

A Critical Assessment of Child Custody Evaluations--Limited Science and a Flawed System

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The authors found that

- (a) tests specifically developed to assess questions relevant to custody are completely inadequate on scientific grounds;
- (b) the claims of some anointed experts about their favorite constructs (e.g., "parent alienation syndrome") are equally hollow when subjected to scientific scrutiny;
- (c) evaluators should question the use even of well-established psychological measures (e.g., measures of intelligence, personality, psychopathology, and academic achievement) because of their often limited relevance to the questions before the court; and
- (d) little empirical data exist regarding other important and controversial issues (e.g., whether evaluators should solicit children's wishes about custody; whether infants and toddlers are harmed or helped by overnight visits), suggesting a need for further scientific investigation.

The system for resolving custody dispute was seen as deeply flawed. The coupling of the vague "best interests of the child" test with the American adversary system of justice puts judges in the position of trying to perform an impossible task, and it exacerbates parental conflict and problems in parenting and co-parenting, which psychological science clearly shows to be key factors predicting children's psychological difficulties in response to their parents' separation and divorce.

One of three recommendations from this assessment of custody evaluations which addresses legislation:

State legislatures are urged to move toward adopting more clear and determinative custody rules, a step that would greatly clarify the terms of the marriage contract, limit the need for custody evaluations, and sharply narrow the scope of the evaluation process. We find particular merit in the proposed "approximation rule" (recently embraced by the American Law Institute), in which post-divorce parenting arrangements would approximate parenting involvement in marriage.

Given their frequency, high cost, and social and personal importance, the authors expected to find a large body of research evaluations and their scientific underpinnings. However, only a few studies of custody evaluations have been completed. One thing these studies show is that, in real life, many evaluators use the instruments and the research shows that most of these measures are deeply flawed when used in the custody context.

Examples of changes in state statutes that have been made as a result of the growing body of evidence about the ineffectiveness and high cost of custody (PRE) evaluations.

2011 Minnesota

Revised Custody Evaluators Statute <https://www.revisor.mn.gov/statutes/?id=518.167>

In contested custody proceedings, and in other custody proceedings if a parent or the child's custodian requests, the court *may* order an investigation and report concerning custodial arrangements for the child.

2002 California

<http://www.camft.org/AM/Template.cfm?Section=Home&CONTENTID=10632&TEMPLATE=/CM/ContentDisplay.cfm>

A complete of "focused" (CFI) evaluation may be ordered.

No person shall be a child custody evaluator unless the person has completed the domestic violence and child abuse training program. The rule shall require a child custody evaluator to declare under penalty of perjury that he or she meets all of the education, experience, and training requirements specified in the rule and, if applicable, possesses a license in good standing. In addition to the education, experience, and training requirements, all child custody evaluators must be licensed as a physician and either is a board certified psychiatrist or has completed a residency in psychiatry, licensed as a psychologist, licensed as a marriage and family therapist, or licensed as a clinical social worker.

Inform the parties of the evaluator's reporting requirements, including, but not limited to, suspected child abuse and neglect and threats to harm one's self or another person.

Some other state statutes which specify *MAY* versus *Shall* for a PRE type evaluation

Ohio, Illinois, Maryland, Massachusetts