

Sb 57 MBC Test Final.pdf

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Position: FAV

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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

January 26, 2021

The Senate Judicial Proceedings Committee
SB 57 Family Law – Child Custody and Visitation
Statement of Support by Senator Mary Beth Carozza

Thank you Chairman Smith, Jr., Vice Chair Waldstreicher, and members of the Judicial Proceedings Committee for the opportunity to respectfully ask for your support of Senate Bill 57 Family Law – Child Custody and Visitation, which will require a court, in a custody or visitation proceeding, to deny custody or visitation rights to a certain party if the court has reasonable ground to believe that a child has been abused or neglected by the party unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party and states the reasons for the finding.

I became aware of the need for legislation on this matter by serving on the Workgroup to Study Child Custody Court Proceedings Involving Child Abuse or Domestic Violence Allegations. The Workgroup was tasked with studying State child custody processes for when child abuse or domestic violence allegations are made during court proceedings; studying available science and best practices pertaining to children in traumatic situations, including trauma-informed decision making; and making recommendations about how State courts could incorporate in court proceedings the latest science regarding the safety and well-being of children and other victims of domestic violence. Our workgroup made up of experts and advocates with experience with child custody cases involving abuse, adopted over 20 recommendations focused on better protecting children through these custody court proceedings and putting the best interest of the child first in these cases.

In current law, Maryland courts resolve child custody disputes based on a determination of “what is in the child’s best interests.” However, the factors to be considered by a court in making such a determination are not specified in statute but have instead been developed through Senate Bill 57.

This bill will address the gap in existing law, ultimately, resulting in better protection for the safety and well-being of children, many of who experience trauma, going through child custody court proceedings involving child abuse and domestic violence.

I urge you, Mr. Chair and members of the Judicial Proceedings Committee, to move favorably on Senate Bill 57. Thank you for your kind consideration.

Bill SB0057 - McLeodTestimony.pdf

Uploaded by: McLeod, Hera

Position: FAV

My name is Hera McLeod. I am writing in support of Senate Bill 57 (Family Law – Child Custody and Visitation). A little over a year ago, I gave my verbal testimony to the working group on Child Custody Reform. I told them about my son Prince who was murdered in 2012, at only 15-months old, after a judge granted his father unsupervised visitation access.

I am supportive of this bill because I think that this type of reform can save children like my son. Specifically, when determining the best interest of the child, the court shall consider each part is able to ensure the physical safety of that child. In that consideration, it is important to factor in evidence of domestic violence, child abuse, or child neglect.

In the fifteen months that I fought in the Montgomery County, MD family court to protect my son, I brought documentation and oral testimony from several people (including police officers, former romantic partners, and the grandparent of my ex's older child). These witnesses testified to numerous occasions where my son's father had both physically and emotionally abused the women and children in his life. In addition to this chilling testimony, a Virginia police officer crossed state lines to testify that my son's father was the sole suspect in two previous murders, one being the mother of his older son.

My son died because the law didn't consider evidence related to domestic violence and child abuse in his father's past. While you might look at my case and assume that it is an outlier because my toddler ended up being brutally suffocated by his father, I would argue that there are many cases that damage children where overwhelming evidence from a parent's previous behavior isn't considered.

Right before the judge sentenced my son to death, he told me that my son would need to come home with cigarette burns or some other horrible physical sign of abuse for the court to issue supervised visitation. On October 21, 2012, my son came home to me in a body bag. Please consider passing this bill so that the children who come next won't have to suffer the same fate as my son.

Sincerely,

Hera A. McLeod

Maryland Senate Bill 57 custody best interest fact

Uploaded by: Saunders, Daniel

Position: FAV



SCHOOL OF SOCIAL WORK

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Date: January 22, 2021

To: Maryland Senate Judicial Proceedings Committee

From: Daniel G. Saunders, Ph.D., Professor Emeritus

Re: Maryland Senate Bill 57: Child Custody and Visitation – Factors for Determining Allocation of Decision-Making and Parenting Time

Chairman Smith, Vice-Chair Waldstreicher, and Members of the Committee, I am grateful for this opportunity to voice my support for Senate Bill 57 and provide some comments.

I am Professor Emeritus at the University of Michigan's School of Social Work. In October 2019, I had the honor of providing detailed in-person and written testimony to your "Workgroup to Study Child Custody Court Proceedings Involving Child Abuse or Domestic Violence Allegations" (written testimony at http://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnChdAbuseDomViol/Testimony_by_Daniel_Saunders.pdf; video testimony at <http://mgahouse.maryland.gov/mga/play/ec54a59f-cbd7-4a4a-95ed-dd4010b6381d/?catalog/03e481c7-8a42-4438-a7da-93ff74bdaa4c&autostart=true>)

The implementation of your Workgroup's recommendations will significantly improve the lives of Maryland's families by increasing the safety and well-being of survivors of domestic abuse and their children. This bill flows directly from the Workgroup's recommendations.

The proposed bill has significant strengths. Commendable is the focus on evidence of abuse of the parents. This focus is illustrated in the following statement: "In a custody or visitation proceeding, the court shall consider, when deciding custody or visitation issues, evidence of abuse by a party against (1) the other parent of the party's child; (2) the party's spouse." Children will not be safe unless the parents are safe. Research consistently finds that children are at risk of physical and emotional harm when domestic abuse occurs, even after parental separation (Devaney, 2015).

Also commendable is the statement that joint custody is not presumed. Most scholars who study custody decisions agree that decisions about the children's best interests need to be individualized (Pruett & DiFonzo, 2014). Evaluators need to thoroughly assess the potential impact of many factors when determining the best interests of children.

Our research (Saunders et al., 2011) shows that many custody evaluators overestimate the extent to which parents are making false claims of child abuse. Such bias is related to the belief that abuse claims are meant to alienate the children from the other parent. Therefore, Bill 57

includes important provisions, specifically that: “a report of child abuse or domestic violence may not be considered unfavorably against the reporting party” and “any reasonable effort to protect a child or a party to a custody or visitation order from the other party may not be deemed as unjustifiable denials or interferences with visitation granted by a custody or visitation order.”

As shown in two studies on the impact of state statutes (Saunders, 2017; Morrill et al., 2005), best interest factors that require a parent to facilitate a positive relationship between the children and the other parent are associated with joint custody arrangements with an abusive parent. Thus, two provisions of this bill are essential: a) extra weight being given to the physical and psychological safety of the child; and b) “if a case involves domestic violence or child abuse, the court shall exclude any factors listed in subsections (e) and (f) of this section that promote the willingness of a party to facilitate contact between the child or the party with the other party.”

In line with the Workgroup recommendations, the Committee might consider more specific provisions for supervised visits. The Workgroup Final Report states that “**statutory law should be expanded to provide specific examples of the types of permissible custody or visitation arrangements that would best protect victims of domestic violence.** For example, following a finding that a party has engaged in domestic violence, Wisconsin courts are statutorily required to impose one or more of the following conditions, as appropriate: “(1) mandating that the exchange of a child take place in a protected setting or requiring supervised exchanges or visitation in the presence of an appropriate third party who agrees to assume responsibility assigned by the court and to be accountable to the court; (2) requiring the abusive parent to pay the costs of supervised visitation; (3) requiring the abusive parent to attend and complete an appropriate abuser intervention program as a condition of exercising visitation; (4) requiring the abusive parent to abstain from alcohol or other controlled substances during visitations and for a period of time prior to each visitation; (5) prohibiting an abusive parent from having overnight visitations; (6) requiring the abusive parent to post a bond for the return and safety of the child; or (7) any other condition that the court determines is necessary for the safety and well-being of the child or the safety of the victim parent.” NCJFCJ has also recognized the importance of such measures in domestic violence cases by noting that visitation should *only* be awarded if a judge finds that adequate provisions for the safety of the child and the abused parent can be made.”

The type of abuse should also be taken into account when determining visitation arrangements, as recommended by the Workgroup: “**supervised visitation arrangements that fall under § 9-101 must take into account whether the case involves neglect or child abuse (including separate considerations, as appropriate, depending on whether the abuse was emotional, physical, or sexual)**”. In cases with the highest risk to children and parents, supervision by a para-professional or professional is needed at a specialized agency. The international organization, Supervised Visitation Network, has standards and training for such agencies <https://www.svnworldwide.org/becoming-a-professional-sv-provider> .

I have a concern about statements on the need for finding “that there is no likelihood of further child abuse or neglect . . . “. Mental health professionals and judges cannot conclude that

there is no future risk of abuse. There is always some risk, even if the risk is extremely low. “Minimal risk” is a term that might fit instead.

Thank you for the opportunity to provide comments on important legislation to help protect Maryland’s citizens from harm.

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MD Bill SB 57_Cust and Visitation_Shaw Jan 2021.pd

Uploaded by: Shaw, Jen

Position: FAV

SB 57: Family Law: Child Custody and Visitation

Sponsor: Senator Susan Lee

Testimony submitted by Dr. Jennifer Shaw

Founding Partner, Gil Institute for Trauma Recovery and Education

Non legislative Member: Maryland Workgroup to Study Child Custody Court Proceedings Involving Child Abuse or Domestic Violence Allegations

Thank you for this opportunity to share a child-centered perspective before voting on SB 57. I am Dr. Jennifer Shaw, a Founding Partner at Gil Institute for Trauma Recovery and Education. Along with my founding partners, Dr. Eliana Gil and Myriam Goldin, LCSW, we co-created a group of providers passionately committed to providing research- and trauma-informed assessment and therapy to children who have been neglected or abused, including sexual abuse in early childhood. We know how to help children begin to heal from what is too often a life-altering brain injury, including joining and guiding their protective parent(s) and families in that effort.

It is imperative that all stakeholders in a position to change the trajectory of a child's life understand that child abuse and neglect is a traumatic injury. An injury that can impact physical, neurological, emotional, relational, and cognitive functioning. For traumatized children, typical neurodevelopment can be derailed in the absence of intervention and evidence-informed rehabilitation.

Whether that injury is a temporary disruption of development or a wound that neuroscience confirms will persist throughout the lifespan depends on what we do as soon as the wound is discovered. In cases of custody, separation from an abusive parent often follows such a discovery. This places a life-altering decision in the hands of courts. When that court defers to a custody evaluator, an injured child's rehabilitation needs must be the priority of anyone tasked with determining the environment best suited to meet those needs. While the implications of this bill are complex, the request of you is simply to ensure that this determination only be made by a professional with sufficient training to identify the complex implications on a child's brain when harm done is ignored and warning signs for further harm are not heeded.

On behalf of all those dedicated to both the protection and restoration of children (social workers, child advocates, protective parents, forensic interviewers, teachers and counselors, and child therapists), I ask you to consider a traumatized child cannot recover until her home proves to be a space of physical and psychological safety. We ask you to accept the science: children cannot begin to heal until they are safe, feel safe consistently, and custodial decision-making is based on a parent's capacity to prioritize research-informed recovery needs. We cannot begin our work when a child's right to safety is postponed, or considered secondary to an adult's right to parent, or deemed debatable as they wait for a final custody determination.

For providers and court advocates, our most important job is to put adult words to the suffering of children, including making recommendations so that their adult stewards prioritize them above all else. Some children are too young to know the words, others have learned their words will not make a

difference, and others may just reserve them for when the world proves that their safety is actually the priority. We serve as trained translators for children; today we ask that all custody evaluators be asked to learn the same language before offering a recommendation for custody and visitation in cases involving an abuse allegation.

When a custody evaluation is ordered in cases involving allegations of child abuse, child neglect, or child's exposure to domestic violence, this bill proposes that such evaluations be focused on what children need most: not the perfect parent, or the one with more financial resources, or the one most equipped to articulate their case for custody in a courtroom. Advocates for traumatized children ask that the primary objective of a custody evaluation be to determine which caregiver has consistently demonstrated the greatest capacity to create a safe, secure, and predictable home. That the process prioritizes ascertaining which home environment is most conducive for emotional and psychological rehabilitation, and one that can be reasonably predicted to do no further harm and can invite an injured brain to resume typical development.

Whether or not a child heals depends much less on the approach of a therapist or the resiliency of a child but much more on what people in their world do in response to what happened.

We all know children are incredibly resilient. However, we cannot rely on a capacity for resilience as justification for a passive response to an active threat to that very capacity. A developing brain either explores or retreats; thrives or survives; attaches to a healthy ally or learns the risk of harm or rejection is just too great. It can grow in the direction of tomorrow or first wait to see if tomorrow is a safe place to be. They are resilient but creating conditions to activate that resilience is our responsibility. In most cases, children survive abuse but let us give injured children a chance to consider that their present circumstance is temporary, and the future is not determined by what has happened but rather how the world responded when it did.

Today, you are hearing all the reasons why this bill is so important. I ask you to consider the impact of failing to recognize that importance. I offer an adult voice to just one of many little voices that would have resulted in a child-centered and trauma-informed decision if it had been heard expressed in a courtroom before determining custody and visitation.

This is a story about a child we will call Liam: Until a custody evaluator's report to the court could be finalized, and the protective parent could borrow enough money to pay her share of the unaffordable report, 5-year-old Liam was ordered to continue his Wednesday evenings and every other weekend visit with his father. Liam had done what we tell children to do, to tell a trusted adult if hurt or touched inappropriately. He trusted his mother most of all. Liam told his mom, his teacher, started touching his Pre-K classmates, and asked his therapist to play the penis game. A motion to deny visitation was to be considered at a future date as Liam's mother was told she had to continue dropping him off even when he screamed and hid when it was time to go. He was interviewed once by a stranger and refused to speak. Liam had already told the stories and the forensic interviewer was well-qualified but had no relationship with him.

We seem to forget we do not tell children to wait for a forensic interview with a stranger before saying they have been harmed. We don't tell them to stop sharing with us because we could be accused of coaching. We don't stop a disclosure of sexual abuse and tell them to wait until they visit an expert stranger.

Telling his trusted adult, the protective parent, was considered an unfounded allegation because it was not repeated on camera and was first disclosed to his primary caregiver, his mother. From then on, with help from his attorney, Liam's abuser argued he was a victim of parental alienation. The protective parent did seek to alienate her child, as we all would if our child disclosed repeated sexual abuse while displaying all signs and symptoms consistent with that disclosure. Failing to protect does include failing to alienate children from an abuser. All subsequent court hearings centered on Liam's mother attempting to prove she was not the one who harmed her son. The court-ordered evaluator had no training in child development or child abuse, including what would have made all the difference for Liam – understanding the neuroscience behind recognizing signs of symptoms of sexual abuse in young children. The evaluator did not talk with his daycare provider, teacher, or his therapist. The person with the most information about Liam's change in behavior and functioning was his mother. Yet her data was considered an opinion just as credible and valid as the abuser's self-report denial without appropriate evaluation to support that denial.

Liam's father was wealthy; he hired a team of attorneys. He paid travel expenses for experts who testified on his father's behalf, including one who argued a 5-year-old believed in Santa Claus and the tooth fairy so we can't expect him to tell the difference between truth and fantasy. His mother drained her 401K and sold her home. Now traumatized and feeling powerless herself, she was less and less equipped to fight for Liam. Each hearing, whether continued or not, cost her up to \$5K. She stopped submitting motions because she had no money to do so. As court limited the abuser's time, and court hearings were continued for one reason or another, Liam continued to travel from a place of safety to a place of danger every week. As Liam and his mother waited for a fair and child-centered hearing, Liam's father showed him his gun collection and told that his mother and his therapist would be killed if he continued to talk. As his father grew emboldened by successful attempts to discredit his mother, Liam lost control of his bladder, clung to his mother, started hitting other children, had chronic headaches and stomachaches, stopped learning in school, and nightmares interrupted his sleep. The only thing that helped him sleep was a trained guard dog who slept next to him every night.

The court ordered child therapy once a week for 45 minutes as if Liam could heal when his injury was ignored or reopened in between his sessions. If any of us were assaulted and informed the police, I doubt we could function if we were then ordered to have dinner with the assailant on Wednesdays and trust him not to do it again every other weekend, at least until our case could be heard in court next year. No one would pick us up and force us out of the car until the accused had a fair hearing. We would not survive psychologically, and we have adult brain capacity.

Whether or not a child heals does not depend on the type of therapy he receives; rehabilitation depends on how the world responds once the visible or invisible wound is discovered. In short, this bill is part of a comprehensive but common-sense effort to ensure no child citizen's right to safety is postponed and no protective parent needs to buy a guard dog, find a pro-bono attorney and pro-bono therapist, or is asked

to choose between handing her injured child to an abuser, or be threatened with contempt of court for refusing to do so. Liam was not safe until he was 8 years old, only after physical evidence was considered sufficient for the court to stop requiring Liam to have dinner with his abuser on Wednesdays and trust him every other weekend. This was a full three years after he first showed his mom and his therapist how to play the penis game. Three years of a missed opportunity to treat a life-altering brain injury that could not begin to heal until safety was consistently established, preventable if SB 57 and SB 355 had been in effect for Liam and his protective parent.

OPD Position On Proposed Legislation SB 57.pdf

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Position: FAV



POSITION ON PROPOSED LEGISLATION

BILL: SB57 – FAMILY LAW -- CHILD CUSTODY AND VISITATION

POSITION: SUPPORT

DATE: January 22, 2021

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on Senate Bill 57.

This bill seeks to protect a child who is the subject of a visitation or custody battle between two parents or a parent and a third party. This bill requires a court presiding over a custody or visitation proceeding to deny a party to the proceeding custody or unsupervised visitation with a child if that child was abused or neglected unless the court makes a specific finding and states with specificity the reasons for finding that there is no likelihood of further child abuse or neglect by the party. The court may approve supervised visits which specifically takes into account the type of abuse or neglect and assures the safety of the child. This bill applies to private custody or visitation disputes and specifically excludes Children In Need of Assistance cases.

The Office of the Public Defender SUPPORTS this bill for the following reasons:

- (1) Expressly providing that this statute is inapplicable in Children In Need of Assistance (CINA) cases strengthens the provisions of the statute by shielding the statute from Constitutional challenges. SB 57 applies to parents (and other family members) and their children who need protection from abuse and neglect. When the government (the Department of Social Services) is involved to try to protect children, the CINA statute applies. The comprehensive CINA statute already contains provisions that require the court to deny custody or visitation to parents when there is a further likelihood of abuse or neglect, without shifting the burden to the parents and thus raising a challenge to the Constitutionality of the statute.

For further information please contact Nena Villamar, Chief of the Parental Defense Division at Nena.Villamar@maryland.gov or Krystal Williams, Director, Government Relations Division, by email at krystal.williams@maryland.gov or by phone at 443-908-0241.

(a) Why Family Law custody and visitation cases between parents/family members are different from CINA cases where the government is the party who wants custody or visitation denied to the parents.

- When two parents engage in a custody or visitation dispute, they are on equal footing in the eyes of the law. Both parents have the same rights because they are the parents and both have an equal chance to obtain custody and visits.
- But when the government is the entity that is seeking to separate families and remove the children from their parents' custody or prevent them from having visits, it becomes a Constitutional matter, because the parent-child relationship is protected from government intrusion by the 14th Amendment of the U.S. Constitution.
- In a CINA case, the Department of Social Services prosecutes the case; therefore, the government is a party. Under the 14th Amendment, there is a presumption that it is best for children to be with their parents. When the government is attempting to separate a family, such as when it asks the court to deny custody or visitation to the parents, the 14th Amendment is implicated. Under the Constitution, the government is not allowed to separate families except under limited circumstances, and the government has the burden of proving that the family should be separated. Applying SB57 to CINA cases will make it very vulnerable to legal challenges because it shifts the burden to the parents to show that they should have custody or visits with their own children. By excluding Child In Need of Assistance cases from these requirements, the statute will be safe from being struck down for being unconstitutional.

(b) Why the comprehensive CINA statute provides children in CINA cases greater protection under the CINA statute than they would have under SB57.

- The CINA statute is comprehensive and requires the court to determine that there is no likelihood of further abuse or neglect before the court may reunite children with their parents. The difference is that under the CINA statute, the responsibility for proving that the children would not be safe with their parents is on the government, whereas SB 57 shifts the responsibility to the parents. The CINA statute is therefore not subject to the same Constitutional challenges that SB 57 would be if it applied to CINA cases.

- At the very beginning of a CINA case – the shelter care hearing – if a court has reason to believe that the child has been abused or neglected, the court has to “determine whether the temporary placement of the child outside of the home is warranted.” (Courts & Judicial Proceedings § 3-815 (c)(2)). The Court only needs to have “reasonable grounds” to believe that the child needs to be placed outside of the home (i.e. deny custody to the parents) which is the exact same standard of proof as is proposed in SB 57.
- Even beyond emergency shelter care, the court may continue to deny custody or visitation to the parents if the court finds that giving custody of the child back to the parents is “is contrary to the safety and welfare of the child.” Obviously, if the court believes there is the likelihood of further abuse or neglect, then the court can deny custody and visitation because that would be contrary to the child’s safety and welfare. (C&J §3-815 (d)(1)).
- If a court finds that a child is a Child In Need of Assistance (because the child has been abused or neglected) the court then has the authority to deny custody and visitation to the parents if it would not be in the child’s best interests to be in the parents’ custody or for them to have visitation. (C&J §3-819 (b)(1)(iii)) Obviously, this means that if the court believes there is the likelihood of further abuse or neglect, the court will deny custody and visitation to the parents. Of equal importance, the court may order the parents to engage in services as a prerequisite to regaining custody and/or visitation. (C&J §3-819 (c)(1)(iii) and (2)).
- Even after the court has determined that a child is a CINA and the parents seek to regain custody or have visits with their child, the court always has to determine whether returning the child is in the best interests of the child. The court is required to hold a review hearing every six months. At the review hearing, the court has to determine the following:

(2) At a review hearing under this section, the court shall:

- (i) Evaluate the safety of the child;
- (ii) Determine the continuing necessity for and appropriateness of any out-of-home placement;
- (iii) Determine the appropriateness of and extent of compliance with the case plan for the child;
- (iv) Determine the extent of progress that has been made toward alleviating or mitigating the causes

necessitating the court's jurisdiction; and

(v) Project a reasonable date by which the child may be returned to and safely maintained in the home or placed for adoption or under a legal guardianship.

(C&J § 3-81.2 (a) (2)).

- Existing law is very well-established that the guiding principle in CINA cases is the best interests of the child. "The purpose of CINA proceedings is 'to protect children and promote their best interests.' " In re Priscilla B., 214 Md.App. 600, 622 (2013) (quoting In re Rachel T., 77 Md.App. 20, 28 (1988)). The CINA statute requires the court to determine that there is no likelihood of further abuse or neglect before the court may reunite children with their parents. Including CINA cases within the ambit of SB57 accomplishes only one thing: It shifts the burden to the parents, whereas in the CINA statute, the burden is on the government to show that the children should not be reunited, and subjects the statute to a constitutional challenge. SB 57 is intended for family law disputes, not disputes where the government is separating the family. The CINA statute is comprehensive and clear; applying SB 57 would only be redundant.

(2) SB 57 properly applies in cases where the government is not a party. It requires the party to prove that the children would not be abused or neglected again if the parent seeking custody or visitation were to be given access to the child. The focus of SB 57 is children who were the victims of domestic violence but who the Department of Social Services for whatever reason did not seek to remove from the parents. Thus, SB 57 ensures the safety of children who were the victims of abuse or neglect from further abuse or neglect by requiring the court to state with specificity its basis for determining that the children will be safe if custody or visitation were granted to the former abuser.

- A party to a custody or visitation proceeding will be required to produce evidence that further abuse or neglect is unlikely to occur if the child is placed in the party's custody or if the party is granted visitation. If the party is unable to produce sufficient or satisfactory evidence then the court will be unable to make the required determination that further abuse or neglect is unlikely, and custody and unsupervised visitation will be denied. Children will not be returned to a dangerous situation.

- Even if the court is unable to award custody or unsupervised visitation to a party, the court may still award supervised visits as long as long as adequate safeguards are in place to protect the child. This provision is consistent with current law which severely limits the circumstances in which any form of visitation is completely denied even to an errant parent. If a child's physical, emotional, and physiological well-being can be protected, supervised visitation should be awarded.
- Children who are the victims of domestic violence – whether it is physical, psychological, or sexual abuse – will be protected from the abuser but not separated from the non-abuser (who is often also a victim of the domestic violence). This -- not creating a redundant provision to apply to CINA cases -- was the underlying purpose of SB57.

* * *

For these reasons, the Maryland Office of the Public Defender urges a favorable report on Senate Bill 57.

SB57- MoCo- DHHS (GA21).pdf

Uploaded by: Frey, Leslie

Position: FWA



Montgomery County

Office of Intergovernmental Relations

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SB 57

DATE: January 26, 2021

SPONSOR: Senator Lee

ASSIGNED TO: Judicial Proceedings

CONTACT PERSON: Leslie Frey

(leslie.frey@montgomerycountymd.gov)

POSITION: SUPPORT WITH AMENDMENTS

(Department of Health and Human Services)

Family Law – Child Custody and Visitation

Senate Bill 57 establishes specified factors for courts to consider in determining the best interest of the child in a custody or visitation proceeding, among other provisions.

Currently, Family Law - Article §9-101 is the governing standard in Child in Need of Assistance Cases (CINA) cases where the local Child Welfare Services entity has proven abuse or neglect by a parent and the court is considering granting visitation to the parent. Under Family Law - Article §9-101(b), visitation must be supervised, and the court may not grant unsupervised visitation unless it finds there is “no likelihood of further abuse or neglect”.

The bill provides that §9-101 would no longer apply to CINA matters, but it does not provide for a replacement standard that would apply to CINA cases. Courts would continue to have the authority to make visitation orders consistent with the best interest of children but would no longer be bound by the §9-101 standard. Montgomery County DHHS respectfully requests that the bill be amended to remove the language exempting CINA cases from §9-101 because it removes a legal protection currently in place that ensures maltreaters are only granted unsupervised access once the higher “no likelihood of further abuse or neglect” standard is met.

Additionally, Montgomery County DHHS requests that the bill be amended to specifically state that §9-109 does not apply to CINA cases; in this instance, it is our understanding that the language in §9-109 is not intended to apply to CINA cases and for clarity we ask that the bill language reflect this intent.

A draft of our suggested amendments is included with this testimony. Montgomery County DHHS respectfully urges the committee to issue a favorable report with our amendments.

Article – Family Law

4 9–101.

5 ~~(A) THIS SECTION DOES NOT APPLY TO A CHILD IN NEED OF ASSISTANCE~~

6 ~~CASE.~~

7 ~~[(a) [In any custody or visitation proceeding, if the court has reasonable grounds to~~
8 ~~believe that a child has been abused or neglected by a party to the proceeding, the court~~
9 ~~shall determine whether abuse or neglect is likely to occur if custody or visitation rights~~
10 ~~are granted to the party.]~~

11 ~~[(b) [Unless the court specifically finds that there is no likelihood of further child~~
12 ~~abuse or neglect by the party, **and [the]** EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS~~
13 ~~SECTION, IN ANY CUSTODY OR VISITATION PROCEEDING, THE court shall deny custody~~
14 ~~or visitation rights to [that party, except that the court may approve a supervised visitation~~
15 ~~arrangement that assures the safety and the physiological, psychological, and emotional~~
16 ~~well-being of the child] A PARTY IF THE COURT HAS REASONABLE GROUNDS TO~~
17 ~~BELIEVE THAT A CHILD HAS BEEN ABUSED OR NEGLECTED BY THE PARTY, UNLESS~~
18 ~~THE COURT:~~

.....

9–109.

29 (A) [THIS SECTION IS SUBJECT TO THE PROVISIONS OF §§ 9–101, 9–101.1,

30 AND 9–101.2 OF THIS SUBTITLE.] **THIS SECTION DOES NOT APPLY TO A CHILD IN NEED OF ASSISTANCE**
CASE.

1 (B) ~~THERE IS NO PRESUMPTION THAT JOINT CUSTODY IS IN THE BEST~~

2 ~~INTEREST OF THE CHILD.~~

3 (C) ~~IN ANY CUSTODY OR VISITATION PROCEEDING, IN DETERMINING THE~~

4 ~~BEST INTEREST OF THE CHILD, THE COURT SHALL GIVE EXTRA WEIGHT TO FACTORS~~

5 ~~LISTED IN SUBSECTIONS (E) AND (F) OF THIS SECTION THAT AFFECT THE PHYSICAL~~

6 ~~AND PSYCHOLOGICAL SAFETY OF THE CHILD.~~

7 (D) ~~IF A CASE INVOLVES DOMESTIC VIOLENCE OR CHILD ABUSE, THE COURT~~

~~8 SHALL EXCLUDE ANY FACTORS LISTED IN SUBSECTIONS (E) AND (F) OF THIS
9 SECTION THAT RELATE TO THE WILLINGNESS OF A PARTY TO FACILITATE CONTACT
10 WITH THE CHILD OR THE OTHER PARTY.~~

~~11 (E) IN ANY CUSTODY OR VISITATION PROCEEDING, IN DETERMINING THE
12 BEST INTEREST OF THE CHILD, THE COURT SHALL CONSIDER THE FOLLOWING
13 FACTORS:~~

~~14 (1) THE ABILITY OF EACH OF THE PARTIES TO MEET THE CHILD'S
15 DEVELOPMENTAL NEEDS, INCLUDING:~~

~~16 (I) ENSURING PHYSICAL SAFETY;~~

~~17 (II) SUPPORTING EMOTIONAL SECURITY AND POSITIVE
18 SELF-IMAGE;~~

~~19 (III) PROMOTING INTERPERSONAL SKILLS; AND~~

~~20 (IV) PROMOTING INTELLECTUAL AND COGNITIVE GROWTH;~~

~~21 (2) THE RELATIONSHIP BETWEEN THE CHILD AND THE PARTIES, THE
22 CHILD'S SIBLINGS, OTHER RELATIVES, AND ANY OTHER PERSON WHO HAS A
23 SIGNIFICANT RELATIONSHIP WITH THE CHILD;~~

~~24 (3) THE ABILITY OF EACH PARTY TO MEET THE DAY-TO-DAY NEEDS
25 OF THE CHILD, INCLUDING:~~

~~26 (I) EDUCATION;~~

~~27 (II) SOCIALIZATION;~~

~~28 (III) CULTURE AND RELIGION;~~

~~29 (IV) FOOD;~~

~~1 (V) SHELTER;~~

~~2 (VI) CLOTHING; AND~~

~~3 (VII) MENTAL AND PHYSICAL HEALTH;~~

~~4 (4) THE ABILITY OF EACH PARTY TO:~~

~~5 (I) CONSIDER AND ACT ON THE NEEDS OF THE CHILD, AS
6 OPPOSED TO THE NEEDS OR DESIRES OF THE PARTY;~~

~~7 (II) PROTECT THE CHILD FROM THE ADVERSE EFFECTS OF ANY~~

8 CONFLICT BETWEEN THE PARTIES; AND

9 (III) MAINTAIN, FOSTER, AND FACILITATE RELATIONSHIPS WITH

10 THE OTHER PARTY, SIBLINGS, OTHER RELATIVES, AND OTHER INDIVIDUALS WHO

11 HAVE A SIGNIFICANT RELATIONSHIP WITH THE CHILD;

12 (5) THE HISTORY OF ANY EFFORTS BY A PARTY TO INTERFERE WITH

13 THE CHILD'S RELATIONSHIP WITH THE OTHER PARTY;

14 (6) ANY EVIDENCE OF EXPOSURE OF THE CHILD TO DOMESTIC

15 VIOLENCE, CHILD ABUSE, OR CHILD NEGLECT;

16 (7) THE AGE AND GENDER OF THE CHILD; AND

17 (8) MILITARY DEPLOYMENT OF A PARTY.

18 (F) IN ANY CUSTODY OR VISITATION PROCEEDING, IN DETERMINING THE

19 BEST INTEREST OF THE CHILD, THE COURT MAY CONSIDER THE FOLLOWING

20 FACTORS:

21 (1) EVIDENCE OF ANY PRIOR COURT ORDERS OR AGREEMENTS

22 BETWEEN THE PARTIES, INCLUDING PRIOR AGREEMENTS CONCERNING THE

23 CHILD'S CUSTODIAL ARRANGEMENTS OR PARENTING RESPONSIBILITIES FOR THE

24 CHILD;

25 (2) THE PARENTAL RESPONSIBILITIES AND THE PARTICULAR

26 PARENTING TASKS CUSTOMARILY PERFORMED BY EACH PARTY, INCLUDING:

27 (I) TASKS AND RESPONSIBILITIES PERFORMED:

6 SENATE BILL 57

1 1. BEFORE THE INITIATION OF LITIGATION;

2 2. DURING THE PENDING LITIGATION; AND

3 3. AFTER THE ISSUANCE OF ORDERS OF COURT; AND

4 (II) THE EXTENT TO WHICH THE TASKS AND RESPONSIBILITIES

5 HAVE BEEN OR WILL BE UNDERTAKEN BY THIRD PARTIES;

6 (3) THE PROXIMITY OF THE PARTIES' HOMES AS IT RELATES TO THEIR

7 ABILITY TO COORDINATE CUSTODY AND VISITATION, SCHOOL, AND ACTIVITIES;

8 (4) THE RELATIONSHIP BETWEEN THE PARTIES, INCLUDING THE

9 ABILITY OF EACH PARTY TO:

10 (I) EFFECTIVELY COMMUNICATE WITH THE OTHER PARTY; AND

11 (II) CO-PARENT THE CHILD WITHOUT DISRUPTION TO THE

12 CHILD'S SOCIAL AND SCHOOL LIFE;

13 (5) THE EXTENT TO WHICH EITHER PARTY HAS INITIATED OR

14 ENGAGED IN FRIVOLOUS OR VEXATIOUS LITIGATION, AS DEFINED IN THE

15 MARYLAND RULES;

16 (6) THE CHILD'S PREFERENCE IF:

17 (I) THE CHILD IS OF SUFFICIENT AGE AND CAPACITY TO FORM

18 A PREFERENCE; AND

19 (II) THE COURT CONSIDERS THE CHILD'S POSSIBLE

20 SUSCEPTIBILITY TO MANIPULATION BY A PARTY OR BY OTHERS; AND

21 (7) ANY OTHER FACTOR THAT THE COURT CONSIDERS APPROPRIATE

22 IN DETERMINING HOW TO BEST SERVE THE PHYSICAL, DEVELOPMENTAL, AND

23 EMOTIONAL NEEDS OF THE CHILD.

24 (G) THE COURT SHALL ARTICULATE ITS FINDINGS OF FACT ON THE

25 RECORD, INCLUDING:

26 (1) THE CONSIDERATION OF EACH FACTOR LISTED IN SUBSECTION

27 (E) OF THIS SECTION;

28 (2) THE CONSIDERATION OF ANY FACTOR LISTED IN SUBSECTION (F)

SENATE BILL 57-7

1 OF THIS SECTION;

2 (3) THE CONSIDERATION OF ANY OTHER FACTOR THAT THE COURT

3 CONSIDERED; AND

4 (4) THE WEIGHT THE COURT GAVE TO EACH FACTOR THAT THE COURT

5 CONSIDERED.

**(B) THIS SECTION IS SUBJECT TO THE PROVISIONS OF §§ 9-101, 9-101.1,
30 AND 9-101.2 OF THIS SUBTITLE.**

1 (C) THERE IS NO PRESUMPTION THAT JOINT CUSTODY IS IN THE BEST

2 INTEREST OF THE CHILD.

3 (D) IN ANY CUSTODY OR VISITATION PROCEEDING, IN DETERMINING THE

4 BEST INTEREST OF THE CHILD, THE COURT SHALL GIVE EXTRA WEIGHT TO FACTORS

5 LISTED IN SUBSECTIONS (E) AND (F) OF THIS SECTION THAT AFFECT THE PHYSICAL

6 AND PSYCHOLOGICAL SAFETY OF THE CHILD.

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18 SELF-IMAGE;

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22 CHILD'S SIBLINGS, OTHER RELATIVES, AND ANY OTHER PERSON WHO HAS A

23 SIGNIFICANT RELATIONSHIP WITH THE CHILD;

24 (3) THE ABILITY OF EACH PARTY TO MEET THE DAY-TO-DAY NEEDS

25 OF THE CHILD, INCLUDING:

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27 (II) SOCIALIZATION;

28 (III) CULTURE AND RELIGION;

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1 (V) SHELTER;

2 (VI) CLOTHING; AND

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6 SENATE BILL 57

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27 (F) OF THIS SECTION;

28 (2) THE CONSIDERATION OF ANY FACTOR LISTED IN SUBSECTION (F)

SENATE BILL 57 7

1 OF THIS SECTION;

2 (3) THE CONSIDERATION OF ANY OTHER FACTOR THAT THE COURT

3 CONSIDERED; AND

4 (4) THE WEIGHT THE COURT GAVE TO EACH FACTOR THAT THE COURT

5 CONSIDERED.

Custody - factors - testimony - senate - 2021.pdf

Uploaded by: Jordan, Lisae C

Position: FWA



Working to end sexual violence in Maryland

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mcasa.org

Testimony Supporting Senate Bill 57 with Amendments
Lisae C. Jordan, Executive Director & Counsel
January 26, 2021

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), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 57 with Amendments.

Senate Bill 57 – Custody Factors

This bill would codify the factors that courts must consider when making decisions about how to allocate custody and visitation. It would also add important mandates for the courts to explain their reasoning when dealing with custody and visitation after abuse has occurred. Currently, determinations regarding children are made based on factors set forth in several Maryland appellate cases. Unrepresented litigants often find it challenging to present the testimony and evidence a court needs to render a decision using these appellate cases. Codifying the factors in a single statute makes this information more accessible and understandable.

Several years ago, the legislature established the Commission on Child Custody Decision Making. The Commission studied many custody, visitation and access issues. The Commission ultimately drafted a proposed custody statute to both codify existing case law and suggest changes in how to handle these cases. The Commission's proposed language maintained the current §9-101 and §9-101.1 which require that judges consider prior abuse against a child or parent of a child, respectively.

Importantly, the Commission's language does not create a presumptions regarding custody, but maintains a best interests of the child standard as the touchstone for decision-making. Judges should have the discretion – and the duty – to consider all factors related to the best interests of a child. This child-centered focus should not be changed with a presumption.

SB57 contains factors that are similar in many respects to the Commission's suggested language and MCASA appreciates the work of the Task Force that produced it. However, MCASA respectfully suggests that the Custody Commission's work is stronger and that SB57 be amended to use the factors and language reflected in the Custody Commission's report.

**The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to report favorably on Senate Bill 57 with Amendments**

SB 57 FWA House of Ruth.pdf

Uploaded by: Lennig, Dorothy

Position: FWA



Marjorie Cook Foundation
Domestic Violence Legal Clinic

2201 Argonne Drive • Baltimore, Maryland 21218 • 410-554-8463 • 410-243-3014 (fax)

TESTIMONY IN SUPPORT WITH AMENDMENTS OF SENATE BILL 57

January 26, 2021

DOROTHY J. LENNIG, LEGAL CLINIC DIRECTOR

The House of Ruth is a non-profit organization providing shelter, counseling, and legal services to victims of domestic violence throughout the State of Maryland. The House of Ruth Domestic Violence Legal Clinic has offices in Baltimore City and Baltimore, Prince George's and Montgomery Counties. Senate Bill 57 amends current family law to require courts to make certain findings on the record if it is going to order custody or visitation in a case where a child has been abused and articulates the factors the court must consider in making a custody determination. **We urge the Senate Judicial Proceedings Committee to amend and report favorably report on Senate Bill 57.**

SB 57 would codify, in Section 9-109, the factors that courts must consider when making decisions about how to allocate custody and visitation. Currently, determinations regarding children are made based on factors set forth in several Maryland appellate cases. While attorneys are able to read these appellate decisions and determine how the factors apply to the facts of a particular case, most unrepresented litigants would have difficulty finding the right cases and analyzing them appropriately. Thus, unrepresented litigants are disadvantaged in their ability to present the testimony and evidence a court needs to render a decision. Codifying the factors in a single statute makes this information accessible to everyone.

Several years ago, the legislature established the Commission on Child Custody Decision Making. The Commission studied many custody, visitation and access issues. The Commission ultimately drafted a proposed custody statute to both codify existing case law and suggest changes in how we handle these cases. We respectfully suggest the bill be amended to use the factors and language reflected in that Commission's report. The Commission premised its work on the notion that neither parent is presumed to have any right to legal decision making or parenting time that is superior to the right of the other parent, and emphasizes that judges are to focus on the needs of an individual child and the parents' respective abilities to meet those needs.

The House of Ruth urges the Senate Judicial Proceedings Committee to amend and report favorably on Senate Bill 57.

SB57 Center for Hope SWA custody and visitation.pd

Uploaded by: Lombardi, Joyce

Position: FWA



Senate Bill 57- Family Law – Custody and Visitation

Senate Judicial Proceedings Committee – January 26, 2021

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

Position: **SUPPORT WITH AMENDMENTS**

Center for Hope (CFH) writes in support of SB57, which enumerates factors for judicial decisions concerning custody and visitation in cases with allegations of child abuse. The bill gives more guidance to courts in deciding these difficult and often dangerous cases.

Center for Hope supports a very limited amendment that would clear up confusion over whether the custody statute in question applies to and is used in CINA (child in need of assistance) cases. According to child welfare lawyers in Maryland, the laws in question in SB57 are indeed used in CINA cases (along with other laws elsewhere in the Md code) and exempting them could be detrimental to children in foster care. Thus the Center for Hope supports amending the bill in the limited clarifying sense by removing the sentence on page 2, line 32 that says “This section does not apply to a Child In Need of Assistance case.”

Center for Hope, a subsidiary of LifeBridge Health, helps clients heal from acute violence such as child abuse, domestic violence, street violence and elder abuse through integrated, evidence-based programs that extend beyond hospital walls. Center for Hope provides trauma-informed crisis intervention, forensic interviews, medical exams, mental health, wraparound case management, family advocacy and workforce development services. Center for Hope now includes the Baltimore Child Abuse Center, one of the state’s oldest and largest children’s advocacy centers. Children’s advocacy centers in Maryland must be available in each county, must meet accreditation standards, and must engage multidisciplinary teams of experts to respond to allegations of child abuse. Md. Cts and Jud Proc §11-928.

Research and anecdote shows that family law judges and magistrates do not always make sound decisions in custody cases, and often end up granting unfettered access to abusers. As reported in the 2020 Final Report of the *Governor’s Workgroup to Study Child Custody Court Proceedings Involving Child Abuse or Domestic Violence Allegations* (of which I was a part) it has been estimated that up to 58,000 children each year in this country are ordered by a court into some form of unsupervised contact with a physically or sexually abusive parent. Some of the children end up abused again; others are subsequently killed by the abusive parent. The Final Report also noted that in 2018, the U.S. House of Representatives adopted a resolution “declaring that allegations of domestic violence and child abuse are often discounted in child custody litigation, thereby placing children at ongoing risk when abusive parents are granted custody or unprotected parenting time by courts.”

This alarming fact occurs in part because many well-meaning court personnel are not adequately trained in the nuances and difficulty of gathering evidence and assessing evidence in child abuse cases – especially evidence from the children themselves. It also occurs in part because of the pervasive bias among most of us, that also permeates courtrooms: that allegations of abuse in custody cases are often fabricated. Though difficult to measure, studies show that “fabrication” and false allegations of child abuse happen in only about 2-10% of cases, a number far lower than many professionals believe. See e.g. D. Finkelhof et al (1993).



The Center for Hope's legal team often helps distraught parents find counsel to navigate family law courts in custody and visitation cases after an allegation of abuse has been made. These cases have increased during the pandemic. The protective parents are almost always pro se, are often survivors of domestic violence, and describe poor treatment by courts in custody/visitation cases to a surprising degree. A few protective parents have reported being threatened with contempt despite simply trying to protect their children and credit the allegations of abuse. This occurs, reportedly, even though they have an open CPS investigation or a CPS Safety Plan, or a forensic interview that supports their (and the child's) need to modify visitation, and/or a child who habitually screams, hides or wets the bed before the times s/he must visit dad's house.

Some protective parents report that court does not get to hear important evidence such as a child's videotaped out of court statements to a trained forensic interviewer, or testimony from a caregiver or independent witness regarding a child's physical manifestations of emotional distress such as bed wetting, stomach or eating problems, nightmares, protective play, etc.

Helping the courts navigate these difficult cases by putting their findings of likelihood of abuse on the record and by providing several factors the courts must consider can help make sure that all available evidence is considered and weighted. It creates a cleaner record on appeal (if any) but also helps parties understand what types of evidence can be considered in difficult contested matters. Furthermore, while existing Maryland law requires the court to determine whether more abuse or neglect is likely to occur, SB57 now requires the court to "state with specificity the reasons for the finding that there is no likelihood of further child abuse or neglect by the party."

We urge a favorable report for SB57, with the minor amendment as noted.

Joyce Lombardi, Director of Government Relations
Center for Hope
2300 North Charles Street
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410-429-7050

LifeBridge Health is a regional health system comprising Sinai Hospital of Baltimore, Levindale Geriatric Center and Hospital in Baltimore; Northwest Hospital; Carroll Hospital and Grace Medical Center (formerly Bon Secours). At LifeBridge Health and Center for Hope, we are committed to convening national best practice and trauma experts to respond to violence, abuse and exploitation of our area's most vulnerable populations.

01.26.2021 Audio_Written Testimony to Maryland Sen

Uploaded by: Marjanovic, Sophia

Position: FWA

I am Dr. Sophia Marjanovic, PhD in immunology and microbiology

I trained at NIH in Bethesda.

I am of the Oceti Sakowin tribe.

I am a survivor of domestic violence, police misconduct, and legal abuse that lead me to lose my 28 month old breastfeeding son

In 2012, I was attacked holding my 10 day old newborn son.

I lost custody of my son to our abuser.

I have suffered for years, even becoming completely debilitated from pain struggling to feel safe in my own body after dealing with corruption in the courts and in the social services departments in the State of Maryland. I have successfully gotten at least a psychologist trying to force me to interact with our abuser declared a danger to the public by the Maryland Board of Examiners of Psychologists.

I eventually became homeless and enslaved in human trafficking as a result of becoming completely disabled from the physical and emotional pain I have sustained in dealing with the inability to protect my son from abuse.

I have been in therapy for years trying to heal, but when the system is so unsafe, I need the system to be repaired to BE safe.

SB 57 will fundamentally change nothing for survivors just like the Termination of Parental Rights Bill in 2018 passed and signed into law by the Maryland General Assembly fundamentally changed nothing to protect children from rapists.

The reason nothing will fundamentally change is because the bill frequently allows court discretion to decide supervised visitation by stating "the court MAY approve a supervised visitation arrangement."

I have not been able to see my son since he was 3.5 years old back on December 20, 2015. He is now over 8.5 years old. In fact, the court subjected me to three hearings where our abuser never appealed the case to the appellate court after a judge had refused to rule in our abuser's favor based on fraudulent testimony of a court appointed social worker, but shopped for a judge in the Anne Arundel County Circuit Court until he found a judge to rule in his favor that I, a survivor who got a federal permanent restraining order who was trying to protect my son from sexual abuse that he disclosed to me after suffering from a sexually transmitted disease, was a "parental alienator." Mind you, parental alienation is a fraudulent diagnosis that was made up by the pedophile, Richard Gardner, and parental alienation is only propagated as real in the courts and in pedophile circles.

This bill will not protect my son, me or anyone else trying to escape abuse from being labeled "parental alienators," which is considered psychological or emotional manipulation by the courts. This bill doesn't specify custody or visitation arrangements, leaving the discretion up to the courts, which has been and will continue to be the problem.

This bill allows the court to continue to have discretion to keep denying the safety of our children in stating "the court may...(1) order that visitation be rescheduled; (2) modify the custody or

visitation order...; (3) assess costs or counsel fees against the party who has unjustifiably denied or interfered with visitation rights.”

This bill does not define what “any reasonable effort to protect a child or a party to a custody or visitation order” means, which leaves protective parents to be labeled “parental alienators” by rapists, pimps, pedophiles, domestic abusers, murderers, etc.

Because I have been traumatized into disability by the way the court has not protected my son, I am unable now to meet the needs of my child in Section E. This bill will not be a remedy for the protective parents who have been traumatized into disability by the corrupt nature of the courts in Maryland.

This bill will fundamentally change nothing by stating “the court MAY consider the following factors: (1) evidence of prior court orders or agreements between parties...” as I have been forced to sign agreements under duress and have loudly stated my objections to such forceful agreements. My objections have often been stricken from the record by the judge because the judge has that ability to do that.

This bill will fundamentally change nothing by stating “the court MAY consider the following factors: (6) The child’s preference if: ...(ii) the court considers the child’s possible susceptibility to manipulation by a part or by others;” as judges have discretion to determine that parental alienation, a fraudulent diagnosis made up by the pedophile Richard Garner and propagated only in the courts, is real and a means to keep protective parents from their children.

I demand that this bill be amended to actually have some teeth based on the criticisms I have already outlined or else this bill is merely political theater that fundamentally changes nothing just like the Termination of Parental Rights of Rapists bill in 2018 passed and implemented into law in 2018 by the Maryland General Assembly has not done anything to protect children from rapists. I expect to be back here for years for now because I know this Maryland General Assembly is not serious about protecting children in the state of Maryland.

SB 57- Family Law - Child Custody and Visitation.pd

Uploaded by: Ruth, Laurence

Position: FWA

BILL NO: Senate Bill 57
TITLE: Family Law- Child Custody and Visitation
COMMITTEE: Judicial Proceedings
HEARING DATE: January 26, 2021
POSITION: **SUPPORT WITH AMENDMENTS**

Senate Bill 57 would amend Family Law Section 9-101 to require the court to articulate its findings under this statute. It makes other alterations to that and other sections, and also codifies factors a court must consider in hearings involving custody. The Women's Law Center of Maryland (WLC) supports the concept of this bill, but thinks the custody factors are better articulated elsewhere.

Senate Bill 57 arises out of recommendations made by the Workgroup to Study Child Custody Court Proceedings Involving Child Abuse or Domestic Violence Allegations, constituted by statute in 2019. The Women's Law Center was appointed to this Workgroup. The Workgroup worked tirelessly, and delved deeply into how domestic violence, child abuse, and child sex abuse effects children and families and how courts manage cases with such allegations. There were many professional experts who presented to the Workgroup. After over 18 months of meetings the recommendations were finalized. The conclusion of the Workgroup, generally, was that stakeholders in child custody proceedings, including judges and magistrates, need more education of newer research, and that courts are not carefully and fully considering evidence of harm to victims when making custody decisions in the best interests of the child.

SB 57 is an effort to make courts be more deliberate in their approach to cases where such allegations are made. Anecdotally, the common view is that courts frequently completely disregard Family Law Code Section 9-101 and 9-101.1. The parts of SB 57 that address specifically these Code Sections, if passed, may reinforce to courts that they must address these allegations explicitly and articulate specific findings. This may help litigants, many of whom are unrepresented, to understand how a court came to its ruling, and may in turn increase faith in the court system. Detractors of SB 57 opine the court will just continue to not address allegations of domestic violence or child abuse, and that making the requirements for the court more stringent will have the opposite of the intended effect. The WLC supports requiring articulation by the court of why it has determined abuse is not likely to reoccur.

SB 57 also amends Section 9-105, to add "ANY REASONABLE EFFORT TO PROTECT A CHILD OR A PARTY TO A CUSTODY OR VISITATION ORDER FROM THE OTHER PARTY MAY NOT BE CONSIDERED AN UNJUSTIFIABLE DENIAL OR INTERFERENCE WITH VISITATION GRANTED BY A CUSTODY OR VISITATION ORDER," We appreciate the effort to make clear that a "protective parent" should not be penalized, but there may be a better way to do this. We are also concerned about potential for abuse of the very broad language in this section in high conflict cases.

The WLC, respectfully, thinks SB 57 is a valiant effort to try to do too much. It is troublesome to add a somewhat piecemeal and non-vetted codification of the case law factors about custody into this bill. Let custody factors stand alone for consideration.

We have long supported codifying custody factors and have been involved in this issue for many years. Our preference regarding codification of the custody factors is for HB 505, a bill that has been presented

over the years, in the same or very similar form, since the extremely well-regarded Custody Commission completed its work in 2013. The WLC was also part of the Custody Commission. The Custody Commission had a much broader charge than the Workgroup, and the language in HB 505 reflects the work of an impressive number of experts in family law. It addresses cases where domestic violence has been alleged and it updates statutory language to try to move the conversation forward from “custody and visitation” to more modern concepts of parenting. It has been widely vetted.

Therefore, the Women’s Law Center of Maryland, Inc. support with amendments Senate Bill 57.

The Women’s Law Center of Maryland is a private, non-profit, legal services 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, working to ensure physical safety, economic security, and bodily autonomy for women in Maryland.

SB57_MNADV_FWA.pdf

Uploaded by: Shapiro, Melanie

Position: FWA



BILL NO: Senate Bill 57
TITLE: Family Law – Child Custody and Visitation
COMMITTEE: Judicial Proceedings
HEARING DATE: January 26, 2021
POSITION: **SUPPORT WITH AMENDMENTS**

The Maryland Network Against Domestic Violence (MNADV) is the state domestic violence coalition that brings together victim service providers, allied professionals, and concerned individuals for the common purpose of reducing intimate partner and family violence and its harmful effects on our citizens. **MNADV urges the Senate Judicial Proceedings Committee to amend and issue a favorable report on SB 57.**

Senate Bill 57 originates from the recommendations of the Workgroup to Study Child Custody Court Proceedings Involving Child Abuse or Domestic Violence Allegations, which was statutorily created in 2019. The Workgroup heard from numerous professional experts and met over an eighteen-month period to develop their recommendations. Currently, child custody factors are found in Maryland case law. This puts pro se litigants at an extreme disadvantage. Senate Bill 57 would codify, in Family Law Article Section 9-109, the factors that courts must consider when determining custody and visitation.

MNADV supports the codification of custody factors. We believe that it will benefit survivors of domestic violence who often appear as pro se litigants. However, we believe the factors should reflect the recommendation from the 2013 Commission on Child Custody Decision Making. Those factors were developed and recommended after a significant vetting process by the family law experts that served on the Commission.

Senate Bill 57 contains an important requirement that courts articulate their findings of fact on the record and explain their considerations of each custody factor. We believe that this language will be of great benefit to all parties in understanding how the court reached its decision on child custody and visitation, and the weight that was given to the various factors to consider including a child's exposure to domestic violence.

For the above stated reasons, the **Maryland Network Against Domestic Violence urges a favorable with amendments report on SB 57.**

MD Judiciary - Testimony SB 57.pdf

Uploaded by: Elalamy, Sara

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 57
Family Law – Child Custody and Visitation
DATE: January 13, 2021
(1/26)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 57. This bill would 1) amend Md. Code, Family Law Art., § 9-101 to require judges to articulate reasons for finding that there is no likelihood of further child abuse or neglect in certain custody and visitation proceedings and alter the conditions of certain supervised visitation arrangements; 2) amend § 9-105 to add that certain efforts to protect a child or party would not be considered an unjustifiable denial or interference with visitation; and 3) add § 9-109, which would establish certain factors for the court to consider when determining which allocation of custody or visitation would be in the best interest of a child.

The Judiciary’s primary concern with this bill is that it would result in substantial changes in law, including changes in certain presumptions about custody, that would limit judicial decision-making and discretion. It would in effect impede a judge’s ability to adjudicate cases based on a family’s unique facts and circumstances.

The Judiciary also has concerns with the provisions in Family Law Article §9-109 that require the court to specifically articulate consideration of each factor, the **weight** given to each, and for the court to give “**extra weight**” to certain factors. While it is prudent for trial judges to articulate consideration of relevant factors, this provision micro-manages decision making and gives an independent basis for appeal on form, as opposed to substance of rulings.

Finally, the Judiciary notes that that language, “if a case *involves* domestic violence or child abuse,” in §9-109(d) is vague.

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

Testimony - SB57.pdf

Uploaded by: Glickman, Ilene

Position: UNF

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**

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 or by telephone at (410) 838-9060.

SB 57-Opposition Testimony.pdf

Uploaded by: White, Rachel

Position: UNF

To: The Honorable Chair, Senator William Smith, and members of the Judiciary Committee
From: Rachel White, JD, Child Welfare Policy Director
Re: **SB 57- Family Law- Child Custody and Visitation**
Date: January 26, 2021
Position: **OPPOSE**

Thank you for the opportunity to provide written testimony on SB 57- Family Law- Custody and Visitation. Advocates for Children and Youth **opposes** this bill as it is not in the best interests of children in need of assistance (CINA) and will cause considerable harm.

SB 57 eliminates current protections provided to children in need of assistance under Family Law 9-101. If this bill is passed in its current form, custody or visitation **will not** be automatically denied for parents/caregivers even when the court has reasonable grounds to believe that a child has been abused or neglected by the parent or caregiver. In addition, when deciding whether custody or visitation can be considered for a parent or caregiver who the court has reasonable grounds to believe has abused or neglected a child in need of assistance, the court **does not** have to consider whether there is a likelihood of further abuse or neglect by the parent/caregiver, and the court **does not** have to state with specificity the reasons for finding that there is no likelihood of further child abuse or neglect by that parent/caregiver.

In addition, when deciding whether supervised visitation can occur for a parent or caregiver that the court reasonably believes has abused or neglected their child, the court **does not** have to consider the type of child abuse, neglect, including whether the abuse was emotional, physical, or sexual. The court also **does not** have to assure the safety and physiological, psychological, and emotional well-being of the child.

In current practice, children's attorneys rely on Family Law 9-101 to protect children in need of assistance from future abuse or neglect from their caregivers. Family Law 9-101 has been used to support children in need of assistance for decades. Passing this bill as is will disrupt precedent and will single-handedly put children in need of assistance in harms way by eliminating current protections.

For the reasons stated above, we urge this committee to issue an unfavorable report on SB 57 as it will put children in need of assistance at risk for future child abuse and neglect.

SB57_DHS_LOI.pdf

Uploaded by: Graziano, Lauren

Position: INFO

DATE: January 26, 2021

BILL NUMBER: Senate Bill 57

COMMITTEE: Judicial Proceedings

BILL TITLE: Family Law – Child Custody and Visitation

DHS POSITION: Letter of Information

The Department of Human Services (DHS) respectfully offers this letter of information regarding Senate Bill 57 (SB 57). This bill significantly changes provisions of Family Law (FL) §§ 9-101 and 9-101.1, and their applicability to Child in Need of Assistance (CINA) proceedings.

SB 57 changes long-standing juvenile court practice by eliminating the application of FL §§ 9-101 and 9-101.1 to CINA proceedings altogether. Since 2000, the Maryland Court of Appeals and Maryland Court of Special Appeals have required that juvenile courts follow FL §§ 9-101 and 9-101.1 in all CINA proceedings before awarding custody or visitation to an abusive or neglectful parent.¹ Furthermore, the requirement to consider FL § 9-101 is set forth in the model CINA orders. With CINA proceedings being excluded from FL §§ 9-101 and 9-101.1, permanency could be delayed for foster youth until there is clear guidance from the appellate courts to replace the parameters set out in these code sections. This may result in additional costs for foster care placement, as well as additional case work service and supervision.

SB 57 adds a new section, FL §9-109, that details which specific factors a court must consider, which factors the court may consider, and which factors must be accorded more weight in determining the child's best interest. While the bill excludes CINA proceedings from FL §§ 9-101 and FL 9-101.1, the bill does not exclude CINA proceedings from the newly proposed FL § 9-109. The bill imposes new factors to determine the best interest of the child, that are not applicable in the context of a CINA proceeding.

Custody and visitation decisions are serious and complex, and each case hinges on a plethora of unique facts relating to each case. As such, current law directs the court to apply a non-exhaustive set of long-established factors when making determinations on custody and visitation.²

Thank you for the opportunity to offer this information. The Department hopes it is helpful in your deliberations regarding SB 57.

¹ See e.g., *In re Justin D.*, 357 Md. 431, 445 (2000); *In re Yve S.*, 373 Md. 551, 587–88 (2003); *In re Andre J.*, 223 Md. App. 305, 325–26 (2015). These cases explain that FL 9-101 gives the juvenile court clear direction-- it cannot award custody or unsupervised visitation to an abusive or neglectful parent without making a proper FL 9-101 finding.

² See *Arizova V. Suleymanov*, 243 Md. App. 340, 345-47 (2019), Appellate courts, however, have recognized that “no single list of criteria will satisfy the demands of every case.” *Taylor v. Taylor*, 306 Md. 290, 303 (1986).

