
To: Members of The House Judiciary Committee

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

Date: February 6, 2020

Subject: **House Bill 269:**
Child Support – Shared Physical Custody

Position: **SUPPORT**

The Maryland State Bar Association (MSBA) FJLSC **supports House Bill 269 – Child Support – Shared Physical Custody.**

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.

HB269 is a reasonable, common sense solution to a dynamic within the existing child support statute known to domestic relations practitioners and Judges as the “Cliff Effect” – referring to the precipitous drop in child support that occurs once a parent reaches thirty-five percent (*i.e.* – 128 overnights) of overnights per year with the minor child at issue. Among other things, the ‘Cliff Effect’ artificially creates conflict and dispute in child access proceedings (both negotiation and litigation) because the difference in a parent having 127 versus 128 overnights with a minor child can result in a very substantial difference in the child support obligation.

Specifically, for child support purposes, Maryland Family Law Article §12-201(m) currently defines “shared physical custody” as cases in which “each parent keeps the child or children overnight for more than 35% of the year and that both parents contribute to the expenses of the child or children in addition to the payment of child support.” In shared physical custody cases,

the parents' adjusted basic child support obligation is divided between them in proportion to their respective adjusted actual incomes. Thereafter, each parent's share of the adjusted basic child support obligation is then multiplied by the percentage of time (*i.e.* – overnights) that the child spends with the other parent to determine the theoretical support obligation owed to the other parent. The parent owing the greater amount of support then owes the difference between the two theoretical support obligations as child support to the other parent.

Application of the formula typically results in an abrupt and steep drop in child support owed by the obligor, as compared to the child support owed under the child support obligation under the sole custody Guidelines. The resulting “Cliff Effect” is problematic.

First, the effect creates an unhealthy and artificial dynamic in custody/child access cases. Not infrequently, potential obligors artificially seek additional child access for the mere purpose of reaching the mythical 35% threshold in order to achieve a sharp reduction in child support. Conversely, the other parent – keenly aware of the same threshold – artificially resists any child access schedule that might approach the 35% mark. The primary focus of a custody/child access case – a schedule of access between the parents that serves the best interests of the child – becomes lost in the mix. The 128-overnight threshold becomes an artificial barrier to constructive attempts to reach a schedule that best promotes the child's welfare, and often causes cases to go into litigation over the access schedule.

Second, the “Cliff Effect” fosters the illusion that that separated parents who have a 127/238 overnight schedule with their child have dramatically different child support needs than parents who have a 128/237 overnight schedule. Due to the “Cliff Effect” in the Guidelines, the parent with 127 overnights pays significantly greater child support than the parent with 128 overnights, even though there is only a single day difference in the custodial access schedule. This result is neither fair, nor does it promote the best interests of the minor child.

HB269 solves these problems by revising the existing “shared physical custody” definition for purposes of child support. Under the proposed legislation, the shared custody adjustment would begin at 92 overnights (instead of 128), but would include further adjustments at the lower (overnights) end of shared custody arrangements to cause a “leveling-off” of child support under the operation of the Guidelines as the number of overnights increases.

Hb269's elimination of the “Cliff Effect” is long overdue. The legislation is fair and economically appropriate in that it causes a gradual reduction of child support as a parent exercises more overnights with his or her children, as opposed to the current shared custody Guidelines model which includes a precipitous drop in child support for parents who exercise 128 as opposed to 127 overnights.

Furthermore, the passage of this legislation will eliminate the ‘bright-line’ 128-overnight threshold that currently becomes a focus in many disputed child custody cases. By adopting a leveling-off approach to child support as a parent exercises more time with his or her child – as

opposed to the current 128-overnight “Cliff Effect” – divorced or separated parents are more likely to focus on creating schedules of physical custody that are optimal for their children, as opposed to artificially focusing on a 128-overnight threshold. This will be a very positive outcome for children throughout Maryland.

For the reason(s) stated above, the MSBA **supports House Bill 269 and urges a favorable 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.