



**MARYLAND
LEGAL AID**

Advancing
**Human Rights and
Justice for All**

Senate Bill 0663

Child Custody – Rebuttable Presumption of Joint Custody

In the Senate Judicial Proceedings Committee

Hearing on February 16, 2024

Position: UNFAVORABLE

Maryland Legal Aid (MLA) submits its written and oral testimony on SB 0663 at the request of Senator Christopher West.

MLA asks that the Committee report **unfavorably** on Senate Bill 0663, which creates a rebuttable presumption that it is in a child’s best interest for courts to award parents joint legal custody and joint physical custody, for approximately equal periods of time. MLA is Maryland’s largest private, civil non-profit law firm, providing free legal services to indigent Maryland residents. MLA assists individuals and families in every Maryland county with a wide array of civil legal issues. In particular, MLA represents Marylanders in family law cases, including divorce, custody, child support, and domestic violence matters, that are high in conflict and in which there is an imbalance of power. Even when MLA is unable to provide full representation, our organization provides legal advice to parties who intend to proceed without an attorney.

Child custody cases are complex, fact-specific matters that cannot be addressed with “one-size-fits-all” solutions.

SB 0663 would require family courts to approach all child custody disputes with the aim of awarding joint custody, which the bill defines as encompassing not only shared decision-making authority, but also “approximately equal periods” of parenting time. The intent behind this bill – to ensure that both parents are equally involved in a child’s life – is laudable, but ultimately misguided. MLA agrees that children deserve to maintain meaningful relationships with both of their parents whenever possible and that, ideally, the burdens, privileges, rights, and responsibilities of parenting children should not fall to just one parent. However, our litigation of countless custody cases has shown us that these important matters need to be resolved through careful consideration of the unique circumstances facing each individual family; a “one-size-fits-all” solution will not work.

Currently, family courts make custody decisions using the best interest of the child standard, which is comprised of numerous factors that are child-focused and that allow the courts to consider the individual facts of each custody case. The best interest factors enable the court to not only consider all relevant

evidence when determining what is in a child's best interest, but also give each piece of evidence the weight it deems necessary. Further, as stated in Maryland Family Law Article § 5-203(d)(2), "neither parent is presumed to have any right to custody that is superior to the right of the other parent." Thus, Maryland's current legal standard in child custody cases gives the court both the power and the flexibility to make an appropriate custody determination in any given case, while the Family Law Article makes clear that each parent begins the case on equal legal footing.

By creating a rebuttable legal presumption of joint physical and joint legal custody, SB 0663 would undermine the family court's ability to determine what is in a child's best interest. Presuming that joint legal and joint physical custody, with approximately equal periods of parenting time, is in every given child's best interest effectively ignores the very fact-specific nature of child custody cases and the reality that no two families are alike. Moreover, a presumption of joint custody inherently shifts the focus of child custody cases from the children to the parents. Rather than prioritizing what is in a child's best interests, SB 0663 prioritizes strict parental equality, relegating the best interest of the child factors to a secondary consideration that only comes into play when rebutting the presumption of joint custody. While family courts are courts of equity, SB 0663 is mistaken in how it attempts to achieve equity. Ensuring that parents have equal parenting rights and access does not ensure that a custody determination is equitable. Rather, an equitable custody determination requires that the family court consider the facts presented before it in the context of the best interest factors, and then make an appropriate ruling, unencumbered by any legal presumption.

SB 0663 offers no guidance as to what evidence is required to rebut the presumption of joint custody.

SB 0663 states that the joint custody presumption may be rebutted "by a preponderance of the evidence that a joint custody arrangement is not in the child's best interests." However, SB 0663 offers no guidance as to what evidence is sufficient to rebut the presumption of joint custody. This lack of clarity would likely produce inconsistent decisions by the family courts in child custody cases across the state.

Additionally, it is deeply concerning that SB0663 makes no mention of domestic violence or child abuse, and their impact on child custody arrangements. As advocates for victims of abuse, MLA knows that an award of joint custody in families where domestic violence or child abuse has occurred is almost always unworkable and likely dangerous. Despite this, SB 0663 does not offer assurance that findings of domestic violence or child abuse will be sufficient to rebut the presumption of joint custody. SB0663 ignores the reality of family violence and the responsibility of family courts to keep victims safe from further abuse.

In highly contested cases, such as those MLA regularly handles, joint custody arrangements are often impractical and unrealistic.

Furthermore, SB 0663 ignores the impracticality of joint custody in high-conflict child custody cases. Joint custody might be an appropriate custodial arrangement in cases where parents are in general agreement as to how they should raise their children; such cases are usually resolved through settlement negotiations and consent orders. However, if a custody case has been unable to settle and has proceeded to a trial, it likely means that the parties are unable to agree on most matters pertaining to their child. In such cases, it is common for the parents to have poor communication with one another. When parents are in high conflict, cannot communicate effectively with one another, and cannot agree on matters pertaining to their child, it is usually not in their child's best interest for the parents to have joint legal custody or equal decision-making authority. Despite this, SB 0663 would require a rebuttable presumption of joint legal custody even in cases where such an arrangement is almost assuredly not in the child's best interest.

Because this bill would create a rebuttable presumption of joint custody in child custody cases, and such a presumption would hinder the family court's ability to determine what is in a child's best interest, **Maryland Legal Aid urges the Committee to issue an UNFAVORABLE report on SB 0663.** If you have any questions, please contact Brett Smoot, (410) 951-7812, bsmoot@mdlaborg.