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February 14, 2024

TO: The Honorable Will Smith
Chair, Judicial Proceedings Committee

FROM: Adam Spangler
Legislative Aide, Legislative Affairs, Office of the Attorney General

RE: SB438 - Family Law - Fundamental Parental Rights - **Oppose**

The Office of the Attorney General opposes Senate Bill 438 because it could have serious, even fatal, consequences for Maryland's children. As explained in detail below, there are three primary reasons for our opposition:

1. The proposed legislation eliminates Maryland's long-time focus on the best interest of the child and instead focuses only on the protection of a parent's rights, without regard to the effect on the child;
2. By providing that Senate Bill 438 prevails in the event of a conflict with any other law, the Bill effectively amends multiple existing laws, including those protecting children from abuse and neglect, without identifying what it is changing; and
3. Senate Bill 438 requires the application of the highest civil evidentiary burden at all proceedings, which would significantly hinder a local department of social services' ability to temporarily remove a child from a "serious, immediate danger" on an emergency basis because there would not be enough time to gather the evidence to meet that extremely high burden.

The United States Supreme Court has long recognized that parents have a fundamental right to direct the upbringing of their child. In all cases involving children, whether public or private, the decision must be guided by consideration of what is in the best interest of the child. Although these two principles may initially seem to contradict each other, as the Supreme Court of Maryland has explained, a parent's fundamental rights and the best interest of a child are not in conflict because there is a "strong presumption that the child's best interests are served by maintaining parental rights." *In re Yve S.*, 373 Md. 551, 571 (2003). The proposed bill, however, speaks only to the rights of the parent and contains no mention whatsoever of a child's best interest.

Current Maryland law only allows State involvement with children when certain limited circumstances exist, such as abuse or neglect. The first statute that would be created by Senate Bill 438 (see page 1, line 19 through page 2, line 6) provides that, if there is a conflict between Senate Bill 438 and any existing law, the new legislation prevails. As a result, Senate Bill 438 would in effect silently amend any laws previously enacted by the General Assembly—including those governing child in need of assistance proceedings and protecting children from child abuse and neglect—by removing consideration of the child's best interest and shifting the focus to the protection of the parent's right to raise the child as they see fit. Finally, current law applies burdens of proof depending on the amount of infringement involved: "reasonable grounds" to remove a child on a temporary, emergency basis from "serious, immediate danger"; "preponderance of the evidence" when removing a child, with that removal subject to periodic reviews; and "clear and convincing evidence"—the highest level of proof that can ever be required in a civil case—in order to terminate parental rights. Senate Bill 438 would amend that practice and require clear and convincing evidence at any proceeding affecting parental rights. This would make emergently removing children from even the most imminently dangerous situations difficult, if not impossible, because the local department of social services would often have less than 24 hours to compile admissible evidence sufficient to satisfy an extremely high burden of proof.

We oppose this proposed legislation and urge an unfavorable report on SB 438 because it would significantly hinder the State's ability to protect Maryland's children from abuse and neglect and eliminates the child-focus of the current child welfare statutes.

cc: Senator Justin Ready
Committee Members