

BCAC_FAV_SB594

Uploaded by: lombardi, joyce

Position: FAV

Senate Bill 594- SUPPORT

Child Custody and Visitation - Abuse or Neglect of Child

Testimony of Joyce Lombardi, Esq., Director of Government Relations and Legal Services,

Baltimore Child Abuse Center

February 18, 2020

Baltimore Child Abuse Center (BCAC) supports Senate Bill 594. This bill would require a family law judge in a custody matter to state the reason for her/his finding that there is no likelihood of further child abuse or neglect by the party. Current law does not require the court to state the reason for its finding. The bill also amends current law to provide that a court may approve a supervised visitation arrangement, with neutral and physically present supervision. Under current law, supervised visitation can be with family members of one party or another. This situation can be ripe for continued conflict for the child and for the protective parent who is left to negotiate with sometime hostile family members.

As Maryland's oldest accredited children's advocacy center, BCAC provides trauma-informed services with a multidisciplinary team approach that includes law enforcement, forensic interviewers, social service workers, prosecutors, family advocates, and medical and mental health providers. Since its inception over 30 years ago, BCAC has provided services to over 40,000 children and their families, most of them children reporting that they have been victims of child sexual abuse. BCAC has also trained thousands of professionals who work with youth on how to prevent, identify and report child abuse.

As director of BCAC's legal department, I have witnessed the interplay of child abuse allegations and custody disputes, and have referred several of our clients and their families to lawyers who are skilled in this area. I am also honored to serve on Governor Hogan's Workgroup to Study Child Custody Court Proceedings Involving Child Abuse or Domestic Violence Allegations, which has studied systematic and statewide evidence of a troublesome trend showing that children and the protective parent are not seen as credible when reporting abuse because the family is in a custody proceeding.

There is a pervasive myth that a child's allegations of abuse, especially sexual abuse, during a contested custody matter is likely to be fabricated. Research shows, however, that children very rarely fabricate child sex abuse, as low as 2 percent of all cases. Some estimates are higher, but never as much as lay people and some family law court personnel believe.

One of the goals of a children's advocacy center is to perform a highly skilled narrative interview in a neutral, child-friendly setting that elicits a neutral narrative response of what if anything happened, in a child's own words. A skilled forensic interview is key for investigating bodies such as CPS or law enforcement to assess allegations. Yet custody disputes are often decided on far less detail or credible evidence, very little of it emanating from the child himself from a trauma-informed skilled forensic approach. Requiring a judge to detail exactly what evidence she used to determine "no likelihood of further abuse" – something very difficult even for a trained trauma expert to assess -- could help courts and parties assess the quality of evidence presented and counter persistent bias of "fabrication" in custody disputes.

We urge a favorable report on SB594.

MSBAFamilyLawSection_FAV_SB594

Uploaded by: Renart, Dan

Position: FAV

To: Members of The Senate Judicial Proceedings Committee

From: Family & Juvenile Law Section Council (FJLSC)
by Ilene Glickman, Esquire and Daniel Renart, Esquire

Date: February 18, 2020

Subject: **Senate Bill 594:**
Child Custody and Visitation – Abuse or Neglect of Child

Position: **SUPPORT WITH AMENDMENTS**

The Maryland State Bar Association (MSBA) FJLSC **supports with amendments Senate Bill 594 – Child Custody and Visitation – Abuse or Neglect of Child.**

This testimony is submitted on behalf of the Family and Juvenile Law Section Council (“FJLSC”) of the Maryland State Bar Association (“MSBA”). The FJLSC is the formal representative of the Family and Juvenile Law Section of the MSBA, which promotes the objectives of the MSBA by improving the administration of justice in the field of family and juvenile law and, at the same time, tries to bring together the members of the MSBA who are concerned with family and juvenile laws and in reforms and improvements in such laws through legislation or otherwise. The FJLSC 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.

SB 594 B addresses whether or not visitation should be granted to a parent who has been found to have abused or neglected his or her child. Once abuse or neglect has been found, visitation shall be denied unless the court also finds that there is no likelihood of further abuse or neglect, except that supervised visitation may be ordered. The bill creates a new requirement for the court to state the reasons for a finding that there is no likelihood of further abuse or neglect, after such abuse or neglect is established. This new requirement is sound and reasonable because it promotes consistency in rulings, and creates a concise record upon which a visitation order can be analyzed on appeal. It prevents the abuser parent from alleging that the denial of unsupervised visitation is arbitrary or capricious.

However, the bill should be amended to remove the additional requirement that supervised visitation, if ordered, must be facilitated by “neutral and physically present supervision.” Many parties agree to utilize a supervisor who is a family member or friend. The requirement that the supervisor be “neutral” necessarily leads to supervision at visitation center (many of which are considered to be sterile environments that are not comfortable for children), or results in high fees paid to private supervisors. In many cases cost is a factor, and in others the parents seek to have supervised visits occur in places that would be comfortable for the children, including but not limited to homes, restaurants, movie theaters, etc. The selection of an appropriate supervisor is incredibly fact specific and often requires creativity on the part of litigants, attorneys and Judges/Magistrates. The proposed language contracts the pool of potential supervisors in every case. The current bill should be amended to remove the language that limits the number of people who can serve as supervisors.

For the reason(s) stated above, the MSBA **supports Senate Bill 594 and urges a favorable with amendments committee report.**

Should you have any questions, please contact Ilene Glickman by e-mail at ilene@lawhj.com or by telephone at (410) 821-8718.

MCASA_FWA_SB594

Uploaded by: JORDAN, LISAE

Position: FWA



Working to end sexual violence in Maryland

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Testimony Supporting Senate Bill 594 with Amendments
Lisae C. Jordan, Executive Director & Counsel
February 18, 2020

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) which provides direct legal services for survivors across Maryland. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 594 with Amendments.

Senate Bill 594 – Custody and Visitation – Protection for Abused and Neglected Children

This bill helps enforce and illuminate court decisions in custody and visitation proceedings after a finding of abuse or neglect of the child. Current law requires that courts evaluate the likelihood of whether abuse or neglect will reoccur and that unsupervised contact between the child and abusive or neglectful parent be denied unless there is no likelihood of further abuse or neglect. Supervised visitation is permitted with specified protections.

Unfortunately, these provisions are not always adhered to and, when they are, it can be difficult to determine the court's reasoning. This frustrates the purpose of the law and hampers appropriate appeals. SB594 would require courts to state the reasons for any finding that there is no likelihood of further abuse or neglect. MCASA believes this is a small but important improvement to some of the most difficult and contentious family law cases, including those involving child sexual abuse.

A second provision in SB594 would clarify that any supervisor of visitation be "neutral and physically present". We appreciate the desire for objective supervisors. The parents of abusers or other family members are too often chosen as supervisors and lack appreciation for the seriousness of sexual abuse, particularly when it involves boundary violations or grooming short of penetration. However, a blanket ban on supervisors who are connected to the family is impractical and could have unintended consequences. It is also unclear how the requirement of being physically present would be implemented (for example, would this permit or prohibit supervisors from leaving the room to use a restroom?). MCASA respectfully suggests that this language in the bill be replaced with a requirement that the court include any necessary details of supervision in its order.

**The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to
report favorably on Senate Bill 594 with Amendments**

House of Ruth_FAV_SB594

Uploaded by: Lennig, Dorothy

Position: FWA



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TESTIMONY IN SUPPORT WITH AMENDMENTS OF SENATE BILL 594

February 18, 2020

DOROTHY J. LENNIG, LEGAL CLINIC DIRECTOR

The House of Ruth Maryland is a non-profit organization providing shelter, counseling, and legal services to victims of domestic violence throughout the State of Maryland. Senate Bill 594 would require a court to articulate its finding that there is no likelihood of further child abuse or neglect by a party in a custody or visitation proceeding where the court has reasonable grounds to believe that a child has been abused or neglected by a party and the court is ordering that the child visit with that parent. **We urge the Senate Judicial Proceedings Committee to amend and report favorably report on Senate Bill 594.**

Under current law, in a custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected, it must determine whether abuse or neglect is likely to occur if custody or visitation is granted to that parent. Unless the court finds that there is no likelihood of further abuse or neglect, the court must deny custody or visitation. SB 594 would require the court to specifically state on the record the reasons for finding that there is no likelihood of further child abuse or neglect before ordering supervised visitation with the parent. SB 594 would provide further protections to children who have already been found to be abused or neglected.

SB 594 also amends the current statute to require “neutral and physically present supervision.” In addition to being vague and likely to cause confusion, this language creates a one-size-fits-all method of addressing visitation in situations involving likely future abuse or neglect. Courts should continue to have discretion to structure visitation in a way that best meets the needs of the children and the family in each individual case. House Ruth urges that SB 594 be amended to remove this language.

The House of Ruth urges the Senate Judicial Proceedings Committee to amend and report favorably on Senate Bill 594.

Laure Ruth WLC_FWA_SB594

Uploaded by: Ruth, Laure

Position: FWA

BILL NO: Senate Bill 594
TITLE: Child Custody and Visitation - Abuse or Neglect of Child
COMMITTEE: Judicial Proceedings
HEARING DATE: February 18, 2020
POSITION: **SUPPORT WITH AMENDMENTS**

Senate Bill 594 would alter Section 9-101 of the Maryland Family Law Article to require judges to articulate their findings under this Section. The Women's Law Center supports Senate Bill 594 as we find that courts often fail to address safety issues and possibility of re-abuse of a child as they are required to do. Requiring a court to articulate its reasons for its findings is simply making clear that this section of our code applies in every case where child abuse or neglect is alleged.

The Women's Law Center sits on a workgroup constituted under SB 567 by this body in 2019. We have met many times since the summer of 2019, and had numerous presentations on research about domestic violence and child abuse, personal stories, and the workings of our Courts when such is alleged. While SB 594 is not a product of that workgroup, it is largely informed by what we have learned during this past $\frac{3}{4}$ of a year.

Under current law, Section 9-101, if a court has reasonable grounds to believe that a child has been abused or neglected, the court must decide if abuse is likely to occur if custody or visitation is granted to the party. Theoretically unless the court finds that there is *no likelihood* of further abuse or neglect by the party, it *must* deny child access to that party, except it can order supervised visitation that assures the safety and well-being of the child.

Please note the fiscal note fails to address the proposed language that would comprise the bill. SB 594 merely adds to the current law that the court shall articulate its reasoning. In other words, if the court finds that there is no likelihood that abuse or neglect will occur, it must state the reasons for this finding. In our SB 567 Workgroup, it became clear that courts fails to follow 9-101, and it is our hope that this simple requirement will remind the court of its duty, and will help litigants to understand why a court orders what it does. In our extensive work with self-represented litigants, anything that helps them understand a court's reasoning encourages faith in the judicial system, which is vitally important.

The original version of the bill would have added that the supervision must be by a neutral supervisor who must be physically present. After discussion that this is simply sometimes impracticable in certain cases, or may not be necessary, the sponsor, we understand, is amending this part out. The reality is that even in jurisdictions where there are supervised visitation centers, it is often severely restricted by time and availability, which may not be in the best interests of the child if there are other alternatives, such as caring and responsible grandparents.

Therefore, the Women's Law Center of Maryland, Inc. urges a favorable report on Senate Bill 594 with the friendly amendment.

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. The Women's Law Center operates two hotlines, Protection Order Advocacy and Representation Projects in Baltimore City, Baltimore County and Carroll County and the Multi-Ethnic Domestic Violence Project.

Lee_FAV_SB594

Uploaded by: Senator Lee, Senator Lee

Position: FWA

SUSAN C. LEE
Legislative District 16
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MAJORITY WHIP

Judicial Proceedings Committee

Joint Committee on
Cybersecurity, Information Technology,
and Biotechnology

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Maryland Legislative Asian American
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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

February 18, 2020

Senate Judicial Proceedings Committee

Senate Bill 594 – Child Custody and Visitation – Abuse or Neglect of Child

Senate Bill 594 is intended to clarify that a court is required to articulate and explain its finding that there is no likelihood of further child abuse or child neglect by a party in a custody or visitation proceeding when there is evidence that abuse and/or neglect has occurred in the past. Family Law 9-101 is often misunderstood, and the need for this bill arose because of case law that seems confounded with the text of the code that was designed to protect children from abuse.

Over the interim, through conversations started during a workgroup surrounding the larger issue of abuse and child custody, our office began to dig into this issue. This bill seeks to be a clarification of the standard created after the 1984 Shubin/Winegrad Governor's Task Force on Child Abuse and Neglect. FL 9-101 has already been clarified once to refer to the specific care required for supervised visitation, but otherwise it is the same language from the 1984 task force; the language needs further updates and clarity to best protect our child victims of abuse and neglect.

The Court of Appeals in *Baldwin v. Baynard*, 215 Md. App. 82 (2013) interpreted this section of code in combination with the court's authority under common law best interest of the child factors. However, as the sole codified section of code, specific steps must be taken by the trial court to determine custody and visitation cases when there are reasonable grounds abuse occurred, the trial courts must state their reasoning and finding of facts to make the determination that there is no likelihood of further abuse. The Court should also state if any other factors are somehow relevant to that determination, although without explaining how the

child would be protected, those other factors should be irrelevant and mute under existing code, and the clarifying legislation before you today.

Too often, the findings of fact and reasoning of the court is not articulated for the record. Delegate Dumais has worked for years with the Judiciary to try and codify all of the Best Interest of the Child factors, and require the judges to articulate their findings of fact. We find these efforts to be complimentary, but while those factors the court “may” consider – FL 9-101 *must* be considered, and we want to have the judge articulate how they considered the safety of the child. Parents and children deserve to know the reasoning as to why abuse would “not” likely occur, and what other factors were taken into account when determining custody.

We are aware of the concerns the Family Law Section of the MSBA has with the neutral and physically present supervision language. To move forward with the main purpose of the bill, which is the required articulated rationale of findings, we are willing to push the supervised visitation clarification back to the workgroup to examine more nuanced approaches to our concerns on the visitation side of this statute. There are serious concerns, but this topic is more complicated, and perhaps requires more than a mere clarification.

This is a complicated subject, but the purpose of the statute was clearly established in the 1980. Unfortunately, the Courts have failed to adequately apply the law to the facts we have been seeing, so we are here to assist their challenging role through this clarification language. Having the reasoning on record helps to make a case for an appeal and more importantly, it provides interested parties a better understands as to why a life altering decision is being made. With many pro se litigants, we should endeavor to make our law in this area as clear as possible. That clarify should highlight our top public policy goal, to protect children from abuse. SB 594, as amended, moves towards our goal, without moving the goal posts.

For these reasons, I respectfully request a favorable report on SB 594, as amended.

MDJudiciary_UNF_SB594

Uploaded by: Jones, Tyler

Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Mary Ellen Barbera
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 594
Child Custody and Visitation – Abuse or Neglect of a Child
DATE: February 5, 2020
(2/18)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 594. This bill requires a court, in a custody or visitation proceeding, to deny custody or visitation rights to a certain party under certain circumstances, unless the court states the reasons for a certain finding. This bill also alters the conditions of a certain supervised visitation arrangement that a court is authorized to approve.

It is not clear what “neutral and physically present supervision” means. The Judiciary is concerned this language would limit the court’s ability to order a supervised visitation arrangement that is in the best interest of each child. It should also be noted that not all counties have supervised visitation centers and courts often rely on appropriate family members and other individuals known to the family to supervise visits.

cc. Hon. Susan Lee
Judicial Council
Legislative Committee
Kelley O’Connor