



House of Ruth Maryland

Domestic Violence Legal Clinic

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Bill No.: Senate Bill 663
Bill Title: Child Custody – Rebuttable Presumption of Joint Custody
Committee: Judicial Proceedings
Hearing Date: February 1, 2024
Position: **UNF**

House of Ruth is a non-profit organization providing shelter, counseling, and legal services to victims of domestic violence throughout the State of Maryland. House of Ruth has offices in Baltimore City, Baltimore County, Prince George’s County, and Montgomery County. Senate Bill 663 would create a rebuttable presumption of joint custody. **We urge the Senate Judicial Proceedings Committee to report unfavorably on Senate Bill 663.**

In 2013, the General Assembly passed a law convening the Commission on Child Custody Decision Making. The purpose of the Commission was to study all aspects of child custody decision-making and make recommendations to improve the process throughout the State. The Commission explored, among other things, the possibility of creating a custody statute that would codify the myriad case law which currently governs custody decision making. After more than a year of work by many, many experts in a variety of fields and disciplines, the Commission ultimately recommended against a presumption of joint custody.

Senate Bill 663 refocuses the standard used in custody decisions from “best interest of the child” to a presumption of joint custody. The best interest of the child standard ensures that custody cases are not determined on a cookie-cutter basis. A presumption of joint custody presumes that most families function in a similar way; this is simply not the case. Each child, each family, each situation needs to be judged on its own merits and decided based on its own needs and resources. One size does not fit all when it comes to custody decisions.

Ordering joint custody is rarely appropriate when one parent has committed acts of violence against the other. Successful joint custody presumes that parents have the ability to work together cooperatively and have equal negotiating power in the relationship. The opposite is true in cases involving domestic violence. Joint custody orders allow physical abuse and emotional intimidation to continue by forcing victims to negotiate and compromise with their batterers. Many batterers will use joint custody, not as a way to co-parent, but as a way to gain continued and ongoing access to the victim. Batterers use this order of joint custody as a way to continue to control and dominate

their victims. These are the very reasons the victim sought to end the relationship. Joint custody orders place victims in danger of further violence, burden the courts with post-judgment proceedings, and can cause mental harm to children who witness abuse.

Judges currently have the authority to order joint custody. However, before a joint custody order is entered, Maryland case law requires trial judges to consider whether parents are able to communicate and reach shared decisions regarding their child's welfare. *Taylor v. Taylor*, 306 Md. 290 (1986). This is good law and reflects the need for judges to make individualized inquiries and determinations based on each family's unique circumstances. Judges should be required to evaluate the relationship of parents to each other before ordering joint custody. A presumption of joint legal and physical custody assumes parents can and do work collaboratively. For the most part, custody litigants who proceed to trial are not able to work collaboratively

The House of Ruth urges the Senate Judicial Proceedings Committee to issue an unfavorable report on Senate Bill 663.