
BILL NO.: House Bill 1114
TITLE: Family Law – Best Interest of the Child – Factors
COMMITTEE: Judiciary
DATE: February 27, 2020
POSITION: SUPPORT WITH AMENDMENTS

House Bill 1114 and House Bill 1328 each would provide a statutory framework of the factors that courts use in deciding custody cases in Maryland. The Women's Law Center supports both bills in their efforts to codify existing Maryland case law regarding custody determinations and continues to rely on the best interest of the child standard. We prefer HB 1328 to HB 1114 but this body chooses HB 1114, we urge amendments.

The advantage to HB 1328 is that it also updates language about parent/child relationships in a way that better signifies these relationships today. In addition, it has revised language from prior years' efforts to codify custody law to reflect language that has been adopted by the Judiciary in its now mandatory parenting plans. This would create a clear-cut framework for litigants.

Currently, there is no statute that sets out the factors a court must consider in making a custody determination. While cases decided over years in Maryland have established general guidelines for judges, including that the overarching guideline in determining child custody should be the best interests of the child, no current statute clearly articulates all factors to be considered. Judges, lawyers and litigants must interpret case law, and litigants especially do not have the benefit of a legislative description of the factors to be considered. This is particularly problematic for litigants who are not represented and are hampered in their ability to appropriately present their case for custody (child access) and/or visitation without clear and accessible factors the court will consider. In some jurisdictions, more than 80% of custody cases have one or both parties unrepresented by an attorney. Incorporating factors that have been developed by Maryland courts in case law into statutory provisions and carefully outlining the mandatory and non-mandatory factors which a court must consider, as well as factors a court may not consider, is a good idea.

By focusing always on the impact of custodial arrangements on the children involved in a case, HB 1114 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. It can be damaging and dangerous in inappropriate situations, such as where there is domestic violence or child abuse. We believe that is what some of the language in HB 1114 is seeking to address (see e.g. page 3, lines 12-14, 18-19), but we prefer the framework and language of HB 1328.

For these reasons, the Women's Law Center urges a favorable report on HB 1114 with amendments.

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.