
To: Members of the House Judiciary Committee

From: Family Law Section Council (FLSC)

Date: February 20, 2023

Subject: **House Bill 848:**
Family Law - Child Custody – Determinations

Position: **FAVORABLE**

The Maryland State Bar Association (MSBA) FJLSC supports House Bill 848 – Family Law - Child Custody – Determinations

This testimony is submitted on behalf of the Family Law Section Council (“FLSC”) of the Maryland State Bar Association (“MSBA”). 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 law and, at the same time, tries to bring together the members of the MSBA who are concerned with family 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 convened 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 the process of custody determinations by courts. Dozens of experts met over 90 occasions to examine current procedures, psychological research, process in other jurisdictions and best practices. HB 848 is an outcome of the efforts of the Commission and reflects a blended list of the factors recommended in that thorough study on Child Custody Decision Making.

In the Final Report issued December 1, 2014, the Commission set forth ten “guiding principles” that were approved by the Commission. The first of these principals was:

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, focusing on factors that affect a child’s long-term adjustment, including significant regular contact with each parent, parenting quality, a child’s developmental

needs, the quality (conflict or not) of the relationship between the parents or parent figures, the parents' psychological adjustment, and a child's need to maintain significant relationships. (Commission on Child Custody Decision Making, Final Report, p.8)

Currently, judicial determinations regarding child custody are made based on factors set forth in several Maryland appellate cases. In order to know what testimony and evidence to present to a court in support of a claim for custody, a litigant has to identify the correct appellate decisions and be able to distill the legal holdings of each case and correctly apply those holdings to the facts of their own case. While this may be fairly straightforward for experienced family law attorneys, most self-represented non-lawyer parents would find this to be a herculean task. Further, the seminal appellate decisions are decades old and not necessarily reflective of today's families and the modern demands of parenting. HB 848, which would codify the factors that a court should consider when deciding parenting time and legal decision-making issues, would finally make the factors recommended by the Commission available and accessible to all litigants and would encourage the consistent use of the best practices regarding such custody decisions.

In fact, HB 848 makes clear these factors should be applied in all stages of custody cases, both initial determinations, as well as on subsequent motions for modification of legal and physical custody. HB 848 also codifies the appropriate burden for litigants seeking such motions for modification. The "material change of circumstances" burden is yet another, legal principle from our appellate case law that HB 848 will clarify for self-represented litigants navigating the complex legal issues related to custody matters.

HB 848 provides appropriate guardrails to the Judge in such custody determinations in setting out the comprehensive list of factors the court may consider, including any other appropriate factor, while also mandating that the Judge shall articulate his/her findings of fact on the record or in a written opinion, specifying each of the factors that were considered. Thus, the passage of HB 848 would lead to more uniformity, clarity and transparency in the legal process and understanding of the outcomes and possible appellate issues for both litigants and counsel involved in these highly emotionally charged and significant family law cases.

HB 848 reflects the well-settled law in Family Law §5-203 that the parents are the joint natural guardians of their minor child with neither presumed to have a superior right of custody over the other parent; and, thus, that courts are permitted to award custody to either parent or jointly to the parents. HB 848 sets forth a uniform method for courts to analyze the circumstances of each individual child and family and make decisions that are in the best interest of those individual children. This is the approach that will best protect the health, safety and welfare of Maryland children. HB 848 is an important evolution in the way Maryland courts make decisions regarding children.

For the reason(s) stated above, the MSBA FLSC **supports House Bill 848 and urges a favorable committee report.**

Should you have any questions, please contact Michelle Smith at 410-280-1700 or msmith@lawannapolis.com.