**Family Law Evaluations Template**



If you will be seeking custody of your child or children, or are already involved in a custody case,

*and*

You think it is possible that you and the other party will not come to an agreement about the parenting plan (custody agreement),

Then we recommend that you read this handout.

*I worked with a survivor who had developed Post Traumatic Stress Disorder and Depression as a result of being abused by her husband. During her dissolution, the court ordered her to undergo a mental health evaluation. I was concerned that the trauma she experienced was going to be used against her. The survivor asked the court to order a parenting evaluation instead to focus on her parenting skills. The court agreed and the parenting evaluator correctly identified the domestic violence. Thanks to the evaluator’s recommendations, the court granted the survivor primary custody of her children and ordered her abusive partner to participate in parenting classes and a batterer intervention program.*

- A domestic violence advocate

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If your state does not refer to custody agreements as “parenting plans,” then we suggest you use the *Find and Replace* tool in Word to replace “parenting plan” with the correct term for your state. Similarly, if your state does not use a “best interests of the child” standard for making custody determinations, then you will want to replace that phrase with information about what your state does. Be sure to edit all of the text in this document so that it accurately reflects what is true in your state.

If you and your children’s other parent cannot agree on a parenting plan[[1]](#footnote-1), then the court will come to a decision for you. The court will make parenting plan decisions based on what the court believes to be in the best interests of the children.[[2]](#footnote-2) The court may rely upon evaluators to provide recommendations about the children’s best interests. This handout focuses on two common types of court-ordered evaluations: parenting evaluations and mental health evaluations.

**What is a Parenting Evaluation?**

In order to decide on the parenting plan, the court may order a parenting evaluation to learn more about the best interests of the children involved. The court can appoint an evaluator of its own choosing or the court can approve an evaluator proposed by either party. In insert the name of your county County, the evaluator may be insert the types of evaluators available in your county (e.g., CASA, Family Court Services, Guardians ad Litem, private parenting evaluators).[[3]](#footnote-3) The scope of the parenting evaluation is determined by the court, but it typically involves:

* The completion of questionnaires by both parents;
* Separate interviews with both parents, relevant professionals (such as school staff), and witnesses;
* Observations of parent-child interactions; and
* A review of relevant records (criminal, medical, mental health, etc.)

Depending on the children’s developmental level, the evaluator might interview them.

**What is a Mental Health Evaluation?**

Mental health evaluations typically are conducted to determine treatment needs. However, in the context of a family law case, mental health evaluations are typically ordered to determine if a person’s time with their children should be limited. A parenting evaluator may conduct a mental health evaluation if their profession and expertise enables them to do so. A mental health evaluation in a family law case typically involves:

* A review of mental health and substance abuse treatment records;
* An interview with the person being evaluated; and
* Psychological testing (even though the tests used are typically not designed to evaluate parenting).

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| --- | --- |
| **Comparing Parenting and Mental Health Evaluations – edit as needed** | |
| **Parenting Evaluations** | **Mental Health Evaluations** |
| Both parents are typically evaluated | Often only one parent is evaluated |
| Focus is on determining the best interests of the children | Focus is on the parent’s mental health |
| Provide recommendations related to the bests interests of the children | Provide recommendations related to one aspect of the best interests of the children – the mental health of one parent |
| Typically includes review of criminal history, Child Protective Service reports, domestic violence, and family law matters  May also include review of health, mental health, and substance abuse records | Typically includes review of only mental health records |
| Relatively easy to obtain | Can be challenging to find an evaluator |
| Free/Sliding Scale options may be available depending on income and capacity of evaluators | Can be expensive |
| Evaluators may have received training on the connections between domestic violence, trauma, substance abuse, and mental health | Evaluators are less likely to have received training on domestic violence and its connections with trauma, substance abuse, and mental health |
| **Domestic violence survivors’ experiences with both types of evaluations vary significantly. The knowledge, experience, and qualifications of evaluators vary widely.** | |

Many domestic violence survivors have mental health concerns due to the abuse and trauma they have experienced. Others may have had mental health concerns that worsened because of the domestic violence. Some survivors are resilient to the emotional impacts of the domestic violence, but have abusive partners who are able to convince others that they are mentally ill. Unfortunately, this is a common abusive tactic.

Your abusive partner might try to convince the court that you are an unfit parent due to mental illness (whether or not you have mental health concerns). Insert the name of your state State law says that the court can insert in plain language what your state statutes say about restricting parenting based on mental illness.

If the court thinks that your mental health is an issue, the court might order you to have a mental health evaluation. The court may want a report from a mental health evaluator in order to figure out what is in the best interests of your children.

We have heard from many survivors that have been court-ordered to go through mental health evaluations that the evaluations did not accurately reflect their parenting abilities. Many survivors have said that evaluators also did not take into account the domestic violence or the other parent’s abusive and coercive behaviors.

Mental health evaluations frequently include psychological tests that were not designed to evaluate parenting or to take domestic violence into consideration. For example, survivors are often described as being paranoid after taking the Minnesota Multiphasic Personality Inventory 2 (MMPI2), a very common psychological test. When survivors answer “true” to questions about whether they think someone is out to get them, the scoring assumes that they are paranoid. The test was not designed to take into consideration the possibility that the person does actually have someone who is trying to harm them. The evaluator can consider this when issuing their recommendations to the court, but the evaluator may not have screened for domestic violence or realized the connection between mental health concerns and domestic violence.

**Choosing a Parenting Evaluation Over a Mental Health Evaluation**

If you think the court might order you to undergo a mental health evaluation, we suggest that you ask the court to order a parenting evaluation instead. While parenting evaluations can be problematic for some domestic violence survivors, mental health evaluations tend to be worse.

There are also situations where you may want to ask for a parenting evaluation even if you do not think the court will order you to undergo a mental health evaluation. For example, if you have concerns about the other party’s parenting and think the evaluation will work in your favor.

We recommend consulting with a domestic violence advocate and an attorney about your options, if possible.

**Arguments to Make When Asking the Court to Order a Parenting Evaluation**



*If the court asks you to do a mental health evaluation, you can ask the court to order a parenting evaluation instead of a mental health evaluation. Here are some arguments you can use for this purpose. We recommend that you put these into your own words.*

1. Parenting evaluations are better designed to provide the information the court needs. They are intended to focus on evaluating parenting to determine the best interests of the children rather than just on the mental health of one of the parents.
2. Parenting evaluations focus on overall parenting including mental health, not just mental health.
3. Parenting evaluations consider the strengths and weaknesses of both parties.
4. Parenting evaluations are better suited for situations involving domestic violence.
5. Parenting evaluations are more accessible for people who have low incomes since free and sliding scale options are available. Edit this if this is not true in your area.

If you will be going through a parenting evaluation, you may want to read insert any local resources you have regarding tips for undergoing parenting evaluations.

**Arguments to Make When Asking the Court *Not* toOrder a Mental Health Evaluation**



*If you have decided to ask the court not to order a mental health evaluation, here are some arguments you can use. We recommend that you put these into your own words.*

1. Mental Health Evaluations are only about the mental health of one party, and therefore do not provide all of the relevant information about the best interests of the children that the court needs to make parenting plan decisions.
2. Mental Health Evaluations for family law matters do not have a clear, uniform standard.
   * Typically, evaluators are trained to assess mental health for treatment purposes (for example, therapy), not for legal purposes (such as parenting plan recommendations).
   * Depending on the training and the theoretical orientation of the evaluator, mental health evaluations may vary widely.
3. Mental Health Evaluations can be difficult to obtain.
   * There is no registry of qualified mental health evaluators for family law matters. Edit this if you do have such a registry.
   * Only a few mental health organizations or clinics are willing to conduct court-ordered mental health evaluations for family law purposes. We recommend checking with local community-based mental health organizations to see if any of them will conduct mental health evaluations for this purpose.
   * Court-ordered evaluations for family law matters can be expensive. We are not aware of any free options for this.
   * People who are ordered to be evaluated may have difficulty finding a mental health evaluator who speaks their language,[[4]](#footnote-4) and who is knowledgeable about domestic violence and their culture.[[5]](#footnote-5)

**Narrowing the Scope of a Court-Ordered Mental Health Evaluation**



If the court orders a mental health evaluation, you can ask the court to limit what the evaluation can include.

Without a narrow court order, mental health evaluators can choose which tests and procedures to include in the evaluation and may charge you for each one. Without specific instructions from the court, the evaluator’s report may not focus on answering the relevant questions.

In order for the court to find that a parent’s time or decision-making needs to be limited because of mental illness, the mental illness must be both long-term and interfere with parenting. Edit this if your statute says something different. Therefore, you can ask the court to direct the evaluator to focus on these questions only:

* Do you have a long-term mental illness?
* Does that mental illness interfere with your parenting?

Many people use the terms “mental health evaluation” and “psychological testing” interchangeably. However, psychological testing is an optional part of a mental health evaluation. Mental health evaluations can consist only of a mental health interview and a mental health records review, if that is applicable.

You can ask the court to exclude psychological tests because the tests are not likely to be able to provide the court with information about whether your mental illness is long-term and interferes with your parenting.

You can ask the court to order the evaluator to only:

* Conduct an interview with you and
* Review your mental health treatment records (if you have any)

We are not aware of psychological tests that:

* Can **predict parenting ability**

This is known in research terms as predictive validity. Predictive validity means the test is able to predict the behavior it is being used to predict. In this case, can it actually predict parenting ability?

***and***

* That have been **researched on people who have experienced domestic violence**

This is known in research terms as norming**.** This means that the test has been administered to the population in question (for example, domestic violence survivors) and that research has shown that the test results can accurately be applied to this group.

***and***

* That have been **researched on people who share your cultural identity.**

Cultural identity refers to the factors that make up your sense of self (race, ethnicity, religion, class, etc.) If a psychological test was normed primarily on White college sophomores in the U.S., and you have a different cultural identity (for example, if you are an immigrant who is a person of color), then the test may not be an appropriate fit for you.

Psychological tests are not generally normed on multiple culturally-specific populations. However, the court may not be aware of this.

You can ask the court to order that the mental health evaluation be conducted by someone who is:

* Knowledgeable about your culture
* Fluent in your primary language[[6]](#footnote-6)
* Knowledgeable about domestic violence

The court may not know that mental health evaluators are not required to undergo domestic violence training, and that mental health evaluations are not designed to consider domestic violence. If you can, you should try to select an evaluator who is knowledgeable about domestic violence, and who can articulate an understanding of the impact domestic violence or trauma may have on the results of a mental health evaluation.

You should also be aware that you can ask the evaluator to send you their report directly. If you have concerns about the report, you can discuss your options with an attorney or an advocate prior to submitting it to the court.

**Mental Health Organizations in** **Insert the name of your county County That DO NOT Offer Court-Ordered Mental Health Evaluations for Family Law Cases**



*In order to save you time, we contacted mental health agencies in* *Insert the name of your county County and asked them if they conduct court-ordered mental health evaluations for family law cases. The agencies listed below will evaluate someone’s mental health if they are seeking mental health treatment from the agency, but do not do evaluations for the purpose of a family law case.*

*The court may assume that mental health evaluations are free or are easy to obtain.*

*The courts may not realize that the following organizations do not offer this service:*

* List each agency that does not provide evaluations for this purpose

**Mental Health Organizations and Clinics in Insert the name of your county County That Offer Court-Ordered Mental Health Evaluations for Family Law Cases**



*This list contains information about organizations and clinics only. There are some private providers who offer court-ordered mental health evaluations as well.*

*This list is provided for informational purposes only and is NOT an endorsement. While we are providing this information to save you time, we want you to know that it is rare for mental health evaluations to be useful or appropriate in understanding parenting.*

*If you will be hiring someone to evaluate your mental health for your family law case, we recommend you make this choice carefully.*

***Questions to consider when selecting a mental health evaluator include:***

1. What is the educational level and experience of the evaluator?
2. Is it possible to speak directly to the person conducting the evaluation before scheduling it?
3. What is the evaluator’s training and experience regarding domestic violence?
4. What does the evaluation entail?
5. Is psychological testing done during the evaluation? If so, why?
6. What sources of information are used in the evaluation?
7. How much does the evaluation cost?
8. Where and when will the report be sent?

**List the name of each provider, their contact info, fees, and any other relevant info.**

**Qualifications:** Describe their qualifications. For example, how much domestic violence training do they receive? Are they students?

**Language Access:** List the languages in which evaluations can be conducted.

**Format:** Briefly describe the format of their evaluations. You may wish to include the typical length and whether they include psychological tests.

**Records:** Describe the records they routinely review as part of their evaluations.

**Timeframe:** Describe how long it typically takes to obtain an evaluation. Are there waitlists?

Inclusion in this handout is not an endorsement. We encourage you to evaluate if the services and the providers are the right fit for you and to verify that the information listed is still accurate. The content of this handout is current as of the time of publication, but may have since changed. If you are not sure where to start, we recommend discussing your options with a domestic violence advocate.

This tool was adapted from the Domestic Violence and Mental Health Collaboration Project’s Family Law Toolkit for Mental Health Service Providers. The original version of this tool is available at <http://endgv.org/toolkits/family-law-toolkit-for-domestic-violence-survivors/>. Learn more about the Collaboration Project and see our Family Law Toolkits at <http://endgv.org/projects/domestic-violence-mental-health-collaboration-project/>.

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1. “Parenting plan” is the legal term for a child custody agreement. The plan specifies how time is allocated with the children, who has decision-making authority regarding education, medical matters, religion, etc., and the process for settling disagreements between the parents. Edit this as needed to fit what is true in your state. [↑](#footnote-ref-1)
2. “Best interests of the children” is a legal concept. If you created your own version of our Parenting Resources tool, you may want to provide a link to it here. If not, you may want to explain the standard your state uses to determine custody here as a footnote or above in the text. [↑](#footnote-ref-2)
3. For a comparison of the different types of evaluators, see \_\_\_. If you created your own version of our Parenting Evaluators Comparison Chart, you may want to provide a link to it here. [↑](#footnote-ref-3)
4. If you created your own version of our Language and Disability Access tool, you may want to provide a link to it here. [↑](#footnote-ref-4)
5. Mental health service providers have ethical obligations that may prevent them from conducting an evaluation when they do not speak the same language as the person or have expertise in that person’s culture. [↑](#footnote-ref-5)
6. It is not considered ethical for a mental health evaluator to evaluate someone or test someone in a language in which they are not both fluent. [↑](#footnote-ref-6)