

SB663 Testimony.pdf

Uploaded by: Senator Nick Charles

Position: FAV

NICK CHARLES
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Judicial Proceedings Committee



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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

SB663: Child Custody - Rebuttable Presumption of Joint Custody
Favorable

Good afternoon, Chair Smith, Vice Chairman Waldstreicher and honorable members of the Judicial Proceedings Committee,

For the record, I am Senator Nick Charles testifying in support of Senate Bill 663. SB663 establishes a rebuttable presumption in child custody proceedings that joint legal custody and joint physical custody for approximately equal periods of time are in the best interests of a child. It authorizes the court to award sole custody based on reasonable and significant evidence that a joint custody arrangement is not in the best interests of the child.

This Bill is about ensuring our custody courts are truly operating under what will be most advantageous to Maryland families. If there is not sufficient evidence shown that one parent cannot contribute to the best interests of the child, what is the basis to limit the access that a child will have to both guardians? By embracing joint custody arrangements, we acknowledge the importance of both parents in a child's life. Published in the Journal of Family Psychology by the American Psychological Association, "Children in joint custody arrangements had less behavior and emotional problems, had higher self-esteem, better family relations and school performance than children in sole custody arrangements".

As we hear countless Bills this Session and ideas about how to transform the lives of our juveniles, I truly believe that we must put more focus on fixing our family court system. This Bill is not just about legalities, it's about the emotional well-being of our children. By promoting joint custody arrangements, we are not just ensuring fairness in the courtroom, but we are also giving children the opportunity to maintain strong bonds with both parents. It's about creating stability and security in their lives, something that every child deserves.

I urge a favorable report.

Thank you,
Senator Nick Charles

A handwritten signature in cursive script that reads "Nick Charles".

SB663 - Maryland Legal Aid - Unfavorable.pdf

Uploaded by: Brett Smoot

Position: UNF



**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.

SB 663 - UNF - House of Ruth.pdf

Uploaded by: Deena Hausner

Position: UNF



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.

sb663.pdf

Uploaded by: Linda Miller

Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Matthew J. Fader
Chief Justice

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 663
Child Custody – Rebuttable Presumption of Joint Custody
DATE: February 7, 2024
(2/16)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 663. This bill creates a rebuttable presumption in child custody proceedings that joint custodial arrangements are in the best interests of a child. It also authorizes a court to consider specified factors when determining the best interests of the child and to award sole custody when a joint custodial arrangement is determined by a preponderance of evidence not to be in the best interests of the child. It also requires the court to enter specified information on the record.

The presumption of joint custody in the bill limits the ability of the court to consider the specific needs of the child and the specific abilities of the parents. The bill directs the court to reach an outcome regarding the award of custody and directs the court to award approximately 50/50 time for each parent in every case unless a presumption for joint custody is rebutted. Further, this bill does not include any factors for the court to consider in the rebuttal of the presumption.

cc. Hon. Nick Charles
Judicial Council
Legislative Committee
Kelley O'Connor

SB 663_FLSC_UNF.pdf

Uploaded by: Lindsay Parvis

Position: UNF

To: Members of the Senate Judicial Proceedings Committee

From: Family Law Section Council

Date: February 16, 2024

Subject: **Senate Bill 663:**
Family Law-Rebuttable Presumption of Joint Custody

Position: **OPPOSE/UNFAVORABLE**

The Maryland State Bar Association (MSBA) Family Law Section Council (FLSC) **opposes Senate Bill 663: Family Law- Custody Evaluators – Qualification and Training.**

This testimony is submitted on behalf of the MSBA’s FLSC. The FLSC is the formal representative of the Family Law Section of the MSBA, which promotes the objectives of the MSBA by improving the administration of justice in the field of family and juvenile law and, at the same time, tries to bring together the members of the MSBA who are concerned with family and juvenile laws and in reforms and improvements in such laws through legislation or otherwise. The FLSC is charged with the general supervision and control of the affairs of the Section and authorized to act for the Section in any way in which the Section itself could act. The Section has over 1,200 attorney members.

In 2013, the General Assembly passed HB687, convening the Commission on Child Custody Decision Making. The Commission was charged with studying child custody decision-making and offering recommendations to improve and bring statewide uniformity to custody determinations. The Commission issued its Final Report on December 1, 2014. The Final Report included a Proposed Draft Custody Statute in similar form this year as HB1232/SB978. The Final Report concludes “there should be no presumed schedule of any kind” and “as a general rule, a minimum of 30 to 33 percent time with each parent is optimal for a child *when both parents are emotionally healthy and focused on the needs of their child, in the context of a parenting plan based on the child’s developmental age and needs.*¹

SB663 creates a rebuttable presumption in an initial custody proceeding (when there is no existing custody agreement or order) that joint legal custody and joint physical custody of equal timesharing are in a child’s best interests.

¹ Final Report, p. 35, emphasis added.

A “presumption” is a conclusion a court must make when certain threshold facts are established, even if the facts would otherwise be insufficient to reach that particular conclusion. A “rebuttable presumption” is a presumption that that must be reached in the absence of evidence to the contrary.

Custody consists of two components: 1) legal custody, which is decision-making about important issues such as health, education, and religious upbringing; and 2) physical custody, which is where a child lives and when a child spends time/has visitation with both parents.

Currently, the standard for determining custody of a child is the “best interests of the child”. This requires a court to consider all the facts and circumstances of the individual family before determining custody for the specific child. Under current law, both parents are the “joint natural guardians of their minor child” and “[n]either parent is presumed to have any right to custody that is superior to the right of the other parent.”²

Judges already have the authority to issue joint custody orders, but only after considering all the facts and circumstances and determining that it is in the best interests of the individual child/ren at issue in any given case.

A presumption does not account for the specific needs of each family and each child, but elevates the wishes of the parents over the best interests of the children. Orders based on nothing more than a presumption, without due and exacting consideration of whether joint custody is truly in the best interests of the specific children involved, is likely to lead to more discord between the parents, family chaos, and harm to the children. This is especially true when joint custody is imposed over the objections of one or both parents, which is almost certainly going to be the situation in any case that has to be resolved by litigation as opposed to an agreement.

There are additional problems with SB663:

The rebuttable presumption would apply at both the *pendente lite* hearing on temporary custody (so, custody until the final custody merits trial) and at the final custody merits trial. Not all jurisdictions determine *pendente lite* custody (i.e. Montgomery County). SB663 encourages more *pendente lite* litigation. It also prioritizes equal physical custody over temporary stability, further uprooting children. It could result in a change from the status quo that existed by the parents’ agreement prior to filing suit. Additionally, in many jurisdictions, *pendente lite* hearings occur early in the case, when there is insufficient time to conduct discovery. This prejudices parents who are unable to sufficiently prepare before their trial or will result in delayed *pendente lite* hearings so parents can conduct discovery and therefore result in prolonged and more contentious litigation.

² Maryland Family Law Article §5-203.

SB663 refers to “permanent” proceedings, but custody is always modifiable in the event of a material change in circumstance. Custody is never “permanent”, although a custody determination may be “final” and no longer appealable, subject to modification.

SB663’s language intending to “equalize” the parents’ positions before the court - “regardless of a parent’s marital status or gender” – is too narrow. What about: sexual orientation; gender identity; age; race, color, or national origin; religious affiliation, belief, creed, or opinion; mental or physical disability; economic circumstances; or, extramarital sexual conduct? Does the presumption not apply in these circumstances? Or, does the presumption operate against a parent for these unmentioned reasons?

SB663 enumerates factors the court “may” but is not required to consider when determining the child’s best interests in light of the rebuttable presumption. This invites a court to disregard the factors and simply rubber stamp joint custody regardless of the enumerated factors.

SB663 does not require the court to articulate the basis for its decision, the factors it considered, and its analysis of the presumption in a particular case. Without this, parents will continue to have no better understanding of the court’s reasoning than under current law and practice (which do not require this).

SB663 ignores the Commission’s Final Report, prevailing psychological research, and the best interests of children. **The FLSC urges an unfavorable report.**

Should you have any questions, please contact:

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Custody - rebuttable presumption - testimony oppos

Uploaded by: Lisae C Jordan

Position: UNF



Working to end sexual violence in Maryland

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Testimony Opposing Senate Bill 663 **Lisae C. Jordan, Legislative Counsel** February 16, 2024

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence in the State of Maryland. We urge the Judicial Proceedings Committee to report unfavorably on Senate Bill 663.

Senate Bill 663 – Presumption of Joint Custody

This bill would create a presumption in favor of joint custody for parents in custody litigation. While MCASA appreciates the desire to involve both parents in a child's life, we strongly advocate for a focus on the child.

A presumption in favor of joint legal custody would have the unintended consequence of endangering children in difficult to prove child sexual abuse cases. Cases involving allegations of child sexual abuse can be extremely difficult to prove and are full of gray areas. Sometimes awarding sole custody to the parent more likely to protect the child is the best that can be done. A rebuttable presumption for joint custody should not be permitted color the Court's focus on the needs of a child in these very difficult cases.

Family Law §§ 9-101 and 9-101.1, by themselves, would not provide adequate protection for cases involving grooming behavior if SB663 were enacted. Perpetrators of child sexual abuse typically "groom" child victims prior to committing abuse. This grooming behavior can involve testing a child to see if he or she will keep a secret, cultivating a private relationship with a child, or pushing physical boundaries. Grooming, however, stops short of abuse and would not fall under provisions of the law regarding abuse such as Family Law Article §§ 9-101 and 9-101.1. Current law gives judges the discretion – and the duty – to consider all factors related to the best interests of a child. This child-centered focus should not be changed with a presumption.

Senate Bill 663 would help abusers by forcing abused or protective parents to rebut a joint custody presumption. A presumption of joint custody is not necessary. Judges currently have the authority to order joint custody and must consider it whenever either parent asks them to. Currently, 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); Leary v. Leary, 97 Md.App. 26 (1993). This is good law. Judges should be required to evaluate the relationship of parents before ordering joint custody. The best interests of children will not be served by requiring shared decisions between parents when one believes that the other parent has sexually abused or failed to protect their child.

This bill would also harm adult victims of marital rape and sexual abuse. An order of joint legal custody is almost never appropriate when one parent has committed acts of sexual or physical violence against the other. Violence is only one facet of a battering relationship. Batterers also use psychological and emotional abuse to manipulate and control their victims. Joint custody orders allow this type of abuse to continue by forcing victims to negotiate and compromise with their batterers. This places victims in danger of further violence, burdens the courts with post-judgment proceedings, and can cause mental harm to children who witness abuse.

Senate Bill 663 would lead courts to order joint custody in error in many cases, particularly cases with pro se litigants. Many -- if not most -- victims of domestic abuse do not identify themselves as such. Victims of marital rape and sexual abuse are even more reluctant to disclose abuse. Unfortunately, many lawyers also do not interview their clients with the care necessary to uncover abuse. As a result, evidence of marital rape and abuse would often not be presented and inappropriate joint custody orders would be entered.

**The Maryland Coalition Against Sexual Assault urges
the Judicial Proceedings Committee to report unfavorably on Senate Bill 663**

SB 663_MNADV_UNF.pdf

Uploaded by: Melanie Shapiro

Position: UNF



BILL NO: Senate Bill 663
TITLE: Family Law – Presumption of Joint Custody
COMMITTEE: Judicial Proceedings
HEARING DATE: February 16, 2024
POSITION: **OPPOSE**

The Maryland Network Against Domestic Violence (MNADV) is the state domestic violence coalition that brings together victim service providers, allied professionals, and concerned individuals for the common purpose of reducing intimate partner and family violence and its harmful effects on our citizens. **MNADV urges the Senate Judicial Proceedings Committee to issue an unfavorable report on SB 663.**

Senate Bill 663 creates a presumption of joint legal custody and physical custody for equal periods of time for each parent. MNADV supports both parents being active and involved in their child’s life. However, SB 663 does not acknowledge that there are circumstances, such as when there is domestic violence, that a presumption of joint legal custody and physical custody could in fact be harmful or even dangerous for the child or one of the parents. It also does not appreciate the power and control dynamics that exist in domestic violence often placing the victim in an inferior position who would, under Bill 663, need to rebut the presumption of joint custody.

A joint legal custody and equal physical custody arrangement requires an intense level of communication and contact between the parents. This degree of interaction could put the victim of domestic violence at significant risk. In families where violence occurs, the children are often used as a tool to control the victim. If joint custody is awarded, the capacity to use the children in this negative way is enhanced. It would also be extremely difficult for a victim of domestic violence to negotiate on equal footing regarding parenting decisions. Senate Bill 663 completely ignores the risks inherent in this situation.

Each case and familial situation is unique, and there are even cases with domestic violence that are appropriate for there to be joint custody, retaining the “best interest of the child” standard is the best way to make this very case specific analysis. MNADV supports the current standard of “best interest of the child” which is the most child centered, case specific, and appropriate standard for custody decision making. MNADV opposes the presumption for joint legal and equal physical custody created by SB 663. This year’s SB 327 is a much more child focused approach to child custody cases and a bill that MNADV supports.

For the above stated reasons, the **Maryland Network Against Domestic Violence urges an unfavorable report on SB 663.**

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