

Senate Bill 0548
Family Law – Child Custody - Determinations
In the Judicial Proceedings Committee
Hearing on February 7, 2025
Position: FAVORABLE

Maryland Legal Aid (MLA) submits its written and oral testimony on SB 0548 at the request of bill sponsor Senator Mary-Dulany James.

MLA asks that the Committee report **favorably** on Senate Bill 0548, which would codify the factors considered by a family court when determining what legal and physical custody arrangement is in the best interests of a child or children. MLA is Maryland’s largest private, civil non-profit law firm, providing free legal services to indigent Maryland residents. MLA assists low-income individuals and families in every Maryland county with a wide array of civil legal issues, including child custody cases that are high conflict and have an imbalance of power. Even when MLA is unable to provide full representation in these cases, our organization provides legal advice to parties who intend to proceed without an attorney.

Child custody decisions are driven by the “best interest of the child” legal standard. In Maryland, and in other states around the country, courts determine what custody arrangement is in a child’s best interest by considering a list of factors, each shedding light on whether a parent is equipped to have custody. In Maryland, however, this list of best interest factors is not codified in the Family Law Article of the Maryland Code. Instead, these factors are buried in decades-old case law. For low-income litigants who cannot afford an attorney, case law on custody is inaccessible and difficult to understand. SB 0548 seeks to change that by codifying the list of factors that courts will consider in custody determinations, thus ensuring that low-income Marylanders can readily access them. Having a clear and definite list of statutory best interest factors will empower both represented and unrepresented litigants to navigate the legal process.

Furthermore, codifying the best interest factors will provide uniformity in how custody decisions are made. Currently, the best interest factors are established across several court cases. Judges across the state do not refer to the same set of factors or cite the same cases when making best interest determinations, leading to varied case outcomes across the state. Thus, SB 0548 will provide consistency and clarity for courts in making custody decisions by providing a fixed list of factors upon which to rely.

One factor that is important in determining the best interest of the child in a custody case is whether there is evidence of domestic violence or abuse. Although § 9-101.1 of the Family Law Article requires the court in a custody or visitation proceeding to consider any evidence of abuse, having evidence of domestic violence or abuse explicitly stated as one of the best interest factors would

give unrepresented litigants clear notice of its relevance in custody determinations, thereby allowing those litigants to properly prepare for their custody hearings. Although the list of factors proposed by SB 0548 requires the court to consider the parents' relationship with one another, as well as a child's protection from and exposure to violence, an unrepresented litigant may not realize that this includes any evidence of domestic violence or abuse, even though it presumably does include such evidence. MLA encourages the Committee to explicitly clarify that domestic violence perpetrated by one parent against the other is relevant to the best interest analysis.

Because this bill will ensure the public's access to justice by codifying child custody factors, **Maryland Legal Aid urges passage of SB 0548**. If you have any questions, please contact Brett Smoot, (410) 951-7812, bsmoot@mdlaborg.