

# Custody Evaluations

BASIC CONCEPTS AND METHODOLOGY  
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# Custody Evaluations

- ▶ Scientific assessment of psycho/social-legal questions
- ▶ Examination and Evaluation of Parental Competencies
  - ▶ In the context of "What does the Court/Law need to know to assist in this determination"
    - ▶ Functional abilities
    - ▶ Deficits in abilities
    - ▶ How deficits affect specific parenting abilities associated with the legal question
  - ▶ Assessment of developmental needs of the child
  - ▶ Analysis of goodness of fit

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# Custody Evaluations

- ▶ Methodology
  - ▶ Standardized process that is consistent with what is accepted within the professional community with respect to quality and competency
  - ▶ Reliability= Consistent
  - ▶ Validity= Accuracy
  - ▶ Research and literature informed
    - ▶ Limitations
      - ▶ Group and aggregate Data defines trends and probabilities, not individual differences
      - ▶ One data point is not enough to create validity. Multi-trait, multi-method collection is necessary

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## Custody Evaluation

- ▶ Precedents for the admission of scientific evidence by Experts:
  - ▶ Frye: Expert testimony based on scientific principles is acceptable only when the principle reaches a level of general acceptance within the field of study. This would go for "general acceptability" of the method as well as the substance about which you speak. The methodology must be shown to be reliable and valid.
  - ▶ Daubert: The trial judge is responsible for ensuring that the expert testimony is based on valid methods, procedures and instruments and it is relevant to the legal question at hand. The judge was given the authority to determine reliability and validity. In other words, does this expert through scientific, technical or other specialized knowledge assist the trier of fact in this issue.
  - ▶ Are you a Frye, Daubert or hybrid state

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## Custody Evaluation

- ▶ Best Interest Standard
  - ▶ Paternal preference
  - ▶ Tender years
  - ▶ Best Interests
    - ▶ 1971 National Conference of Commissioners for Uniform State Laws
    - ▶ No firm, agreed upon definition
    - ▶ Factors drawn from clinical intuition, culture, research
    - ▶ Michigan Factors, first state to "define" custody factors of best interests to the child. Contained emotional, physical, educational, moral, developmental and religious needs.
    - ▶ Still no clear definition. As per, "All other relevant factors."

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## Custody Evaluation

- ▶ Some general Best Interest Factors for Assessment
  - ▶ Child abuse, spousal abuse, neglect
  - ▶ Age and sex of child
  - ▶ Adjustment of child to environment
  - ▶ Stability
  - ▶ Special needs of the child, emotionally or physically
  - ▶ Economic stability of parents
  - ▶ Child's preference
  - ▶ Educational needs
  - ▶ Parents agreements

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## Custody Evaluation

- ▶ Best Interest Factors, continued
  - ▶ Parent's desire
  - ▶ Sibling relationships
  - ▶ Mental and physical health of parents
  - ▶ Prior custodial arrangements
  - ▶ Level of conflict
  - ▶ Ability to encourage relationship with other parent
  - ▶ Flexibility
  - ▶ Substance abuse
  - ▶ Historical and future caretaking arrangements and availability
  - ▶ Alienation

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## Custody Evaluation

- ▶ What factors for "good" or "good enough" parenting
  - ▶ Involved and caring
  - ▶ Communication between parent/child, and parent/parent
  - ▶ Ability to recognize adult and child boundaries
  - ▶ Appropriate supervision given developmental level
  - ▶ Ability to nurture in all developmental areas
  - ▶ Knowledge of child's strengths and weaknesses
  - ▶ Appropriate disciplinarian
  - ▶ Understanding impact of parental behavior on child
  - ▶ Encourages relationship with other parent
  - ▶ Positive values
  - ▶ Parenting Style

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## Custody Evaluation

- ▶ Parenting Deficits
  - ▶ Substance use and/or abuse, i.e. drugs, alcohol, tobacco, and non-substance addictions such as sexual, internet, etc.
  - ▶ Interpersonal Violence, including physical, emotional, verbal, financial, sexual
  - ▶ Child abuse and/or neglect
  - ▶ Severe emotional disturbance that interferes with parenting tasks

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## Custody Evaluation

- ▶ Standard Process
- ▶ AFCC Model Standards for Comprehensive Custody Evaluations
  - ▶ First, Custody evaluators obtain reasonably detailed information concerning their role, purpose and scope of the evaluation and obtain agreement which defines the focus of the evaluation
  - ▶ CE has specialized knowledge and training in a multitude of topics related to various aspects of the evaluation and keeps current with respect to evolving research and literature
  - ▶ Encourages that anyone with less than two years of experience in evaluations seek supervision
  - ▶ CE's are knowledgeable regarding the statutes and legal precedents in the jurisdictions in which they work

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## Custody Evaluations

- ▶ CCE's maintain detailed records of their investigatory process and findings and secure the necessary releases for all information
- ▶ CCE's carefully review with parties the rules regarding information exchange and communication with litigants, attorneys and the court
- ▶ With respect to the collection of data and the presentation of their findings and opinions, CCE's are accurate, objective, fair and independent, and utilize peer-reviewed research to support their conclusions whenever possible.
- ▶ CCE's use multiple data gathering methods so as to increase the accuracy, objectivity and validity of their finding.

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## Custody Evaluation

- ▶ CCE's consider multiple hypotheses regarding the central issues in a given case and explore each hypothesis in an objective manner
- ▶ CCE's utilize a balance process to increase objectivity, fairness and independence
  - ▶ The evaluative criteria are the same for each party
  - ▶ All tools are applied equally to each party
  - ▶ All allegations against a party are shared and explored, allowing opportunity for rebuttal
  - ▶ Interview time is balanced to the greatest degree possible

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### Custody Evaluation

- ▶ CCE's use reliable and valid methods of data collection, focusing on empirically based methods and procedures (for the most part)
- ▶ CCE's directly evaluate all parents or parenting figures who have significant contact or input into the child's daily life, especially all parental figures who live in the house or will be living in the house in the near future
- ▶ CCE's individually assess all of the children who are subjects of the evaluation so as to consider their stated wishes within the context of their maturity and the overall family context. Sibling relationships are also assessed
- ▶ CCE's assess the relationship of each parent with each child
- ▶ A minimum of one in-person interview should be conducted with each parent

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### Custody Evaluation

- ▶ CCE's make individual decisions about formal assessment instruments, i.e. testing.
- ▶ CCE should have knowledge and skill in the use of the procedures, or refer
- ▶ CCE must be able to articulate reason for choice of instrument and instrument must meet evidentiary standards and that the administration of the instrument was done according to instructions
- ▶ CCE's show extreme caution in using computer generated test interpretation and it does not replace independent knowledge and skill

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### Custody EValuations

- ▶ Team approaches to a CCE is appropriate, but all must be qualified
- ▶ CCE's have skill in the interviewing of children and they follow recognized procedures in so doing.
- ▶ Observations of parent-child relationship, or home visits are conducted with an awareness of observer effects.
- ▶ CCE's gather data from collateral sources so as to increase their data points
  - ▶ Open disclosure of collaterals used and what weight was put on data
  - ▶ Make collaterals aware the information is not confidential
  - ▶ CCE's are aware of hearsay rules of law and make the court aware of uncorroborated data

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## Custody Evaluation

- ▶ CCE's analyze and present their data and opinions in a report to the court
- ▶ CCE's offer opinions only when they are competent to do so
- ▶ CCE's differentiate in their reports between information gathered, data collected, observations made, inferences made and opinions formulated
- ▶ CCE's do not comment on non-interviewed, non-assessed individuals
- ▶ CCE's comment on the limitations of their conclusions

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