

Testimony HB848.pdf

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Position: FAV

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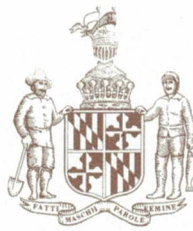
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TESTIMONY IN SUPPORT OF HB 848/SB 327 FAMILY LAW - CHILD CUSTODY – DETERMINATIONS

HB 848 and the cross-filed SB 327 are the product resulting from the grueling studies and analysis commissioned by the Maryland General Assembly over a decade ago. Though various amended and modified forms of HB 849 were tenaciously sought by former Delegate Dumais, now a Circuit Court judge in Montgomery County, it was her deeply held belief that this proposed legislation would one day become the reality that would bring about a confluence of case law and statute, thus simplifying an already daunting task for many pro se litigants and the overly burdened court system. HB 848 is the overwhelmingly supported amalgamation of case law and statute.

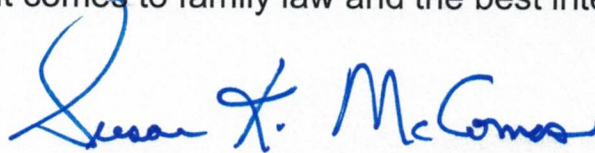
HB 848 codifies the factors a circuit court judge must consider in making a determination as to a custody case in Maryland. By so doing, its passing puts in one place, the Maryland Annotated Code, the nuts and bolts of what a layman needs to know in a child custody case.

The more than 15 factors the Courts are to consider in a child custody determination are listed within HB 848. These factors are distilled from multiple Maryland common law determinations, outlined and set forth by the Court in such cases as *Montgomery County v. Sanders*, 38 Md. App. 406, (1977) and *Taylor v. Taylor*, 306 Md. 290 (1986).

More importantly, the bill sets forth that the Court must articulate its findings of as to each factor on the record to assure that all the factors are considered This is a nod to a landmark case: Domingues v. Johnson, 323 Md. 486, 1991.

HB 848 garners the support of such groups as the Maryland State Bar Association Family Law Section and the Maryland Judicial Conference.

HB 848 is a no brainer when it comes to family law and the best interest of the child.

A handwritten signature in blue ink, reading "Susan H. McGowan". The signature is fluid and cursive, with the first name "Susan" and the last name "McGowan" clearly legible.

**PLEASE ENTER A FAVORABLE REPORT FOR HB 848
and as Cross-Filed: SB 327**

HB 848 - FAV - House of Ruth.pdf

Uploaded by: Deena Hausner

Position: FAV



Domestic Violence Legal Clinic

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Toll Free: 1-888-880-7884 • Maryland Relay: 711

Bill No.: House Bill 848
Bill Title: Family Law – Child Custody - Determinations
Committee: Judiciary
Hearing Date: February 22, 2024
Position: **FAV**

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. House Bill 848 requires the court, when determining legal and physical custody, to consider certain factors. **We urge the House Judiciary Committee to favorably report on House Bill 848.**

House Bill 848 codifies the factors that courts must consider when making decisions about legal and physical custody of children. Currently, determinations regarding children are made based on factors set forth in several Maryland appellate cases. While attorneys are able to read these appellate decisions and determine how the factors apply to the facts of a particular case, most unrepresented litigants would have difficulty finding the right cases and analyzing them appropriately. Thus, unrepresented litigants are disadvantaged in their ability to present testimony and evidence a court needs to render a decision. Codifying the factors in a single statute makes this information accessible to everyone. With passage of this bill, Maryland would join the majority of states that statutorily clarify how courts are to make determinations regarding children.

HB 848 emphasizes that judges are to focus on the needs of an individual child and the parents' respective abilities to meet those needs. HB 848 ensures that child custody cases are not determine in cookie-cutter fashion, but rather than each child and family's situation is judged on its own merits based on the needs of the children and the resources of the family.

The House of Ruth urges the House Judiciary Committee to report favorably on House Bill 848.

MPA_Comm_HB848_LetterofSupport_20240216.pdf

Uploaded by: Katherine Killeen, Ph.D.

Position: FAV



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Delegate Luke Clippinger, Chair
Delegate J. Sandy Bartlett, Vice Chair
House Judiciary Committee
House Office Building, Room 101
Annapolis, MD 21401

RE: HB 848 – Family Law – Child Custody - Determinations

Position: Support

Dear Chair Clippinger, Vice Chair Bartless, and Members of the Committee:

The Maryland Psychological Association, (MPA), which represents over 1,000 doctoral level psychologists throughout the state, asks the House Judiciary Committee to **report favorably on HB 848**.

Maryland trial courts make determinations regarding child custody based on the “best interests” of the child standard. However, as you well know, there is currently no statute which specifies the factors and criteria the Courts “may” or “shall” consider when making these critical decisions. As a result, the courts look to a list of factors enumerated in case law including *Montgomery County v. Sanders*, 38 Md. App. 406, 420, 381 A.2d 1154 (1977) and *Taylor v. Taylor*, 60 Md. App. 268 (1984).

The Maryland legislature authorized the Commission on Child Custody Decision Making in 2013. One of the considerations of the Commission was whether Maryland could benefit from, or “needs a statute specific to child custody decisions.” The Commission issued its Final Report in December 2014 and recommended that Maryland develop a statute to identify “best interests of a child factors.” The Commission also noted that Maryland is one of the handful of states which do not have statutory factors.

HB 848 identifies the best interest of the child factors the court may consider when making determinations regarding legal and physical custody. The factors identified in HB 848 are the result of years of work by parents, interested parties, various stakeholders, the legal community, and the mental health community. The factors include needs of the child factors, abilities of the parents’ factors, and include research-based considerations such as “how to...protect the child from the negative effects of any conflict between the parents...” which has been shown to be a significant predictor of a child’s adjustment following divorce. The MPA strongly supports the factor which provides for “frequent, regular, and continuing contact with parents *who can act in the child’s best interest*” [italics added]. The MPA, in contrast, strongly opposes presumptions which provide significant time with parents without considering their parenting skills, their ability to recognize and act in the child’s best interest, and the child’s relationship with that parent.

HB 848 provides clear factors to the Judiciary, and to the increasing numbers of parents who are self-represented and do not have a “guidebook” (i.e. statute) to help them know what issues they want to present to the court and what “case” they want to provide to the court during their own divorce hearings.

The MPA strongly encourages the Committee to report favorably on HB 848. If we can be of any further assistance as the House Judiciary Committee considers this bill, please do not hesitate to contact MPA’s Legislative Chair, Dr. Stephanie Wolf, JD, Ph.D. at mpalegislativcommittee@gmail.com.

Respectfully submitted,

Brian Corrado, Psy.D.

Brian Corrado, Psy.D.
President

Stephanie Wolf, JD, Ph.D.

Stephanie Wolf, JD, Ph.D.
Chair, MPA Legislative Committee

cc: Richard Bloch, Esq., Counsel for Maryland Psychological Association
Barbara Brocato & Dan Shattuck, MPA Government Affairs

HB 848 - WLCMD - FAV.pdf

Uploaded by: Laure Ruth

Position: FAV

BILL NO.: House Bill 848
TITLE: Family Law –Child Custody Determinations
COMMITTEE: Judiciary
DATE: February 22, 2024
POSITION: **SUPPORT**

House Bill 848 would codify the factors that courts use in determining what is in the best interests of the child in custody cases. The Women’s Law Center supports House Bill 848 as this would distill in one place all of the case law that has developed over decades in a multitude of cases, which would benefit the public and large number of self-represented litigants who go to court for custody determinations¹. HB 848 does not just import language from each of these cases. Instead, it combines and modernizes the case law to make it appropriate to today’s parenting styles and needs of families.

Currently, there is no statute that sets out the factors a court must consider in making a custody determination. Codifying case law, especially for self-represented litigants, would be of great benefit to our litigants and courts. No current statute clearly articulates all factors a Court may consider. Judges, lawyers, and litigants must interpret case law and do not have the benefit of a legislative description of the factors to be considered. This is particularly problematic for self-represented litigants who are hampered in their ability to appropriately present their case for custody and/or visitation without clear and accessible law. In some jurisdictions, as many as 80% of custody cases have one or both parties unrepresented by an attorney.

HB 848 requires the fact-finder in custody determinations to articulate its findings of fact on the record or in a written opinion, specifying each of the factors that were considered. This requirement will significantly assist litigants and lawyers to understand how a court reached its decision, and it would offer increased clarity and transparency in the legal process.

House Bill 848 would not preclude a court from ordering joint legal and/or shared physical “custody.” Instead, by focusing always on the impact of child access arrangements on the children involved in a case, HB 848 recognizes, as does current case law, that custody decisions should be child focused, and that each case is unique and requires an individualized evaluation of what is in the best interests of the child. The Women’s Law Center recognizes and deeply respects the benefits of having both parents actively involved in a child’s life. However, it is appropriate only when the parents are able to work together in the best interests of the child. Joint or shared custody can be damaging and dangerous in inappropriate situations, such as where there is domestic violence.

For these reasons, the Women’s Law Center urges a favorable report on House Bill 848.

The Women’s Law Center of Maryland is a private, non-profit, membership organization that serves as a leading voice for justice and fairness for women. It advocates for the rights of women through legal assistance to individuals and strategic initiatives to achieve systemic change.

¹ HB 848 is a change from prior years efforts to also update language; it is a simpler bite at the apple as the legislature did not have the appetite for the larger proposed changes that arose from the Custody Commission recommendations some ten years or so ago.

hb848.pdf

Uploaded by: Linda Miller

Position: FAV

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Matthew J. Fader
Chief Justice

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: House Judiciary Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: House Bill 848
Family Law – Child Custody - Determinations
DATE: February 2, 2024
(2/22)
POSITION: Support

The Maryland Judiciary supports House Bill 848. The bill would establish factors for the court to consider when determining legal and physical custody arrangements are in the best interest of a child, require an articulation of certain factors by the court, and authorize certain modifications.

“The light that guides the trial court in its [custody] determination....is the ‘best interest of the child standard,’ which ‘is always determinative in child custody disputes.’” *Santo v. Santo*, 448 Md. 620, 626 (2016) (quoting *Ross v. Hoffman*, 280 Md. 172, 178 (1977)).

For decades, this standard has been based on a series of ‘best interest of the child factors’ set forth in caselaw. One case was decided in 1978 and the other in 1986. *Montgomery County v. Sanders*, 38 Md. App. 406 (1978); *Taylor v. Taylor*, 306 Md. 290 (1986). Families have evolved since then as has our understanding of child development and how custody determinations can affect a child’s physical and emotional well-being, security, and sense of self.

The factors delineated in this bill are nearly identical to factors contain in Maryland Rule 9-204.1 (Parenting Plans), which was adopted by the Supreme Court of Maryland in 2019 (eff. January 1, 2020) and are based on recommendations from the Child Commission on Child-Custody Decision Making.¹ That Commission identified the need for factors that are, unlike those from the aforementioned cases, child-focused and based on social

¹ The commission was comprised of over 125 stakeholders including mental health providers, advocates for survivors of intimate partner violence, disability rights advocates, judges, attorneys, and members of the General Assembly. It’s Final Report, including a recommendation for statutory best interest of the child factors, is available at <https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/020000/020737/unrestricted/20150076e.pdf>.

science and literature on child development and the effects custody decisions have on parent-child relationships.

If enacted, this legislation would modernize how custody determinations are made and give everyone – courts, attorneys, and litigants – one set of factors to focus on in custody cases. Their codification would also increase transparency of custody determinations and be especially meaningful for the overwhelming number of litigants who are unable to afford an attorney. Finally, Maryland would no longer be among the minority of states that do not have statutory best interest of the child factors.

cc. Hon. Susan McComas
Judicial Council
Legislative Committee
Kelley O'Connor

Custody - testimony - house - 2024 - HB848 FAV.pdf

Uploaded by: Lisae C Jordan

Position: FAV



Working to end sexual violence in Maryland

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Silver Spring, MD 20907
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For more information contact:
Lisae C. Jordan, Esquire
443-995-5544
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Testimony Supporting House Bill 848
Lisae C. Jordan, Executive Director & Counsel
February 22, 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 Judiciary Committee to report favorably on House Bill 848.

House Bill 848 – Child Custody Determinations

This bill codifies and updates Maryland's law regarding custody. It continues to include important protections for survivors of child sexual and physical abuse, child neglect, and domestic violence.

HB848 maintains the current §9-101 and §9-101.1 which require that judges consider prior abuse against a child or parent of a child, respectively. It is important for sexual assault and sexual abuse survivors that these provisions remain in place. Under §9-101, if a court has reasonable grounds to believe that a child has been abused or neglected, the court must determine whether the abuse or neglect is likely to occur again. Unless the court specifically finds that there is no likelihood of further abuse or neglect, then the court is required to deny legal decision making or parenting time except for a supervised parenting time arrangement that assures the safety and physiological, psychological, and emotional well-being of the child.

Section 9-101.1 imposes similar requirements when one party has abused the other parent of the party's child, the party's spouse, or a child residing within the household. Under this provision, courts are also required to make custody or visitation arrangements that best protect the child who is the subject of the proceeding and the victim of abuse.

Importantly, HB848 does not create a presumption for sole or joint custody, but maintains a best interests of the child standard as the touchstone for decision-making. Judges should have 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 for any person other than the child.

**The Maryland Coalition Against Sexual Assault urges the
Judiciary Committee to
report favorably on House Bill 848**

HB 848_MNADV_FAV.pdf

Uploaded by: Melanie Shapiro

Position: FAV



BILL NO: House Bill 848
TITLE: Child Custody - Legal Decision Making and Parenting Time
COMMITTEE: Judiciary
HEARING DATE: February 22, 2024
POSITION: **SUPPORT**

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 House Judiciary Committee to issue a favorable report on HB 848.**

House Bill 848 codifies existing Maryland case law regarding custody determinations using the best interests of the child standard. There is no current statute that encompasses or delineates the factors a court must consider for custody determinations. Codifying factors will be especially beneficial to pro se litigants who would have the benefit of clear statutory language outlining the factors a court will and will not consider since they may not have access to or understanding of appellate case law.

House Bill 848 recognizes, as does current case law, that custody decisions should be child focused. There is no custody presumption in HB 848. Neither parent is presumed to have any right to legal decision making or parenting time that is superior to the right of the other parent. MNADV supports the premise that the court should be focused on each family and child's unique circumstances and needs when making custody determinations. Custody decisions should be made absent any presumptions and by carefully weighing all the factors. In families where there is domestic violence it may or may not be in a child's best interest to have both parents actively involved in a child's life, a court can only reach that decision after careful evaluation of the factors in HB 848.

For the above stated reasons, the **Maryland Network Against Domestic Violence urges a favorable report on HB 848.**

2024 02 20, HB 848_FLSC_FAV.pdf

Uploaded by: Michelle Smith

Position: FAV

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.

MPA_Comm_HB848_LetterofSupport_20240220.pdf

Uploaded by: stephanie wolf

Position: FAV



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Delegate Luke Clippinger, Chair
Delegate J. Sandy Bartlett, Vice Chair
House Judiciary Committee
House Office Building, Room 101
Annapolis, MD 21401

RE: HB 848 – Family Law – Child Custody - Determinations

Position: Support

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Respectfully submitted,

Brian Corrado, Psy.D.

Brian Corrado, Psy.D.
President

Stephanie Wolf, JD, Ph.D.

Stephanie Wolf, JD, Ph.D.
Chair, MPA Legislative Committee

cc: Richard Bloch, Esq., Counsel for Maryland Psychological Association
Barbara Brocato & Dan Shattuck, MPA Government Affairs