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**To:** Members of The Senate Judicial Proceedings Committee

**From:** Family & Juvenile Law Section Council (FJLSC)  
by Eleni vanRoden Bickley, Esquire

**Date:** January 26, 2021

**Subject:** **Senate Bill 57:**  
Family Law – Child Custody and Visitation

**Position:** **OPPOSE**

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The Maryland State Bar Association (MSBA) FJLSC **opposes Senate Bill 57 – Family Law- Child Custody and Visitation.**

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 acknowledges that the issue of abuse in custody and visitation matters is often not adequately addressed and supports efforts to improve the way in which the issue is handled by the Courts. However, the FJLSC has the following concerns regarding Family Law Section 9-101 and the changes proposed by this bill:

1. 9-101 is, as it stands, is often not applied. The Section is concerned that further expanding the requirements will result in less, not more application.
2. A “one size fits all” approach to abuse is too limiting and will often result in an outcome that is contrary to the best interests of the family/children at issue.
3. The FJLSC believes that rather than providing two options – denial of visitation or supervised visitation, Judges should be given more discretion to fashion a custody and/or visitation arrangement that meets the best interests of the children at issue in light of the unique facts and circumstances of that case. The FJLSC would support an

amendment providing for such and further requiring the Judge acknowledge the abuse issue and to state how the arrangement assures that the custody and visitation ordered assures the safety and well-being of the child.

Under current law in Family Law Section 9-105, the Court determines whether a party has unjustifiably denied or interfered with visitation granted in a custody or visitation order, and may take remedies available in a matter consistent with the best interests of the minor child, including rescheduling of missed visitation time, modifying the custody or visitation order to require additional terms, or assess costs to the breaching party. SB 57 proposes to add that any reasonable effort to protect a child or a party from the other party may not be considered an unjustifiable denial or interference. The FJLSC opposes this provision. The Section is concerned that this provision will regularly result in the withholding of children and will, in too many families, disrupt the stability and predictability (and all of the benefits thereof) that the court ordered custody and visitation order is designed to provide. The FSLC strongly advocates for the protection of children from abuse and believe that there are already several avenues available means for a concerned parent to protect a child from abuse. These include: (1) The Domestic Violence Statutes; or (2) a Request For Emergency Hearing. As a result the potential benefits of this proposed modification are outweighed by the risks of its abuse.

There is not currently a Family Law Section 9-109. The addition of the custody factors has been proposed in the Maryland General Assembly annually since 2008, as well as bills mandating a presumption of custody. The FJLSC supports codifying the factors to be considered by the Court in rendering custody and visitation decisions. However the Section raises the following concerns regarding those proposed in this bill:

The FLJSC believes that the factors to be codified should be those that came from the work of the Commission On Custody Decision-Making in Maryland, which involved more than 200 people including private attorneys, citizen groups, the Judiciary, mental health professionals, Clerks of the Court, domestic violence advocates and others. HB505 contains the factors that came from the work of the Commission.

The FJLSC supports codifying the factors to be considered by the Court in rendering custody and visitation decisions. However, the Section opposes the inclusion of factors in a statute that is applicable only to cases in which abuse is present. The factors should be the same in all custody and visitation cases. Therefore, the factors should be removed from this bill and included elsewhere.

The FJLSC urges the Senate Judicial Proceedings, for the reasons stated above, to issue an unfavorable report on SB 57.

Should you have any questions, please contact Eleni v. Bickley, Esquire by e-mail at [eleni@vanrodenlaw.com](mailto:eleni@vanrodenlaw.com) or by telephone at (410) 838-9060.