
To: Members of The Senate Judicial Proceedings Committee

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

Date: March 9, 2021

Subject: **Senate Bill 775:**
Family Law – Child Custody and Visitation – Abuse

Position: **OPPOSE**

The Maryland State Bar Association (“MSBA”) Family and Juvenile Law Section (“FJLSC”) opposes Senate Bill 775 - Family Law - Child Custody and Visitation - Abuse.

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.

The FJLSC appreciates recommendations that safeguard the physical and mental well-being of a minor child that has been the victim of abuse and/or neglect and adamantly opposes the abuse of any child. Maryland Judges, when considering child custody, are required to determine the best interest of the child based on factors laid out in *Montgomery County v. Sanders* 38 Md. App. 406, which in short include, but are not limited to the following:

- (1) The fitness of the parents;
- (2) The character and reputation of the parties;
- (3) The requests of each parent and the sincerity of the requests;
- (4) Any agreements between the parties;
- (5) Willingness of the parents to share custody;
- (6) Each parent’s ability to maintain the child’s relationships with the other parent, siblings, relatives, and any other person who may psychologically affect the child’s best interest;
- (7) The age and number of children each parent has in the household;

- (8) The preference of the child, when the child is of sufficient age and capacity to form a rational judgment;
- (9) The capacity of the parents to communicate and to reach shared decisions affecting the child's welfare;
- (10) The age, health, and sex of the child;
- (11) The relationship established between the child and each parents.

Additionally, pursuant to Family Law Article Section 9-101, “where the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party. Unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court shall deny custody or visitation rights to that party, except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.”

While the FJLSC recognizes that the proposed language, specifically the conditions, provided in section two (c) (2) of SB 775 are intended to protect the physical and mental well-being of minor children, the requirement that a court (“shall” line 12, page 2) impose certain conditions is viewed as limiting the discretion of the Court in determining what is ultimately in the best interest of children. Cases involving abuse and neglect allegations are not always black and white and all custody matters require the court to take into consideration the specific facts of a case, the requirements of Family Law Article Section 9-101, as well as the factors set forth in *Montgomery County v. Sanders* as enumerated above. The Court is currently provided with the ability to implement certain conditions or even deny visitation if there are reasonable grounds to believe abuse or neglect has occurred to a minor child.

The FJLSC is also concerned with the entirety of the proposed language set forth in Section D of SB 775, and more specifically with the following starting in line 3, page 3: “[t]here is a rebuttable presumption that it is not in the best interest of a child for a court to grant sole or joint legal or physical custody to a party who has committed abuse against the other parent of the party’s child, the party’s spouse, or any child residing within the party’s household.” Maryland Law does not currently provide for a rebuttable presumption as stated herein. The FJLSC is concerned that establishing a rebuttable presumption as to the best interest of a minor child in any circumstances, not simply relating to abuse, is contrary to the long-standing tradition of our Court having broad discretion to make tailored decisions in the best interest of each child based on the specific facts and circumstances of each case.

Please note that if the proposed conditions set forth in section (c)(2) of SB 775 were modified and amended to reflect a non-exclusive list of recommendations, and if the word “shall” were removed from line 12, page 2 and replaced with the word “may”, the FJLSC may be in a position to support the proposed changes to section (c)(2).



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For those reasons stated above, FJLSC opposes Senate Bill 775 and asks the committee to issue an unfavorable report.

Should you have any questions, please contact Samantha P. Rodier, Esquire and/or Krystle Acevedo Howard, Esquire at rodierfamilylaw@gmail.com or by telephone at 410-803-1839 OR Michelle Smith, Esquire by e-mail at msmith@lawannapolis.com OR by telephone (410) 280-1700.