

SB 548_Codification of Best Interest Factors.pdf

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Position: FAV

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@mdlabor.org.

SB548 House of Ruth

Uploaded by: Caron Watkins

Position: FAV



House of Ruth Maryland

Domestic Violence Legal Clinic

2201 Argonne Drive, Baltimore, Maryland 21218

(410) 554-8463 • Fax: (410) 243-3014 • www.hruth.org • legal@hruthmd.org

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

Bill No.: Senate Bill 548
Bill Title: Family Law – Child Custody - Determinations
Committee: Judicial Proceedings
Hearing Date: February 7, 2025
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. Senate Bill 548 requires the court, when determining legal and physical custody, to consider certain factors. **We urge the Senate Judicial Proceedings Committee to favorably report on Senate Bill 548.**

Senate Bill 548 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.

SB 548 emphasizes that judges are to focus on the needs of an individual child and the parents’ respective abilities to meet those needs. SB 548 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 Senate Judicial Proceedings Committee to report favorably on Senate Bill 548.

SB 548 Family Law - Child Custody - Determinations

Uploaded by: Catherine OMalley

Position: FAV

BILL NO: Senate Bill 0548
TITLE: Family Law - Child Custody - Determinations
COMMITTEE: Judicial Proceedings
HEARING DATE: February 7, 2025
POSITION: **SUPPORT**

Senate Bill 0548 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 Senate Bill 0548 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 determinations. SB 0548 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.

SB 0548 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.

Senate Bill 0548 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, SB 0548 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 Senate Bill 0548.

The Women's Law Center of Maryland is a non-profit legal services organization whose mission is to ensure the physical safety, economic security, and bodily autonomy of women in Maryland. Our mission is advanced through direct legal services, information and referral hotlines, and statewide advocacy.

SB 548 - MNADV - FAV.pdf

Uploaded by: Laure Ruth

Position: FAV



BILL NO: Senate Bill 548
TITLE: Child Custody - Legal Decision Making and Parenting Time
COMMITTEE: Judicial Proceedings
HEARING DATE: February 7, 2025
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 Senate Judicial Proceedings Committee to issue a favorable report on SB 548.**

Senate Bill 548 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. We cannot think of a group or person that would not benefit from this bill.

Senate Bill 548 recognizes, as does current case law, that custody decisions should be child focused. There is no custody presumption in SB 548. 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 SB 548.

For the above stated reasons, the **Maryland Network Against Domestic Violence urges a favorable report on SB 548.**

For further information contact Laure Ruth ■ Public Policy Director ■ 301-852-3930 ■ lruth@mnadv.org

1997 Annapolis Exchange Parkway, Suite 300 ■ Annapolis, MD 21401
Tel: 301-429-3601 ■ E-mail: info@mnadv.org ■ Website: www.mnadv.org

Custody - testimony - senate - 2025 - SB548 FAV.pd

Uploaded by: Lisae C Jordan

Position: FAV



Working to end sexual violence in Maryland

P.O. Box 8782
Silver Spring, MD 20907
Phone: 301-565-2277
Fax: 301-565-3619

For more information contact:
Lisae C. Jordan, Esquire
443-995-5544
www.mcasa.org

Testimony Supporting Senate Bill 548
Lisae C. Jordan, Executive Director & Counsel
February 7, 2025

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 favorably on Senate Bill 548.

Senate Bill 548 – 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.

SB548 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 provision 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, SB548 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
Judicial Proceedings Committee to
report favorably on Senate Bill 548**

SB 548 Senator James Sponsor Testimony.pdf

Uploaded by: Mary-Dulany James

Position: FAV

MARY-DULANY JAMES
Legislative District 34
Harford County



James Senate Office Building
11 Bladen Street, Room 103
Annapolis, Maryland 21401
410-841-3158 · 301-858-3158
800-492-7122 Ext. 3158
MaryDulany.James@senate.state.md.us

Judicial Proceedings Committee
Executive Nominations Committee

Senate Chair

Joint Committee on
Children, Youth, and Families

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Testimony of Senator Mary-Dulany James
In Support of SB 548 – Family Law - Child Custody - Determinations
Before the Senate Judicial Proceedings Committee
February 7th, 2024

Dear Chairman Smith and Members of the Committee,

Over a decade ago, the General Assembly established a Commission on Child Custody Decision Making. The Commission met over 90 times and spent literally thousands of hours analyzing and discussing the testimony of leading experts in a variety of disciplines related to children. The Commission’s final report set forth ten guiding principles that should govern child custody decisions, the first of which was as follows: “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[.]”

Under current Maryland law, judges make their child custody decisions based upon factors set forth in numerous appellate court decisions handed down over a period of many decades. Some of these rulings are not necessarily reflective of modern demands of parenting. In addition, some judges rely on different cases than other judges, so child custody decisions are not always consistent from one jurisdiction to another.

Furthermore, while most family law lawyers and all judges deciding child custody cases are familiar with the relevant caselaw, in some jurisdictions in Maryland as many as 80% of custody cases have one or both parties appearing in court on a pro se basis. In those cases, low-income litigants who cannot afford an attorney are at sea as the cases on child custody are inaccessible and difficult for a layperson to understand.

Senate Bill 548 is the response to the Commission’s final report that was issued nearly ten years ago. For the first time, it pulls together and codifies in statute the 16 relevant factors that a court must consider when deciding child custody issues. Once this bill is enacted, this information will finally be easily accessible to judges, attorneys and litigants, no matter their

personal financial circumstances and whether or not they are represented by counsel. The bill is written in plain English, so the relevant factors can be easily understood by lawyers and laymen alike.

Factors for the child's well-being the court may consider include the child's foreseeable health, the frequent, regular and continuing contact between the child and parents who can act in the child's best interest, whether and how parents who do not live together will share the rights and responsibilities of raising the child, the child's relationship with each parent and any siblings, their physical and emotional security, and the child's developmental and day-to-day needs. The final factor is "any other factor that the court considers appropriate in determining how to best serve the physical, developmental and emotional needs of the child.

Unlike the previous version of this bill, Senate Bill 548 primarily consists of the list of factors. It does not put its finger on the scales by weighting one or more factors more heavily than others. Everything is left to the court's discretion, but the bill requires the decision of the court to be set forth in writing or on the record. The only other component of the bill is a provision stating that the court may modify its child custody or visitation order if the court determines that there has been a material change of circumstances that results in a situation in which such a modification would be in the best interests of the child. Such a provision is only prudent.

This is a reasonable and responsible bill that simply implements the recommendation of the Commission.

I appreciate the Committee's consideration of Senate Bill 548 and ask for a Favorable Report.

Respectfully,

A handwritten signature in black ink, reading "Mary-Dulany James". The signature is written in a cursive style with a long, sweeping tail on the "James" part.

Senator Mary-Dulany James

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Uploaded by: Michelle Smith

Position: FAV

To: Members of The Senate Judicial Proceedings Committee

From: Family Law Section Council (FLSC)

Date: February 5, 2025

Subject: Senate Bill 548:
Family Law-Child Custody-Determinations

Position: FAVORABLE

The Maryland State Bar Association (MSBA) FLSC **supports Senate Bill 548.**

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 and law and, at the same time, tries to bring together the members of the MSBA who are concerned with family related 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 1,100 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. SB 548 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 the legal and physical custody of children are made based on factors set forth in several Maryland appellate cases. In order to understand the relevant testimony and evidence to present to a Judge in support of a claim for legal or physical 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 unrepresented non-lawyer parents would find this to be a herculean task. Further, the seminal appellate decisions are quite old and not necessarily reflective of today's families and the modern demands of parenting. SB 548, which would codify the factors that a court should consider when deciding parenting time (physical custody) and legal decision-making issues (legal custody), 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 addition, SB 548 provides appropriate guardrails to the Judge in such legal and physical custody determinations in establishing 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 SB 548 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.

SB 548 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. SB 548 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.

SB 548 represents thousands of hours of analysis by leading experts in a variety of disciplines related to children and the legal processes used to determine legal and physical



520 West Fayette St., Baltimore, MD 21201
410-685-7878 | 800-492-1964
fax 410-685-1016 | tdd 410-539-3186
msba.org

custody issues. SB 548 is an important evolution in the way Maryland courts make decisions regarding children.

Enacting SB 548 will bring Maryland in line with the majority of states across our country which have custody determination factors listed in statutes. Currently, Maryland is only one of 8 states which do not have custody factors in their body of statutory law; whereas 42 other states do have codified custody factors. Moreover, last month, the MSBA conducted a survey of the members of the Family Law Section asking the question of: “Should MD adopt a statute codifying the custody factors that must be used by Judges to determine the best interests of the child?”, to which 83.67% of the responses were Yes.

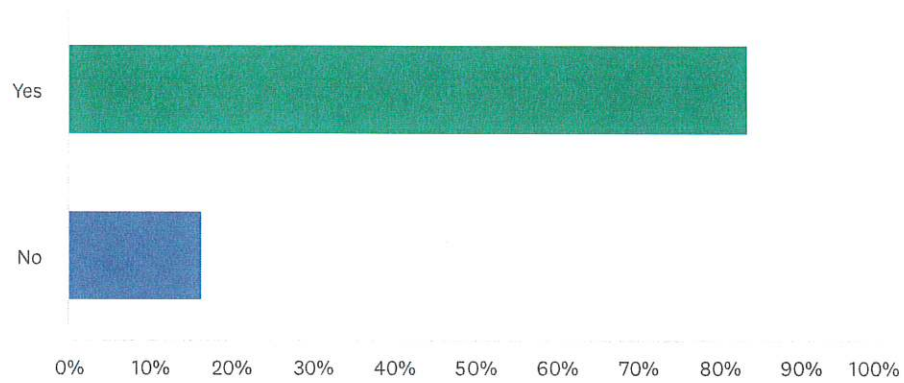
For the reason(s) stated above, the MSBA FLSC **supports Senate Bill 548 and urges a favorable committee report.**

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

Enclosure: MSBA Family Law Section Poll result Q1

Q1 Should MD adopt a statute codifying the custody factors that must be used by Judges to determine the best interests of the child?

Answered: 49 Skipped: 2



ANSWER CHOICES

Yes

No

TOTAL

RESPONSES

83.67%

16.33%

41

8

49

sb548.pdf

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Position: FAV

HON. STACY A. MAYER
CIRCUIT COURT
JUDGE
BALTIMORE COUNTY
CHAIR

HON. RICHARD SANDY
CIRCUIT COURT
JUDGE
FREDERICK COUNTY
VICE-CHAIR



KELLEY O'CONNOR
ASSISTANT STATE COURT
ADMINISTRATOR
GOVERNMENT RELATIONS
AND PUBLIC AFFAIRS
P: (410) 260-1560

SUZANNE PELZ, ESQ.
SNR. GOVT. RELATIONS AND
PUBLIC AFFAIRS OFFICER
P: (410)260-1523

MARYLAND JUDICIAL COUNCIL LEGISLATIVE COMMITTEE

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 548
Family Law – Child Custody - Determinations
DATE: January 29, 2025
(2/7)
POSITION: Support

The Maryland Judiciary supports Senate Bill 548. 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.’ To find these factors, parents must turn to appellate cases decided in 1978 and the other in 1986. *Montgomery County v. Sanders*, 38 Md. App. 406 (1978); *Taylor v. Taylor*, 306 Md. 290 (1986). Those cases are written in legalese and the factors are easier to find with an attorney, a privilege that is not an option for many litigants. In contrast, there are statutes setting forth factors for the division of marital property and the establishment of alimony. Md. Code, Family Law Art., §§ 8-205 & 11-106.

The factors in *Montgomery County v. Sanders* and *Taylor v. Taylor* are also dated and focus on the need of parents rather than their children. Families have evolved since those cases were decided 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 listed 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 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. It would also increase transparency of custody determinations and be especially meaningful for the overwhelming number of litigants who are unable to afford an attorney. Maryland would also no longer be among the minority of states that do not have statutory best interest of the child factors.

cc. Hon. Mary-Dulany James
Judicial Council
Legislative Committee
Kelley O'Connor

¹ The commission was comprised of over 125 stakeholders including parents, mental health providers, advocates for survivors of intimate partner violence, disability rights advocates, judges, attorneys, and members of the General Assembly. Its 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>.