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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

February 13th, 2024
The Maryland State Senate Judicial Proceedings Committee
The Honorable William C. Smith, Jr.
2 East Miller Senate Building
Annapolis, Maryland 21401

Re: Senate Bill 327: Family Law – Child Custody - Determinations

Dear Chairman Smith and Members of the Committee,

Over a decade ago, the General Assembly established a Commission on Child Custody Decision Making. The Commission met over 90 times and spent literally thousands of hours analyzing and discussing the testimony of leading experts in a variety of disciplines related to children. The Commission’s final report set forth ten guiding principles that should govern child custody decisions, the first of which was as follows: “The need for a Maryland Custody Decision-Making Statute providing a clear consistent, predictable, gender-neutral process guiding custody determinations for litigants, lawyers and judges.”

Under current Maryland law, judges make their child custody decisions based upon factors set forth in numerous appellate court decisions handed down over a period of many decades. Some of these rulings are not necessarily reflective of modern demands of parenting. In addition, some judges rely on different cases than other judges, so child custody decisions are not always consistent from one jurisdiction to another.

Furthermore, while most family law lawyers and all judges deciding child custody cases are familiar with the relevant caselaw, in some jurisdictions in Maryland as many as 80% of custody cases have one or both parties appearing in court on a *pro se* basis. In those cases, low-income litigants who cannot afford an attorney are at sea as the cases on child custody are inaccessible and difficult for a layperson to understand.

Senate Bill 327 is the response to the Commission’s final report that was issued nearly ten years ago. For the first time, it pulls together and codifies in statute the 16 relevant factors that a court must consider when deciding child custody issues. Once this bill is enacted, this information will finally be easily accessible to judges, attorneys and litigants, no matter their personal financial circumstances and whether or not they are represented by counsel. The bill is written in plain English, so the relevant factors can be easily understood by lawyers and laymen alike.

Factors for the child’s well-being the court may consider include the child’s foreseeable health, the frequent, regular and continuing contact between the child and parents who can act in the

child's best interest, whether and how parents who do not live together will share the rights and responsibilities of raising the child, the child's relationship with each parent and any siblings, their physical and emotional security, and the child's developmental and day-to-day needs. The final factor is "any other factor that the court considers appropriate in determining how to best serve the physical, developmental and emotional needs of the child.

Unlike last year's version of this bill, Senate Bill 327 primarily consists of the list of factors. It does not put its finger on the scales by weighting one or more factors more heavily than others. Everything is left to the court's discretion, but the bill requires the decision of the court to be set forth in writing or on the record. The only other component of the bill is a provision stating that the court may modify its child custody or visitation order if the court determines that there has been a material change of circumstances that results in a situation in which a such a modification would be in the best interests of the child. Such a provision is only prudent.

This is a reasonable and responsible bill that simply implements the recommendation of the Commission.

I appreciate the Committee's consideration of Senate Bill 327 and will be happy to answer any questions the Committee may have.