAT IS
16 SUBMITTED TO THE COURT BY A CHILD AND FAMILY INVESTIGATOR, IF ONE
17 IS APPOINTED PURSUANT TO SECTION 14-10-116.5; A PROFESSIONAL
18 PARENTAL RESPONSIBILITIES EVALUATOR, IF ONE IS APPOINTED PURSUANT
19 TO SECTION 14-10-127; OR A LEGAL REPRESENTATIVE OF THE CHILD, IF
20 ONE IS APPOINTED PURSUANT TO SECTION 14-10-116;

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

25 **14-10-127. Evaluation and reports - training and**
26 **qualifications of evaluators - disclosure.** (1) (a) (I) (A) In all
27 proceedings concerning the allocation of parental responsibilities with

1 respect to a child, the court may, upon motion of either party or upon its
2 own motion, order any county or district department of human or social
3 services or a licensed mental health professional qualified pursuant to
4 subsection (4) of this section AND REFERRED TO IN THIS SECTION AS AN
5 "EVALUATOR" to perform an evaluation and file a written report
6 concerning the disputed issues relating to the allocation of parental
7 responsibilities for the child, unless the motion by either party is made for
8 the purpose of delaying the proceedings. THE PURPOSE OF THE
9 EVALUATION AND REPORT IS TO ASSIST IN DETERMINING THE BEST
10 INTERESTS OF THE CHILD, WITH THE CHILD'S WELFARE ALWAYS
11 PARAMOUNT. THE EVALUATION AND SUBSEQUENT REPORT MUST FOCUS ON
12 PARENTING ATTRIBUTES, THE CHILD'S PSYCHOLOGICAL NEEDS, AND THE
13 RESULTING FIT.

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

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

1 evaluation is completed.

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

12 (II) Each party and the child, IF POSSIBLE, shall cooperate in the
13 supplemental evaluation. If the court finds that the supplemental
14 evaluation was necessary and materially assisted the court, the court may
15 order the costs of such supplemental evaluation to be assessed as costs
16 between the parties. Except as otherwise provided in this section, ~~such~~
17 THE report ~~shall be considered~~ IS confidential and ~~shall not be~~ IS NOT
18 available for public inspection unless by order of court. The cost of each
19 department of human services evaluation ~~shall be~~ IS based on an ability
20 to pay and ~~shall~~ MUST be assessed as part of the costs of the action or
21 proceeding, and, upon receipt of such sum by the clerk of court, ~~it shall~~
22 ~~be transmitted~~ THE CLERK OF COURT SHALL TRANSMIT THE MONEY to the
23 department or agency performing the evaluation.

24 (b) The person signing a report or evaluation and supervising its
25 preparation ~~shall~~ MUST be a licensed mental health professional. ~~The~~
26 ~~mental health professional may have associates or persons working under~~
27 ~~him or her who are unlicensed.~~ THE LICENSED MENTAL HEALTH

1 PROFESSIONAL SIGNING A REPORT OR EVALUATION MUST BE QUALIFIED AS
2 COMPETENT, BY TRAINING AND EXPERIENCE, AS DESCRIBED IN SUBSECTION
3 (4) OF THIS SECTION. UNLICENSED ASSOCIATES OR OTHER PERSONS MAY
4 WORK WITH THE MENTAL HEALTH PROFESSIONAL TO PREPARE THE REPORT.

5 (c) IF IT IS NECESSARY FOR AN EVALUATOR TO INTERVIEW A CHILD
6 FOR THE PURPOSES OF PREPARING THE REPORT, THE EVALUATOR SHALL
7 FOLLOW THE REQUIREMENTS SET FOR IN SECTION 19-3-308 AND IN
8 SECTION 19-3-308.5 IF THE INTERVIEW IS RECORDED.

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

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

18 (a.5) THE EFFECTS OF DOMESTIC VIOLENCE ON CHILDREN, ADULTS,
19 AND FAMILIES, INCLUDING THE CONNECTION BETWEEN DOMESTIC
20 VIOLENCE AND TRAUMA ON CHILDREN, AND CHILD ABUSE. THE PERSON'S
21 TRAINING AND EXPERIENCE MUST BE PROVIDED BY RECOGNIZED SOURCES
22 WITH EXPERTISE IN DOMESTIC VIOLENCE AND THE TRAUMATIC EFFECTS OF
23 DOMESTIC VIOLENCE. INITIAL AND ONGOING TRAINING MUST INCLUDE, AT
24 A MINIMUM:

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

27 (II) SIX INITIAL HOURS OF TRAINING ON CHILD ABUSE AND ITS

1 TRAUMATIC EFFECTS; AND

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

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

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

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

23 (9) A PARTY WISHING TO FILE A COMPLAINT RELATED TO A
24 PERSON'S DUTIES AS AN EVALUATOR SHALL FILE SUCH COMPLAINT IN
25 ACCORDANCE WITH THE APPLICABLE PROVISIONS IN CHIEF JUSTICE
26 DIRECTIVES.

27 **SECTION 6. Effective date.** This act takes effect January 1,

1 2022.

2 **SECTION 7. Safety clause.** The general assembly hereby finds,
3 determines, and declares that this act is necessary for the immediate
4 preservation of the public peace, health, or safety.